IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 3085 OF 2014

UDHAV SITARAM KAMBLE
VERSUS
THE ADDITIONAL COMMISSIONER, AURANGABAD AND OTHERS

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Advocate for Petitioner : Mr. Rudrawar S.G.
AGP for Respondent/ State : Mr.S.P.Dound.
Advocate for Respondent Nos.2 and 3 : Mr. Shinde Bhagwat A.

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CORAM : **N. W. SAMBRE, J.**
DATE : 06th May, 2015.

Per Court:

1 In view of law laid down by this Court in the matter of ***Narendra Motiram Bodkhe Vs. Additional Commissioner & Ors***, reported in ***2006(5) Bom. C. R. 48***, relying upon the judgment of the Apex Court in the matter of ***Kulwqant Singh Gill Vs. State of Punjab***, reported in, ***1990(2) C.L.R. 686***, it is held to be mandatory to hold an inquiry before imposing even a minor penalty.

2 The relevant observations of this Court in the said judgment read thus:

> "7 We have given our anxious thoughts to the various contentions canvassed by the respective Counsel. In the instant case, it is not in dispute that the punishment of withholding of two increments permanently is imposed by the Disciplinary Authority. At this stage it will be appropriate to consider the law laid down by the Apex Court in the above referred judgment,

particularly Para 4 which reads thus;

> Withholding of increments of pay simplicitor 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 reductions 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 falls 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 simplicitor 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 pealed 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.), 2, I.L.E. 1985 (2) P & H 193 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 to 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 without expressly stating so. This preposterous consequences cannot 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. Considering the law laid down by the Apex Court,

> it is evident that in the instant case the punishment of withholding 2 increments permanently is admittedly the punishment which would fall in the category of major punishable and by necessary implication such punishment could not have been imposed by the Zilla Parishad without conducting appropriate departmental enquiry."

3 Admittedly in present case no enquiry was held against the Petitioner. In view of above, the writ petition stands allowed. The order dated 17th February, 2014 and 3rd April, 2013, impugned in the present petition are hereby quashed and set aside.

4 The matter stands restored to the file of Respondent / Zilla Parishad with liberty to initiate appropriate disciplinary proceedings against the Petitioner.

[N. W. SAMBRE, J.]

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