

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P. No.23132 of 2002ORDER:

This writ petition is filed challenging the orders passed by the Labour Court in I.D.No. 165/ 98 dated 23.08.2001, wherein the petitioner was appointed afresh by modifying the punishment of removal from service.

2. The counsel for the petitioner submits that the allegation leveled against the petitioner is that he was absent from duties for four days, for which the petitioner submitted sick certificate, but the respondents, without appreciating the said certificate, had initiated disciplinary proceedings and imposed a major penalty of removal from service, vide orders dated 03.01.1997. Challenging the same, the petitioner has unsuccessfully preferred appeal and review, and thereafter, filed I.D.No. 165/ 98 under Section 2(a)(2) of the Industrial Disputes Act, challenging the orders of removal. In the charge sheet, it was stated that the petitioner was absent from 15.06.1995 to 22.07.1995.

3. The counsel for the petitioner submits that the punishment of removal from service is too harsh and therefore, the Labour Court, while applying the proportionality theory, had set aside the orders of removal, but, while granting relief, had directed that the petitioner be appointed afresh without continuity of service and back wages. Challenging the same, the present writ petition is filed.

4. The counsel for the petitioner submits that the Labour Court ought to have granted continuity of service, at least, for the purpose of terminal benefits, and contends that appropriate orders be passed

directing the respondents to grant continuity of service, at least for the purpose of terminal benefits.

5. The Standing Counsel appearing for the respondent-Corporation had contended that the disciplinary authority had rightly imposed the punishment of removal for the proven misconduct in the enquiry, and the Labour Court, in exercise of the powers under Section 11(a) of the Industrial Disputes Act, modified the punishment of removal to that of fresh appointment, and no illegality or irregularity has been pointed out by the petitioner in the orders passed, and in the absence of the same, this Court should not interfere with the orders passed by the Labour Court, and the writ petition is liable to be dismissed.

6. This Court, having considered the submissions made by the parties, is of the considered view that the Labour Court ought to have applied the proportionality theory and ought to have considered the case of the petitioner for grant of continuity of service at least for the purpose of terminal benefits. The Labour Court should have appreciated the fact that the allegation against the petitioner is the lone allegation in his entire career and should have granted him continuity of service. The allegation is only for unauthorized absence, that too, on account of ill-health of the petitioner. Therefore, ends of justice would be met if the writ petition is disposed of, directing the respondents to extend the continuity of service to the petitioner for the purpose of terminal benefits.

7. Accordingly, the writ petition is disposed of, directing the respondents to extend the continuity of service to the petitioner only for the purpose of terminal benefits. The rest of the Award passed by the

Industrial Tribunal is confirmed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Date: 20.12.2018
DMG

