HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.26520 OF 2011

ORDER:

1. This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with I.D.No.243 of 2007 on the file of the 1st respondent-Industrial Tribunal and to quash the award passed therein on 14.12.2010 and the punishment imposed vide order dated 8.5.1997 by holding them as illegal and arbitrary, and consequently, to direct the 2nd respondent to grant two increments with all consequential benefits.

2. Heard Sri G. Ravi Mohan, learned Counsel for the petitioner and Sri A. Rama Rao, learned Standing Counsel for the respondent-Corporation.

3. It is the case of the petitioner that he was appointed as a conductor in the respondent-corporation on 1.1.1988 and while he was performing his duties on 31.12.1996, the bus was brought back to the Rajampet Depot without completing the schedule service and in that connection, the 2nd respondent issued a charge sheet on 13.1.1997 to the petitioner. After conducting enquiry and on the basis of report of the enquiry officer, the 2nd respondent imposed punishment of stoppage of annual increment for a period of two years with cumulative effect, vide order dated 8.5.1997. Thereafter,

the petitioner preferred appeal before the appellate authority and the said appeal was rejected vide order dated 30.4.1999. Thereafter, the petitioner preferred review, which was also rejected on 23.3.2006. Aggrieved by the said orders, the petitioner raised a dispute before the Conciliation Officer through Union. On failure of conciliation talks, the Government vide G.O.Rt.No.2319, Labour Employment Training and Factories Department, dated 13.10.2007 referred the dispute to the Tribunal. The learned Tribunal considered the entire case and dismissed the I.D. vide order dated 14.12.2010. Aggrieved by the same, the present writ petition is filed.

4. Learned Counsel for the petitioner contended that the punishment vide order dated 8.5.1997 was imposed straightaway and in the very same proceedings, show cause notice was issued calling for the explanation as to why the suspension period should not be treated as 'Not on Duty'. He further contended that in the show cause notice, the punishment was imposed, and the similar issue fell for consideration before this Court in W.P.No.18299 of 2005 and this Court vide order dated 5.9.2005 was pleased to pass the following order:

> *"Heard the learned Counsel for the petitioner and the learned Standing Counsel for the respondents.*
>
> *The first respondent followed a peculiar procedure, in the disciplinary proceedings initiated, against the petitioner. An enquiry*

was conducted, and on the basis of the report submitted by the enquiry officer, the first respondent has, straight away, inflicted the punishment of stoppage of annual increment, for two years, with cumulative effect. However, he has chosen to issue a show cause notice, in relation to the period of suspension. On considering the explanation submitted by the petitioner, the first respondent treated the period of suspension, as not on duty. The appeal and review filed by the petitioner were rejected. Therefore, it clearly emerges that the punishment of stoppage of increment, with cumulative effect, was inflicted on the petitioner, without issuing any show cause notice, after the departmental enquiry was conducted. When the first respondent himself recognized the necessity to issue a show cause notice, as to how the period of suspension must be treated, as not on duty, he ought to have followed the same procedure before inflicting the punishment of stoppage of increment, that too, with cumulative effect.

Strictly speaking, the impugned order deserves to be set aside, and the matter needs to be remanded. However, having regard to the fact that nearly six years have elapsed, this Court does not find it proper, to subject the petitioner to another set of proceedings. Taking the totality of the circumstances, into account, the punishment of stoppage of increment shall be treated, as the one without cumulative effect. However, the petitioner shall not be entitled for any monetary benefit, upto the date of this order, on account of the modification of the punishment."

The learned Counsel for the petitioner contended that the issue raised in this writ petition is also squarely covered by the above said judgment.

5. The learned Standing Counsel appearing for the respondent-Corporation contended that for the proven misconduct,

punishment was imposed, and there was no illegality either in the order passed by the 2nd respondent or in the order passed by the Tribunal. However, the learned Standing Counsel has not disputed the judgment passed by this Court in W.P.No.18299 of 2005, dated 5.9.2005.

6. This Court, having considered the rival submissions made by the parties and the judgment referred to supra, is of the view that the issue raised in this writ petition is squarely covered by the judgment of this Court in W.P.No.18299 of 2005, dated 5.9.2005, and therefore, this writ petition can be disposed of in terms of the above judgment.

7. Accordingly, the Writ Petition is disposed of modifying the punishment of stoppage of annual increment for a period of two years **with cumulative effect** to that of stoppage of annual increment for a period of two years **without cumulative effect**. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

(ABHINAND KUMAR SHAVILI, J)

Dated: 10th September, 2018
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THE HON'BLE SRI ABHINAND KUMAR SHAVILI

Writ Petition No.26520 of 2011

10th September, 2018

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