

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.27307 OF 2007

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.252 of 2004 on the file of the 3rd respondent-Labour Court, Ananthapur; to quash the award dated 11.6.2007 passed therein and consequently, to direct the respondents to reinstate the petitioner and to pay the wages for the removal period forthwith along with all benefits.

2. Heard Sri Mohammad Yacoob, party-in-person and Sri A. Rama Rao, learned Standing Counsel for the respondent-Corporation.

3. The case of the petitioner in brief is as follows:

(i) The petitioner was appointed as Booking Clerk w.e.f. 13.7.1975 and subsequently, he was promoted as conductor and again, as Typist, and Personal Assistant in the Respondent-Corporation on 5.6.1980. While he was working at Anantapur, he was transferred to Kadapa on his own request on 20.11.1989 and he was again transferred from Kadapa to Badvel by the respondent-Corporation on 1.10.1992. The petitioner was transferred to a lower post of Typist from Stenographer/PA effecting his salary. The application filed

before the respondent-Corporation to cancel the transfer order was rejected on 19.3.1993.

(ii) After issuing the transfer orders on 1.10.1992, the Senior Manager (Traffic), Kadapa passed office order dated 28.12.1992 advising the petitioner to hand over all the records to the concerned staff shown therein. The petitioner failed to comply with the same. On the letter addressed by the Depot Manager of Badvel on 23.2.1993, the petitioner was relieved at Kadapa on 19.3.1993. The petitioner appears to have refused to receive the relieving order as per letter dated 19.3.1993 submitted by the Junior Assistant before Senior Manager. Thereafter, the respondent-Corporation issued a charge sheet dated 11.6.1993, for which the petitioner submitted explanation on 14.7.1993. After conducting enquiry, the enquiry officer submitted his report holding that the charges were proved. The respondent-Corporation issued a show cause notice of removal, for which the petitioner submitted a representation. Finally, the respondent-Corporation removed the petitioner from service vide proceedings dated 3.1.1996. After lapse of 9 years, the petitioner filed appeal before the Executive Director and the said appeal was rejected. The review petition filed before the Vice Chairman/Managing Director was also rejected on 9.8.2004. Challenging the same, the petitioner filed I.D.No.252 of 2004 before the Labour Court.

(iii) The Labour Court passed award impugned modifying the order of removal to that of compulsory retirement of the petitioner from service. Aggrieved by the same, the petitioner filed this writ petition.

4. It has been contended by the petitioner that the Regional Manager has illegally transferred him and the petitioner belongs to Minority community and he has not completed even 7 years of stay at Kadapa, but he was transferred that too, to a lower post of typist, even before completion of three years. Further, it has been contended that the 2nd respondent directed the concerned not to take the petitioner to duty and though the petitioner reported to duty the officials concerned failed to allot duties, for which the petitioner was made to run around the offices. Further, it has been contended that a stage managed enquiry was conducted against him, and without examining the facts, the Regional Manager simply relied on false enquiry report and removed the petitioner.

5. Further, it has been contended by the petitioner that the enquiry officer should be atleast in the cadre of Regional Manager or above him and that the request of the petitioner to change the enquiry officer was not considered, and on the instructions of the Regional Manager, the enquiry officer conducted ex parte enquiry violating all the rules, and that the

Labour Court has failed to consider his contentions and therefore, the award impugned needs interference.

6. The learned Standing Counsel for the respondent-Corporation contended that the petitioner intentionally evaded to obey the transfer orders and failed to report at Badvel depot and the same is nothing but disobedience to the orders of the respondent-corporation, and for the proven misconduct in the enquiry, removal orders were passed. He further contended that the approach of the petitioner is not bonafide and that the Labour Court after considering the material on record, took a lenient view and modified the order of removal to that of compulsory retirement, and in compliance with the orders of the Labour Court, the petitioner was given compulsory retirement w.e.f.3.1.1996 vide office order dated 21.11.2017 and all the amounts were settled as per his eligibility.

7. The principal grievance of the petitioner is that he was transferred vide order dated 1.10.1992 to Badvel. The material on record discloses that the petitioner has not handed over the charge. The said conduct of the petitioner was construed as misconduct, and the disciplinary authority after conducting enquiry passed removal order. Thereafter, the petitioner has unsuccessfully preferred appeal and review. Thereafter, he filed I.D.No.252 of 2004 under Section 2-A(2) of the Industrial Disputes Act. The Labour Court after considering the material

on record, passed reasoned order modifying the punishment of removal to that of compulsory retirement by taking a lenient view. The Labour Court has rightly passed orders modifying the punishment of removal to that of compulsory retirement. The Labour Court has rightly exercised its jurisdiction under Section 11-A of the Industrial Disputes Act by applying proportionality theory and also taking into account long length of service put in by the petitioner and also the appreciation letter received by the petitioner from the respondents, and modified the punishment of removal. No grave irregularity or illegality has been pointed out in the order passed by the Labour Court and in the absence of the same, this Court cannot interfere with the orders passed by the Labour Court. There are no merits in this writ petition.

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

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 28th December, 2018.
Nn.

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI



WRIT PETITION No.27307 OF 2007

28/12/2018

Nn.

