

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.7 of 2014

ORDER

This writ petition is filed seeking the following relief:

“to issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Mandamus declaring the action of the 4th respondent in imposing penalty of withholding of two increments of pay (for the year 2011 & 2012 without cumulative effect) *vide* order No.Ref BDL/GM(SAM)/2010/2 dt 25.7.2011 without considering petitioner's explanation dt 15.07.2010 in its proper perspective as illegal, unjust, arbitrary, violative of principals of natural justice and also violative of Articles 14 and 21 of the Constitution of India and consequently set aside the order dt 25.07.2011 with all consequential benefits and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

Heard Sri S.Ramachander Rao, learned Senior Counsel appearing for the petitioner and learned Standing Counsel appearing for the respondents.

While admitting the writ petition, *vide* order dated 3.1.2014 in W.P.M.P.No.10 of 2014, this Court directed the respondents to consider the case of the petitioner for promotion to the post of Deputy General Manager (P&A) without reference to the order passed by the 4th respondent dated 25.07.2011.

Learned Senior Counsel appearing for the petitioner contended that without furnishing the report of the enquiry officer and without considering the explanation of the

petitioner dated 15.07.2010, the respondents have imposed the major punishment of withholding of two annual increments without cumulative effect *vide* order dated 25.07.2011. It is further contended that in spite of the interim direction granted by this Court on 3.1.2014, the respondents have not considered the case of the petitioner and during pendency of the writ petition, the petitioner had retired from service. It is prayed that since the impugned order is contrary to the Rules, the same is liable to be set aside and appropriate orders be passed directing the respondents to consider the case of the petitioner for promotion to the post of Deputy General Manager notionally.

Learned Standing Counsel appearing for the respondents contends that after conducting enquiry, and for the proven misconduct, the respondents have passed the impugned order and it needs no interference.

A perusal of the material goes to show that the respondents have imposed the punishment of withholding of two annual increments without cumulative effect *vide* order dated 25.7.2011. Since the currency of punishment was over by 26.7.2013, the respondents ought to have considered the case of the petitioner for promotion to the post of Deputy General Manager. The contention of the petitioner that without

furnishing the report of the enquiry officer, the respondents have imposed the punishment is not acceptable as the punishment of withholding of annual increments for a period of two years without cumulative effect is not a major punishment and the respondents are not obligated to conduct any enquiry. Therefore, the punishment imposed against the petitioner by the respondents is in accordance with the Rules. Since the currency of punishment period expired by 26.7.2013, the respondents ought to have considered the case of the petitioner for promotion to the post of Deputy General Manager notionally.

Hence, this Court is of the considered view that ends of justice would be met if a direction is given to the respondents to consider the case of the petitioner for promotion to the post of Deputy General Manager notionally since he has retired from service.

Accordingly, the Writ Petition is disposed of directing the respondents to consider the case of the petitioner for promotion to the post of Deputy General Manager notionally since he has retired from service on attaining the age of superannuation and pass appropriate orders, in accordance with the law, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

16th September, 2019
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