

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.880 OF 2009

ORDER:

1. This writ petition is filed seeking to issue a writ of Mandamus declaring the action of the 1st respondent in issuing G.O.Ms.No.896, Panchayat Raj and Rural Development (Estt.II.A) Department, dated 17.6.2008, and declaring the consequential proceedings issued by the 3rd respondent vide proceedings No.C3/1876/Driver/2002, dated 26.9.2008, as illegal, arbitrary, against the principles of natural justice and violation of Articles 14 and 21 of the Constitution of India, and consequently, to direct the respondents to reinstate the petitioner into service with all consequential benefits including continuity of service etc.

2. It is the case of the petitioner that he was appointed as Jeep Driver with effect from 6.9.1998 on daily wage basis as NMR and since then, he has been working as such to the best satisfaction of his superiors and everyone concerned. While so, during September, 2002, while the petitioner was discharging his duties the respondents without following the relevant provisions of the Industrial Disputes Act more particularly the provisions of Section 2 (00) orally terminated him from service. Challenging the said order of termination, the petitioner filed I.D.No.162 of 2003 before the Industrial Tribunal-

cum-Labour Court, Ananthapur under Section 2-A (2) of the Industrial Disputes Act. The learned Tribunal vide award dated 4.7.2006 was pleased to pass orders in favour of the petitioner directing the respondents to reinstate the petitioner into service with continuity of service and attendant benefits, but without back wages. Challenging the said award, the respondents filed W.P.No.450 of 2007 before this Court and this Court granted interim suspension of the award passed by the Tribunal subject to payment of wages. Thereafter, the Engineer-in-Chief (PR), Hyderabad vide his letter dated 21.9.2007 requested the Government to accord permission/sanction for payment of wages amounting to Rs.59,565/- payable to the petitioner as per the interim directions of this Court, and for removal of the petitioner from service. The Government vide G.O.Rt.No.896, dated 17.6.2008 accorded permission to the Engineer-in-Chief for payment of wages amounting Rs.59,565/- to the petitioner for the period from 4.7.2006 to 30.7.2006, 1.8.2006 to 31.5.2007 and 1.6.2007 to 31.3.2008 and thereafter, to remove the petitioner's services as per the I.D. Act. Then, the Superintending Engineer issued consequential proceedings dated 26.9.2008 removing the petitioner from service. Aggrieved by the same, the petitioner filed this writ petition.

3. Learned Counsel for the petitioner contends that once the Labour Court granted reinstatement in I.D.No.162/2003, vide

award dated 4.7.2006, the Government has no power to circumvent the orders of the reinstatement and that W.P.No.450 of 2007 filed by the respondents challenging the award passed by the Tribunal in I.D.No.162 of 2003 was dismissed vide order dated 10.12.2018, and in view of the same, the orders passed by the respondents in G.O.Rt.No.896, dated 17.6.2008 and the consequential proceedings issued by the Superintending Engineer dated 26.9.2008 are liable to be set aside, and that the petitioner is entitled for reinstatement with all consequential benefits in terms of the award passed by the Tribunal in I.D.No.162 of 2003, dated 4.7.2006, and therefore, appropriate orders may be passed directing the respondents to reinstate the petitioner with all consequential benefits in terms of the award passed by the Tribunal in I.D.No.162 of 2003 dated 4.7.2006.

4. The learned Government Pleader appearing for the respondents contends that this Court granted interim suspension in W.P.No.450 of 2007 filed by the respondents against the award passed by the Tribunal in I.D.No.162 of 2003, dated 4.7.2006, subject to payment of wages, and thereafter, since there was no work the services of the petitioner were removed and that the respondents have not committed any illegality or irregularity in passing the orders

impugned and that there are no merits in this writ petition and therefore, the writ petition is liable to be dismissed.

5. Further, the learned Government Pleader for the respondents contends that G.O.Rt.No.896, dated 17.6.2008 and the consequential proceedings were suspended by this Court and thereafter, the petitioner has not joined the duty and hence, the question of paying wages under Section 17-B of the I.D. Act, to the petitioner would not arise.

6. The above contention of the learned Government Pleader that as the petitioner did not join duty pursuant to the interim suspension obtained by the respondents in W.P.No.450 of 2007 vide order dated 19.1.2007, the services of the petitioner were removed, cannot be accepted. As long as the interim suspension granted by this Court suspending the award of the Tribunal in I.D.No.162 of 2003, is in subsistence, the question of the petitioner joining duty would not arise. Further, the said interlocutory order was in subsistence till the writ petition was dismissed on 10.12.2018. Therefore, the above contention of the learned Government Pleader cannot be accepted.

7. The material on record goes to show that the respondents filed W.P.No.20582 of 2005 challenging the orders in I.A.No.298 of 2003 in I.D.No.162 of 2003, whereby the Tribunal issued interim direction to continue the petitioner in service, and

this Hon'ble Court was pleased to grant interim suspension of the said order. Interpreting the said interlocutory orders, the Engineer-in-chief wrote a letter to the Government seeking permission for payment wages amounting to Rs.59,565/- and also for removal of the petitioner and that the Government granted permission to the Engineer-in-Chief, for payment of wages amounting to Rs.59,565/- in favour of the petitioner and also for removal of the services of the petitioner, vide G.O.Rt.No.896 dated 17.6.2008. The Tribunal allowed I.D.No.162 of 2003 in favour of the petitioner vide award dated 4.7.2006 directing the respondents to reinstate the petitioner into service with continuity of service and other attendant benefits, however without back wages. In pursuance of the orders passed by the State Government in G.O.Rt.No.896, dated 17.6.2008, the respondents removed the petitioner contrary to the directions in main I.D.No.162 of 2003 and the said action of the respondents is not permissible and the Government has no power to do that.

8. In view of the above, this Court is of the view that the State Government has no power to remove the petitioner from service more so, by citing interlocutory orders passed by this Court in W.P.No.20582 of 2005. This Court granted interim suspension of the award in I.D.No.162 of 2003 dated 4.7.2006 subject to payment of wages. But this Court never directed the

Government to issue G.O.Rt.No.896, dated 17.6.2008. W.P.No.450 of 2007 filed by the respondents was dismissed by this Court on 10.12.2018. The respondents should not have violated the orders passed by the Tribunal more so, when W.P. filed by the respondents challenging the award in I.D.No.162 of 2003 was dismissed, vide order dated 10.12.2018. Therefore, the impugned G.O.Rt.No.896 dated 17.6.2008 and the consequential proceedings issued by the Superintending Engineer dated 26.9.2008 are set aside. The respondents are directed to reinstate the petitioner with all consequential benefits in terms of the award dated 4.7.2006 in I.D.No.162 of 2003 with all consequential benefits.

9. Accordingly, the Writ Petition is allowed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 21.12.2018.
Nn.

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

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Nn.