

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.8660 OF 2004

ORDER

This writ petition is filed seeking the following relief:

“...to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Certiorari in calling the records pertaining to I.D.No.30 of 1999, dated 23.1.2001 of the Chairman, Industrial Tribunal-cum-Labour Court, Godavarikhani, Karimnagar District and set aside the same, which is confirming the punishment of removal from service imposed on the petitioner by the 2nd and 3rd respondents vide letter P.R.G.II/CF/MSR/656, dated 20.03.1998 pursuant to the charge sheet No.GDK 8A/06-I/2862, dated 21.10.1997 for the petitioner alleged habitual absenteeism from duty without sufficient cause during the year 1996 as arbitrary, illegal, unjust, unfair and violative of principles of natural justice and Articles 14 and 21 of the Constitution of India apart from being disproportionate to the alleged Act of absenteeism and to pass such other order or orders.”

Heard Sri T.Dayananda Rao, learned counsel appearing for the petitioner and Sri J.Srinivasa Rao, learned Standing Counsel appearing for the respondents.

It is the case of the petitioner that initially he was appointed as Badli-Filler in the year 1992 and thereafter, promoted as Coal-Filler. During the year 1996-97, he had absented to his duties due to ill health and domestic problems and the respondents have construed the same as habitual absenteeism, initiated disciplinary proceedings. After conducting departmental enquiry, and for the proven

misconduct, the disciplinary authority had imposed the punishment of removal vide order dated 20-03-1998. Aggrieved by the same, he preferred I.D.No.30 of 1998 before the Industrial Tribunal-cum-Labour Court, Godavarikhani, under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short 'the Act'). The Tribunal, without appreciating any of the contentions raised by the petitioner, had erroneously dismissed the said ID vide Award dated 23.1.2001.

Learned counsel appearing for the petitioner contends that the Labour Court, by exercising its power under Section 11-A of the Act, ought to have reinstated the petitioner afresh without continuity of service and back wages; and that appropriate orders be passed directing the respondents to reinstate the petitioner into service by duly setting aside the order of removal.

Learned Standing Counsel appearing for the respondents had contended that the disciplinary authority had imposed the punishment of removal on the petitioner for the proven misconduct and that no illegality or irregularity has been committed by the respondents in passing the impugned order.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the considered

view that the Labour Court ought to have exercised its power under Section 11-A of the Act, and granted fresh appointment to the petitioner by applying the proportionality theory. The punishment of removal imposed on the petitioner for his unauthorized absence is shockingly disproportionate. The petitioner was aged 30 years at the time of filing the writ petition. Ends of justice would be met if a direction is given to the petitioner to submit a representation to the respondents seeking employment afresh.

Accordingly, the Writ Petition is disposed of directing the petitioner to submit a representation seeking employment afresh within a period of two weeks from the date of receipt of a copy of this order. On receipt of such representation, the respondents shall consider the case of the petitioner for appointment afresh, subject to his medical fitness and pass appropriate orders within a period of four weeks thereafter. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

30th November, 2018
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