

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.20291 of 2011

ORDER :

This writ petition is filed seeking a Writ of Certiorari to call for the records related to and connected with the orders passed in L.C.I.D. Case No.106 of 2007, dated 17.01.2010 and quash or set aside the same by declaring it as illegal, arbitrary, perverse and against to the Statutory Rules.

It has been contended by the petitioners that the 2nd respondent-workman was appointed on compassionate grounds on 24.07.1998. After appointment of the 2nd respondent-workman, it was noticed that he was frequently absenting himself from duties and the petitioners have initiated disciplinary proceedings against the 2nd respondent-workman. After conducting disciplinary inquiry, the petitioners have dismissed the 2nd respondent-workman vide proceedings dated 05.07.2002 and thereafter, 2nd respondent-workman preferred appeal and the appellate Court also rejected the appeal on 30.08.2002. Thereafter, the 2nd respondent-workman has filed a review and the review was also dismissed on 27.04.2002. Thereafter, the 2nd respondent-workman has filed I.D.No.106 of 2007 under Section 2-A(2) of the Industrial Disputes Act. The Labour Court, vide orders dated 17.01.2010, had allowed the I.D. preferred by the 2nd respondent-workman and set aside the orders of dismissal and directed the petitioners to reinstate the 2nd respondent-workman within two months. Challenging the same, the present writ petition is filed.

It has been contended by the learned Standing Counsel for petitioners that the Labour Court, without appreciating any of the contentions raised before it, has mechanically allowed the I.D. preferred by the 2nd respondent-workman and the disciplinary authority has not committed any irregularity in imposing the punishment of dismissal for the proven charge in the inquiry and contend that the Labour Court, without appreciating the evidence, has erroneously allowed the I.D. preferred by the 2nd respondent-workman. Counsel for petitioners further contend that the petitioners pleaded before the Labour Court that the 2nd respondent has indulged in similar misconduct on three previous occasions and the petitioners have taken a lenient view and imposed some minor punishments, and inspite of imposing minor punishments, the 2nd respondent has not mended his ways and he continued to remain unauthorised absence. Left with no option, petitioners have imposed the major punishment of dismissal after giving opportunity and conducting detailed inquiry.

Counsel appearing for 2nd respondent-workman has contended that the Labour Court has rightly passed orders in his favour by applying proportionality theory. It was alleged that the 2nd respondent-workman was absent only for 22 days and the petitioners have imposed the punishment of dismissal which is shockingly disproportionate. The disciplinary authority has also noted the fact that the 2nd respondent-workman was appointed on compassionate ground. Counsel for 2nd respondent-workman further contended that no illegality or irregularity

has been pointed by the petitioners so as to interfere with the order passed by the Labour Court.

This Court, having considered the contentions raised by both the parties, is of the considered view that the Labour Court has rightly passed orders in favour of 2nd respondent-workman in exercise of powers under Section 11-A of the Industrial Disputes Act by applying the proportionality theory. Until and unless grave irregularity has been pointed out in the orders passed by the Labour Court, this Court cannot interfere with the same.

In view of the above, there are no merits in the writ petition and the same is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

15th November 2018

ajr

