

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.25042 OF 2000

ORDER:

1. This writ petition is filed by the petitioner seeking to issue a writ of Certiorari calling for the records relating to and connected with the award in I.D.No.4 of 1996 on the file of the 1st respondent and to quash the same and consequently, to direct the 2nd respondent to reinstate the petitioner into service with continuity of service, backwages and attendant benefits.

2. Heard Sri G. Ravi Mohan, learned Counsel for the petitioner and Sri B. Mayur Reddy, learned Standing Counsel for the 2nd respondent-TSRTC.

3. It is the case of the petitioner that he was appointed as a Conductor in the year 1989, and on 8.6.1992, a charge memo was issued to him alleging that he produced fake S.S.C. certificate at the time of his selection, and on that allegation, an enquiry was conducted and the enquiry officer held that the charge was proved, and basing on the report of the Enquiry Officer, the petitioner was removed from service on 17.4.1993. Aggrieved by the same, the petitioner filed I.D.No.4 of 1996 before the 1st respondent, Tribunal vide order dated 27.6.2000 dismissed the petition while confirming the order of removal of the petitioner from service. Challenging the same, the present writ petition is filed.

4. The learned Counsel for the petitioner contended that no officers of S.S.C. Board were examined before the enquiry officer to prove the charge leveled against the petitioner and that though some documents were referred to in the enquiry, no witness was examined to speak about those documents, but however, the enquiry officer held the charge as proved, and that the 1st respondent-Labour Court has failed to appreciate the

evidence properly and therefore, the award passed by the 1st respondent warrants interference.

5. Learned Standing Counsel for the 2nd respondent contends that since the petitioner had indulged in misconduct by producing a fake SSC certificate, after conducting a regular enquiry, the petitioner was removed from service and that the disciplinary authority rightly passed the removal order as a measure of punishment for the proven misconduct in the enquiry.

6. I have considered the rival submissions made by the parties. Perusal of the record would disclose that the disciplinary authority or the Labour Court had not examined any officials so as to come to a conclusion that the petitioner produced a fake SSC certificate at the time of his selection, and that the Labour Court having relied upon the fact that the petitioner had not submitted any explanation to the charge memo and he did not attend the enquiry and has drawn the adverse inference against the petitioner to the effect that the petitioner produced the fake SSC certificate. I am afraid to accept that such inference can be drawn. Basing on the material available on record, it is to be decided as to whether the charge is proved or not. The Labour Court or the Enquiry Officer cannot simply rely on the absence of the petitioner. Taking into consideration the absence of the petitioner in the enquiry, the enquiry officer appears to have given a finding that the charge is proved. The same error was committed by the Labour Court in coming to a conclusion that the charge against the petitioner was proved since the petitioner had not participated in the enquiry. The initial finding as to whether charge is proved or not was mainly built on inappropriate procedure. In the departmental enquiry, it is for the presenting officer and the enquiry officer to come to a conclusion

whether the charge leveled against the petitioner is proved or not on the material available on record. Just because the petitioner had not appeared before the Enquiry Officer it does not mean that the charge is automatically proved. In the entire process, in order to examine as to whether the petitioner produced fake SSC certificate or not, none of the officials of Secondary Board were examined. The persons, who were not connected with the issuance of SSC certificate, were examined. In view of the fact that the enquiry was not conducted properly against the petitioner, the petitioner was removed from service. Therefore, the ends of justice would be met, if the matter is remitted to the Labour Court for fresh consideration.

7. Accordingly, the award dated 27.6.2000 in I.D.No.4 of 1996 on the file of the 1st respondent-Labour Court is set aside. Since the petitioner was removed way back in the year 1993, the Labour Court is directed to adjudicate the matter afresh and pass appropriate award, within a period of three months from the date of receipt of a copy of this order.

8. With the above direction, the Writ Petition is disposed of. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

25th January, 2018
nn

(ABHINAND KUMAR SHAVILI, J)

THE HON'BLE Mr. ABHINAND KUMAR SHAVILI



25th January, 2018

nn