

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 26196 of 2008

ORDER:

1. This writ petition is filed by the petitioner seeking to issue a writ of Certiorari calling for the records relating to and connected with I.D.No.25 of 2005 on the file of the 1st respondent-Addl.Labour Court, Hyderabad, and to quash the award dated 3.6.2008 passed therein by holding it as illegal and arbitrary.

2. Heard Sri D. Ravishankar Rao, learned Counsel for the petitioner and Sri L.K. Sharma, learned Counsel for the respondent-workman.

3. It is the case of the petitioner that the respondent-workman was employed as Electro Plating Operator by the petitioner during November, 1975. During 2002, the respondent-workman remained absent for about more than 250 days within a span of 12 months. The said conduct of the workman was construed as misconduct, and after conducting a detailed enquiry, the disciplinary authority imposed punishment of dismissal on the petitioner vide order dated 4.11.2003. Challenging the same, the workman filed I.D.No.25 of 2005 before the 1st respondent under Section 2-A(2) of the Industrial Disputes Act. The Labour Court vide order dated 3.6.2008 allowed the I.D. without appreciating any of the contentions

raised by the petitioner, and directed the petitioner to reinstate the workman into service without back wages, however, with continuity of service for the purpose of seniority. Challenging the same, the petitioner-management filed this writ petition.

4. Learned Counsel for the petitioner contended that the Labour Court has relied upon the judgment reported in 2008 LAB.I.C.543 of Rajasthan High Court, Jaipur Bench, and allowed the I.D. filed by the workman, and in the case referred to by the Labour Court, there was absence for only two months, but in the instant case the unauthorized absence is for more than 250 days and that the said judgment has no application in the present case and that the Labour Court ought not to have allowed I.D. preferred by the workman. The learned Counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court rendered in ***L & T Komatsu Limited Vs. N. Udayakumar***¹ wherein the Hon'ble Supreme Court while holding that unauthorized absence is a serious misconduct and it amounts to gross violation of discipline and that the Labour Court as well as High Court erroneously interfered with the punishment imposed by the appellant therein, set aside the order of the Labour Court and High Court and allowed the appeal preferred by the employer. The learned Counsel for the petitioner further contended that the punishment of dismissal is

¹ 2008(1) SCC 224

not shockingly disproportionate as per the judgment of the Hon'ble Supreme Court referred to supra and the Labour Court wrongly interfered with the punishment of dismissal.

5. The learned Counsel for the petitioner further contended that the workman attained the age of superannuation during pendency of this writ petition and that the petitioner paid wages under Section 17-B of the Industrial Disputes Act till the respondent-workman attained the age of superannuation, and therefore, this writ petition may be allowed and the order of the Labour Court is liable to be set aside.

6. The learned Counsel for the respondent-workman contended that the Labour Court has rightly passed orders in favour of the workman by exercising its power under Section 11-A of the Industrial Disputes Act, and that the Labour Court by applying the **Wednesbury** principle, held that the punishment of dismissal is shockingly disproportionate to the charges proved. He further contended that the Labour Court has taken into consideration the facts that this is the lone misconduct alleged to have been committed by the workman and the respondent-workman has put in more than 25 years of service and for the absence of few days that too beyond the control of the workman, the petitioner-management ought not to have imposed punishment of dismissal which is shockingly disproportionate to the proved misconduct and that the Labour

Court has rightly interfered with the punishment of dismissal and rightly passed orders in favour of the respondent-workman and that there are no merits in this writ petition and therefore, this petition is liable to be dismissed.

7. This Court having considered the rival submissions made by the parties is of the view that the Labour Court has rightly passed orders in favour of the respondent-workman by applying **Wednesbury** principle, while observing that the punishment is shockingly disproportionate to the proven misconduct. The Labour Court has also taken a fact into consideration that this is the lone incident in the entire career of the respondent-workman and the respondent-workman has put in more than 25 years of service. No irregularity or illegality has been pointed out by the petitioner in the award of the Labour Court. Moreover, the respondent attained the age of superannuation and that the petitioner has paid wages under Section 17-B of the Industrial Disputes Act till the respondent-workman has attained the age of superannuation and the only issue is payment of some balance of terminal benefits to the workman.

8. In view of the above discussion, this Court is not inclined to interfere with the award impugned.

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

ABHINAND KUMAR SHAVILI, J

Dated 14.11.2018
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HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI



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