

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVIL

WRIT PETITION No.4619 of 2009

ORDER:

This writ petition is filed seeking the following relief:

“to issue a Writ of Mandamus or any other appropriate Writ, order or direction, declaring the proceedings of the 4th respondent in APSRTC No.02/95(82)/05-WNP, dated 21.8.2006, confirmed by the 3rd respondent by proceedings No.PA/19(2)/2006-DVM-NUKL, dated 28.10.2006 and further affirmed by the 2nd respondent in I.D.No.94/2006 dated 11.3.2008, published by the 1st respondent in G.O.Rt.No.1402, Labour Employment, Training and factories (Lab.I) Department, dated 23.6.2008 as illegal and arbitrary and set aside the same and consequently direct the respondents 3 and 4 to reinstate me into service withal consequential benefits such as continuity of service, backwages and all other attendant benefits and pass such other or further orders as are deemed fit and proper.”

Heard Sri S.Girimoji Rao, learned counsel for the petitioner and the learned standing counsel for the respondent Corporation.

It has been contended by the petitioner that he was initially appointed as conductor in the year 1987 in the respondent Corporation. While he was discharging his duties on 8.12.2005, the checking officials of the respondent corporation had conducted a check and found that the petitioner had indulged in cash and ticket irregularities and the said act of the petitioner was construed as misconduct and after conducting a regular departmental enquiry, the disciplinary authority had imposed punishment of

removal from service on the petitioner for the proven misconduct vide proceedings dated 21.8.2006. The appeal preferred by the petitioner was also rejected. Aggrieved by the same, the petitioner had preferred I.D.No.94 of 2006 on the file of the 2nd respondent-Labour Court-III. The 2nd respondent-Labour Court vide orders dated 11.3.2008 had dismissed the I.D. preferred by the petitioner. Challenging the same, the present writ petition is filed.

It is contended by the learned counsel for the petitioner that the 2nd respondent-Labour Court had not exercised its powers under Section 11-A of the Industrial Disputes Act and the proportionality theory was not applied. Learned counsel for the petitioner further contended that the 2nd respondent-Labour Court had failed to appreciate that the punishment of removal is shockingly disproportionate to the charges leveled against the petitioner.

Learned standing counsel had contended that the 2nd respondent-Labour Court has rightly rejected the claim of the petitioner and the disciplinary authority had imposed the punishment of removal for the proven misconduct and no illegality has been committed by the disciplinary authority and the writ petition is liable to be dismissed.

This Court having considered the submissions made by both the parties is of the considered view that the 2nd respondent-Labour court ought to have applied the theory of proportionality and interfered with the punishment of removal and the punishment imposed on the petitioner is shockingly disproportionate to the charges leveled against him. Therefore, ends of justice would be

met, if the petitioner is directed to be reinstated into service as a fresh conductor without any back wages and continuity of service.

Accordingly, the Writ Petition is disposed of directing the respondent corporation to reinstate the petitioner into service as a fresh conductor without any back wages and continuity of service. It is needless to say that the case of the petitioner will be considered for fresh appointment subject to medical fitness. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVIL, J

Date: 17/09/2018
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