

THE HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.18554 of 2012

ORDER:

This writ petition is filed seeking the following relief :-

“....to issue appropriate, order or direction more particularly, in the nature of Writ of Mandamus declaring the action of the respondent No.2 Dt: 20-6-2000 withholding one year annual increment with cumulative effect which is illegal arbitrary and against the principles of natural justice and violation under Article 14 and 21 of Constitution of India, consequently direct the respondents to pay the arrears of one annual increment with hold by the respondents, and pass such other order, orders as this Hon’ble Court may deem fit and proper in the circumstances of the case and in the interest of justice.”.

2. Heard Sri M. Vijaya Kumar Goud, learned counsel for the petitioner and Sri N. Vasudeva Reddy, learned Standing Counsel for the respondents.

3. It has been contended by the petitioner that he was appointed as driver in the respondent corporation in August 1999. While he was discharging his duties, on 27.04.2000, the respondent corporation had issued a charge memo alleging that he has driven the bus in a hurried manner and reached the final destination 28 minutes ahead of the schedule time and said conduct of the petitioner was construed as misconduct by the disciplinary authority and the disciplinary authority had initiated disciplinary proceedings against him as well as the conductor. The disciplinary authority after conducting detailed

inquiry has imposed a major penalty of withholding annual increment for a period of one year with cumulative effect on the petitioner, vide proceedings, dated 20.06.2000, and in respect of conductor, the disciplinary authority has imposed penalty of withholding annual increment for a period of one year without cumulative increment. The petitioner preferred an appeal before the appellate Court and the appellate Court was pleased to reject the appeal vide proceedings, dated 24.01.2001. Thereafter, the petitioner has preferred a review before the Reviewing Authority on 10.08.2010, but so far the Reviewing Authority has not passed any orders.

4. Learned counsel for the petitioner submits that the petitioner, being a driver, cannot drive the bus without the assistance of the conductor. The petitioner drove the bus as per the instructions of the conductor. As there was no traffic on that particular day, the petitioner had reached the final destination 28 minutes ahead of the schedule time and the action of the respondents in imposing a lesser punishment to the conductor and imposing a major penalty to the petitioner is arbitrary and illegal, therefore, the punishment order of withholding annual increment for a period of one year with cumulative effect be modified to that of atleast withholding annual increment for a period of one year without cumulative effect as it was done in case of conductor. Therefore, learned counsel for the petitioner submits that appropriate orders be passed in the writ petition by modifying the punishment order, dated 20.06.2000, from

withholding of annual increment for a period of one year with cumulative effect to that of without cumulative effect and also modify the appellate authority's order, dated 24.01.2001, wherein the appeal preferred by the petitioner was rejected.

5. Learned Standing Counsel for the respondents had contended that the petitioner has filed the present writ petition belatedly i.e., after 11 years from the date of rejection of the appeal. Though the contention of the petitioner that he has preferred review in the year 2010, the same is not traceable and there are no merits in the writ petition and the same is liable to be dismissed.

6. This Court, having considered the rival submissions of the learned counsel for respective parties, is of the considered view that the petitioner has filed a review petition before the Reviewing Authority with an acknowledgment at Page 11 of the material papers, which goes to show that the petitioner was pursuing his remedies. As far as the merits of the case are concerned, the disciplinary authority, on the identical charge, imposed a lesser punishment of withholding annual increment for a period of one year without cumulative effect on the conductor, whereas the petitioner was imposed with a major penalty of withholding annual increment for a period of one year with cumulative effect. Therefore, the respondents ought to have considered the case of the petitioner on par with the co-employee i.e., conductor. Both conductor and driver are responsible for running the bus and the allegation levelled against the petitioner is that he has

driven the bus and reached the destination 28 minutes ahead of the schedule time, this could be a minor mis-conduct because there is a less traffic, and the said ground was taken by the petitioner before the disciplinary authority as well as the appellate authority, but both the authorities have failed to take this fact into consideration and they mechanically imposed a major penalty on the petitioner. Therefore, viewed from any angle, the impugned punishment of withholding annual increment for a period of one year with cumulative effect appears to be harsh punishment, more so, when the conductor, who was also alleged with the very same allegations, was let off with a minor penalty of withholding annual increment for a period of one year without cumulative effect. Therefore, this Court is of the considered view that ends of justice would be met if the impugned order, dated 20.06.2000 and appellate authority's order dated 24.01.2001 are modified to that of withholding of annual increment for a period of one year without cumulative effect.

7. Accordingly, the Writ Petition is disposed of modifying the punishment to that of withholding of annual increment for a period of one year without cumulative effect.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

ABHINAND KUMAR SHAVILI, J

26th August 2019

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