

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.4521 of 2002

ORDER:

This writ petition is filed seeking a writ of Certiorari, calling for the records relating to and in connection with the award passed by the Labour Court in I.D.No.171 of 1994 dated 02.03.1998, which is published in the Gazette vide G.O.Rt.No.641 dated 27.03.1998, insofar as it went against the petitioner in not granting the wages for the period he was out of employment and the past service, as illegal and consequently to direct the respondents to pay back-wages from the date of removal along with all benefits including continuity of service and other attendant benefits.

2. Heard Sri S.M. Subhan, learned counsel for the petitioner and Sri S.V. Ramana, learned standing counsel for the respondent-Corporation.

3. It has been contended by the petitioner that he was appointed as Driver in the year 1987. At the time of his appointment, he has produced certificate to show his date of birth, which turned out to be false. The respondent-Corporation has construed the said conduct of the petitioner, in producing certificate to show his date of birth, which turned to be false, as a misconduct and initiated disciplinary proceedings against the petitioner. A charge sheet was issued on 06.10.1988 and after conducting regular enquiry, the respondent-Corporation imposed punishment of removal on the petitioner vide order dated 25.06.1994.

4. It is to be noted that the petitioner has not participated in the enquiry in spite of giving opportunity and, in fact, in the reply to the charge sheet dated 06.10.1988, the petitioner has admitted about the furnishing of false certificate in respect of his date of birth, but, however, pleaded in his explanation that the certificate produced by him has no relevance for the post held by him and he was appointed based on the valid driving licence, which he possessed. Challenging the order of removal dated 25.06.1994, petitioner has filed I.D.No.171 of 1994 before the Industrial Tribunal-cum-Labour Court, Visakhapatnam. The Labour court, after hearing both the parties, has come to a conclusion that the punishment imposed on the petitioner is on higher side and set aside the order of removal and directed the respondent-Corporation to reinstate the petitioner into service without back-wages and without continuity of service.

5. Learned counsel for the petitioner contends that in pursuance of the order passed by the Labour Court, petitioner was reinstated into service on 02.03.1998.

6. Learned standing counsel for the respondent-Corporation has contended that the date of birth of the petitioner was entered in the Service Register based upon fake certificate produced by the petitioner and it amounts to misconduct and no interference is called for with the award passed by the Labour Court and the said award has also been complied by the respondent-Corporation.

7. This Court, having considered the rival submissions made by the parties, is of the considered view that the Labour Court has rightly come to the conclusion that the punishment of removal from service imposed on the petitioner is on higher side and only on the proportionality theory, set aside the order of removal and directed the respondent-Corporation to reinstate the petitioner into service. However, a finding was also given to the effect that the fake certificate relating to the date of birth has no relevance for the post held by the petitioner. When such finding was recorded, the Labour Court at least ought to have granted continuity of service, but did not do so. The Labour Court was justified in not granting back-wages, however, this Court feels that the petitioner is entitled for continuity of service, for the purpose of pensionary benefits.

8. Accordingly, the writ petition is disposed of modifying the award of the Labour Court, to the extent of granting continuity of service for the purpose of pensionary benefits and the rest of the award is upheld. No order as to costs.

As a sequel, miscellaneous petitions, if any pending, shall stand closed.

ABHINAND KUMAR SHAVILI, J

July 23, 2018
MRR