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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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RSA-273-2001 (O&M)

Date of Decision : 01.10.2024

Gurdev Singh

....Appellant

VERSUS

State of Haryana

....Respondent

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Sanjay Jain, Advocate for the appellant.

Mr. Harish Nain, AAG Haryana.

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SUDEEPTI SHARMA, J (Oral).

The present appeal is filed against the judgment and decree dated 22.12.1998 passed by the learned Civil Judge (Jr. Division), Ambala and judgment and decree dated 26.07.2000 passed by the learned District Judge, Ambala, whereby the suit seeking a decree for declaration to the effect that action of defendant in withholding his annual increment since the year 1971 be declared illegal and against the principles of natural justice, with a consequential relief of mandatory injunction directing the defendants to release all the annual increments for the aforesaid period, was dismissed vide judgment and decree dated 22.12.1998 and the appeal filed against the same was dismissed vide judgment dated 26.07.2000.

2. The case of the appellant before the learned Trial Court was that he joined the service as conductor with Haryana Roadways in October 1969 in the pay

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scale of Rs.110-225 and he has not been granted any annual increment since the year 1971. In the year 1979, pay scales were revised by the Government of Haryana and basic pay of the plaintiff/appellant was fixed at Rs.420/- per month. Thereafter, pay scales were revised in the year 1987 w.e.f 1986 and basic pay of the plaintiff was fixed at Rs.1050/-. Till date, plaintiff/appellant is drawing his basic salary and he has not been granted any annual increment. The plaintiff/appellant made numerous representations to grant him annual increments but to no avail. Finally, a notice dated 08.10.1995 was issued to the defendant/respondent in this regard. Finding no other way, suit seeking declaration with a consequential relief of mandatory injunction in this regard was filed.

3. The respondent-defendant filed the written statement admitting the appointment of plaintiff/appellant as conductor in the year 1969 in the pay scale of 110-225. It is averred that first annual increment was granted to the plaintiff/appellant w.e.f. 21.07.1971, when his monthly pay was raised to Rs.114/- from Rs.110/-. Again, monthly pay of plaintiff/appellant was raised to Rs.118/- w.e.f. 06.09.1973 and thereafter, to Rs.122/- and Rs.126/- w.e.f. 08.10.1975 and 13.12.1978, respectively. On revision of pay scales, monthly pay of plaintiff/appellant was fixed at Rs.430/- w.e.f 02.07.1979. On further revision, monthly basic pay of plaintiff/appellant was revised to Rs.1080/-. In as many as 31 disciplinary actions were taken against plaintiff/appellant, his 41 annual increments were stopped and the said fact is well within the knowledge of plaintiff/appellant. Accordingly, dismissal of suit was prayed.

4. On the pleadings of the parties, the following issues were framed by the learned Trial Court:-



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1. Whether the plaintiff is entitled to a declaration that the increments in his pay scale have illegally been withheld as alleged, if so, its effect? OPP
 2. Whether the suit of the plaintiff is within time? OPP
 3. Whether the present Court has jurisdiction to try the suit? OPP
 4. Relief.
5. After hearing both the parties and perusing the whole record, the learned Trial Court vide its judgment dated 22.12.1998, dismissed the suit filed by the appellant. The relevant portion of the same is reproduced as under:-

“ Having heard the arguments and perusing record of the case carefully, I am of the view that this issue deserves to be decided against the plaintiff. Admittedly, plaintiff is in service since the year 1969. The plaintiff has filed present suit only on 03.01.1996 claiming annual increments since the year 1971. The defendant in para 2 of written statement has specifically pleaded that 41 increments of the plaintiff were stopped in 31 disciplinary proceedings and the plaintiff never challenged those orders. The plaintiff in corresponding para 2 of his replication has not specifically denied the aforesaid position and there is total evasive denial in this regard. The defendant has produced on record orders Ex.D1 to Ex.D30 vide which, plaintiff was denied annual increment from time to time and the plaintiff has not challenged those orders before any competent authority and therefore, plaintiff is not entitled to any relief claimed in the suit. Perusal of orders Ex.D1 to D30 would show that most of the times,



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plaintiff was found negligent in performing his duties and authorities took lenient view by only ordering the stoppage of annual increments. Most of the times, plaintiff was found causing financial loss to the State Government by not issuing tickets to passengers travelling in bus. In view of the above, it is held that plaintiff is not entitled to any declaration that action of defendant in stopping his annual increments from time to time is either illegal or unconstitutional. Issue No.1 is thus, decided against plaintiff."

6. The appeal filed by the appellant against judgment and decree dated 22.12.1998 was also dismissed by the learned District Judge, Ambala vide judgment dated 26.07.2000. Hence the present appeal.

SUBMISSION OF LEARNED COUNSEL FOR THE PARTIES

7. Learned counsel for the appellant contends that without appointing any Enquiry Officer major penalty of stoppage of 41 increments has been imposed upon the appellant. He further contends that learned Trial Court did not take into consideration the very fact that before imposing major penalty, show cause notice is required to be given and the Enquiry Officer is to be appointed and on the basis of the enquiry report decision of major penalty is to be taken. In support of his contentions he has relied upon judgments of Hon'ble Supreme Court passed in the cases of *Jagdish Prasad Saxena Vs. State of Madhya Bharat (now Madhya Pradesh) [1961 AIR (Supreme Court) 1070]*; *Kulwant Singh Gill Vs. The State of Punjab [1991 SCC (L&S(998)]* and judgment of Madhya Pradesh High Court in the case of *S.L.Bhimte Vs. The Managing Director, M.P Audyogik Kendra Vikas Nigam [1993(3) S.C.T 603*.

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8. *Per contra*, learned counsel for the State contends that the stoppage of 41 increments was not a major penalty. He further contends that in the State of Haryana the services of the employees were governed by the Punjab Civil Services (Punishment and Appeal) Rules, 1970 and withholding of increment of pay was a minor punishment. He further contends that State of Haryana notified its own Rules i.e. The Haryana Civil Services (Punishment and Appeal) Rules, 1987. And punishment of withholding of increment of pay with cumulative effect for the first time was brought under the heading “Major Penalties” vide amendment notified on 19.11.1992. In support of his contention, the learned State counsel has relied upon the judgment of this Court passed in ***RSA-1588-1991***, titled as ***Ram Sarup Vs. Haryana State, decided on 03.10.2023***

9. I have heard learned counsel for the parties and perused the whole record of this case.

10. The statement of DW-1 Gian Chand, Clerk, HRO, Ambala shows that in his cross-examination he has stated that appellant never wanted any enquiry to be conducted in his case and he gave it in writing. A perusal of the record further shows that the appellant was given many opportunities of being heard.

11. So far as the judgments cited by the learned counsel for the appellant are concerned, ***Jagdish Prasad Saxena’s case (supra)*** is the case under Article 311(2), which is not applicable to the facts and circumstances of the case of the appellant and cases of the ***Kulwant Singh Gill (supra)*** and ***S.L.Bhimte (supra)*** pertain to imposition of major penalty, which would also not be applicable in the case of the appellant.



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12. The judgment relied upon by the learned State counsel squarely covers the present case wherein the punishment of stoppage of three increments with cumulative effect was granted and the regular second appeal was dismissed. Relevant paragraphs of *Ram Sarup's case (supra)* are being reproduced here under:-

“5. The learned counsel representing the appellant submits that the judgments passed by the Courts below are not sustainable as the stoppage of three increments with cumulative effect is a major punishment and the same could not be ordered in absence of regular departmental inquiry.

6. On the other hand, the learned counsel representing the State of Haryana submits that previously the services of the employees were governed by the Punjab Civil Services (Punishment and Appeal) Rules, 1970 and withholding of increment of pay was a minor punishment. He further contends that State of Haryana notified its own Rules i.e. The Haryana Civil Services (Punishment and Appeal) Rules, 1987 and punishment of withholding of pay with cumulative effect for the first time was brought under the heading “Major Penalties” vide amendment notified on 19.11.1992.

“2. In the Haryana Civil Services (Punishment and Appeal) Rules, 1987, in rule 4, in sub-rule (1)----

(i) Under Heading “Minor Penalties”, for clause (v), the following clause shall be substituted, namely:-



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(v) withholding of increment of pay without cumulative effect”

(ii) Under heading “Major Penalties”, the following clause shall be inserted, namely:-

(v-a) withholding of increments of pay with cumulative effect.”

7. Keeping in view the aforesaid facts, the learned counsel representing the appellant fairly submits that at the relevant time, the rules of 1970 were applicable.

CONCLUSION

13. In view of the above punishment of stoppage of three increments with cumulative effect was not major punishment before the year 1992, when the Haryana Civil Services (Punishment and Appeal) Rules, 1987 were notified. And punishment of withholding of pay with cumulative effect for the first time was brought, under the heading ‘Major Penalties’ vide amendment notified on 19.11.1992.

14. In view of the above, I do not find any merit in the present appeal and accordingly, dismiss the same being devoid of any merit.

15. Decree sheet be drawn accordingly.

16. Pending applications, if any, also stand disposed of.

October 01, 2024
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(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes