

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 19995 of 2007

O R D E R:

The petitioner was appointed as Driver in respondent-Corporation on 01.09.1988 and posted at Gadwal Depot. While the petitioner was working at Atchampet Depot, on 02.12.1997 he was conducting bus bearing No.AP 9Z 1713 on the route Nagarkurnool-Madhavanipally at Kurvonigutta (near Rakonda village), a fatal accident took place as a result, the driver of the lorry bearing AAK 5959 succumbed to injuries and eight passengers traveling in the bus sustained minor injuries besides grievous injuries to the driver and conductor of the bus. A case in crime No.98 of 1997 was registered against the petitioner for the offence punishable under Section 304-A and 337 and 338 IPC. Thereafter, a domestic enquiry was ordered and without following due process of law as contemplated under the Conduct Rules and on the basis of enquiry report, the respondent authorities came to the conclusion that the charges levelled against the petitioner were proved and thereby respondent No.2 by impugned proceedings dated 10.07.1998 awarded punishment of deduction in present basic pay by two incremental stages which shall have effect on future increment besides treating suspension period as not on duty. After conducting regular trial, the trial court acquitted the petitioner in CC No.227 of 1998 for the offence stated therein. The petitioner submitted a representation dated 29.07.2004 to respondent No.2 requesting to set aside the punishment imposed on him and

to consider his case for grant of back wages and incremental arrears for the period for which he was kept out of employment and incremental arrears. Without considering his request, respondent No.2 in a mechanical way passed an order dated 30.07.2004 rejected the representation of the petitioner on the ground that the appeal preferred by the petitioner on 05.08.1999 is not entertained as it is time barred and that the appeal should have been preferred within a period of two months from the date of receipt of final orders of Depot Manager, Atchampet. The petitioner filed a revision dated 15.10.2006 before respondent No.1 and the same is pending consideration. Questioning the impugned final order dated 10.07.1998 passed by respondent No.4 and consequential proceedings dated 30.07.2004 issued by respondent No.2, the present writ petition is filed.

2. Heard learned counsel for petitioner and learned Standing Counsel for Respondent-Corporation and perused the material on record and the impugned order.

3. The learned counsel for petitioner would contend that respondent authorities ought to have applied proportionality theory and modified the punishment of imposing lessor punishment than that of penalty of two incremental stages having effect on future increments besides treating the suspension period as Not on Duty.

4. On the other hand, learned Standing Counsel for respondent-Corporation would contend that the punishment imposed on the petitioner is justified to that of the offence committed by the petitioner and therefore, the case of the petitioner cannot be considered on the ground of

proportionality theory. Therefore, the corporation is justified in directing deferment of two annual grade increments with cumulative effect on the petitioner and no interference is called for.

5. The main allegation leveled against the petitioner is rash and negligent driving of the bus at the time of accident and the trial court acquitted the petitioner for the offence connected to this accident.

6. 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 two 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.

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

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

ABHINAND KUMAR SHAVILI, J

08th November, 2018

Mjl/*