

THE MANAGING DIRECTOR, A.P. STATE ROAD TRANSPORT CORPORATION

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v.

THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, RAMKOTE,
HYDERABAD AND ORS. ETC.

FEBRUARY 1, 2001

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[S. RAJENDRA BABU AND S.N. VARIAVA, JJ.]

Labour Laws:

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Industrial Disputes Act, 1947: Section 10 (1) (d)—Reference to Industrial Tribunal regarding entitlement of the transferees under the new employer to benefits accruing to the employees of the former employer after the date of transfer—Held, in such a situation, the real issue was as to what service conditions were applicable to the transferred employees who had opted to abide by the regulations of the new employer—Industrial Tribunal cannot be said to have crossed the limits under reference.

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Promotion—Some of the transferred employees foregoing promotion while the other were being promoted—Industrial Tribunal held that if and when the transferees opted to be governed by the Corporation's regulations, they should be promoted on the basis of total service and seniority including their service in Tirupati Tirumala Devasthanam—Such direction of the Industrial Tribunal held to be improper—Held that such employees whose juniors had already been promoted should be considered for promotion as and when vacancies arise in future without disturbing the already affected promotions—Further notional promotion be given without monetary benefits—Service Law.

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Back wages—Transport wing of the Devasthanam transferred to the appellant Corporation in 1975—Some employees opted to be governed by Rules and Regulations of the Corporation while the rest did not—Transferred workmen's claim to selection grade under consideration since prior to the date of transfer—Said claim granted by the Corporation notionally in 1976 i.e., after the transfer with effect from 1974 i.e., before the transfer—The monetary benefits were to be with effect from 1978—Industrial Dispute referred—Tribunal allowed the monetary benefits from the first day of the

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A *year of the transfer—Challenge to the said award in a writ petition dismissed by the High Court—On appeal, Held: The award called for no interference.*

Ex-gratia bonus—Industrial Tribunal held that the transferred employees opting to be governed by the Corporation's regulations to get ex-gratia bonus at par with the other employees of the Corporation—Held, finding of the Tribunal justified.

B *Concessional rates of bus tour—Said concessional rates for the employees of the Corporation raised to Rs. 4 per kilometer from Re. 1 per kilometer—Industrial Tribunal changed the said rate to Rs. 2.50 per kilometer on equitable basis till the same are changed by the corporation—Finding of the Tribunal—Held, justified.*

C **By an agreement entered into in 1975, the transport wing of Tirupati Tirumala Devasthanam, along with its 850 workmen, was transferred to the appellant Corporation. A challenge to the said transfer, by way of a writ petition, was dismissed by the High Court. Subsequently, appeal against the High Court order was also dismissed. While some of the transferred workmen opted to come under the Rules and Regulations of the appellant Corporation, the others opted not to come under the same. The members of the workers' Union made a demand that under Clause 13 of the transfer agreement they were entitled to the benefits which accrued to the present TTD workers after the transfer. However, the Corporation did not agree to the demand which led to referring of an industrial dispute under Section 10 (1) (d) of the Industrial Disputes Act, 1947. The Tribunal held that members of the claimant Union were not entitled to claim benefits which were conferred by the TTD Management on its employees subsequent to the merger in 1975. The Tribunal ordered (a) for Pay in selection grade to be fixed taking 01-01-1975 as the crucial date; (b) for promotion to the workmen as and when their opting to be governed by the appellant Corporation's Regulations taking into account their total service and seniority including the TTD service; (c) facility for bus tour on concessional hire and (d) grant of ex-gratia bonus to the members of the claimant Union on the basis on which the order employees of the appellant Corporation were paid. Appellant Corporation challenged the said award in a writ petition which was dismissed by the High Court. Hence this appeal.**

D **The appellant Corporation contended that the question referred to the Tribunal being of a limited character as to whether the benefits accruing to the present TTD workers could be extended to the employees of the transport**

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wing or not and having answered that the said employees have all opted for being governed by the Corporation rules and regulations and other service conditions, it is not open to them to claim those benefits. It was also contended that the direction given by the Tribunal was far beyond the scope of the reference. A

Partly allowing the appeal, the Court B

HELD : 1. The Tribunal has noticed that selection grade has been given with effect from 1-1-1974 restricting the monetary benefits to be given only from 1-1-1978; that the orders were actually issued in the year 1976, and that the appellant Corporation had agreed to safeguard the conditions of service of the workers. The Tribunal had further noticed that the claim in that regard was pending consideration before the takeover and therefore, restricting the monetary benefits to be given only from 1-1-1978 was not justified and the monetary benefits will have to be given with effect from 1-1-1975. This claim appears to be rightly allowed by the Tribunal and thus calls for no interference. [789-D-E] C

2. With regard to ex-gratia, the direction of the Tribunal is that it shall be paid to the members of the claimant Union on the same basis on which ex-gratia is paid to other employees of the appellant Corporation. Inasmuch as the employees working in the transport wing have now opted to be governed by the appellant Corporation's regulations and other service conditions, the Tribunal held that they should be treated at par from the year 1986 onwards and they should be given similar benefits that have been given to the other workers of the appellant Corporation earlier. This finding of the Tribunal is justified. [789-G-H; 790-A] D

3. With regard to the bus tour on concessional rate being @ Rs. 1.00 per kilometer, the Tribunal fixed the rate @ Rs. 2.50 per kilometer for the years 1985 onwards till the appellant Corporation changes the rate of hire. The Tribunal adopted this as a rule of thumb with a view to find out an equitable solution for the dispute between the parties. Inasmuch as the Tribunal had found that unilateral alteration of hire rate to Rs. 4 per kilometer was not justified adopted the rule of thumb. Thus, the discretion exercised by the Tribunal in this regard is not improper. [790-A-C] E

4. The direction of the Tribunal regarding promotion would give rise to a lot of difficulties in the services inasmuch as several others have already been promoted and given that benefit and now to consider the cases of the members of the Union for promotion would lead to anomalous results, apart F
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A from financial burden that will arise in the case. Therefore, all that could be done now is to consider the case of these employees for promotion as and when vacancies arise bearing in mind whether their juniors have been promoted earlier or not. In such cases, since the workmen in the Transport wing have also opted to be governed by the appellant Corporation's regulations, their cases will have to be examined for promotion but where promotions had already been given to others the same cannot be disturbed. Notional promotion may be given to them without any monetary benefits and suitable adjustments in seniority be made. [790-E-G]

C 5. The question referred to the Tribunal though worded as to cover applicability of conditions of service in TTD to the members of the respondent Union, what was really in issue is as to what conditions of service are applicable to them after they exercised their option to abide by the Corporation regulations, and thereafter both parties have raised pleadings and adduced evidence. Hence it cannot be said that the Tribunal travelled beyond the scope of reference. [790-H; 791-A]

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CIVIL APPELLATE JURISDICTION : Civil appeal No. 3747 of 1998.

From the Judgment and Order dated 3.12.96 of the Andhra Pradesh High Court in W.P. No. 6464 of 1989.

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Civil Appeal No. 3748 of 1998.

F L. Nageswara Rao, M.N. Rao, G.R.K. Prasad, Ms. Madhu Tewatia, Jayant Muthraj, G. Prabhakar, G. Vidya Sagar, R. Santhana Krishnan and P.P. Singh for the appearing parties.

The Judgment of the Court was delivered by

G **RAJENDRA BABU, J.** The transport wing of Tirupathi Tirumala Devasthanam (for short "T.T.D.") was transferred to the Andhra Pradesh State Road Transport Corporation (for short "the Corporation") under an agreement dated 8.8.1975. It was provided in the agreement that 850 workmen to be transferred to the Corporation. The transfer of the workmen to the Corporation was challenged in a writ petition No. 1361 of 1976 but it was dismissed on 13.7.1977 and a writ appeal filed against the said judgment was also confirmed. While some of the transferred T.T.D. transport workers who

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opted to come under the Corporation Rules and Regulations were not before the court, the other workers wanted to maintain their separate identity in spite of their transfer to the Corporation and so they did not opt to come under the Corporation Rules and Regulations. Subsequent to the transfer certain settlements had been entered into with the Corporation by the Union of the workmen from time to time. The members of the Union made a demand that under clause 13 of the transfer agreement dated 8.8.1975 they were entitled to the benefits which accrued to the present T.T.D. workers after 8.8.1975 but the Corporation did not agree for such demand, an industrial dispute was raised which was referred to the Industrial Tribunal (hereinafter referred to as 'the Tribunal') under Section 10(1)(d) of the Industrial Disputes Act (for short "the Act"). The question referred to the Tribunal reads as follows :

"Whether the former transferred T.T.D. workers (presently the APSRTC workers) are entitled to the benefits accrued to the present T.T.D. workers after 8.8.75 in terms of the agreement dated 8.8.75. If so, to what extent?"

After notice the representatives of the Union, the Corporation and the T.T.D. filed their statements. The Union raised several questions although the question referred to the Tribunal was with reference to the benefits that have accrued to the present T.T.D. workers would be applicable to the erstwhile T.T.D. workers or not. In view of the several claims made before the Tribunal the scope of the reference was to be considered. The Tribunal examined various contentions and raised certain issues which are :

1. Whether the second respondent TTD represented by its Executive Officer is a proper and necessary party in this industrial dispute?
2. Whether the members of the petitioner Union are entitled to the benefits conferred on the TTD employees subsequent to 10.8.1975 merger?
3. If any relief is to be granted in this industrial dispute against whom should the award be passed?
4. To what relief?

The Tribunal noticed that clause 11 of the agreement indicated that the T.T.D. reserved its right to retain vehicles, equipment and other assets as required by them along with the required number of workers to operate them. Clause 13 stipulated that all the remaining workmen working in the transport

A undertaking of the T.T.D. without interruption in their service are taken by the Corporation and protection is given in pay and allowance, provident fund contributions and gratuity in terms of Section 25FF of the Act and T.T.D. agreed to pay such compensation if any as is liable to be paid to workmen who do not opt to serve under the Corporation. Under clause 14 arrangement is made for retirement benefits, provident fund and gratuity. Under clause 15

B T.T.D. agreed to continue to permit the employees to continue to reside in their quarters subject to certain conditions. Pursuant to the take over there was complete cessation of legal relationship between the members of the Union and the T.T.D. and after 10.8.1975 these employees have entered into various agreements and settlements with the Corporation and the T.T.D. was

C not a party to those agreements and none of these workers opted to be retrenched and claimed compensation from the T.T.D., the Tribunal confined the dispute only as against the Corporation. The entire transport wing had been handed over to the Corporation and, therefore, Section 25FF of the Act would be applicable. But the workmen also exercised their option in the form indicated in Ex. M9 in which they have to give an undertaking that they shall

D abide by the rules of RTC in force from time to time subject to the workmen rights under Section 25FF of the Act. This option form was provided pursuant to a writ petition No. 4456 of 1975. In the circumstances, the Tribunal found that having given categorical undertaking that they would abide by the rules and regulations of the Corporation in force, it is not open to the members of

E the claimant Union to now contend that they continued to be governed by the T.T.D. rules and regulations and they continue to be employees of the T.T.D.. Therefore, the Tribunal held that they are not entitled to claim benefits which conferred by the T.T.D. Management on its employees subsequent to 10.8.1975. However, after rejecting several other reliefs claimed, the Tribunal

F granted the following four reliefs :

1. Pay in the selection grade will have to be fixed taking 1.1.1975 as the crucial date.
2. Regarding promotions, it held as under :

G “if and when the workers opt to be governed by A.P.S.R.T.C. Regulations then they may be given promotions taking into account their total service and the seniority including the TTD services.”

3. The facility for bus tour on concessional hire, and
- H 4. Ex gratia bonus should be paid to the members of the claimant

Union on the same basis on which *ex gratia* bonus is paid to other employees of the RTC. A

The matter was carried in writ petition to the High Court and the High Court by its order made on 3.12.1996 did not interfere with the award made by the Tribunal. It is only in regard to these four reliefs that arguments are addressed before us. B

In this Court the contentions urged before the Tribunal and the High Court are reiterated that the question referred to the Tribunal being of a limited character as to whether the benefits accruing to the present T.T.D. workers could be extended to the employees of the transport wing or not and having answered that the said employees have all opted for being governed by the Corporation rules and regulations and other service conditions, it is not open to them to claim those benefits. C

So far as the first question raised before us regarding selection grade is concerned, it is noticed by the Tribunal that selection grade has been given with effect from 1.1.1974 restricting the monetary benefits to be given only from 1.1.1978; that the orders were actually issued in the year 1976, and that the Corporation had agreed to safeguard the conditions of service of the workers. The Tribunal further noticed that the claim in that regard was pending consideration before the take over and, therefore, restricting the monetary benefits to be given only from 1.1.1978 was not justified and the monetary benefits will have to be given with effect from 1.1.1975. This claim appears to us has been rightly allowed by the Tribunal and thus calls for no interference. D E

So far as *ex gratia* bonus is concerned, on an earlier occasion this question has been raised and the matter had reached this Court in Civil Appeal No. 4693 of 1984 and this Court disposed of the matter on 23.11.1984 stating that the parties had agreed that on payment of Rs. 7,50,000 by the respondents to the petitioners within six weeks from that day as *ex gratia* payment the disputes raised by the workmen of the transport wing which was the subject matter of that appeal should be treated as settled and resolved completely. The direction of the Tribunal in this regard is that *ex gratia* shall be paid to the members of the claimant Union on the same basis on which *ex gratia* is paid to other employees of the RTC. Inasmuch as the employees working in the transport wing have now opted to be governed by the RTC regulations and other service conditions, the Tribunal held that they should be treated at par from the year 1986 onwards and they should be given similar benefits that have been given to the other RTC workers earlier. Therefore, we H

A find, this finding recorded by the Tribunal also to be justified.

B So far as the claim for bus tour on concessional rate is concerned, although original concessional rate was @ Re. 1 per kilometer, the Tribunal fixed at Rs. 2.50 per kilometer for the years 1985 onwards till the Corporation changes the rate of hire under Section 9A of the Act and the Tribunal adopted as a rule of thumb and with a view to find out an equitable solution for the dispute between the parties. Inasmuch as the Tribunal had found that unilateral alteration of hire rate to Rs. 4 per kilometer was not justified adopted the rule of thumb, we do not think that the discretion exercised by the Tribunal in this regard is improper.

C Now the only question for consideration before us is with regard to the direction given by the Tribunal regarding promotion of the employees. The Tribunal noticed that the difficulty in regard to promotion had arisen on account of the fact that employees in the transport wing of the Corporation who were erstwhile employees of the T.T.D. were retrenched to go out of station and, in fact, those who were promoted and posted out of station came back to Tirupathi by giving up benefit of promotion. In these circumstances, the Tribunal felt that if and when the workers opt to be governed by the RTC regulations then they may be given promotions taking into account their total service and the seniority including the T.T.D. services. This direction would give rise to a lot of difficulties in the services inasmuch as several others have already been promoted and given that benefit and now to consider the cases of the members of the Union for promotion would lead to anomalous results that apart from financial burden that will arise in the case. Therefore, all that could be done now is to consider the cases of these employees for promotion as and when vacancies arise bearing in mind whether their juniors have been promoted earlier or not. In such cases, since the workmen in the transport wing have also opted to be governed by the RTC regulations, their cases will have to be examined for promotion but where promotions had already been given to others the same cannot be disturbed. Notional promotion may be given to them without any monetary benefits and suitable adjustments in seniority be made. Direction of this sort given in modification of the award of the Tribunal would meet the requirements of justice. We order accordingly.

H Shri Nageswara Rao pointedly addressed that direction given by the Tribunal is far beyond the scope of the reference. The question referred to the Tribunal though worded as to the cover applicability of conditions of service in T.T.D. to the members of the respondent Union, what was really

in issue is as to what conditions of service are applicable to them after they exercised their option to abide by the Corporation regulations, and thereafter both parties have raised pleadings and adduced evidence. Hence, we cannot say that the Tribunal travelled beyond the scope of reference. A

Subject to the modification of the award as stated above, the award made by the Tribunal is upheld as confirmed by the High Court. In the circumstances, the appeals are, therefore, partly allowed. The parties are left to bear their respective costs. B

R.C.K.

Appeal partly allowed.