

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.8800 OF 2001

ORDER:

1. This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with the Award passed by the 1st respondent-Labour Court in I.D.No.100 of 1995, dated 30.11.1998, which was published on 12.4.1999, and to quash the same to the extent of non-granting of continuity of service, backwages and other attendant benefits to the petitioner.

2. Heard Sri P. Sridhar Rao, learned Counsel for the petitioner and the learned Government Pleader for Roads and Buildings.

3. It has been submitted by the petitioner that he was orally appointed as a Gang Mazdoor on daily wage basis on 16.1.1989 and was paid wages as per S.S.R. rates fixed by the Government from time to time, and while he was working as such, respondents Nos.2 and 3 orally terminated him on 31.3.1994 without giving any notice, and challenging the said termination order, the petitioner filed I.D.No.100/1995 before the 1st respondent-Labour Court under Section 2-A(2) of the Industrial Disputes Act. It has been further submitted that the Labour Court passed the award on 30.11.1998 observing that oral termination is bad in law and that respondents

Nos.2 and 3 have to absorb and reinstate the petitioner. But the Labour Court while observing so, held that the petitioner is not entitled for backwages and other attendant benefits, and aggrieved by the denial of backwages and other attendants benefits, the petitioner filed this writ petition.

4. Learned Counsel for the petitioner contends that the Labour Court has erred in denying backwages and other attendant benefits to the petitioner while holding that the termination of the petitioner is bad in law. The learned Counsel for the petitioner has relied upon the judgment rendered by the Hon'ble Supreme Court in *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and others*¹, wherein it is held as follows:

“The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always keep in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give a premium to the

¹ (2013) 10 SCC 324

employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.”

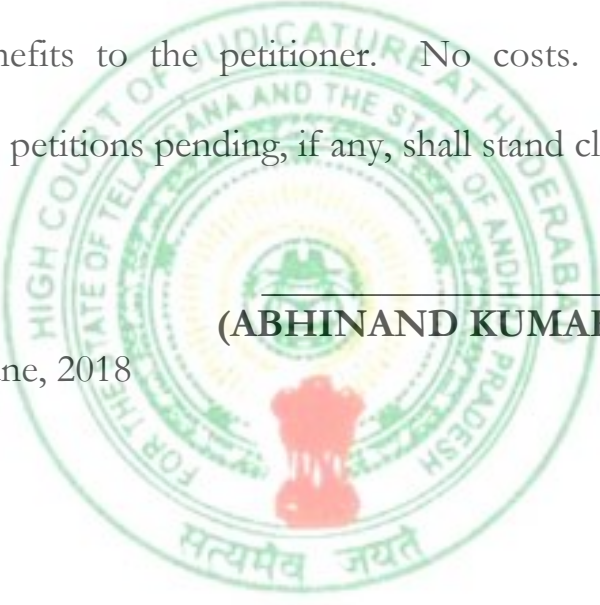
5. The learned Government Pleader for respondents Nos.2 and 3 contends that the Labour Court has rightly passed the award and denied the backwages and other attendant benefits to the petitioner and that in pursuance of the Award of the Labour Court, the petitioner was reinstated into service, and therefore, no interference is called for from this Court.

6. On perusal of the above judgment of the Hon'ble Supreme Court, it is obvious that whenever the Labour Court finds that the employer acted in gross violation of statutory provisions or the principles of natural justice or is guilty of victimizing the employee or workman, then the Court or Tribunal concerned will be fully justified in directing payment of backwages. In the instant case, the Labour Court has given a specific finding that respondents Nos.2 and 3 had not followed the statutory provisions before orally terminating the petitioner. When there is such finding, the Labour Court ought to have considered the case of the petitioner for grant of backwages and other attendant benefits.

7. In the above circumstances and in the light of the judgment of the Hon'ble Supreme Court (cited supra), this Court is of the view that the Labour Court ought to have granted backwages and other attendant benefits in view of its specific finding that

respondents Nos.2 and 3 had violated the statutory provisions before orally terminating the petitioner. Therefore, the award of the Tribunal to the extent of denial of backwages and other attendants to the petitioner is modified by holding that the petitioner is entitled to backwages and other attendant benefits. Rest of the award of the Tribunal shall remain static.

8. With the above modification, the Writ Petition is allowed directing respondents Nos.2 and 3 to pay backwages and other attendant benefits to the petitioner. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.


(ABHINAND KUMAR SHAVILI, J)

Dated: 29th June, 2018
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29.6.2018

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