

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.5867 of 2004

ORDER:

This writ petition is filed seeking to issue a writ of certiorari, calling for records relating and connecting to I.D.No.181 of 1992, dated 16.07.1996, quash and set aside the same holding it as arbitrary and illegal only to the extent of denying continuity of service, attendant benefits and back wages to the petitioner.

Heard Sri G.Ravi Mohan, learned counsel for the petitioner and Sri B.Mayur Reddy, learned standing counsel for the respondents.

It has been contended by the petitioner that he was appointed as a conductor in the respondent corporation and while he was discharging his duties as a conductor, during October, 1991 he was issued a charge memo, alleging that he had indulged in cash and ticket irregularities. After a detailed enquiry, the petitioner was removed from service, vide orders, dated 29.01.1992. Challenging the order of removal, the petitioner had preferred I.D.No.181/1992 under Section 2-A(2) of the Industrial Disputes Act and the Industrial Tribunal, exercising its power under Section 11-A of the Industrial Disputes Act, was pleased to pass an order on 16.07.1996, setting aside the removal order, dated 29.01.1992 and directed that the petitioner be reinstated into service as a "Fresh Recruit", without back wages, without any attendant benefits and without continuity of service. Challenging the same, the present writ petition is filed.

Learned counsel, appearing for the petitioner, had contended that at least the Labour Court ought to have granted continuity of service for purpose of terminal benefits without any monetary benefits. He had

further contended that the Labour Court has interfered with the punishment on the ground of proportionality. Learned counsel had further contended that in all fairness, by applying proportionality theory, continuity of service ought to have been granted by the Labour Court in exercise of power under Section 11-A of the Industrial Disputes Act.

Learned standing counsel for the respondents has contended that the Industrial Tribunal has taken a lenient view and applying the proportionality theory, interfered with the punishment of removal and rightly passed an order denying back wages and continuity of service to the petitioner and directed that the petitioner be reinstated into service as a "Fresh Recruit".

This court, having considered the rival submissions made by the parties, is of the considered view that when the Labour Court interfered with the punishment of removal on the proportionality theory, it ought to have at least granted continuity of service for the purpose of terminal benefits by duly taking into account the long length of service put in by the petitioner. Therefore, this court feels that ends of justice would be met if the writ petition is allowed to the extent of continuity of service for purpose of terminal benefits without any monetary benefits. Rest of the award is being confirmed.

With these observations, this writ petition is allowed in part to the extent indicated above. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

ABHINAND KUMAR SHAVILI, J

Date: 11.09.2018
Dsr