

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.25595 OF 2006

ORDER

This writ petition is filed seeking to issue a writ of Mandamus declaring the action of the 3rd respondent in issuing the proceedings dated 15.07.2004 as illegal and arbitrary and consequently, to set aside the same.

Heard Sri G. Ravi Mohan, learned counsel for the petitioner and Sri B. Mayur Reddy, learned Standing Counsel for the respondent-Corporation.

It is the case of the petitioner that he was appointed as a Driver in the respondent-Corporation on 16.10.1992 and while he was performing his duties on 17.11.2003, accident took place, for which a charge sheet was issued to him on 19.12.2003. After conducting enquiry and on the basis of report of the enquiry officer, the 3rd respondent imposed punishment of reduction of pay by two incremental stages for a period of two years with cumulative effect and treating the suspension period as 'not on duty' *vide* order dated 15.07.2004. Thereafter, the petitioner preferred an appeal before the 2nd respondent and the same was rejected *vide* order dated 16.3.2006.

Aggrieved by the said order, the petitioner filed this writ petition.

Learned counsel for the petitioner contended that the punishment *vide* order dated 15.7.2004 was imposed straightaway. He further contended that similar issue fell for consideration before this Court in W.P.No.18299 of 2005 and this Court *vide* order dated 5.9.2005 passed 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.”

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

Learned Standing Counsel appearing for the respondent-Corporation contended that for the proven misconduct, punishment was imposed, and there was no illegality in the order passed by the 3rd respondent. 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.

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.

Accordingly, the Writ Petition is disposed of modifying the impugned order passed by the 3rd respondent to that of reduction of pay of the petitioner by two incremental stages without cumulative effect. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

29th October, 2018
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