

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.17231 OF 2002

ORDER (ORAL):

This Writ Petition has been filed seeking a Writ of *Certiorari* calling for the records pertaining to M.P. No.39 of 1998 dated 09.05.2002 passed by the Labour Court, Ananthapur, and to quash the same as arbitrary, illegal and contrary to law.

2. Heard Sri A. Rama Rao, learned standing counsel for the petitioner - The Depot Manager, Andhra Pradesh State Road Transport Corporation, Dharmavaram, and Sri S.D. Goud, learned counsel for respondent No.2 - workman, and perused the material on record.

3. For convenience sake, the petitioner and respondent No.2 are hereinafter referred to as Corporation and Workman, respectively.

4. It has been contended by the learned counsel for the Corporation that the Workman was removed from service vide order dated 02.07.1985 for indulging in an assault on a co-employee. Questioning the same, the Workman preferred an appeal and review, wherein he was unsuccessful. Challenging the same, the Workman filed I.D. No.175 of 1987 before the Industrial Tribunal - cum - Labour Court. The Labour Court was pleased to dismiss the said I.D. vide order dated 31.10.1987. Assailing the same, the Workman filed W.P. No.13660 of 1988 before this Court and the same was allowed by this Court on 12.03.1996 directing the Corporation to reinstate the Workman into

service with all consequential benefits. Challenging the same, the Corporation preferred W.A. No.1013 of 1996 and by the judgment dated 17.09.1996, a Hon'ble Division Bench of this Court was pleased to modify the orders in W.P. No.13660 of 1988 modifying a portion of the order of the learned single Judge where back wages were directed to be paid with the following observation:

“We are inclined for the said reason to modify the impugned order to the effect that the writ petitioner - respondent shall make an application before the competent authority claiming backwages and the competent authority, after being satisfied that the writ petitioner - respondent was not gainfully employed during the period of unemployment on account of removal from service and there are no other circumstances to deny to him the wages for the period of unemployment, may accordingly pass suitable orders.”

5. Thereafter, the Workman has submitted a representation to the competent authority to pass appropriate orders and for grant of back wages. The Corporation in order to ascertain whether the Workman was gainfully employed or not has conducted an enquiry and the enquiry revealed that the Workman was gainfully employed. Accordingly, the Corporation has passed orders on 14.08.1997 rejecting the case of the Workman for grant of back wages. Challenging the same, the Workman had filed M.P. No.39 of 1998 before the Labour Court. The Labour Court vide order dated 09.05.2002 gave a finding that the Workman is entitled to back wages and the Labour Court having examined the so-called enquiry report issued by the Corporation came to the

conclusion that the enquiry was not conducted in accordance with the rules and principles of natural justice were not followed while conducting enquiry and no evidence was collected to demonstrate that the workman was gainfully employed and accordingly allowed the M.P. Challenging the same, the present Writ Petition is filed by the Corporation.

6. It has been contended by the learned counsel for the Corporation that the Labour Court ought not to have granted back wages to the workman and in the enquiry conducted by the petitioner it was clearly revealed that the workman was gainfully employed and when once the employee gainfully employed the question of granting back wages to the respondent does not arise. The learned counsel for the workman has contended that the Labour Court has rightly passed the award impugned in favour of the workman and that the Labour Court had not committed any illegality or irregularity in passing the same.

7. Burden of proof that he was not gainfully employed is on the Workman. But, no opportunity was given to him by the Corporation to demonstrate that he was not gainfully employed. On the other hand, the so-called enquiry conducted by the Corporation to ascertain whether the Workman was employed through the backdoor was behind the back of the Workman, and therefore, such an enquiry report cannot be used against the Workman and to deny rightful back wages to him. On 11.09.2002, at the time of admission of this writ petition, this Court was pleased to grant interim suspension of the orders passed by the

Labour Court in M.P. No.39 of 1998 on the condition that the Corporation shall deposit 50% of the amount awarded in M.P. No.39 of 1998 within a period of four (4) weeks and, complying the same, the Corporation has deposited 50% of the amount. The Labour Court has gone into enquiry report and gave a specific finding that no statements were recorded and no evidence was collected so as to demonstrate that the Workman was gainfully employed and the so-called enquiry was conducted behind the back of the Workman.

8. Having considered the rival submissions made by the learned counsel on either side, this Court is of the view that to meet the ends of justice and to give *quietus* to this long pending *lis*, if the Workman is allowed to receive 50% of the back wages which were already deposited by the Corporation if not already withdrawn by him and in respect of balance 50% of the back wages, as the enquiry report of the Corporation is that the Workman was gainfully employed; without going into all these aspects, back wages to the Workman are confined to 50%.

9. With the above directions, the Writ Petition is disposed of. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Writ Petition stand closed.

ABHINAND KUMAR SHAVILI, J

October 4, 2018.
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