

THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

WRIT PETITION No.22867 of 2005

DATED: 31.01.2006

Between:

M.Basavaraj.

... PETITIONER

AND

The Depot Manager.

... RESPONDENT

ORDER:

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The petitioner was employed as a Conductor in the APSRTC on 10.01.1971. He was removed from service, on disciplinary grounds, on 09.04.1985. Aggrieved thereby, the petitioner raised an Industrial Dispute, being I.D.No.172 of 1986, before the Labour Court-III, Hyderabad. Through its award, dated 24.04.1993, the Labour Court directed reinstatement of the petitioner with continuity of service, but denied back wages. Consequently, the petitioner was reinstated into service on 06.11.1993. Thereafter, the petitioner retired from service on 31.03.2005. The grievance of the petitioner is that he was denied the gratuity for the period from the date of removal to the date of reinstatement i.e., from

09.04.1985 to 06.11.1993, on the ground that he was not in active service, during that period. The petitioner challenges the action of the respondent and seeks appropriate directions.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent.

The limited grievance of the petitioner is about the denial of gratuity to him, for the period from the date of removal to the date of reinstatement. The Payment of Gratuity Act, 1972 (for short 'the Act'), mandates that an employee shall be paid the gratuity, calculated on the basis of the length of his service. The Act does not insist that the employee must be in physical service. If that were to be so, an employee would not be entitled for gratuity, for the period, for which he has gone on leave. Similarly, if the employee was removed from service, and he is directed to be reinstated, duly granting continuity of service, the employer cannot ignore that portion of the service, in the context of payment of gratuity. This aspect of the matter was dealt with by this Court in the case of ***M. Rama Rao vs. Asst. Traffic Manager, APSRTC, Hyd..*** The facts of that case are identical to the one on hand. In the instant case, the Labour Court granted the relief of continuity of service to the petitioner, though it denied back wages.

For the foregoing reasons, the Writ Petition is allowed, and the respondent is directed to pay the gratuity to the petitioner, for the period between 09.04.1985 and 06.11.1993, in accordance with the provisions of the Act, within a period of three (3) months from the date of receipt of a copy of this order. There shall be no order as to costs.

31.01.2006

Note: Issue C.C. in one week.

(B/o)

Jsu