

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILU

WRIT PETITION Nos.23268 of 2014 and 12093 of 2019

COMMON ORDER:

As the award passed by the Tribunal in I.D.No.22 of 2007 dated 18.03.2014 is under challenge in these writ petitions, both these writ petitions are being heard together and disposed of by way of this common order.

W.P.No.23268 of 2014 is filed seeking the following relief :-

“....to issue appropriate writ, order or direction, particularly a writ of Certiorari calling for the records from Respondent No.1 pertaining to award dt.18.03.2014 in I.D.No.22 of 2007 passed by Respondent No.1 and quash the same.....”.

W.P.No.12093 of 2019 is filed seeking the following relief :-

“.... to issue an appropriate writ, order or direction more particularly one in the nature of Writ of CERTIORARI calling for the records of Award dated 18.03.2014 in I.D.No.22 of 2007 passed by 1st respondent for modifying the same to an extent of converting the VRS (Golden Shake Hand) Scheme into Medical Retirement Scheme (Medical Invalidation) and consequently direct the 2nd respondent to pay all back wages, consequential service benefits etc., by restoring 15 years of service of the petitioner.....”.

Heard Mr.J.Prabhakar, Mr.T.Panduranga Rao and Sri J.Sreenivasa Rao, learned counsel for the respective parties.

For the sake of convenience, the facts in W.P.No.23268 of 2014 are discussed hereunder.

It has been contended by the petitioner company that the 2nd respondent was appointed as a Security Guard with the petitioner company on 05.05.1975. While he was discharging his duties during the year 1998, he has absented himself from duty unauthorizedly and the said conduct of the 2nd respondent was considered as a misconduct and the petitioner has initiated

disciplinary proceedings against the 2nd respondent. After conducting a detailed enquiry, the petitioner has imposed the punishment of dismissal from service vide proceedings dated 05.01.1999 with effect from 07.01.1999. The 2nd respondent has challenged the said order of dismissal before the Tribunal by filing I.D.No.22 of 2007 and the Tribunal vide order dated 18.03.2014 disposed of the said I.D. by observing as follows:-

“In the result, the dismissal order dated 05.01.1999 marked as Ex.M-7 is set aside and the petitioner shall be deemed to have been retired from service under VRS (Golden Shake Hand Scheme) with effect from 05.01.1999. The petitioner shall be paid all the consequential benefits thereof. However, he is not entitled to any benefits subsequent to the date of his dismissal from service.”

Challenging the said order dated 18.03.2017 in I.D.No.22 of 2007, the present writ petition is filed.

Learned counsel for petitioner submits that the Tribunal ought not to have set aside the order of dismissal and the disciplinary authority has imposed the punishment of dismissal only after conducting a detailed enquiry and for the proven misconduct, the Tribunal ought not to have interfered with the order of dismissal and set aside the same. Therefore, the order passed by the Tribunal is liable to be set aside and the writ petition deserves to be allowed.

It has been contended by the 2nd respondent that owing to ill-health of 2nd respondent and also the fact that the 2nd respondent's daughter was harassed by her in-laws for want of more dowry and the 2nd respondent's wife was also sick, the 2nd respondent remained absent from duty and right from his initial appointment, he has been discharging his duties to the best satisfaction of his superiors and everyone concerned. However,

unauthorized absence of the petitioner has been projected as a major misconduct and the punishment of dismissal from service is shockingly disproportionate to the alleged misconduct and therefore, the Tribunal has rightly intervened in the case and set aside the order of dismissal in exercise of its power under Section 11-A of the I.D.Act by applying the proportionality theory. Therefore, the writ petition 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 Tribunal has rightly set aside the order of dismissal in exercise of its power under Section 11-A of the Act on the ground that the punishment of dismissal is shockingly disproportionate to the charges levelled against the 2nd respondent. Therefore, this Court is not inclined to interfere with the order impugned in this writ petition.

W.P.No.23268 of 2014 is accordingly dismissed.

So far as W.P.No.12093 of 2019 is concerned, learned counsel for the petitioner submits that the Tribunal ought to have converted VRS (Golden Shake Hand Scheme) into medical retirement scheme i.e., medical invalidation, instead of VRS (Golden Shake Hand Scheme), and contends that appropriate orders be passed in the writ petition directing the respondents to treat the petitioner to have retired under medical invalidation scheme, instead of VRS (Golden Shake Hand Scheme) as directed by the Tribunal.

Learned counsel for the petitioner further submits that at the time of retiring from service on attaining the age of superannuation also, the petitioner is suffering from paralysis. If the respondents convert the order of dismissal to that of VRS (Golden Shake Hand Scheme) as directed by the Tribunal, the petitioner would not be entitled for any benefits, such as appointment on compassionate

grounds to any of the dependant family members. Therefore, in order to have more benefits to the petitioner, who is suffering from paralysis, ends of justice would be met, if the dismissal order is converted to that of retirement under medical invalidation scheme.

This Court, having considered the rival submissions made by the learned counsel for the respective parties, is of the considered view that when such a pleading of converting the order of dismissal to that of retirement under medical invalidation scheme was not raised before the Tribunal, it would be difficult for this Court to convert the dismissal to that of retirement under medical invalidation scheme instead of VRS (Golden Shake Hand Scheme). Therefore, this Court is not inclined to interfere with the order passed by the Tribunal.

However, since the petitioner is suffering from paralysis, it is always open to the petitioner to submit a fresh representation to the respondents seeking to retire him under medical invalidation scheme. It is needless to say that the respondents shall consider the same and pass appropriate orders in accordance with law. If the medical invalidation scheme permits the respondents to treat the petitioner to have retired on medical grounds, they are at liberty to do so. However, this Court is not inclined to give such a direction to the respondents.

With the above observation, W.P.No.12093 of 2019 is dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVIL, J

Date: 05-07-2019
Prv

