

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.19950 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 the award dated 7.3.2002 in I.D.No.231 of 1998 on the file of the 1st respondent and to quash the same by holding it as arbitrary and illegal, and to grant reinstatement with continuity of service, attendant benefits and back wages to the petitioner.

2. Heard Sri G. Ravi Mohan, learned Counsel for the petitioner and Sri B. Mayur Reddy, learned Standing Counsel for the 2nd respondent.

3. It has been submitted by the learned Counsel for the petitioner that he was appointed as a conductor on 1.7.1988 and while he was conducting the bus on 12.9.1997, a team of checking officials conducted a check and found that the petitioner has indulged in cash and ticket irregularities, and the 2nd respondent - Corporation issued charge sheet on 20.9.1997, for which, the petitioner gave his explanation, and being not satisfied with the same, a detailed enquiry was conducted, and the petitioner was removed for the proven misconduct in the departmental enquiry, vide proceedings dated 6.2.1998. Further, it has been submitted

that aggrieved by the removal order, the petitioner preferred appeal before the appellate authority, and the appellate authority rejected the appeal vide order dated 24.8.2001 and challenging the same, the petitioner preferred I.D.No.231 of 1998 before the 1st respondent-Labour Court under Section 2-A(2) of the Industrial Disputes Act and the said I.D. was dismissed. Hence, the petitioner filed this writ petition.

4. Learned Counsel for the petitioner contends that the Labour Court without considering the aspect that the 2nd respondent had not filed any documents relating to enquiry conducted by the enquiry officer, and without appreciating the evidence in a proper perspective, dismissed the I.D. on 7.3.2002 while holding that the petitioner is guilty of the charges, and that the punishment of removal for the alleged proven conduct is very disproportionate and therefore, the award of the Tribunal warrants interference by this Court.

5. This Court has considered the submissions made by both the parties and perused the material available on record. Though the Labour Court held that the petitioner had reissued the tickets and the charge against the petitioner is proved, it has not properly considered the issue in respect of proportionality of punishment. The petitioner was appointed in the year 1988 and after rendering

11 years of service, this was the sole incident. This factor should have been taken into account while imposing punishment of removal for the proven misconduct before examining the case of the petitioner on proportionality i.e., Wednesbury principle. Taking into consideration the service rendered by the petitioner and the charge proved against the petitioner, this Court is of the view that the punishment of removal is disproportionate to the proven misconduct. The Labour Court in one sentence dismissed the I.D. stating that in its opinion this is not at all disproportionate punishment to the proven misconduct. The other aspects were not taken into account such as length of service and lone incident and gravity of charge. It is not that in each and every case of cash and ticket irregularity, removal/dismissal should be imposed. Since the punishment imposed on the petitioner is disproportionate to the charge leveled against the petitioner, the punishment of removal imposed by the disciplinary authority is set aside. Ends of justice would be met if the award of the Labour Court is modified to the effect that the petitioner be reinstated into service as a fresh entrant without any back wages, continuity of service and other attendant benefits.

6. Accordingly, the Writ Petition is disposed of setting aside the order of removal of the petitioner dated 6.2.1998 and modifying the award of the Labour Court to the effect that petitioner be reinstated

into service as a fresh entrant without any back wages, continuity of service and other attendant benefits. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 3rd August, 2018.

Nn.



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3/08/2018

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