

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.22048 of 2002

ORDER:

This writ petition is filed seeking a writ of Certiorari calling for the records relating to and connected with the award in I.D.No.140 of 1993, dated 04.05.1995, passed by the Labour Court, Hyderabad and quash or set aside the same holding it as arbitrary and illegal and sought a consequential direction to reinstate the petitioner into service forthwith, with continuity of service and full back wages.

It has been contended by the petitioner that he joined the 1st respondent-Company on 16.12.2003 and subsequently he earned series of promotions and while he was working as a General Worker, the 1st respondent alleged that the petitioner had indulged in a theft and initiated disciplinary proceedings. After conducting detailed inquiry, the petitioner was dismissed from service vide proceedings dated 13.08.1992. Challenging the same, the petitioner has filed I.D.No.140 of 1993 before the Industrial Tribunal under Section 2-A (2) of the Industrial Disputes Act. The Tribunal, vide order dated 04.05.1995, instead of exercising its power under Section 11-A of the Industrial Disputes Act, had modified the punishment of dismissal to that of discharge and directed that retiral benefits be paid to the petitioner.

Heard Sri A.Sanjeev Kumar, learned counsel for petitioner and Sri M.Panduranga Rao, learned counsel for 1st respondent.

Counsel for petitioner submits that the Industrial Tribunal ought to have set aside the orders of dismissal and reinstated the petitioner

into service with full back wages and continuity of service. The Tribunal erred in not granting the relief and in modifying the punishment of dismissal to that of a non-existent punishment of disengagement. The counsel for petitioner submits that disengagement is not one of the stipulated punishments in the Regulations of the 1st respondent-Company, and hence, the Labour Court could not and ought not to have imposed the punishment of disengagement, which is not stipulated in the Regulations of the 1st respondent-Company.

Challenging the orders passed by the Industrial Tribunal, wherein, the relief of reinstatement with continuity of service and full back wages were denied, the present writ petition is filed.

Learned counsel appearing for the 1st respondent-Company contend that the Industrial Tribunal had passed orders in I.D.No.140 of 1993 on 04.05.1995 and the present writ petition is filed in the year 2002 i.e. after a lapse of 7 years and the petitioner was aged about 59 years at the time of filing this writ petition and he attained the age of superannuation. Therefore, at this point of time, the relief sought by the petitioner to reinstate him into service may not be feasible and the Labour Court has rightly modified the punishment from dismissal to that of discharge and pursuant to orders of the Tribunal, the 1st respondent-Company has paid full retiral benefits to the petitioner. There are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions of the parties, is of the considered view that the Labour Court has rightly

passed orders in favour of the petitioner and was conscious of the fact that the charge levelled against the petitioner was proved in the departmental inquiry and for a proven misconduct, the 1st respondent-Company has imposed the punishment of dismissal. However, by applying the proportionality theory, modified the punishment of dismissal to that of discharge from duty only to enable the petitioner to get some service benefits.

In view of above, I do not find any merit in the writ petition and the same is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

12th December 2018

ajr

ABHINAND KUMAR SHAVILI, J

