

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4889 of 2012

Date of Decision:- 15.7.2016.

CTU Worker's Union

.....Petitioner

Versus

The Divisional Manager, Chandigarh Transport Undertaking-cum-Director Transport, U.T. Chandigarh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Pritam Saini, Advocate for the petitioner.

Mr. Suvir Sehgal, Senior Standing Counsel U.T. with
Mr. Jaivir Chandail, Advocate for
respondent Nos.1 and 2.

P.B. BAJANTHRI, J.

1.) In the present writ petition, petitioner has questioned the Award passed by the Labour Court dated 9.5.2011 as well as order of punishment dated 18.7.1996 and Appellate Authority's order dated 25.9.1997.

2.) The petitioner was appointed as a Conductor in the respondent-organization. He was subjected to disciplinary proceedings for certain misconduct committed by him. In the disciplinary proceedings, the disciplinary authority imposed the penalty of reduction in the time scale for five years and his reduction

in the time scale will not have postponing effect on future increment. It was further ordered that *“it will not have any effect on the increment during the period of reduction and his suspension period be limited to the grant of subsistence allowances only.”* Aggrieved by the order of disciplinary authority, he preferred an appeal before the Appellate Authority. On 25.9.1997, the Appellate Authority modified the penalty to the extent *“punishment of reduction of pay in time scale for 5 years awarded to him, into that of stoppage of three increments with cumulative effect as the penalty imposed seems excessive.”* Thereafter, he approached the Labour Court. The Labour Court upheld the order of the disciplinary authority as well as Appellate Authority. Petitioner aggrieved by the Award passed by the Labour Court presented this writ petition.

3.) Learned counsel for the petitioner has no grouse against the Award passed by the Labour Court. His limited argument is that the Appellate Authority even though accepted the petitioner's appeal in part while recording that *“penalty imposed seems excessive”*. The intention of the Appellate Authority is to reduce the penalty. However, stoppage of three increments with cumulative effect has been ordered instead of without cumulative effect. Reading of the Appellate Authority's order, it is crystal clear that the intention of the Appellate Authority is to modify the penalty on the score that disciplinary authority's order imposing penalty was in excess. Thus, it was contended that the Appellate Authority's order be modified. On

the other hand, learned counsel for the respondents submitted that the petitioner was not before the Labour Court. He was represented through Union. Now the writ petition has been filed by the Union, therefore, he cannot seek any relief.

4.) Heard learned counsel for the parties.

5.) The respondents' contention is too technical, therefore, the same is discarded. The limited question for consideration in the present writ petition is whether the intention of the Appellate Authority is to reduce the penalty imposed by the disciplinary authority or not. Admittedly, the modified order passed by the Appellate Authority is higher than the disciplinary authority's order of penalty. Reading of the Appellate Authority's order, it is crystal clear that the intention of the Appellate Authority was to reduce the penalty imposed by the disciplinary authority. Even though the above issue was not raised before Lower Court it is only non-application of mind issue. Therefore, order of the Appellate Authority is read down as follows:-

“reduction of pay in time scale for 5 years awarded to him, into that of stoppage of three increments without cumulative effect”.

6.) The petition stands disposed of.

**(P.B. BAJANTHRI)
JUDGE**

July 15, 2016.

sandeep sethi