

Court No. - 8

Case :- WRIT - A No. - 9311 of 2023

Petitioner :- Kamta Prasad Shukla (K.P. Shukla)

Respondent :- State Of U.P. Thru. Addl. Chief Secy., Deptt. Of Chini Udyog Evam Ganna Vikas Lko And 2 Others

Counsel for Petitioner :- Mahendra Pratap Singh, Krishna Kant Yadav, Ranjit Singh

Counsel for Respondent :- C.S.C., Sudhanshu Chauhan

Along with

Case :- WRIT - A No. - 9313 of 2023

Petitioner :- Kamta Prasad Shukla (K.P. Shukla)

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Chini Udyog Evam Ganna Vikas U.P. Lucknow And 2 Others

Counsel for Petitioner :- Mahendra Pratap Singh, Krishna Kant Yadav, Ranjit Singh

Counsel for Respondent :- C.S.C., Sudhanshu Chauhan

Hon'ble Pankaj Bhatia, J.

1. Heard learned counsel for the petitioner, learned Standing Counsel for the State respondent, Sri Sudhanshu Chauhan, learned counsel appearing on behalf of the respondent nos. 2 and 3 and perused the material brought on record.

2. In view of the matter is proposed to be decided on the basis of the interpretation of the Rules, there is no need for counter affidavit.

3. Both the petitions raises similar question are being decided by means of a common judgment for the sake of gravity, the facts of Writ A No. 9311 of 2023 are being reproduced.

4. The present petition has been filed by the petitioner challenging an order dated 08.02.2017, whereby an order of punishment was passed against the petitioner withholding two increments with cumulative effect. The petitioner preferred an appeal against the said order, which has been dismissed vide order dated 27.09.2023.

5. The main submission of the counsel for the petitioner is that prior to passing of the order dated 08.02.2017, neither any proceedings were initiated against the petitioner nor was any show cause notice or opportunity of hearing granted to the petitioner, as such, the impugned order was bad in law and these aspects have not been considered in the appellate order, as such, the appellate order is also bad in law.

6. It is argued by the counsel for the petitioner at the bar that the services of the petitioner are governed under the Uttar Pradesh Sahakari Chini

Mills Sangh Limited Employees Service Regulation-1988. Chapter-7 of the said Regulation provides for the manner and imposition of penalty. Rule 50 of the said Regulation provides for the following punishments. Regulation 50 is quoted herein below:-

"50(1) Without prejudice to the provisions contained in any regulation, an employee who commits a breach of duty enjoined upon him or has been convicted for a criminal offence or an offence under Section 103 of the Act or does anything which is prohibited by these regulations, shall be liable to be punished by the Appointing Authority with any of the following penalties:

(a) Censure,

(b) Withholding of increment or promotion,

(c) Recovery from pay or security deposit to compensate in whole or in part any pecuniary loss caused to the Federation Factory, Distillery or any other Commercial establishment by the employee's conduct,

(d) Reduction in rank or grade held substantively by the employee's,

(e) Removal from service, or

(f) Dismissal from service.

(2) Copy of the order of punishment shall invariably be given to employee concerned and entry to this effect shall be made in the service record of the employee.

(3) (a) A Charge-sheeted employee shall be award punishment by the appointing authority according to the seriousness of the offence, provided that no penalty under sub-clauses (d), (e) and (f) of clause (1) shall be imposed without recourse to disciplinary proceedings.

(b) The appointing authority while passing orders for stoppage of increment shall state in writing the period for which it is stopped and whether it shall

have effect of postponing future increment or promotion."

7. Regulation 50(3)(a) further prescribes that punishment under Sub-clause (d), (e) and (f) of Clause 1 can be imposed only after taking recourse to disciplinary proceedings. Regulation 51 further provides the manner in which, the disciplinary proceedings are to be conducted. In the light of the said provisions, the counsel for the petitioner argues that under Regulation 50(1)(b), the only minor punishment prescribed is withholding of increment or promotion, whereas in the present case the order has been passed withholding increment with cumulative effect, which for all practical purpose amounts to punishment traceable to Regulation 50(1)(d). In support of the said, he argues that similar provision came for consideration before the Supreme Court in the case of Kulwant Singh Gill Versus State of Punjab, 1991 Supp(1) Supreme Court Cases 504, wherein the Supreme Court observed as under in paragraph 4:-

" Withholding of increments of pay simpliciter undoubtedly is a minor penalty within the meaning of Rule 5(iv). But sub-rule (v) postulates reduction to a lower stage in the time-scale of pay for a specified period with further directions as to

whether or not the Government employee shall earn increments of pay during the period of such reductions and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay. It is an independent head of penalty and it could be imposed as punishment in an appropriate case.

It is one of the major penalties. The impugned order of stoppage of two increments with cumulative effect whether would fall within the meaning of Rule 5(v)? If it so fails Rules 8 and 9 of the Rules require conducting of regular enquiry. The contention of Shri Nayar, learned counsel for the State is that withholding two increments with cumulative effect is only a minor penalty as it does not amount to reduction to a lower stage in the time-scale of pay. We find it extremely difficult to countenance the contention. Withholding of increments of pay simpliciter without any hedge over it certainly comes within the meaning of Rule 5(iv) of the Rules. But when penalty was imposed withholding two increments i.e. for two years with cumulative effect, it would indisputably mean that the two increments earned by the employee was cut off as a measure of penalty for ever in his upward march of earning higher scale of pay. In other words the clock is put back to a lower stage in the time-scale of pay and on expiry of two years the clock starts working from that stage afresh. The insidious effect of the impugned order, by necessary implication, is that the appellant employee is reduced in his time-scale by two places and it is in perpetuity during the rest of the tenure of his service with a direction that two years' increments would not be counted in his time-scale of pay as a measure of penalty. The words are the skin to the language which if peeled off its true colour or its resultant effects would become apparent. When we broach the problem from this perspective the effect is as envisaged under Rule 5(v) of the Rules. It is undoubted that the Division Bench in Sarwan Singh v. State of Punjab & Ors., I.L.R. 1985 2 P & H. 193, P.C. Jain, A.C.J. speaking for the division bench, while considering similar question, in paragraph 8 held that the stoppage of increments with cumulative effect, by no stretch of imagination falls within clause (v) of Rule 5 or in rule 4.12 of Punjab Civil Services Rules. It was further held that under clause (v) of Rule 5 there has to be a reduction to a lower stage in the time-scale of pay by the competent authority as a measure of penalty and the period for which such a reduction is to be effective has to be stated and on restoration it has further to be specified whether the reduction shall operate to postpone the future increments of his pay. In such cases withholding of

the increments without cumulative effect does not at all arise. In case where the increments are withheld with or without cumulative effect the Government employee is never reduced to a lower stage of time scale of pay. Accordingly it was held that clause (iv) of Rule 5 is applicable to the facts of that case. With respect we are unable to agree with the High Court. If the literal interpretation is adopted the learned Judges may be right to arrive at that conclusion. But if the effect is kept at the back of the mind, it would always be so, the result will be the conclusion as we have arrived at. If the reasoning of the High Court is given acceptance, it would empower the disciplinary authority to impose, under the garb of stoppage of increments, of earning future increments in the time scale of pay even permanently with expressly stating so. This preposterous consequences cannot be permitted to be permeated. Rule 5(IV) does not empower the disciplinary authority to impose penalty of withholding increments of pay with cumulative effect except after holding inquiry and following the prescribed procedure. Then the order would be without jurisdiction or authority of law, and it would be per se void. considering from this angle we have no hesitation to hold that the impugned order would come within the meaning of Rule 5(v) of the Rules; it is a major penalty and imposition of the impugned penalty without enquiry is per se illegal."

8. In view of the law as propounded by the Supreme Court, it is clear that punishment accorded to the petitioner is in fact a major punishment traceable to Regulation 50(1)(d) of the Regulation and is inflicted without holding any disciplinary proceedings. Even otherwise, even if it is presumed for the sake of argument that it was a minor punishment, non-affording an opportunity of hearing clearly renders the order dated 08.02.2017 being in violation of principles of natural justice and thus bad in law. The appellate

order clearly does not consider any of these aspects and as such cannot be sustained and is liable to be quashed. In fact, against the similar order, an appeal preferred by the persons similarly situated was allowed by the appellate authority itself through its judgment dated 26.05.2018 communicated through documents contained in Annexure No. 13.

9. For the reasonings recorded above coupled with the fact that admittedly no disciplinary proceedings were initiated, the impugned orders dated 08.02.2017 and 27.09.2023 are quashed.

10. The counsel for the respondent states that the respondent may be permitted to continue the proceedings against the petitioner. However, the said submission merits rejection for the reason that the petitioner had admittedly retired on 31.12.2020 and prior to the passing of the order dated 08.02.2017, no charge sheet was issued against the petitioner, as such, permitting the respondent to initiate and continue proceedings at present after retirement would be causing adverse consequences on the petitioner, which cannot be

permitted after seven years.

11. The writ petition is accordingly allowed in terms of the said order, the consequential benefits in terms of money shall be paid to the petitioner by the respondent within three months from today.

12. Writ A No. 9313 of 2023 is also allowed on the same reason and logic as contained herein above, the judgment dated 15.12.2018 as well as appellate order dated 27.09.2023 are quashed. The directions given in respect to the petitioner of Writ A No. 9311 of 2023 shall apply to the present petitioner also.

Order Date :- 13.12.2023
Arun