

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.3302 of 2012

ORDER:

This Writ Petition is filed seeking to issue a writ of *Certiorari* to call for the records related to and connected with the orders dated 28.4.2008 as well as the proceedings dated 21.6.2010 of respondent No.3 insofar as reducing the petitioner's pay by one incremental stage permanently, treating out of service period as 'not on duty', and not granting the consequential benefits, as arbitrary and illegal and sought a consequential direction to the respondents to restore the reduced increment by duly treating the removal period as 'on duty period' with wages along with other consequential benefits.

Heard Sri V.Narasimha Goud, learned counsel for the petitioner and Sri A.Ravi Babu, learned counsel for the respondent-Corporation.

It is case of the petitioner that she was appointed as Deputy Superintendent (Traffic) in the respondent Corporation on 25.6.2004 and was promoted to the post of Superintendent (Traffic) during August, 2006; that while she was discharging her duties as Superintendent, she had to apply for leave from 20.8.2007 to 19.11.2007 due to ill-health and domestic problems; that she has extended the leave from 20.11.2007 to 19.11.2008, *vide* application dated 01.11.2007, but the respondents have not extended the leave and on the other hand, came to a conclusion that the petitioner was unauthorisedly absent and accordingly initiated disciplinary

proceedings; that the disciplinary authority after conducting a detailed enquiry and for the proved misconduct has imposed the punishment of removal from service, *vide* order dated 28.4.2008; that challenging the same, she preferred an appeal and the appellate authority was pleased to dismiss the appeal *vide* order dated 19.02.2010; that thereupon, she preferred a Revision before respondent No.3 and the revisional authority entertained the Revision and modified the punishment of removal from service to that of punishment of reduction of pay by one incremental stage permanently and treated the out of employment period as 'not on duty' for the purpose of wages, increments, seniority and settlements. Challenging the said order of the revisional authority to the extent of treating the out of employment period as 'not on duty' for the purpose of wages, increments, seniority and settlements, the present Writ Petition is filed.

Learned counsel for the petitioner contended that the revisional authority while modifying the order of removal ought not to have treated the out of employment period as 'not on duty' for the purpose of at least increments and seniority since the petitioner cannot strictly claim wages for the out of employment period in the interest of justice. He further contended that the seniority and notional increments to which the petitioner is entitled to ought to have been awarded by the revisional authority and therefore, he prayed that appropriate orders be passed in this Writ Petition directing the respondents to grant notional increments and seniority

to the petitioner for the out of employment period by treating the same as 'on duty' and accordingly, modify the order of the revisional authority to the said limited extent.

Learned Standing Counsel appearing for the respondent-Corporation has contended that the revisional authority has considered the case of the petitioner and taking a lenient view has passed the impugned orders, which needs no interference, and hence, the Writ Petition is liable to be dismissed.

Having considered the rival submissions of the learned counsel and on perusal of the record, this Court is of the considered view that the submission of the learned counsel for the petitioner claiming seniority and notional increments to the petitioner for the out of employment period by treating the same as 'on duty' appears to be justified. However, as regards the wages, the petitioner is not entitled to the same as she has not discharged her duties during the out of employment period. When once the revisional authority had come to a conclusion that the petitioner's absence cannot be treated as unauthorised absence because she has applied for leave and sought to extend the leave *vide* application dated 01.11.2007, the finding of the disciplinary authority that the petitioner remained absent unauthorisedly is not appropriate.

In view of the above, this Court is of the considered view that ends of justice would be met if the order of the revisional authority, dated 21.6.2010, to the extent of denying the increments and seniority to the petitioner is liable to be set aside.

Accordingly, the Writ Petition is partly allowed and the order dated 21.6.2010, of respondent No.3 to the extent of denying the increments and seniority to the petitioner for the out of employment period is set aside and the respondents are directed to grant notional increments and seniority to the petitioner by treating the out of employment period as 'on duty'.

Pending Miscellaneous Petitions, if any, shall stand closed. No order as to costs.

30th September, 2019
dr

JUSTICE ABHINAND KUMAR SHAVILI

