

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.2099 OF 2003

ORDER:

1. This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with M.P.No.14 of 1999 in I.D.No.34 of 1998 on the file of the 1st respondent-Tribunal, and to quash the proceedings therein and consequently, to remand the industrial dispute for fresh adjudication under Section 33-A of the Industrial Disputes Act.

2. Heard Smt. K. Udaya Sri, learned Counsel for the petitioner and Smt. G. Sudha, learned Counsel for the 2nd respondent.

3. It is the case of the petitioner that he joined as operator with the 2nd respondent and he was elected as President of Employees union and he was exposing the cause of workmen before the management. While so, a charge sheet dated 18.1.1999 was issued to the petitioner alleging that during the flag hosting on 28.12.1998, he made provocative speeches against the Management and threatened the Management. On the said allegations, the 2nd respondent initiated disciplinary proceedings against the petitioner and after conducting enquiry, dismissed the petitioner from service vide order dated 26.8.1999. At the time of initiation of disciplinary proceedings,

the petitioner raised industrial dispute before the Tribunal in I.D.No.34 of 1998 with regard to various demands including wage revision of workmen. While the petitioner was exposing the cause of fellow workmen in the form of I.D.No.34 of 1998 before the Tribunal, the 2nd respondent dismissed the petitioner from service. It amounts to victimization and violation of Section 33(1)(2)(b) and 33-A of the Industrial Disputes Act. The petitioner challenged the action of the respondents in imposing punishment of dismissal by filing M.P.No.14 of 1999 in I.D.No.34 of 1998, which is pending before the Tribunal, wherein various other issues were raised by the petitioner. The Tribunal passed orders on 16.5.2001 dismissing the M.P. filed by the petitioner challenging the order of his dismissal. Aggrieved by the same, the petitioner filed this writ petition.

4. The learned Counsel for the petitioner contends that the Tribunal ought to have set aside the order of dismissal impugned in M.P.No.14 of 1999, but the Tribunal erroneously dismissed the M.P. filed by the petitioner.

5. The learned Counsel for the 2nd respondent contends that the Tribunal gave a finding that the order of dismissal covered by the impugned order is neither a contravention of Section 33(1) nor it was given as a measure of victimization or unfair labour practice and that the dismissal order was passed for the

proven misconduct in the enquiry and that the 2nd respondent was justified in dismissing the petitioner from service.

6. This Court having considered the rival submissions made by the parties is of the view that the Tribunal has given a clear finding against the petitioner that the petitioner was dismissed from service for the proven misconduct in the enquiry and that the action of the 2nd respondent in imposing punishment of dismissal from service against the petitioner neither attracts Section 33(1) of the Act nor it is a case of victimization. The Tribunal has rightly dismissed the M.P. on 16.5.2001.

7. Further, while passing the award, the Tribunal observed that I.A. was dismissed without prejudice to the rights of the workman in raising industrial dispute under Section 10(1) of the Industrial Disputes Act. Therefore, this Court is of the view that the order of dismissal passed by the Management can be challenged by the petitioner independently before the Tribunal either by filing a petition under Section 2-A(2) or 10(1) of the Industrial Disputes Act. Since the petitioner has been pursuing his remedies in a wrong forum for all these years, the same may not be put against the petitioner. The petitioner can always challenge the order of his dismissal before the Tribunal by filing independent I.D. either under Section 2-A(2) or 10(1) of the Industrial Disputes Act.

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

(ABHINAND KUMAR SHAVILI, J)

Dated: 12th November, 2018
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Dated: 12.11.2018

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