HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITIONS NO.17810 & 17812 OF 2001

COMMON ORDER:

1. Since the issue involved in these writ petitions and the parties are one and the same, both the writ petitions are heard together and are being disposed of by this common order.

2. W.P.No.17810 of 2001 is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with the office order dated 12.3.1996 issued by the Depot Manager, APSRTC, Adilabad, and also the proceedings dated 8.6.1998 issued by the Deputy Chief Mechanic Engineer, Adilabad, and to quash the same, and consequently, to direct the 1st respondent to add the increments which were withheld vide office order dated 12.3.1996 and to pay the arrears of increments to the petitioner.

3. W.P.No.17812 of 2001 is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with the order dated 16.6.1993 passed by the Depot Manager, APSRTC, Adilabad and the order dated 3.2.1998 passed by the appellate authority-Deputy Chief Mechanical Engineer, Adilabad, and to quash the same, and to direct the 1st respondent to add two annual increments, which were withheld for a period of two years and which shall have its effect of postponing future increments i.e., with

cumulative effect, to the pay scale of the petitioner and to pay along with arrears of such increments upto date and pay back Rs.1,000/- to the petitioner, which was debited from the salary of the petitioner.

4. Heard Sri Sadu Rajeswara Reddy, learned Counsel for the petitioner and Sri A. Ravi Babu, learned Standing Counsel for TSRTC.

5. The petitioner in both the writ petitions was imposed with the punishment of stoppage of two annual increments with cumulative effect, without conducting enquiry, vide two different orders and on two different allegations i.e., absenteeism and negligence resulting in accident. The alleged absence of the petitioner without prior permission and the alleged negligence on the part of the petitioner, which resulted in accident while he was discharging duty as mechanic in the respondent-corporation, were construed as misconduct, and charge sheets were issued to the petitioner, for which the petitioner submitted explanation denying the allegations levelled in the charge sheets. However, the respondent-corporation without conducting any enquiry, imposed punishment of stoppage of increments with cumulative effect vide two separate orders impugned in the above writ petitions.

6. The issue raised in these writ petitions is squarely covered by the judgment laid down by the Hon'ble Supreme Court in ***Kulwant Singh Gill Vs. State of Punjab***[1]**,** wherein it was held as under:

> *"The further contention of Shri Nayar that the procedure under Rule 8 was followed by issuance of the show cause notice and consideration of the explanation given by the appellant would meet the test of Rules 8 and 9 of the Rules is devoid of any substance. Conducting an enquiry, dehorse the rules is no enquiry in the eye of law. It cannot be countenanced that the pretence of an enquiry without reasonable opportunity of adducing evidence both by the Dept. as well as by the appellant in rebuttal, examination and cross-examination of the witnesses, if examined, to be an enquiry within the meaning of Rules 8 and 9 of the Rules. Those rules admittedly envisage, on denial of the charge by the delinquent officer, to conduct an enquiry giving reasonable opportunity to the presenting officer as well as the delinquent officer to lead evidence in support of the charge and in rebuttal thereof, giving adequate opportunity to the delinquent officer to cross-examine the witnesses produced by the Dept. and to examine witnesses if intended on his behalf and to place his version; consideration thereof by the enquiry officer, if the disciplinary authority himself is not the enquiry officer. A report of the enquiry in that behalf is to be placed before the disciplinary authority who then would consider it in the manner prescribed and pass an appropriate order as per the procedure in vogue under the Rules. The gamut of this procedure was not gone through. Therefore, the issuance of the notice and consideration of the explanation is not a procedure in accordance with Rules 8 and 9. Obviously, the disciplinary authority felt that the enquiry into minor penalty is not necessary and adhering to the principles of natural justice issued the show cause notice and on receipt of the reply from the delinquent officer passed the impugned order imposing penalty thinking it to be a minor penalty. If it is considered, as stated earlier, that it would be only a minor penalty, the procedure followed certainly meets the test of the principles of natural justice and it would be a sufficient compliance with the procedure. In view of the finding that the impugned order is a major penalty certainly then a regular enquiry has got to be conducted and so the impugned order is clearly illegal. The Trial Court rightly granted the decree. The judgment and the decree of the High Court is vitiated by manifest illegality. At this distance of time it is not expedient to direct an enquiry under rules 8 and 9 of the Rules. The appeal is accordingly allowed and the judgment and decree of the High Court is set aside and that of the trial court is restored but in the circumstances without costs."*

7. As per the law laid down by the Hon'ble Supreme Court, stoppage of increments with cumulative effect is a major penalty.

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[1] 1991 Supp(1) SCC 504

Without conducting any enquiry, the respondents should not have imposed such major penalty on the petitioner.

8. The learned Standing Counsel appearing for the respondent-Corporation contended that there is delay on the part of the petitioner in approaching the authorities concerned and the punishments were imposed in the year 1993 and 1996 on two different grounds and he preferred appeal in the year 1998 and thereafter, he filed the present writ petitions in the year 2001 and there is delay of more than five years in approaching this Court.

9. Having considered the submissions made by the parties, this Court is of the view that as per the law laid down by the Hon'ble Supreme Court, stoppage of increments with cumulative effect is a major penalty and the respondents should not have imposed such penalty without conducting enquiry. Therefore, the impugned orders in both the writ petitions are liable to be set aside.

10. Accordingly, the Writ Petitions are allowed setting aside the orders impugned in both the writ petitions. The petitioner is entitled to all the consequential benefits. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

(ABHINAND KUMAR SHAVILI, J)

Dated: 24th July, 2018
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HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITIONS NO.17810 & 17812 OF 2001

Dated: 24.7.2018

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