

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.26703 OF 2009

ORDER

This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with I.D.No.5 of 2007 on the file of the Industrial Tribunal-cum-Labour Court, Vishakapatnam, and to quash the award dated 28.05.2009 passed therein, by holding it as illegal and arbitrary, and to direct the respondents to reinstate the petitioner into service with continuity of service and all other benefits including full back wages.

Heard Sri P.V.Ramana, learned counsel for the petitioner, learned Government Pleader for Labour appearing for the 4th respondent and Sri C.Appaiah Sarma, learned Standing Counsel for the respondent-Corporation.

It is the case of the petitioner that he was appointed as Conductor. While so, he was unauthorizedly absented to his duties from 15.08.2000 to 11.9.2000, due to ill-health of his son. The respondent-Corporation construing the said act as misconduct initiated disciplinary proceedings against the petitioner, and after conducting enquiry, imposed punishment of removal from service on the petitioner on 29.12.2000. The

appellate authority as well as review authority confirmed the said punishment vide proceedings dated 30.11.2001 & 9.3.2002 respectively. Aggrieved by the same, the petitioner filed I.D.No.5 of 2007 before the Industrial Tribunal-cum-Labour Court, Visakhapatnam. But the Labour Court dismissed the I.D. Challenging the same, the present writ petition is filed.

Learned counsel appearing for the petitioner submitted that except the incident in question, there are no such other incidents in the entire service career of the petitioner and that the punishment of removal is very disproportionate and that the Labour Court ought to have applied proportionality theory and interfered with the punishment of removal, but the Labour Court has erroneously dismissed the I.D.

Learned Standing Counsel for the respondent-Corporation contended that the disciplinary authority imposed punishment of removal for the proven misconduct and the Labour Court has rightly dismissed the I.D., and therefore, the award impugned does not warrant any interference.

This Court having considered the submissions made by the parties and the nature of the charges levelled against the petitioner, is of the considered view that the punishment of

removal imposed by the respondent-Corporation is very disproportionate and the Labour Court ought to have examined the case of the petitioner and interfered with the punishment of removal by applying the proportionality theory and at least, the Labour Court ought to have directed the respondent-Corporation to reinstate the petitioner into service as fresh Conductor. Since the punishment of removal is shockingly disproportionate, this Court feels that ends of justice would be met if the respondent-Corporation is directed to reinstate the petitioner into service as fresh Conductor.

Accordingly, the Writ Petition is disposed of directing the respondent-Corporation to reinstate the petitioner into service as fresh Conductor, subject to medical fitness, without continuity of service, without back wages and other attendant benefits. No costs.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

9th November, 2018.

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