

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 25162 of 2000

ORDER:

This writ petition is filed, under Article 226 of the Constitution of India, filed by the petitioner company seeking a writ of certiorari to call for the records in I.A.No.17 of 1998 on the file of the Industrial Tribunal-I, Hyderabad, and quash the award dated 15.05.2000 passed therein.

2. Heard Sri J. Srinivasa Rao, learned counsel for the petitioner company, and Sri A.K. Jaya Prakash Rao, learned counsel for the 2nd respondent union.

3. According to the petitioner company, the workman, by name Rajamallaiah, was sanctioned special leave for six months from 02.07.1990 to 01.01.1991 due to heart ailment, on the certificate produced by the Area Hospital, Ramarkishnapur. During this period, the workman obtained a fitness certificate in the Area Hospital at Bellampalli, in order to renew his statutory certificate to continue as Mining Sardar which needs to be taken for every five years. After the period of special leave, the workman took the advice of Osmania General Hospital, according to which, the workman may be given a job on surface. Pursuant thereto, the workman was continued on surface job in 'C' grade and given all the allowances as per that grade. As there was no improvement in his health, the workman was reviewed by the Medical Board on 03.07.1991 and he was found unfit

to work underground conditions as Mining Sardar, by an order dated 14.10.1991. Basing on the same, the workman was terminated from the post of Mining Sardar from 15.10.1991. Subsequently, on a representation made by him, the workman was given a job on surface on 25.11.1991. Subsequently, the 2nd respondent union reviewed his case and issued an order dated 11.09.1993 placing the workman in 'E' grade.

4. The 2nd respondent union raised a dispute before A.L.C.(C), Mancherial demanding that Sri Rajamalliah should be given protection of basic pay treating his case as medical unfit under P.M.E. The conciliation proceedings ended in failure and the matter was referred by the Government of India under Section 10(1) (d) and sub-section (2A) of the Industrial Disputes Act, 1947, to the Industrial Tribunal – I, Hyderabad, wherein the matter was registered as I.D.No.17 of 1998. The Tribunal passed an award dated 15.05.2000 holding that the workman is entitled for 'C' grade from 03.07.1991 with pay protection as he was drawing prior to his being disabled. However, as he is not working underground, he is not entitled to underground allowance and other allowance which are paid to those who are working underground, but for that the workman shall continue to draw the same pay as he was drawing before going on leave from 02.07.1990. Aggrieved by the same, the petitioner filed the present writ petition.

5. Learned counsel for the petitioner company contends that there was a settlement between the petitioner company and the 2nd respondent union and it was arrived at under Section 18(2) of the Industrial Disputes Act and came to be enforced from 22.03.1990, that the reduction of grade of workman is absolutely inconsonance with the service conditions as are applicable to the workman, that the inference drawn by the Tribunal to accord benefits is ipso facto sufficient for interference by this Court, inasmuch as it is a very inconsistent inference and is bordered on mercy rather than any rule position, and that the workman is well aware of his ineligibility to work underground and only on his request, he was given a job on surface.

6. Learned counsel for the 2nd respondent union submits that the Tribunal has passed the award impugned in the writ petition in proper perspective and, therefore, it does not warrant any interference.

7. As per the settlement entered into between the parties on 22.03.1990, if the mining staff are injured in mine accidents and declared unfit for underground work and found fit for surface jobs, all efforts will be made to offer them suitable alternative supervisory employment on surface with protection of wages in the grades as provided to them at the earliest. Admittedly, in this case, the workman had not suffered any injury or was medically invalidated on account of a mine accident. Therefore, the question of pay protection would not arise. The Tribunal erred in allowing the I.D. to the extent

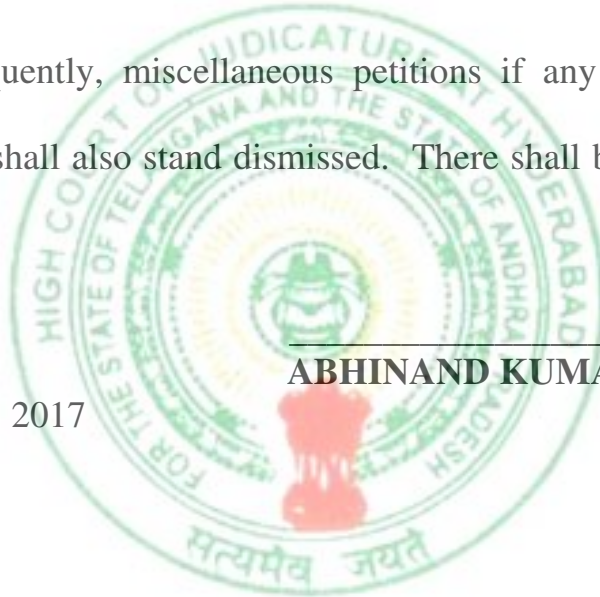
of giving pay protection to the workman. The benefits, which have been provided in the settlement in respect of those workmen, who have declared medically unfit for underground jobs due to reasons other than mine accidents, were already extended to the workmen.

8. Accordingly, the Writ Petition is allowed. The workman is entitled for the benefits as per the settlement dated 22.03.1990 for being declared medically unfit for the reasons other than mine accidents.

Consequently, miscellaneous petitions if any pending in the writ petition shall also stand dismissed. There shall be no order as to costs.

December, 2017
cbs

ABHINAND KUMAR SHAVILI, J



HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI



WRIT PETITION No. 25162 of 2000

December, 2017

cbs