

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.2053 OF 2010

ORDER

This writ petition is filed seeking the following relief:

“...to issue a writ or order more in the nature of Writ of Certiorari calling for the records in I.D.No.4 of 2007, dated 20-12-2007 published in G.O.Rt.No.277, dated 12.02.2008 as illegal and arbitrary and quash the same and further direct the respondent herein to restore the deferred annual increment with all consequential benefits including re-fixation of pay and arrears of pay and pass such other order or orders in the circumstances of the case as otherwise the petitioner may suffer irreparable loss and hardship.”

Heard Sri P.Govindarajulu, learned counsel appearing for the petitioner and Sri A.Ravi Babu, learned Standing Counsel appearing for the respondent-Corporation.

It is the case of the petitioner that he is working as Driver in the respondent-Corporation. While so, the respondent-Corporation has issued a charge sheet on 21.09.1998 on the ground that he had driven the vehicle in lack of anticipation and caused accident. Construing the said incident as misconduct, after conducting departmental enquiry, the respondent-Corporation *vide* order dated 24-11-1998 imposed the punishment of deferment of annual

increment for a period of one year, which shall have effect on his future increments and the same was also confirmed in the appeal preferred by him. Thereafter, the petitioner has pursued his remedies through Union, which made a complaint before the Conciliation Officer to resolve the issue. The Conciliation Officer has entertained the dispute raised by the Union, submitted the failure report to the Government. The appropriate Government has referred the dispute to the Industrial Tribunal-cum-Labour Court, Godavarikhani, vide G.O.Rt.No.259, dated 7.2.2007. After considering the entire case, the Tribunal vide Award dated 20-12-2007 dismissed the said I.D. Challenging the same, the present writ petition is filed.

Learned counsel appearing for the petitioner submitted that the Tribunal had not considered the judgment of the Apex Court in *Kulwant Singh Gill vs. State of Punjab*¹ and mechanically dismissed the ID preferred by the petitioner. The Tribunal instead of appreciating the law laid down by the Apex Court (1) supra, had gone into the aspect of delay. The Tribunal was under erroneous impression that the order of punishment dated 24-11-1998 was challenged only in 2007. The Tribunal has erred in considering the fact that the reference itself was made by the appropriate Government *vide*

¹ 1991 Supplement 1 SCC 504

G.O.Rt.No.259, dated 7.2.2007. The Tribunal ought not to have dismissed the ID on the ground of delay of nine years. It is further submitted that the issue involved in this writ petition is squarely covered by the order dated 24-07-2018 passed in W.P.Nos.17810 and 17812 of 2001 of this Court, and the same was also confirmed by the Division Bench in W.A.Nos.106 and 108 of 2019, dated 07.09.2007. It is prayed that the punishment of deferment of annual increment for a period of one year imposed on the petitioner *vide* order dated 24.11.1998 is liable to be set aside.

Learned Standing Counsel appearing for the respondent contended that since the petitioner has failed to prove his case and failed to submit his explanation, the Tribunal has rightly dismissed the I.D on the ground of delay. The Tribunal has considered the case of the petitioner on merits and held that the punishment imposed against him is appropriate and just and that there are no merits in the writ petition and the same is liable to be dismissed.

Admittedly, the respondents have not conducted any enquiry before imposing the major punishment against the petitioner, which is contrary to the judgment of the Apex Court in *Kulwant Singh Gill's* case (1 supra). When once the reference is made by the appropriate Government *vide*

G.O.Rt.No.259, dated 7.2.2007, the Tribunal ought not to have dismissed the I.D on the ground of laches. There is no delay and laches on the part of the petitioner. The reference was made by the Government during February, 2007. The Tribunal passed Award on 20-12-2007. Therefore, the impugned Award passed by the Tribunal is liable to be set aside.

Accordingly, the Writ Petition is allowed and the impugned Award passed by the Tribunal on 20-12-2007 and the punishment imposed by the respondent-Corporation *vide* order dated 24.11.1998 as confirmed by the appellate authority *vide* order dated 19-06-2000 are set aside, and the petitioner is entitled for all consequential benefits.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

12th September, 2019

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