

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.13145 of 2010

ORDER

This writ petition is filed seeking the following relief:

“.....to issue a writ, order or direction more particularly one in the nature of Writ of Certiorari and after calling for records from the Labour Court Award in I.D.No.48 of 2005, dated 10.03.2010 and quash the same and consequently direct the 4th respondent to reinstate me into service with full back wages and all other attendant benefits and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

Heard Sri S.Ravindranath, learned counsel appearing for the petitioner, learned Government Pleader for Labour appearing for the 5th respondent and Sri S.Ramesh, learned Standing Counsel appearing for respondents 1 to 4.

It is the case of the petitioner that initially, he was engaged as apprentice Fitter by the 1st respondent during 1994 and while discharging his duties, he had applied medical leave during August, 1996 due to ill health. After recovery, he had reported to duty. But respondents 1 and 2 have not permitted him to duty and initiated disciplinary proceedings against him. The disciplinary authority has conducted regular departmental enquiry and for the proven misconduct, dismissed him from service *vide* order dated 18.10.1996.

Challenging the same, the petitioner filed W.P.No.22255 of 1996. This Court *vide* order dated 21.03.2003 dismissed the same by giving liberty to the petitioner to approach the Labour Court. Pursuant to the same, the petitioner filed I.D.No.48 of 2005 before the Labour Court-III, Hyderabad, under Section 2(A) (2) of the Industrial Disputes Act, 1947 (for short 'the Act'). Since respondents 3 and 4 have taken over the assets and business interest of respondents 1 and 2 *vide* agreement dated 4.11.1998, the petitioner has filed I.A.No.41 of 2006 and I.A.No.109 of 2008, for impleading respondents 3 and 4. The Labour Court has impleaded respondents 3 and 4 in the said I.D. The Labour Court *vide* Award dated 10-03-2010 dismissed the said I.D by holding that the enquiry conducted against the petitioner was proper. Challenging the same, the present writ petition is filed.

Learned counsel appearing for the petitioner contended that without conducting any enquiry as per the Rules and without giving any opportunity to the petitioner for a small misconduct of unauthorized absence due to his ill health the respondent management ought not to have imposed the major penalty of dismissal. Hence, the impugned Award passed by the Labour Court is liable to be set aside and the respondents

be directed to reinstate the petitioner into service with full back wages.

Learned Standing Counsel appearing for respondents 3 and 4 contended that respondents 3 and 4 have taken over the business interest of respondents 1 and 2 by way of agreement dated 4.11.1998 and the employees, who were on rolls as on 16.12.1998, were taken over by respondents 3 and 4 and that since the petitioner was dismissed from service vide order dated 8.10.1996, there is no master and servant relationship between the petitioner and respondents 3 and 4. It is further contended that the Labour Court having gone into these aspects, held that the management of respondents 1 and 2 have conducted the enquiry as per the rules and rightly imposed the punishment of dismissal from service against the petitioner for the proven misconduct. The Labour Court while exercising its powers under Section 11-A of the Act declined to grant any relief to the petitioner.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the view that the Labour Court has dealt with the matter on merits of the case and after appreciating the evidence has come to the conclusion that the petitioner was rightly dismissed from service by the management of respondents 1 and 2. No

ground has been pleaded in respect of proportionality theory before this Court by the petitioner. In the absence of any pleading to the effect that the dismissal order is shockingly disproportionate to the alleged misconduct, this Court is not inclined to interfere with the Award passed by the Labour Court. There are no merits in the writ petition and the same is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No costs.

Pending miscellaneous petitions, if any, shall stand closed.

1st October, 2019
rkk

JUSTICE ABHINAND KUMAR SHAVILI

