

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 13793 of 2003

O R D E R:

This writ petition is filed seeking *Certiorari* calling for records pertaining to Award dated 01.04.2002 passed in ID No.29/1999 on the file of respondent No.2, and quash the same as illegal and arbitrary.

2. The petitioner was appointed as Conductor in respondent No.1-Corporation. While so, on 25.01.1997, when the petitioner was conducting bus bearing No.AP 9Z 2590 on route Badvel to Chennupalli, the Regional Enforcement Squad, Cuddapah, intercepted the bus and found that the petitioner had indulged in cash and ticket irregularity. Considering the same as misconduct, the corporation authorities issued charge memo against the petitioner and subsequently, preliminary enquiry was conducted and issued charge sheet by framing three charges against him. Dissatisfied with the explanation submitted by the petitioner for the charges framed against him, the respondent No.1-Corporation conducted domestic enquiry. Based on the evidence recorded and the material on record, the Enquiry Officer found the petitioner guilty of all three charges. Thereafter respondent No.1 issued termination order dated 08.07.1998 removing the petitioner from service. However, the appellate and reviewing authorities confirmed the order of termination by orders dated 31.12.1998 and 18.01.1999 respectively. Aggrieved by the same, the petitioner filed claim petition under Section 2(A)2 of the Industrial Disputes Act before respondent No.1. The tribunal passed the impugned Award by setting aside the termination

order and directed respondent No.1-Corporation to appoint the petitioner afresh and to defer five annual grade increments with cumulative effect. Challenging the same, the petitioner filed the present writ petition.

3. Heard Sri B.Srinivasa Rao, learned counsel for petitioner and Sri A.Rama Rao, learned Standing Counsel for Respondent No.1-Corporation and perused the material on record and the impugned order.

4. The learned counsel for petitioner would contend that respondent No.2 ought to have applied proportionality theory and modified the punishment of removal by imposing lesser punishment than that of major penalty of five annual increments with cumulative effect.

5. On the other hand, learned Standing Counsel for respondent No.1-corporation would contend that the labour court while exercising its powers under Section 11-A of the Industrial Disputes Act, had interfered with the punishment on the ground of proportionality theory. Therefore, the tribunal is justified in directing deferment of five annual grade increments with cumulative effect on the petitioner and no interference is called for.

6. The main allegation leveled against the petitioner is cash and ticket irregularity and that he failed to observe the rule "issue and Start" and to close the SR of all denominations upto Stage No.12/13. The petitioner failed to give spot statement to the checking officials and stated that he will submit later. The ground chosen by the petitioner that he was not doing well while performing duty, cannot be accepted. Therefore, all the charges were proved against the petitioner.

7. Having heard the rival contentions of both the counsel, and on perusal of the oral and documentary evidence, this court is of the considered view that ends of justice would be met if proportionality theory is applied and penalty of five annual grade increments with cumulative effect is modified to that of without cumulative effect. However, the petitioner shall not be entitled for any monetary benefits. The rest of the order passed by respondent No.1 shall stand good.

8. With the above observations, the writ petition is disposed of No costs.

9. Miscellaneous Petitions, if any, pending in this writ Petition shall stand closed.

12th September, 2018
Mjl/*

ABHINAND KUMAR SHAVILI, J

