

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 18195 of 2009

ORDER:

This writ petition is filed seeking to issue a writ of certiorari calling for the records relating to and connected with I.D.No.144 of 2003 on the file of the 1st Respondent - Labour Court and quash the award dated 27.09.2004 passed therein insofar as not granting continuity of service, attendant benefits and back wages to the petitioner, holding it as illegal and arbitrary. A Consequential direction is also sort to grant continuity of service, attendant benefits and back wages to the petitioner.

Heard Sri G. Ravi Mohan, learned counsel for the petitioner, and Sri A. Ravi Babu, learned standing counsel for TSRTC appearing on behalf of the 2nd respondent.

It has been contended by the petitioner that he was appointed as Security Guard in the 2nd Respondent Corporation on 02.06.1972. While so, on the allegation that he misbehaved with his superiors, the disciplinary authority, after initiating disciplinary proceedings and after conducting a detailed enquiry, had imposed punishment of removal from service on him vide proceedings dated 10.03.1999 for the proven misconduct in the enquiry. Aggrieved thereby, he unsuccessfully preferred an appeal and a review and, thereafter, raised an industrial dispute before the 1st Respondent in I.D.No.144 of 2003 under Section 2-A(2) of the Industrial Disputes Act, 1947. The 1st

Respondent - Labour Court passed an award dated 27.09.2004 directing the 2nd Respondent Corporation to reinstate him into service as afresh without any continuity of service, attendant benefits and any back wages. Challenging the same, he filed the present writ petition.

Learned counsel for the petitioner has contended that when the Labor Court has exercised its power under Section 11-A of the Industrial Disputes Act, by applying the proportionality theory, it ought to have granted the relief of reinstatement, with continuity of service, attendant benefits, and back wages, but, instead, reinstated the petitioner into service as afresh. He further contended that at least, the Labour Court ought to have granted continuity of service for the purpose of terminal benefits without any monetary benefits.

On the other hand, learned standing counsel for the 2nd Respondent Corporation has contended that the Labor Court had rightly passed the award by exercising its power under Section 11-A of the Industrial Disputes Act and though the charges leveled against the petitioner are held to be proved, the Labour Court interfered with the order of removal by applying the proportionality theory. Therefore, no interference is called for from this Court. He has also contended that the writ petition is liable to be dismissed only on the ground of delay and laches in filing the same, as the Labour Court has passed the award in favor of the petitioner in the year 2004 whereas the writ petition was filed in the year 2009. In support of his contention, he relied upon a judgment of the Apex Court in *Chennai*

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Babu¹, wherein it is held as follows:

“Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ Court is required to weigh the explanation offered and the acceptability of the same. The Court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a Constitutional Court, it has a duty to protect the rights of the citizens, but, simultaneously, it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the Court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.”

I have considered the rival submissions made by the learned counsel on either side and perused the record. I am of the view that the Labour Court ought to have, at least, granted continuity of service for the purpose of terminal benefits without any monitory benefits, while exercising its power under Section 11-A of the Industrial Disputes Act. When the Labour Court has come to the rescue of the

¹ (2014) 4 SCC 108

petitioner and interfered with the punishment of removal, by applying the proportionality theory, in all fairness, it ought to have taken into account the length of service put in by the petitioner and granted continuity of service to him. Therefore, ends of justice would be met, if continuity of service, only for the purpose of terminal benefits without any monitory benefits, is granted to the petitioner.

Insofar as the contention of the learned standing counsel for the 2nd Respondent Corporation that the writ petition is liable to be dismissed only on the ground of delay and laches is concerned, the Apex Court has considered the issue where an order of dismissal was questioned after four years. But, in the instant case, such is not the scenario and the Labour Court passed an award in favor of the petitioner directing the Respondent Corporation to reinstate him into service, and pursuant to the award passed by the Labour Court, the petitioner was reinstated into service in the year 2005. Since the petitioner is a workman, it takes some reasonable time for him to approach the Court. Therefore, the contention of the learned standing counsel cannot be accepted and is rejected.

In view of the above, the writ petition is disposed of directing the 2nd Respondent Corporation to extend the benefit of continuity of service to the petitioner only for the purpose of terminal benefits without any monitory benefits. The rest of the award of the Labour Court is confirmed.

Consequently, miscellaneous applications, if any, pending in the writ petition shall stand closed. No order as to costs.

ABHINAND KUMAR SHAVILI, J

18th September, 2018
cbs



HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI



Writ Petition No. 18195 of 2009
(disposed of)

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