

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.17298 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.110 of 2006 on the file of the 2nd respondent-Industrial Tribunal-cum-Labour Court, Visakhapatnam, and to quash the award dated 26.2.2009 passed therein, by holding it as illegal and contrary to well established principles of law, and consequently, to direct the 1st respondent-Corporation to reinstate the petitioner and pay wages for removal period forthwith.

2. Heard Sri S.M.Subhan, learned counsel for the petitioner and Sri B. Mayur Reddy, learned Standing Counsel for the 1st respondent-Corporation.

3. It is the case of the petitioner that he was appointed as driver in the year 1991 in the respondent-Corporation. While he was discharging his duties as such, on the allegation of unauthorized absence, he was removed from service vide proceedings dated 24.5.2003. Aggrieved by the same, the petitioner preferred I.D.No.110 of 2006 on the file of the 2nd respondent-Labour Court. The Labour Court vide order dated

26.2.2009 dismissed the I.D. preferred by the petitioner. Challenging the same, the present writ petition is filed.

4. Learned Counsel for the petitioner contended that the Labour Court had not exercised its powers under Section 11-A of the Industrial Disputes Act, and that the proportionality theory was not applied. He further contended that the Labour Court failed to appreciate that the punishment of removal is shockingly disproportionate to the charge leveled against the petitioner.

5. Learned Standing Counsel for the respondent-Corporation contended that the Labour Court has rightly rejected the claim of the petitioner and the disciplinary authority had imposed the punishment of removal for his unauthorized habitual absence, and that there is no illegality in the award passed by the Labour Court, and the writ petition is liable to be dismissed.

6. This Court having considered the submissions made by both the parties is of the view that the Labour Court ought to have applied the theory of proportionality and interfered with the punishment of removal as the punishment imposed on the petitioner is shockingly disproportionate to the charge leveled against him. Therefore, ends of justice would be met, if the petitioner is directed to be reinstated into service, subject to

medical fitness, without any back wages and other attendant benefits.

7. Accordingly, the Writ Petition is disposed of directing the 1st respondent-corporation to reinstate the petitioner into service without back wages. However, it is made clear that the entire service of the petitioner shall be construed as that of continuity of service only for the purpose of terminal benefits without any monetary benefits. No costs. Miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Date: 17/09/2018

Nn



HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.17298 of 2009



17.9.2018

Nn.