

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.12722 OF 2010

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.152 of 2004 on the file of the 2nd respondent- Labour Court, Visakhapatnam District, and to quash the award dated 22.12.2008 passed therein.

2. Heard Sri P. Prabhakar, learned Counsel for the petitioner and Sri K. Satyanarayana Murthy, learned Standing Counsel for the respondent-Corporation.

3. It is the case of the petitioner that while he was working as conductor in the respondent-Corporation, he was suspended from service on the allegation of misappropriation of money and a charge memo was issued to him to that effect. The respondent-Corporation after conducting enquiry, imposed punishment of removal from service on the petitioner vide order dated 21.9.2004. Aggrieved by the same, the petitioner filed I.D.No.152 of 2004 on the file of the Labour Court. But the Labour Court dismissed the I.D. Challenging the same, the present writ petition is filed.

4. Learned Counsel for the petitioner submitted that the Labour Court failed to see that the passengers were not examined either in the labour Court or in the enquiry and therefore, the final enquiry would become vitiated and that the Labour Court has erroneously come to the conclusion that the petitioner misappropriated the amounts, by believing the enquiry report in the absence of examination of any witnesses and that the punishment of removal is very disproportionate and that the Labour Court ought to have applied proportionality theory and interfered with the punishment of removal, but the Labour Court has erroneously dismissed the I.D.

5. Learned Standing Counsel for the respondent-Corporation contended that the disciplinary authority imposed punishment of removal for the proven misconduct and the Labour Court has rightly dismissed the I.D., and therefore, the award impugned does not warrant any interference.

6. This Court having considered the submissions made by the parties and the nature of the charges levelled against the petitioner, is of the considered view that the punishment of removal imposed by the respondent-Corporation is very disproportionate and the Labour Court ought to have examined the case of the petitioner and interfered with the punishment of removal by applying the proportionality theory and at least, the Labour Court ought to have directed the respondent-

Corporation to reinstate the petitioner into service as fresh conductor. Since the punishment of removal is shockingly disproportionate, this Court feels that ends of justice would be met if the respondent-Corporation is directed to reinstate the petitioner into service as fresh conductor.

7. Accordingly, the Writ Petition is disposed of directing the respondent-Corporation to reinstate the petitioner into service as fresh conductor, subject to medical fitness, without continuity of service, without back wages and other attendant benefits. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.



JUSTICE ABHINAND KUMAR SHAVILI

Dated:17th September, 2018.
Nn.

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17/09/2018

Nn.