

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.24118 OF 2008

ORDER

This writ petition is filed for the following relief:

“...to issue an appropriate Writ, Order or Direction, particularly one in the nature of Writ of Mandamus declaring that the order passed by 2nd respondent in proceedings No.LC/876(26)/2002-RM-WL, dated 14-10-2005, treating the period from 1-9-2001 to 23-10-2001 as not on duty for all purposes, and denying monetary benefits and wages as illegal, unjust, contrary to law, arbitrary and violative of Articles 14,16 and 21 of the Constitution of India, and grant all consequential benefits; and pass such other order or orders as this Hon'ble Court may deem fit and proper under the circumstances of the case.”

Heard Sri A.K.Jayaprakash Rao, learned counsel appearing for the petitioner and Sri B.Mayur Reddy, learned Standing Counsel appearing for the respondent-Corporation.

It is the case of the petitioner that initially, he was appointed as Driver on 15-01-1979 and since then, he is discharging his duties as such. While so, due to his personal problems, he submitted an application seeking voluntary retirement on 24-07-2001. Thereafter, he made an application on 28-08-2001 to the Depot Manager, Mahabubabad, seeking withdrawal of his application made on 24-07-2001. But, without considering his application, the respondent-Corporation *vide* proceedings 01-09-2001 informed that his

application for voluntary retirement was accepted and he was made to retire from service. Aggrieved by the same, the petitioner filed W.P.No.15669 of 2002. This Court allowed the said writ petition and set aside the order of retirement and directed the respondents to reconsider the entire issue in view of the later application filed by the petitioner on 28.08.2001 for withdrawal of the earlier application and pass orders in accordance with law including as to the other benefits to which the petitioner is entitled to. Challenging the same, the respondent-Corporation filed W.A.No.1363 of 2005 and the same was dismissed on 10.08.2005. Thereafter, the 2nd respondent passed order on 14-10-2005, which reads as under:

“In view of dismissal of W.A.No.1363 of 2005 and to comply with the orders of Hon’ble High Court in W.P.No.15669/2002, dt. 9.3.2005 the application dt. 28.08.2001 submitted by the petitioner Sri Ch.Pulinder Reddy, E.80397 for withdrawal of the application submitted for voluntary retirement dt. 24-07-2001 has been considered and the party be reinstated into service with immediate effect”.

Subsequently, the petitioner was reinstated into service on 24.10.2005 and on attaining the age of superannuation, he retired from service on 31.01.2008. After retirement from service, the petitioner filed the present writ petition seeking benefits for the period he was kept out of employment from 1.9.2001 to 23.10.2005.

Learned Standing Counsel appearing for the respondent-Corporation contends that the writ petition is filed after retirement of the petitioner and that too after three years from the date of his reinstatement; that the petitioner is not entitled for the benefits from 1.9.2001 to 23.10.2005 as he was kept out of employment; that the respondents have rightly passed the order denying the benefits for the above said period. Therefore, no interference is called for and the writ petition is liable to be dismissed.

In *Shambhu Murari Sinha vs. Project & Development India Limited*¹, the Apex Court categorically held that resignation/voluntary retirement can always be withdrawn before it is accepted. In view of the same, the action of the respondent-Corporation in retiring the petitioner in spite of withdrawing his resignation before it is accepted is not in accordance with law and the respondents ought not to have denied the benefits of wages.

Hence, this Court is of the considered view that ends of justice would be met if a direction is given to the respondent-Corporation to treat the period from 1.9.2001 to 23.10.2005 during which the petitioner was kept out of employment, with continuity of service for the purpose of calculating gratuity only, without any monetary benefits.

¹ (2000)5 SCC 621

Accordingly, the Writ Petition is disposed of directing the respondent-Corporation to treat the period from 1.9.2001 to 23.10.2005 during which the petitioner was kept out of employment, with continuity of service for the purpose of calculating gratuity only, without any monetary benefits. The amount of gratuity, which was already paid shall be adjusted, subject to any other deductions to which the respondent-Corporation is entitled to deduct, as per law. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

31st August, 2018
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