

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.23193 of 2008

ORDER:

This writ petition is filed seeking the following relief:

“To issue an order or direction more particularly one in the nature of writ of Certiorari by calling for the records relating to and in connection with I.D.No.79/2006 dated 24.4.2008 which was published in the Gazette vide G.O.Rt.No.1441 dt.28.6.2008 in confirming the punishment of removal from service as unjust and illegal, contrary to well established principles of law, contrary to circular instructions, and as such quash the award by consequently direct the respondents herein to reinstate the petitioner and to pay the wages for the removal period forthwith along with all benefits and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances.”

Heard Si S.M.Subhan, learned counsel for the petitioner and Si P.Durga Prasad, learned standing counsel for the respondent Corporation.

It has been contended by the petitioner that he was initially appointed as conductor in the year 1998 in the respondent Corporation. While he was discharging his duties on 26.6.2005, the checking officials of the respondent corporation had conducted a check and found that the petitioner had indulged in cash and ticket irregularities and the said act of the petitioner was construed as misconduct and after conducting a regular departmental enquiry, the disciplinary authority had imposed punishment of removal from service on the petitioner for the proven misconduct vide proceedings dated 30.11.2005. The appeal and revision

preferred by the petitioner were also rejected. Aggrieved by the same, the petitioner had preferred I.D.No.79 of 2006 on the file of the 3rd respondent-Labour Court. The 3rd respondent-Labour Court, vide orders dated 24.4.2008 had dismissed the I.D. preferred by the petitioner. Challenging the same, the present writ petition is filed.

It is contended by the learned counsel for the petitioner that the 3rd respondent-Labour Court had not exercised its power under Section 11-A of the Industrial Disputes Act and the proportionality theory was not applied. Learned counsel for the petitioner further contended that the 3rd respondent-Labour Court had failed to appreciate that the punishment of removal is shockingly disproportionate to the charges leveled against the petitioner.

Learned standing counsel had contended that the 3rd respondent-Labour Court has rightly rejected the claim of the petitioner and the disciplinary authority had imposed the punishment of removal for the proven misconduct and no illegality has been committed by the disciplinary authority and the writ petition is liable to be dismissed.

This Court having considered the submissions made by both the parties is of the considered view that the 3rd respondent-Labour court ought to have applied the theory of proportionality and interfered with the punishment of removal and the punishment imposed on the petitioner is shockingly disproportionate to the charges leveled against him. Therefore, ends of justice would be met, if the petitioner is directed to be reinstated into service as a fresh conductor without any back wages and continuity of service.

Accordingly, the Writ Petition is disposed of directing the respondent corporation to reinstate the petitioner into service as a fresh conductor without any back wages and continuity of service. It is needless to say that the case of the petitioner will be considered for fresh appointment subject to medical fitness. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVIL, J

Date: 17/09/2018
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