

HON' BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 25912 of 2002

ORDER:

This writ petition is filed seeking *Certiorari* calling for records in ID No.221/ 1999 on the file of respondent No.1 and quash the Award dated 20.09.2001 passed therein insofar as denying the continuity of service, attendant benefits and back wages to the petitioner holding it, as illegal, arbitrary and unjust.

2. The petitioner was initially appointed as Causal Conductor in respondent No.2-Corporation on 01.02.1991 and thereafter his services were regularized on 16.09.1993. While so, on 13.08.1998 at about 16.45 hours, when the petitioner was conducting a bus in route Yadagirgutta to up hills, a check was conducted at stage No.16 and allegedly found certain cash and ticket irregularities. Basing on the same, petitioner was charge sheeted on 20.09.1998 by framing four charges. During enquiry, the Enquiry Officer, found the petitioner guilty of the charges. Thereafter, the respondent No.2 issued show-cause notice of removal, dated 04.02.1999 to the petitioner and without considering his explanation, passed final orders dated 24.02.1999 terminating the petitioner from service. Questioning the same, the petitioner preferred an appeal unsuccessfully and later approached respondent No.1 by way of filing ID No.221 of 1999. The Labour Court passed the impugned Award on 20.09.2001 by setting aside the order of removal and directing respondent No.1-Corporation to appoint the petitioner afresh.

3. Heard Sri G.Pavi Mohan, learned counsel for the Petitioner and Sri A.Pavi Babu, learned standing counsel appearing for respondents-Corporation.

4. It is contended by the learned counsel for the petitioner that though Labour Court set aside the order of removal, failed to appreciate the fact that in the spot statement it was categorically stated that the said five passengers, who got down the bus, paid the fare and that the petitioner issued the tickets to them and none of the passengers were found without ticket. Further, at the time of check, the checking officials did not find any cash irregularity from the petitioner and thereby it is clear that the petitioner did not commit any misappropriation nor defraud the corporation fraudulently. It is further contended that the enquiry officer did not follow the due process of law contemplated under law and even did not give any opportunity to cross-examine the management witness, which is violative of the principles of natural justice.

5. *Per contra*, the learned standing counsel appearing for respondent No.2-Corporation contended that the said five passengers were holding re-issued tickets and that the Award passed by the Labour Court does not suffer from any infirmity or illegality in directing to appoint the petitioner afresh.

6. Perused the material available on record.

7. A perusal of the award makes it clear that respondent No.1, by observing overall circumstances of the case, held that the punishment of removal is disproportionate to the gravity of the misconduct and ordered to reinstate the petitioner afresh. The Labour Court had gone to the

rescue of the petitioner on proportionality theory. In this view of the matter, respondent No.1, by exercising the powers envisaged under Section 11-A of the Industrial Disputes Act, 1947, ought to have considered the case of the petitioner sympathetically for extending the benefit of continuity of service for the purpose of all retiral benefits instead of appointing him afresh.

8. Having considered the rival contentions of both the counsel and considering the age of the petitioner, this court is of the opinion that ends of justice would be met if the Award of respondent No.1 is modified by granting continuity of service for the purpose of terminal benefits without monitory benefit.

9. In the result, the writ petition is disposed of and the order dated 20.09.2001 passed by respondent No.1-Labour Court is modified by granting continuity of service to the petitioner for the purpose of terminal benefits without monitory benefit instead of appointing him afresh. No costs.

10. Miscellaneous Petitions, if any, pending in this writ Petition shall stand closed.

5th September, 2018
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ABHINAND KUMAR SHAVILI, J

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