

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.20720 OF 2004

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.25 of 1998 on the file of the 1st respondent and to quash the award dated 15.11.2001 passed therein, only to the extent of not granting continuity of service, attendant benefits, back wages and to the extent of imposing punishment of deferment of five annual increments with cumulative effect, and consequently, to grant continuity of service, attendant benefits, back wages and five annual increments to the petitioner.

2. Heard Sri G. Ravi Mohan, learned Counsel for the petitioner and Sri A. Rama Rao, learned Standing Counsel for the respondent-corporation.

3. The case of the petitioner is that he was appointed as a driver in the respondent-Corporation in the year 1991 and while he was discharging his duties he caused an accident on 6.6.1991 and the respondent-Corporation construed the said incident as misconduct and initiated disciplinary proceedings against the petitioner and thereafter, after conducting an enquiry, the respondent-Corporation issued proceedings dated 27.1.1992 terminating the petitioner from

service. Challenging the same, the petitioner preferred an appeal to the appellate authority and the said appeal was also rejected. Thereafter, he filed review petition before the Regional Manager, APSRTC, and the said review was also rejected. Hence, the petitioner preferred I.D. before the 1st respondent-Tribunal under Section 2-A (2) of the Industrial Disputes Act. The learned Tribunal vide order dated 15.11.2001 passed award setting aside the order of termination and directing the respondent-Corporation to reinstate the petitioner into service without back wages. However, the learned Tribunal directed the respondent-Corporation to differ five annual increments of the petitioner with cumulative effect. Challenging the denial of back wages and imposition of punishment of deferment of annual increments, the petitioner filed this writ petition.

4. It has been contended by the learned Counsel for the petitioner that the learned Tribunal while setting aside order of removal dated 27.1.1992, directed the respondent-Corporation to reinstate the petitioner into service without any back wages, but the respondent-Corporation treated the said direction as a fresh appointment and denied nine years of service from the date of removal till the date of reinstatement. It has been further contended that the learned Tribunal had not denied the granting of continuity of service, but the respondents misunderstood the

directions of the learned Tribunal and they are implementing the award as if it is a direction for fresh appointment.

5. The learned Standing Counsel for the respondent-Corporation contended that the learned Tribunal has rightly passed the award modifying the punishment of removal to that of deferment of five annual increments with cumulative effect and thus, the learned Tribunal interfered with the punishment only on the ground of proportionality theory and therefore, the award impugned does not warrant any interference of this Court.

6. This Court has considered the rival submissions made by the parties and perused the material available on record. In the award, there is no direction to reinstate the petitioner into service as a fresh entrant. Further, the order of removal was set aside and a specific direction was given to the respondent-Corporation to reinstate the petitioner into service. The reinstatement would mean that the petitioner should be taken into service. But the interpretation given by the respondent-Corporation that the petitioner is appointed afresh vide proceedings dated 4.5.2002, cannot be sustained. Further, there is no denial of continuity of service of the petitioner in the award impugned. The services of the petitioner from the date of removal i.e. 27.1.1992 till 4.5.2002 should be treated as

‘SPENT ON DUTY’, and all the benefits which accrue in favour of the petitioner should be given to him.

7. With the above observations, the Writ Petition is disposed of. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 27.8.2018.
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27/08/2018

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