

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 1578 of 1991

Date of Decision: 6.2.2015

The Punjab State & anr.

... Appellants

Versus

Jarnail Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. N.K. Verma, Sr. DAG, Punjab,
for the appellants.

Mr. S.C. Chhabra, Advocate,
for the respondent.

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

B.S. WALIA, J.

The State is in Regular Second Appeal against the concurrent findings recorded by both the Courts below decreeing the suit filed by the respondent-plaintiff for declaration that the orders dated 07.07.1975 and 19.5.1977 passed by the General Manager, Punjab Roadways, Ferozepur stopping one annual increment with cumulative effect on each occasion were null and void being illegal, wrong, perverse, unconstitutional and against the principles of natural justice, departmental instructions, procedure of inquiry and provisions of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter referred to as the 'P&A Rules').

Brief facts of the case necessary for adjudication of the instant regular second appeal are that the respondent-plaintiff was serving under the appellant-defendant No.2 as Conductor at Punjab Roadways Depot, Ferozepur. Vide orders dated 07.07.1975 *and* 19.05.1977, the General Manager, Punjab Roadways, Ferozepur Depot, stopped one annual

increment *each* of the plaintiff with cumulative effect on the allegations that on 17.10.1974, the plaintiff while on duty on bus No.2855 on being checked by Dev Raj, Inspector, was found to be not wearing the prescribed uniform besides, was not in possession of the complaint book. The explanation of the plaintiff called for by the General Manager was found to be unsatisfactory and as a result thereof, the General Manager stopped one increment of the plaintiff with cumulative effect. On a subsequent occasion, i.e. on 08.11.1976, bus of the plaintiff was checked at Village Shadde, on Ferozepur-Karmuwala route, and two passengers were found travelling without ticket from Ferozepur to Shadde and although the plaintiff had taken due fare from them, but had not issued tickets to them. In this case also, the explanation of the plaintiff was called and thereafter, the impugned order dated 19.05.1977 was passed by the General Manager stopping one annual increment with cumulative effect.

The respondent-plaintiff impugned both the orders on the ground inter alia that they were passed by the General Manager in complete violation of the provisions of the P&A Rules, principles of natural justice and fair play. On the basis of the aforementioned pleas, the respondent-plaintiff sought a decree for declaration that the impugned orders were illegal, null and void, and inoperative.

In the written statement, it was denied that the impugned orders were in violation of the principles of natural justice, fair play or Rules applicable. In addition thereto, a plea was taken that the suit was barred by limitation.

On the pleadings of the parties, the following issues were framed:-

- “1. Whether the impugned order dated 7.7.1975 passed by the General Manager, Punjab Roadways, Ferozepur, is illegal, null and void ? OPP*
- 2. Whether the suit is time barred ? OPP*
- 3. Relief.”*

After analyzing the material as well as the evidence available on record, the Subordinate Court decreed the suit in favour of the respondent-plaintiff vide judgment and decree dated 16.5.1990. Appeal filed by the State-defendant was dismissed by the Additional District Judge, Ferozepur, vide judgment and decree dated 15.3.1991. Hence this appeal.

I have heard learned counsel for the parties and with their able assistance, have gone through the records of the case.

On the basis of submission of counsel, the following substantial questions of law arise for consideration in the instant Regular Second Appeal:-

- “1. Whether imposition of punishment of withholding of an increment with cumulative effect without conducting a regular inquiry as envisaged in Rules 8 & 9 of the P&A Rules is legal and sustainable?*
- 2. Whether the orders dated 7.7.1975 and 19.5.1977 ordering withholding of one increment each with cumulative effect having not been challenged within three years of the passing of the impugned order, the suit filed by the plaintiff was liable to be dismissed being barred by limitation?”*

Learned counsel for the appellant contends that the due procedure prescribed for imposing punishment of withholding of annual increment with cumulative effect was complied with and a regular departmental inquiry was held, therefore, the impugned judgments and decrees are liable to be set aside.

On the other hand, learned counsel for the respondent contends that the aforementioned orders were passed without conducting a regular inquiry as envisaged under the P&A Rules, therefore, the same were unsustainable being in violation of the law laid down by the Hon'ble Supreme Court in the case of *Kulwant Singh Gill Vs. State of Punjab*, **1990(6)SLR 73**.

The plea of the learned counsel for the appellant/defendants that a regular departmental inquiry was held according to prescribed procedure is contrary to the findings recorded in respect thereto in paragraph No.8 of the judgment of the Subordinate Court, wherein it is clearly mentioned that on complaint being made by Sh. Dev Raj, Inspector, against the plaintiff in respect of first charge, explanation of the plaintiff was called; the same was not considered and straightway show cause notice was issued and without considering anything, impugned order dated 07.07.1975 was passed qua the misconduct of non-wearing of the prescribed uniform and not possessing complaint book. Likewise, in paragraph No.9 of the judgment of the Subordinate Court, it has been mentioned that explanation furnished by the plaintiff with regard to other charge was not considered and straightway the impugned order was passed. Even show cause notice was not issued. The Subordinate Court also recorded that it was patently discernible from a bare reading of the impugned orders that the punishing authority failed to apply its mind to the explanation furnished by the plaintiff. Similarly, perusal of order dated 19.05.1977 passed by the General Manager, Punjab Roadways, Ferozepur, reveals that penalty of withholding one increment with cumulative effect was not based on the findings of any inquiry. In the circumstances, the Subordinate Court held that the impugned orders were

cryptic and, therefore, decided issue No. 1 in favour of the respondent-plaintiff and against the appellant-defendant.

With regard to limitation, the Subordinate Court held that since the orders were illegal and inoperative, therefore, no period of limitation was prescribed for setting aside such orders. Accordingly, finding on issue No. 2 was recorded by the Subordinate Court against the department and in favour of the plaintiff. Resultantly, a decree was passed that the orders dated 07.07.1975 and 19.05.1977 passed by the General Manager, Punjab Roadways, Ferozepur, were illegal and inoperative and the plaintiff was held entitled to the increments from the date, the same were stopped vide the impugned orders.

The Lower Appellate Court in paragraph No.7 of its judgment recorded its findings that the inquiry as required under Rules 8 & 9 of the P&A Rules had not been conducted and further that the impugned orders did not reflect consideration of the explanation given by the plaintiff nor disclosed reasons as to why the explanation submitted by the plaintiff was found unsatisfactory.

Impugned orders dated 07.07.1975 and 19.05.1977 were passed in the following manner :-

“Order dated 7.7.1975:-

Conductor was without uniform at the time of his duty and was not having a complaint book with him which is violation of the Government Rules. Therefore, his one annual increment is stopped with cumulative effect.”

“No.988/IC dated 19/5/1977

On 6/11/1976 Sh. Jarnail Singh Conductor No.125 has not issued the tickets to two passengers after recovering the fares from them and thus, one annual

increment is stopped with cumulative effect.”

A bare perusal of the aforesaid impugned orders reveals that the same are bereft of any reason much less cogent reason to justify the imposition of penalty.

The Hon'ble Supreme Court in *Kulwant Singh Gill's case (supra)* while taking into account the imposition of penalty of withholding of increment with cumulative effect without conducting a regular inquiry as envisaged in Rules 8 & 9 of the P&A Rules held that mere issuance of show cause notice and consideration of explanation given by the charged employee would not meet the test of Rules 8 & 9 of the P&A Rules and that conducting of an inquiry de hors the rules was no inquiry in the eyes of law. Relevant extract of the aforementioned judgment is reproduced below:-

“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 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 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 were 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 timescale 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**, 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 without expressly stating so. This preposterous consequence 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.

5. The further contention of Shri Nayar that the procedure under Rule 8 was followed by issuance of the show cause notice and consideration of the explanation given by the appellant would meet the test of Rules 8 and 9 of the Rules is devoid of any substance.

Conducting an enquiry, dehorse the rules is no enquiry in the eye of law. It cannot be countenanced that the pretence of an enquiry without reasonable opportunity of adducing evidence both by the Dept. as well as by the appellant in rebuttal, examination and cross-examination of the witnesses, if examined, to be an enquiry within the meaning of Rules 8 and 9 of the Rules. Those rules admittedly envisage, on denial of the charge by the delinquent officer, to conduct an enquiry giving reasonable opportunity to the presenting officer as well as the delinquent officer to lead evidence in support of the charge and in rebuttal thereof, giving adequate opportunity to the delinquent officer to crossexamine the witnesses produced by the Dept. and to examine witnesses if intended on his behalf and to place his version; consideration thereof by the enquiry officer, if the disciplinary authority himself is not the enquiry officer. A report of the enquiry in that behalf is to be placed before the disciplinary authority who then is to consider it in the manner prescribed and to pass an appropriate order as per the procedure in vogue under the Rules. The gamut of this procedure was not gone through. Therefore, the issuance of the notice and consideration of the explanation is not a procedure in accordance with Rules 8 and 9. Obviously, the disciplinary authority felt that the enquiry into minor penalty is not necessary and adhering to the principles of natural justice issued the show cause notice and on receipt of the reply from the delinquent officer passed the impugned order imposing penalty thinking it to be a minor penalty. If it is considered, as stated earlier, that it would be only a minor penalty, the procedure followed certainly meets the test of the principles of natural justice and it would be a sufficient

compliance with the procedure. In view of the finding that the impugned order is a major penalty certainly then a regular enquiry has got to be conducted and so the impugned order is clearly illegal. The Trial Court rightly granted the decree. The judgment and the decree of the High Court is vitiated by manifest illegality. At this distance of time it is not expedient to direct an enquiry under rules 8 and 9 of the Rules. The appeal is accordingly allowed and the judgment and decree of the High Court is set aside and that of the trial court is restored but in the circumstances without costs.”

In the circumstances, I have no hesitation in holding that in the absence of regular inquiry as envisaged under Rules 8 & 9 of the P&A Rules not having been conducted, the punishment of withholding of increment with cumulative effect as imposed vide orders dated 7.7.1975 and 19.5.1977 is legally unsustainable. Accordingly, in view of the decision of the Hon'ble Supreme Court in Kulwant Singh Gill's case (supra), substantial question of law No.1 is answered against the appellant/defendant and in favour of the respondent/plaintiff.

As regards the second substantial question of law, it needs mention that the same is to be answered against the respondent/plaintiff and in favour of the appellant/defendants in view of the fact that the orders dated 7.7.1975 and 19.5.1977 imposing punishment withholding one increment each with cumulative effect were impugned by the respondent/plaintiff only by way of civil suit No.238-1 of 1989. In other words, after lapse of approximately 14 years of the passing of the impugned orders, whereas it is well settled law that in terms of Articles 58 and 113 of the Limitation Act, 1963, limitation to bring a suit for declaration that the orders withholding increments with cumulative effect were illegal is three years and the

limitation is to run from the date of the impugned order. Since in the instant case, the impugned orders are dated 7.7.1975 and 19.5.1977, the suit filed in the year 1989 is hopelessly barred by limitation. Relevant extract of the judgment of the Hon'ble Supreme Court in State of Punjab Vs. Rajinder Singh, 1999 SCC (L&S) 664, is reproduced below:-

“4. After conducting departmental inquiry by proceedings dated 10.12.1981, two increments with cumulative effect were stopped. The suit was filed on 15.1.1988. Article 58 of the Schedule of the Limitation Act 21 of 1963 prescribes three years limitation from the date of the order, to seek a declaration that the impugned order was illegal and did not bind him. The residuary provision is Article 113 also equally prescribes the limitation of three years. The limitation starts running from the date of passing of the order withholding increments. On expiry of three years from that date, the limitation expires by the efflux of time. Consequently, the suit gets barred by limitation. Section 3 of the Limitation Act directs the Court to take notice of the bar of limitation before proceeding further. This legal position was set at rest by the judgment of this Court in *State of Punjab Vs. Gurdev Singh, (1991) 4 SCC 1*. The suit of the respondent is barred by limitation.

5. The appeal is accordingly allowed and the suit stands dismissed, but in the circumstances, without costs.”

In view of the aforesaid position of law, substantial question No.2 is answered in favour of the appellant/defendants and against the respondent/plaintiff.

Resultantly, the appeal is allowed, judgment and decree of both the Courts below are set aside and the suit stands dismissed being time barred. In the circumstances of the case, the parties are left to bear their own costs.

6.2.2015
monika

(B.S. WALIA)
JUDGE