

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.17294 OF 2009

ORDER:

1. This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with I.D.No.18 of 2008 on the file of the 1st respondent-Labour Court, and to quash the award dated 14.11.2008 passed therein, by holding it as illegal and arbitrary, and to direct the respondent-Corporation to reinstate the petitioner into service with all consequential benefits.

2. Heard Sri G. Ravi Mohan, learned Counsel for the petitioner and the learned Standing Counsel for the respondent-Corporation.

3. It is the case of the petitioner that he was appointed as driver in the year 1999 in the respondent-Corporation and while he was discharging his duties on 12.10.2003, he caused an accident. The respondent-Corporation construing the said incident as misconduct initiated disciplinary proceedings against the petitioner, and after following the procedure, removed the petitioner. The appeal preferred by the petitioner was rejected on merits. Aggrieved by the same, the petitioner filed I.D.No.18 of 2008 before the Labour Court. But the Labour

Court dismissed the I.D. Challenging the same, the present writ petition is filed.

4. Learned Counsel 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 action of the respondent-Corporation in removing the petitioner without conducting any enquiry, is illegal, and that such punishment is very disproportionate and that the Labour Court ought to have applied proportionality theory and interfered with the said punishment, but the Labour Court has erroneously dismissed the I.D.

5. Learned Standing Counsel for the respondent-Corporation contended that the disciplinary authority removed the petitioner from service for the proven misconduct and the Labour Court has rightly dismissed the I.D., and therefore, the award impugned does not warrant any interference.

6. This Court having considered the submissions made by the parties and the nature of the misconduct alleged to have been committed by the petitioner, is of the considered view that removal of the petitioner from service is very disproportionate and the Labour Court ought to have examined the case of the petitioner and interfered with the said punishment by applying the proportionality theory and at least, the Labour Court ought

to have directed the respondent-Corporation to reinstate the petitioner as fresh entrant. This Court feels that ends of justice would be met if the respondent-Corporation is directed to reinstate the petitioner into service as fresh entrant.

7. Accordingly, the Writ Petition is disposed of directing the respondent-Corporation to reinstate the petitioner into service as fresh entrant, 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

Dated:13th November, 2018.
Nn.

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13/11/2018

Nn.