

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVIL

WRIT PETITION No.13778 of 2008

ORDER:

This Writ Petition is filed seeking a Writ of Certiorari to call for records in I.D.No.46 of 2006 dated 05.06.2007 on the file of the 1st respondent and quash the award dated 05.06.2007 passed therein insofar as not granting continuity of service, attendant benefits and back wages to the petitioner.

Heard Mr.G.Ravi Mohan learned counsel for petitioner and Mr.B.Mayur Reddy learned Standing Counsel for the respondent Corporation.

It has been contended by the petitioner that he was appointed as Conductor in the month of April 1990 and while he was discharging duties during September 2004, the checking officials of the respondent Corporation conducted a check and found that the petitioner had indulged in cash and ticket irregularities and the said conduct of the petitioner was construed as misconduct and disciplinary proceedings were initiated and they were proved as misconduct and the disciplinary authority imposed punishment of removal on 10.03.2005. Thereafterwards, the petitioner unsuccessfully preferred appeal and review. Subsequently, the petitioner has filed I.D.No.46 of 2006 under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act') and the Industrial Tribunal, vide order dated 05.06.2007, was pleased to allow partly the said I.D. by setting aside the order of removal. However, while granting relief, it directed that the petitioner be reinstated into service as a conductor afresh, thereby

denying the continuity of service, back wages and other attendant benefits. Challenging the same, the present writ petition is filed.

It has been contended by petitioner that the Labour Court had interfered with the punishment of removal based on the proportionality theory and while interfering with the punishment of removal, the Labour Court ought to have exercised power under Section 11-A of the Act and simply set aside the removal order, instead of directing the petitioner to be reinstated as a fresh conductor without any back wages, continuity of service and other attendant benefits.

Learned Standing Counsel appearing for respondent Corporation has contended that the Labour Court has not interfered with the punishment of removal on merits, but only by applying proportionality theory, the Labour Court has passed orders and directed that the petitioner be reinstated into service as a fresh conductor and unless and until gross irregularities are pointed out, this Court normally should not interfere with the order passed by the Labour Court.

This Court, having considered the rival submissions, is of the considered view that the Labour Court while interfering with the punishment of removal by applying the proportionality theory ought to have exercised power under Section 11-A of the Act and at least granted continuity of service without any monetary benefits only for the purpose of pensionary benefits by duly taking into account the fact that the petitioner joined way back in 1990. Therefore, this Court feels that the order of the Labour Court be modified to the extent of granting continuity of service without any monetary

benefits only for the purpose of pensionary benefits. The rest of the award of the Labour Court is confirmed.

With the above observations, the writ petition is disposed of.
No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVIL, J

10-09-2018
Prv

