

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.10822 OF 2002

ORDER

This writ petition is filed seeking to issue a Writ of Certiorari calling for the records relating to and connected with Award dated 20-04-2001 passed in I.D.No.121 of 2000 (Old I.D.No.202 of 1997) by the 1st respondent-Industrial Tribunal-II, Hyderabad, and quash or set aside the same by holding it as arbitrary and illegal.

Heard Sri G.Ravi Mohan, learned counsel appearing for the petitioner, and Sri N.Vasudeva Reddy, learned Standing Counsel appearing for the 2nd respondent-Corporation.

It is the case of the petitioner that he was appointed as Driver in the respondent-Corporation in the year 1983 and while working as such, he fell sick on 18-3-1991 and was absented from duty. The respondent-Corporation construed the conduct of the petitioner as a misconduct, issued a charge sheet on 15.4.1991. After conducting regular departmental enquiry, *vide* order dated 3.2.1992, the respondent-Corporation terminated him from service. Challenging the same, the petitioner preferred an appeal before the appellate authority, which was rejected on 31.08.1993. Aggrieved thereby, he filed a review petition, which was also rejected *vide* order dated

5.12.1994. Thereafter, the petitioner filed I.D.No.121 of 2001 (Old ID No.202 of 1997) before the Industrial Tribunal. The Tribunal, while exercising its powers under Section 11-A of the Industrial Disputes Act, 1947 (for short 'the Act'), modified the punishment of termination to that of stoppage of nine (9) annual increments with cumulative effect, and directed the respondent-Corporation to reinstate the petitioner into service with continuity of service, but without back wages. Hence, the present writ petition is filed.

Learned counsel appearing for the petitioner submits that while exercising its powers under Section 11-A of the Act, the Tribunal has modified the punishment of termination with another major penalty of stoppage of nine annual increments with cumulative effect.

Learned Standing Counsel appearing for the respondent-Corporation submits that the Tribunal has taken a lenient view and modified the punishment of termination to that of stoppage of nine annual increments with cumulative effect and the Tribunal has rightly exercised its powers and modified the punishment and hence, no interference is called for.

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

view that when the Tribunal had exercised its powers under Section 11-A of the Act and also on the theory of proportionality, it ought not to have imposed another major punishment of stoppage of nine annual increments with cumulative effect. The imposition of stoppage of nine annual increments with cumulative effect is too harsh punishment. Hence, ends of justice would be met if the impugned Award in respect of stoppage of nine annual increments with cumulative effect is modified to that of without cumulative effect.

Accordingly, the Writ Petition is disposed of. The impugned Award in respect of stoppage of nine annual increments with cumulative effect is modified to that of without cumulative effect. Rest of the Award is confirmed. The respondent-Corporation is directed to calculate the increments notionally and pay the notional benefits to the petitioner.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

21st August, 2018

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