

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 19559 of 2011

ORDER:

1. This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with LCID No.50 of 2007 on the file of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad, and to quash the award dated 23.4.2010 passed therein, by holding it as arbitrary and illegal, and consequently, to set aside the order of dismissal of the petitioner and to reinstate him into service.

2. Heard Sri K. Vasudeva Reddy, learned Counsel for the petitioner and Sri Nandigama Krishna Rao, learned Standing Counsel for the respondents Nos.1 and 2.

3. It is the case of the petitioner that he was initially appointed as Badli filler on 12.12.1991 and was promoted as Coal Filler in the year 1994. During the year 1999, he remained absent owing to his ill-health and domestic problems. The authorities of the respondent-company construed the said absence of the petitioner as misconduct and initiated disciplinary proceedings against him, and issued charge sheet to the petitioner in terms of Standing Order 25.25. After conducting detailed enquiry, the respondent-company dismissed the petitioner from service vide order dated

29.5.2001. The petitioner challenged the said order of dismissal before the Tribunal under Section 2-A(2) of the Industrial Disputes Act. The Tribunal without appreciating the contentions raised by the petitioner dismissed the I.D. preferred by the petitioner vide order 23.4.2010. Accordingly, no relief was granted to the petitioner. Aggrieved by the same, the present writ petition is filed.

4. The learned Counsel for the petitioner submits that the petitioner produced a medical certificate to the effect that he was seriously ill and he was not in a position to discharge his duties, and this particular fact was not considered either by the disciplinary authority or by the Tribunal and therefore, appropriate orders may be passed by directing the respondent-company to reinstate the petitioner into service by setting aside the order of dismissal.

5. The learned Standing Counsel for respondents Nos.1 and 2 contended that the disciplinary authority has rightly dismissed the petitioner from service for the proven misconduct in the enquiry, and the Tribunal also rightly dismissed the I.D. and that there are no merits in this writ petition and that the case of the petitioner does not deserve to be considered for reinstatement.

6. This Court having considered the rival submissions made by the parties is of the view that the Tribunal ought to have

applied the proportionality theory and considered the case of the petitioner, as the punishment of dismissal is too harsh and shockingly disproportionate to the charges levelled against the petitioner, and therefore, this Court is of the considered view that the case of the petitioner can be considered as a fresh appointment without any continuity of service and back wages subject to medical fitness of the petitioner.

7. Accordingly, the Writ Petition is disposed of directing respondents Nos.1 and 2 to consider the case of the petitioner for fresh appointment without any back wages, without continuity of service and without any other attendant benefits, subject to medical fitness of the petitioner, and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. It is made clear that the petitioner shall abide to the condition of 190 musters in the first year if such condition is prescribed by respondents Nos.1 and 2. No costs. Consequently, miscellaneous petitions, if any pending, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Dated: 13th December, 2018
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HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI



Writ Petition No. 19559 of 2011
(disposed of)

13th December, 2018

Nn