

HON'BLE SRI JUSTICE M.GANGA RAO

W.P.No.5101 of 2002

ORDER

Aggrieved by the Award dated 13.12.1999 passed in I.T.I.D.No.17 of 1999 by the Industrial Tribunal-cum-Labour Court, Visakhapatnam, whereby the 2nd respondent-workman was reinstated into service without back wages, the petitioner-Visakhapatnam Port Trust, filed the present writ petition.

The brief facts are that the 2nd respondent-workman joined in the petitioner-organization in the month of May 1982. While working as crane operator in the year 1994, he sustained injuries to his head and other parts of his body, for which he was not paid any compensation. The petitioner-organization issued a memo on 30.03.1996 to the 2nd respondent-workman alleging that he was unauthorisedly absent from 22.01.1996 to 27.03.1996. In the enquiry, the 2nd respondent-workman admitted his guilt. Based on his admission, the enquiry officer held that the charge levelled against the 2nd respondent was proved and removed him from service *vide* proceedings dated 30.01.1997. Challenging the same, the 2nd respondent-workman raised industrial dispute being I.T.I.D.No.17 of 1997 under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short 'the Act'). The Labour

Court having considered the documentary evidence placed before it, and on considering the fact that the charge levelled against the 2nd respondent relates to unauthorized absenteeism for a period of two months, and that he has not indulged in any fraud, modified the order of removal by reinstating the 2nd respondent-workman into service by treating his absence as not on duty, and without back wages, and with continuity of service for reckoning the seniority alone. Questioning the same, the present writ petition is filed by the petitioner-organization.

Ms. V.Uma Devi, learned Standing Counsel appearing for the petitioner-organization would contend that the charge of un-authorized absenteeism was proved in the enquiry based on the admission of the 2nd respondent-workman and that he was removed from service based on the enquiry report given by the enquiry officer. The Labour Court while exercising the powers under Section 11-A of the Act erroneously passed the order reinstating the 2nd respondent into service with continuity of service for reckoning his seniority, which is arbitrary and illegal and the same is liable to be dismissed.

Per contra, Sri J.Sudheer, learned counsel appearing for the 2nd respondent-workman submits that the 2nd respondent-

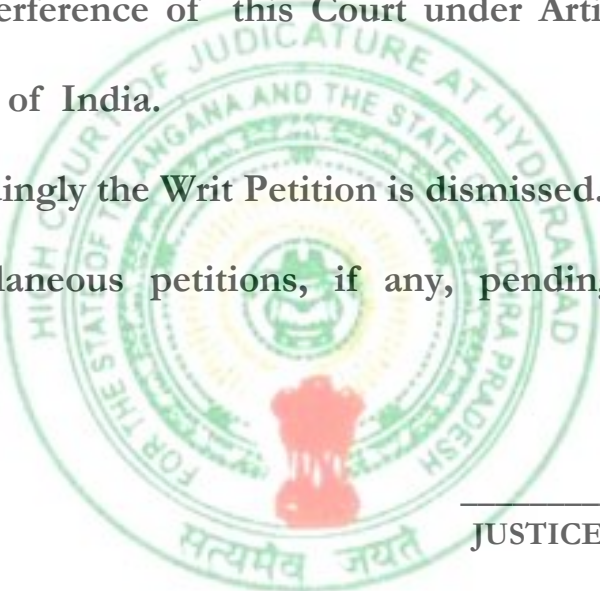
workman is working since 1982 and no serious charges are levelled against him and that as he sustained injuries, he absented from his duties for a period of two months, which he admitted during the course of enquiry before the enquiry officer. He further submits that without considering his representation to the Chief Mechanical Engineer, was imposed the punishment of removal from service; the Labour Court, after appreciating the material evidence in its proper perspective, exercised its powers under Section 11-A of the Act, by considering the fact that the punishment imposed against the 2nd respondent-workman is shockingly disproportionate to the proved misconduct of unauthorized absence and set aside the punishment of dismissal from service to that of reinstating the 2nd respondent-workman into service with continuity of service for reckoning the seniority, but without back wages. Hence, the Award passed by the Labour Court needs no interference by this Court.

While admitting the writ petition on 20.03.2002, this Court granted interim stay *vide* WPMP No.6409 of 2002 subject to condition of the petitioner complying with the mandatory provisions contained under Section 17-B of the Act. But it appears, the petitioner-organization has not complied with the order.

Considering the rival submissions made by the learned counsel on either side and on perusing the entire material, this Court is of the considered view that the Labour Court has rightly exercised the power vested in it under Section 11-A of the Act and passed award reinstating the petitioner into service, with continuity of service for the purpose of reckoning his seniority and without back wages. There is no error of fact and law in the Award passed by the Labour Court, which warrants interference of this Court under Article 226 of the Constitution of India.

Accordingly the Writ Petition is dismissed. No costs.

Miscellaneous petitions, if any, pending shall stand closed.



JUSTICE M.GANGA RAO

26th July, 2018
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