HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.27543 of 2019

ORDER

This Writ Petition is filed seeking the following relief:

> "to issue a writ, order or orders more particularly one in the nature of writ of mandamus by declaring the action of the respondents in not sanctioning the annual grade increment for the years 2013, 2014 and 2015 to the petitioner as illegal, arbitrary and violative of Article 21 of the Constitution of India and consequently direct the respondents to sanction the annual grade increments for the years 2013, 2014 and 2015 to the petitioner 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 Lakkadi Dayaker Reddy, learned counsel appearing for the petitioner, and learned Government Pleader for Commercial Tax appearing for the respondents.

The petitioner is working as Joint Commissioner (State Tax). While so, he was placed under suspension during 2013 and he was continued under suspension upto 2015. His grievance is that the respondents are not releasing the annual grade increment for the years 2013, 2014 and 2015. Hence, he submitted a representation dated 19.01.2017. But, the respondents have neither considered the said representation nor released the annual grade increments to the petitioner. Hence, the present writ petition.

Learned counsel appearing for the petitioner contended that the respondents cannot deny the increments to the petitioner during the suspension period. In support of his contention, he placed reliance on the Division Bench judgment of this Court in W.P.No.6617 of 2004, dated 4.11.2004. The relevant portion of the order reads as under:

> **"It is contended by the petitioners that in view of the provisions of F.R.24, as the respondent has not been in active service, there is no method by which his conduct in service be judged. Therefore, he is not entitled to any incremental benefits. In view of the provisions of F.R.24.**
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> **F.R.24. An increment shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld from a Government servant by (the State Government), or by any authority to whom the State Government may delegate this power if his conduct has not been good, or his work has not been satisfactory. In ordering the withholding of an increment the withholding authority shall state the period of which it is withheld, and whether the postponement shall have the effect of postponing future increments."**
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> **It is apparent from the rule that an increment shall be drawable by an employee as a matter of course unless it is withheld. An increment may however be withheld on proof of a Government servant's unsatisfactory or bad conduct. However, that an order withholding increments shall state the period from which it is withheld and whether the postponement shall have effect of postponing future increments. In any**

> **event, an order of withholding of increments constitutes a penalty and requires following the due procedure under the provisions of A.P.C.S.Rules, 1991."**

Learned Government Pleader appearing for the respondents contended that since the representation submitted by the petitioner is pending with the respondents, the respondents would consider and same and pass appropriate orders in accordance with law.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the view that this Writ Petition can be disposed of directing the respondents to consider the representation dated 19.01.2017 submitted by the petitioner by duly taking into consideration the Division Bench judgment in W.P.No.6617 of 2004, dated 04.11.2004 and pass appropriate orders in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is disposed of. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Date: 12.12.2019
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