

THE HONOURABLE SMT JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.17270 of 2004

ORDER:

This writ petition is filed seeking the following relief:

“For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon’ble Court may be pleased to issue an order or direction more particularly one in the nature of writ of CERTIORARI by calling for the records related to and in connection with the Award of the labour court in I.D.No:59/2000, which was published in the gazettee vide G.O.Rt No: 1492 dt 4-9-2004 and to set aside the same in so far it went against to the petitioner in not granting the full wages with all benefits for the out of employment period as illegal, unjust, arbitrary and violate of principles of natural justice, contrary to the well established principles of law and as such liable to be set aside in the interest of justice and consequently direct the respondents to reinstate the petitioner as Conductor with continuity of service with full back-wages and with all other consequential benefits and pass such other order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case”.

Heard Sri S.M.Subhan, the learned counsel for petitioner and the learned Standing Counsel for TSRTC.

The brief facts are that the petitioner was appointed as conductor with effect from 1-5-1982 on regular basis and working in Shadnagar Depot. While conducting the bus on the route Kothapeta, a check was exercised on 9-3-2002. It is alleged against him that he failed to issue the ticket worth of Rs.4/- to two passengers. By conducting a mechanical enquiry, he was removed from service by orders dated 12-6-2002. That the allegation itself is unjust as the said passengers were not paid any fare, hence the impugned removal order is liable to be set aside on this ground alone. Challenging the said order, the petitioner preferred I.D.No.59 of 2002 under Section 2-A(2) of Industrial Disputes Act,

1947. By order dated 19.07.2004, the Labour Court-III was pleased to pass order in favour of the petitioner by setting aside the order of termination and directed that the respondent shall reinstate the petitioner with continuity of service and back wages. After reinstatement in terms of the award, one increment shall be stopped with cumulative effect. Petitioner is not entitled for attendant benefits. Period of suspension shall not be counted for any purpose. Challenging the same, the petitioner filed the present writ petition, only to the extent of withholding of one increment with cumulative effect.

Learned counsel for the petitioner contended that the award of the Tribunal may be modified to that of withholding of one increment without cumulative effect instead of with cumulative effect.

Learned Standing Counsel for the respondent-Corporation contended that since the Labour Court had modified the major punishment of removal to that of withholding of one increment with cumulative effect, it should be understood that another major penalty of withholding of one increment with cumulative effect has been imposed by the Labour Court and accordingly, the respondent-Corporation had imposed the punishment of withholding of one increment with cumulative effect.

Having considered the rival contentions of the parties, this Court is of the considered view that the modified punishment of removal to that of withholding of one increment with cumulative effect is too harsh. Therefore, ends of justice would be met, if a clarification is given by this Court that withholding of one increment should be understood as without cumulative effect. Therefore, the respondent-Corporation is directed to

treat the modified punishment imposed by the Tribunal as that of withholding of one increment without cumulative effect.

In view of the above, the Writ Petition is allowed to the extent of withholding of one increment without cumulative effect and the respondent-Corporation is directed to grant notional benefits to the petitioner without any monetary benefits. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

ABHINAND KUMAR SHAVILI, J

11th December, 2018

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