

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.28031 OF 2013

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed seeking to declare the action of the 1st respondent insofar as imposing punishment of deferment of annual increment for a period of one year with cumulative effect vide proceedings No.PA/329(2)/2013-RM(RR) dated 22.07.2013 as illegal and arbitrary.

The facts in issue are as under:

The petitioner was appointed as a driver in the respondent-Corporation in the year 1990. On 11.05.2012, while the petitioner was conducting the bus enroute Bailadilla to Hyderabad, a check was exercised at Stage No.12 (Kusuma). It is said that though there was no irregularity on the part of the petitioner, the respondent alleged cash and ticket irregularity and a charge memo was issued on the same day. *In spite of* petitioner submitting his explanation, he was issued a charge sheet dated 06.06.2012. The petitioner submitted a detailed explanation to the said charge sheet on 07.06.2012, denying the charges. However, the respondent appointed an enquiry officer to conduct enquiry into the said charges. Basing on the evidence of TTI, petitioner was issued a letter dated 10.07.2012, wherein suspension order was raised duly imposing punishment of differing annual increments for two years with cumulative effect and treating the suspension period as 'not on duty'. Again a show cause notice dated 17.07.2012 was issued calling upon the petitioner to explain, to which the petitioner gave a detailed explanation. Finally, on 10.09.2012 the respondent passed an order imposing punishment of deferment of annual increments for a period of two years with

cumulative effect. Aggrieved by the same, petitioner preferred an appeal before the appellate Authority and as the same was not considered, the petitioner filed W.P.No.36872 of 2012, which was disposed of on 29.09.2012 directing the 2nd respondent to consider the appeal and pass appropriate orders. Pursuant thereto, the 2nd respondent passed a detailed order on 19.03.2013, rejecting the claim of the petitioner. Against the said order, petitioner filed a review petition before the 1st respondent, which was allowed vide order dated 22.07.2013, modifying the punishment imposed on the petitioner as deferment of annual increments for a period of (1) year with cumulative effect. Challenging the same, present Writ Petition is filed.

Though various grounds are raised in the Writ Petition, the learned counsel for the petitioner restricts his prayer seeking reduction of punishment imposed on the petitioner contending that the punishment imposed is disproportionate to the offence alleged.

The same is seriously disputed by the learned Standing Counsel for the respondent-Corporation. In support of his contention, he relied on the decision of the Supreme Court in ***Divisional Controller, N.E.K.R.T.C. v. H.Amaresh***¹ wherein it has been held that when an employee is found guilty of pilferage or misappropriation of Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. It was held that in such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfere with the quantum of punishment.

¹ (2006) SCC 187

Insofar as the decision relied by the learned Standing Counsel for respondents is concerned, it was a case of misappropriation, where originally the petitioner therein was removed from service. Pursuant to the order of the Labour Court, he was reinstated into service. Aggrieved by the same, Corporation preferred an appeal before the Supreme Court. Having regard to the facts and circumstances therein, the Supreme Court held that the respondent-employee has no legal right to continue in service and directed the appellant-Corporation to discharge the employee from service. The allegations and charges levelled against the employee therein were with regard to misappropriation of funds. Hence, the decision relied by the respondents is not applicable to the facts of the present case.

Issue identical to the case on hand came up for consideration before this Court in W.P.No.17698 of 2013, wherein this Hon'ble Court after referring to the judgments of the Supreme Court in ***Kulwant Singh Gill vs. State of Punjab***² and ***Executive Director, Syndicate Bank vs. K.C. Arya***³ and also the Regulations of the respondent-Corporation, modified the punishment imposed on the petitioner therein. Relevant portion of the order reads as under:

“ ... I deem it appropriate to dispose of the Writ Petition by modifying the punishment of deferment of increment for a period of one year which shall have its effect on his future increments is modified and shall be read as stoppage of increment for a period of one year simplicitor without any effect on his future increments and pay. The final order dated 15.02.1993 passed by the disciplinary authority as confirmed by the review authority by the order impugned is set aside to the extent indicated above.”

² 1990 II LLN 1019

³ 1996-LLJ-2-727

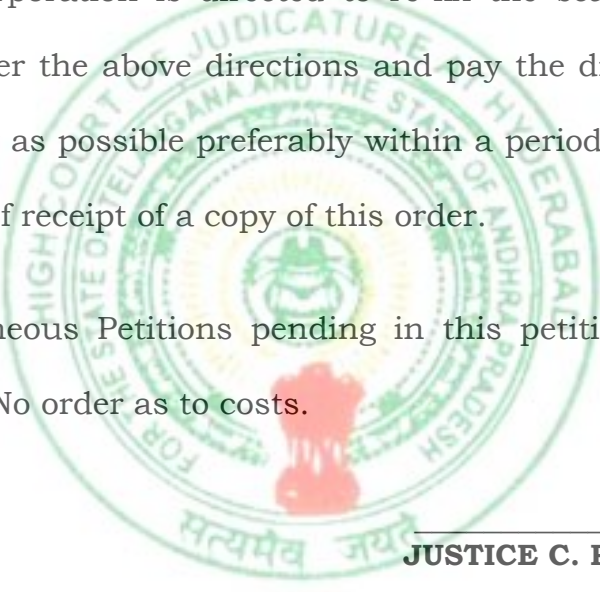
Further, while dealing with 'cash and ticket irregularities', this Court in W.P.No.19635 of 2014 vide order dated 15.07.2014, reduced the punishment imposed on the employee to withholding increment for a period of one year without cumulative effect.

Having regard to ratio laid down by this Court in above referred judgments, the punishment imposed on the petitioner is reduced to withholding of increment for a period of one year without cumulative effect.

Accordingly, the Writ Petition is disposed of. Further, the respondent-Corporation is directed to re-fix the scale of pay of the petitioner as per the above directions and pay the difference amount to him as early as possible preferably within a period of three months from the date of receipt of a copy of this order.

Miscellaneous Petitions pending in this petition, if any, shall stand closed. No order as to costs.

25.04.2017
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**JUSTICE C. PRAVEEN KUMAR**