

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.10692 of 2003

ORDER:

This writ petition is filed seeking to issue a writ of certiorari, calling for records relating and connecting to the Award, dated 23.02.2001, passed in I.D.No.86 of 1998 by the Industrial Tribunal-cum-Labour Court, Godavarikhani, and quash and set aside the same, holding it as arbitrary and illegal, and consequentially sought a direction to the 1st respondent to reinstate the petitioner into service.

Heard Sri T.Bheemsen, learned counsel, appearing for the petitioner, and Sri A.Ravi Babu, learned counsel, appearing for the 1st respondent.

It has been contended by the petitioner that he was initially appointed as a Conductor on 31.12.1987 and while he was working as a Conductor, during 1995, owing to domestic problems and ill-health, he had remained absent from 20.07.1995 till December, 1995. The said absence of the petitioner was construed as misconduct and the petitioner was charge sheeted for unauthorized absence. The 1st respondent, after conducting a detailed enquiry, was pleased to pass an order of removal from service against the petitioner, vide orders, dated 16.02.1996. The petitioner has preferred an appeal, which was rejected on 20.08.1996. Later, the petitioner has filed a review and the same was also dismissed on 29.10.1996. There afterwards, the petitioner has preferred I.D.No.86/1998 before the Industrial Tribunal-cum-Labour Court under Section 2A(2) of the Industrial Disputes Act, 1947. The learned Tribunal had dismissed the said I.D, vide orders, dated 23.02.2001. It has been

contended by the petitioner that the Labour Court has not considered the case at all and simply said that the charge against the petitioner is proved and punishment of removal from service is proportionate to the charge, and mechanically dismissed the I.D preferred by the petitioner.

The learned counsel for the 1st respondent contends that the disciplinary authority had rightly removed the petitioner from service for proved misconduct in the enquiry and the Labour Court has also confirmed the same and contends that no interference is called for from this court.

This court, having considered the rival submissions made by the parties, is of the considered view that the Labour Court had given a very perfunctory finding in respect of the charge on the ground that the petitioner has remained *ex parte*. Under what circumstances, the petitioner had to be abstained from duty was not examined and with a single stroke of sentence that the charge against the petitioner is proportionate to the charge, the Labour Court has dismissed the I.D. The Labour Court had not exercised its power under Section 11-A of the Industrial Disputes Act. The Labour Court ought to have examined the material evidence available before it and discussed the circumstances under which the petitioner had remained himself absent. These facts were not taken into consideration by the Labour Court. Therefore, the impugned Award, dated 23.02.2001 is set aside. Taking into the age of the petitioner that he is 52 years as on today, this Court is of the considered view that ends of justice would be met, if the award of the Labour Court is modified from dismissal to that of reinstatement of the petitioner as a fresh candidate, without any back wages and continuity of

service, subject to suitability and fitness of the petitioner. The respondents are directed to complete the above exercise, within a period of 4 (four) weeks from the date of receipt of a copy of this order.

With the above observations, the Writ Petition is allowed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

ABHINAND KUMAR SHAVILI, J

Date: 27.07.2018
Dsr

