

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.16421 OF 2009

ORDER:

1. This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with I.D.No.77 of 2006 on the file of the 1st respondent, and to quash the award dated 13.2.2008 therein insofar as non-granting of continuity of service, back wages and attendant benefits, and consequently, to grant continuity of service, back wages and other attendant benefits.

2. Heard Sri G. Ravi Mohan, learned Counsel for the petitioner and the learned Government Pleader for Labour.

3. It is the case of the petitioner that he was initially appointed as driver in the respondent-Corporation in the year 1978 and while he was discharging his duties as such, on 18.9.2005 he stopped the bus in the middle of the route as he was unable to drive the bus due to hypertension. At that time, the official of the 2nd respondent-Corporation, who was passing through, arranged the driver. But alleging that the petitioner was driving the bus in a drunken condition, the 2nd respondent placed the petitioner under suspension vide order dated 19.9.2005. On the same day, charge memo was also issued to the petitioner, for which an explanation was submitted by the petitioner. Being not satisfied with the explanation submitted by the petitioner, the disciplinary authority initiated enquiry, and after completion of the enquiry, the enquiry officer submitted his report holding that the charge

was proved. Basing on the said report of the enquiry officer, the petitioner was removed from service vide order dated 12.4.2006. The appeal and review preferred by the petitioner were rejected. Hence, the petitioner filed I.D. No.77 of 2006 before the Labour Court, under Section 2-A(2) of the Industrial Disputes Act, and the Labour Court after considering the entire case, was pleased to set aside the order of removal vide award dated 13.2.2008 and direct the respondent-Corporation to reinstate the petitioner into service as a fresh driver in the present scale of pay, but without continuity of service, back wages and other attendant benefits. Challenging the same, the present writ petition has been filed.

4. It has been contended by the learned Counsel for the petitioner that the disciplinary authority has not taken the health condition of the petitioner, and only due to hypertension, the petitioner stopped the bus as he was unable to drive and in the interest of the passengers, and the said conduct of the petitioner should not have been construed as misconduct, but the respondent corporation levelled the allegation as if the petitioner drove the vehicle in a drunken state and that the petitioner was not subjected to any medical examination so as to come to a conclusion that he was in drunken state at the time of driving the bus and in the absence of medical examination, the charge levelled against the petitioner could not have been proved, and these factors were not taken into account, however, the Labour Court was pleased only to set aside the order of removal, and that the Labour Court while granting such relief, erroneously held that the petitioner be appointed as a fresh

driver without continuity of service and back wages and the said order of the Labour Court is arbitrary and illegal insofar as denial of continuity of service, back wages and other attendant benefits. He further contended that atleast the service rendered by the petitioner be counted for the purpose of terminal benefits without any monetary benefits.

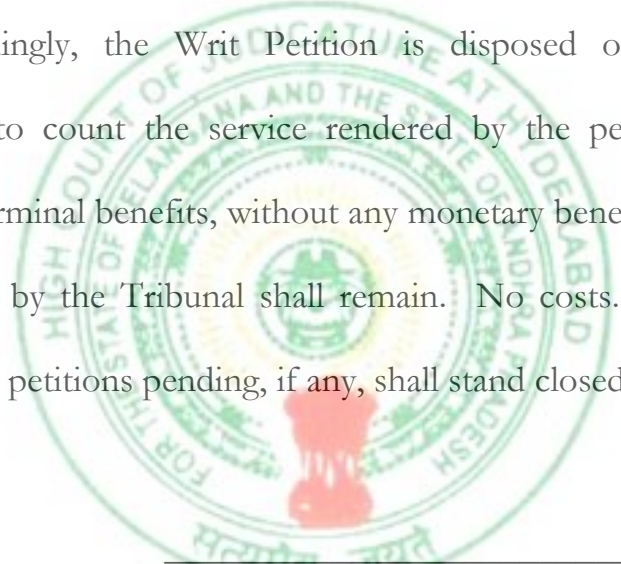
5. Learned Standing Counsel appearing for the respondent-corporation contended that the disciplinary authority has rightly imposed the punishment of removal for the proven misconduct in the enquiry and the Labour Court took a lenient view and passed the order in favour of the petitioner and that the Labour Court with the conscious of fact that the petitioner had indulged in grave misconduct of driving the bus in drunken state, denied the back wages and continuity of service and that the order of the Labour Court does not warrant any interference by this Court.

6. This Court has considered the rival submissions made by the parties and perused the material available on record. From the award impugned, it is obvious that no medical evidence was placed before the Labour Court to show that the petitioner consumed alcohol and drove the bus in an intoxicated condition on the date of incident. On the other hand, the petitioner also failed to produce any material before the Labour Court to show that he was sick. However, taking into consideration all the factors, the Labour Court directed reinstatement of the petitioner into the respondent-Corporation as fresh driver. When once it was found that no material was placed by either of the parties to

demonstrate the pleas taken by them, the Labour Court ought to have granted the relief atleast to count the service rendered by the petitioner for the purpose of terminal benefits in exercise of powers under Section 11-A of the I.D. Act, without any monetary benefits.

7. In the above circumstances, this Court feels that ends of justice would be met if the respondent-Corporation is directed to count the service rendered by the petitioner only for the purpose of terminal benefits, without any monetary benefits.

8. Accordingly, the Writ Petition is disposed of directing the respondents to count the service rendered by the petitioner for the purpose of terminal benefits, without any monetary benefits. Rest of the award passed by the Tribunal shall remain. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.



JUSTICE ABHINAND KUMAR SHAVILI

Dated: 20th September, 2018.
Nn.

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20/09/2018

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