

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.8256 OF 2004

ORDER

This writ petition is filed seeking the following relief:

“...to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus or any other appropriate writ declaring the action of the 1<sup>st</sup> respondent in deferring two annual increments with cumulative effect *vide* his proceedings No.01/25(1)/02-ALG, dt.12.09.2002 and confirming the same by the 2<sup>nd</sup> respondent *vide* his proceedings Sts/9(31)/03-DVM-NDL, dt 29.3.2003 as illegal, arbitrary and contrary to the regulations of Corporation and in violation of the Articles 14 and 21 of the Constitution of India and consequentially prayed that this Hon'ble Court may be pleased to direct the respondents to add two annual increments to the pay of the petitioner besides treating the suspension period as on duty for the purpose of leave and wages and pass such other or further order as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

Heard Sri S.Surender Kumar, learned counsel appearing for the petitioner, and Sri P.Vinayaka Swamy, learned Standing Counsel appearing for the respondent-Corporation.

It is the case of the petitioner that he was appointed as Driver in the respondent-Corporation and was discharging his duties as such. While so, based on the report of the Security Head Guard, a charge sheet dated 6.5.2002 was issued to him for assaulting his colleague. His conduct was construed as misconduct and after initiating disciplinary proceedings and

after conducting regular enquiry and for the proven misconduct, the disciplinary authority had imposed punishment of withholding of two annual increments with cumulative effect besides treating the suspension period as 'not on duty' *vide* order dated 12.09.2002. Aggrieved by the same, the petitioner preferred an appeal before the 2<sup>nd</sup> respondent. The 2<sup>nd</sup> respondent *vide* order dated 29-03-2003 modified the punishment to that of withholding of annual increment for a period of one year with cumulative effect. Challenging the same, the present writ petition is filed.

Learned counsel appearing for the petitioner contends that the modified punishment of withholding of annual increment for a period of one year with cumulative effect is too harsh and that the appellate authority ought to have taken a lenient view and imposed the punishment of withholding of annual increment for a period of one year without cumulative effect.

Learned Standing Counsel appearing for the respondent-Corporation contends that the disciplinary authority had imposed punishment of withholding of two annual increments with cumulative effect besides treating the suspension period as 'not on duty' for the proven misconduct in the enquiry; that the appellate authority has taken a lenient

view and modified the punishment to that of withholding of annual increment for a period of one year with cumulative effect and therefore, no further lenient view can be taken and that writ petition is liable to be dismissed.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the considered view that the appellate authority ought to have imposed the punishment of withholding of annual increment for a period of one year without cumulative effect instead of with cumulative effect. Therefore, ends of justice would be met if the punishment imposed by the appellate authority is modified to that of withholding of annual increment for a period of one year without cumulative effect.

Accordingly, the Writ Petition is disposed of modifying the punishment imposed by the appellate authority to that of withholding annual increment for a period of one year without cumulative effect, without monetary benefits. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

---

JUSTICE ABHINAND KUMAR SHAVILI

*24<sup>th</sup> December, 2018*  
*rkk*

