

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILU

WRIT PETITION No.12156 of 2007

ORDER:

This writ petition is filed seeking the following relief :-

“.....to issue a writ or order, more in the nature of Writ of Certiorari calling the records in I.D.No.47 of 2005 dated 7.9.2006 on the file of Hon'ble Labour Court, Hyderabad-III and quash the same in so far as denying the continuity of service, attendant benefits, including increments and full back wages and further direct the respondent herein to grant all benefits including continuity of service, attendant benefits, increments and full back wages”.

Heard Mr.P.Govinda Rajulu, learned counsel appearing for the petitioner and Sri B.Mayur Reddy, learned Standing Counsel for the respondent.

It has been contended by the petitioner that he was employed as a Sharmik with the respondents on 03.01.1986 and he has been discharging his duties to the best satisfaction of his superiors and everyone concerned. The petitioner submits that owing to ill-health, he remained absent from 15.09.2002 to 30.09.2002. The respondents have construed the same as a misconduct and initiated disciplinary proceedings and after conducting detailed enquiry, for the proven misconduct, the disciplinary authority has imposed major penalty of removal vide proceedings dated 19.09.2003. The petitioner has unsuccessfully preferred appeal and revision and thereafter challenged the order of removal before the Labour Court and the Labour Court vide order dated 07.09.2006 was pleased to partly allow I.D.No.47 of 2005 and set aside the order of removal holding that the

punishment of removal is shockingly disproportionate to the charges levelled against the petitioner and further directed that the petitioner be reinstated into service afresh without continuity of service, attendant benefits and back wages. Challenging the same, the present writ petition is filed.

Learned counsel for the petitioner contended that when once the Labour Court had interfered with the punishment of removal, atleast the Labour Court ought to have granted continuity of service to the petitioner. The petitioner was reinstated into service pursuant to the order passed by the Labour Court and the petitioner also retired from service on attaining the age of superannuation. The only issue is with regard to extending continuity of service to the petitioner. In support of his contention, he also relied upon the judgment of the Hon'ble Supreme Court in *COLOUR-CHEM LIMITED Vs. A.L.A LAL SPURKAR & OTHERS*¹, wherein the Hon'ble Supreme Court held that when the punishment of dismissal was shockingly disproportionate to the charges proved against workmen, reinstatement with continuity of service was the least that could have been ordered in their favour.

Learned counsel for the petitioner further submits that the Labour Court had interfered with the punishment of removal holding that the punishment of removal is shockingly disproportionate. But, however, denied continuity of service, back wages and attendant benefits. The counsel submits that atleast the Labour Court ought to have granted continuity of service. Therefore, appropriate orders be passed in the writ petition by duly

¹ AIR 1998 (SC) 948

modifying the award passed by the Labour Court in I.D.No.47 of 2005 dated 07.09.2006 atleast to the extent of granting continuity of service.

The learned Standing Counsel appearing for the respondents has contended that the Labour Court had held that the charges levelled against the petitioner are proved. But, however, interfered with the punishment of removal by applying proportionality theory. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions made by the learned counsel for the respective parties, is of the considered view that the Labour Court ought to have granted continuity of service, as it had held that the punishment of removal is shockingly disproportionate to the charges levelled against the petitioner. Therefore, by following the law laid down by the Hon'ble Supreme in the above referred judgment, this Court is inclined to modify the award passed by the Labour Court in I.D.No.47 of 2005 dated 07.09.2006 only to the extent of granting continuity of service and the rest of the award passed by the Labour Court is confirmed.

With the above observations, the writ petition is disposed of.
No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVIL, J

16-09-2019
Prv