IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

208 **CWP No.21469-2012**
Date of Decision: 08.09.2015

JAI KISHAN BHARDWAJ

....Petitioner

VERSUS

STATE OF PUNJAB & ORS.

....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. R.S Cheema, Advocate, and
Mr. D.S Rawat, Advocate, for the petitioner.

Mr. Anshul Gupta, AAG, Punjab.

Mr. Arpandeep Narula, Advocate, for
Mr. Rahul Sharma, Advocate,
for respondents No. 2 to 4.

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P.B BAJANTHRI, J. (Oral)

In this petition, the petitioner has questioned the decision/noting dated 22.03.2006 vide Anneuxre P-11, by which the respondent No.2 withheld the annual increment, which is due to the petitioner from 01.04.2006.

The petitioner was subjected to disciplinary proceedings and he was charge sheeted on 08.06.2005. The Inquiry Officer submitted his report to the disciplinary authority. Pursuant to the Inquiry Officer's report a show cause notice was issued on 21.11.2006 vide annexure P-9. The petitioner is stated to have filed reply to the show cause notice on

27.11.2006. Thereafter, no orders have been passed in the disciplinary proceedings.

It is learnt that petitioner has been warned and the matter was closed by the disciplinary authority, however, no orders have been made available or conveyed to the petitioner.

In this background, before issuance of show cause notice, pursuant to inquiry officer's report, annual increment of the petitioner which was due on 01.02.2006 has not been granted while quoting disciplinary proceedings and further stating that as per orders, the conduct of petitioner was taken into consideration and his annual increment has been withheld after evaluating his conduct. The said decision dated 22.03.2006 is stated to have not been communicated to the petitioner. The petitioner has obtained the said decision dated 22.03.2006 under RTI and presented this petition questioning the decision dated 22.03.2006.

The learned counsel for the petitioner submitted that inquiry was initiated on 08.06.2005 and it had attained finality in warning the petitioner therefore, question of withholding of annual increment, which was due to the petitioner as on 01.01.2006 vide decision dated 22.03.2006 is not in accordance with law. Moreover the said decision dated 22.03.2006 has not been communicated. Withholding of annual increments has civil consequences. In other words, pay of the petitioner would have been enhanced for which he is entitle to, having regard to the service rendered with respondent No. 2-institution.

Per contra learned counsel for respondent No.2. contended that the petition is highly belated in so far as questioning the decision dated 22.03.2006 is concerned. It was further contended that respondent No. 2 is a Society and this Court has no jurisdiction. In so far as merit is concerned, it was contended that the petitioner's annual increment which was due to him as on 01.01.2006 has been withheld with reference to the performance of the petitioner and not with reference to the disciplinary proceedings.

Heard learned counsel for the parties.

It is undisputed that the disciplinary proceedings initiated on 08.06.2005 ended in warning the petitioner. So far as the decision taken to withhold annual increment of the petitioner which is due on 01.01.2006 vide Annexure P 11 dated 22.3.2006 is concerned, it is to be noted that charge sheet has been finalized in warning the petitioner and so also petitioner's conduct has been evaluated and decision has been taken to withheld annual increment. Respondent No.2 cannot withhold annual increment abruptly without informing the petitioner. Since the petitioner is entitle to annual increment having rendered service for the particular year, therefore, before withholding annual increment atleast the petitioner should have been informed reasons for withholding annual increment. In so far as delay in questioning the decision dated 22.03.2006 is concerned, respondent No.2 has not produced any material to show that petitioner was issued a show cause notice or the decision dated 22.03.2006 has been communicated to the petitioner**.** On the other hand, the petitioner obtained copy of the decision dated 22.03.2006 under RTI. Therefore, question of delay in filing the writ petition do not arise. The contention of learned counsel for respondent No.2 that the present writ petition is not maintainable for the reasons that respondent No. 2 is a Society is not correct as respondent No.2. has not produced any material to show that it is a Society, registered under the Societies Act. It is an institute for machine tools technology at Batala. The decision dated 22.03.2006 has an adverse impact on the petitioner's service for which he is entitle to notice. Since the same has not been complied with by respondent No.2, therefore, Anneuxre P -11 decision dated 22.03.2006 is liable to be set aside. The respondents are directed to reconsider the issue relating to grant of withhold annual increment and release the same with consequential benefits within a period of ten weeks.

Accordingly, the writ petition is disposed of.

08.09.2015 **(P.B BAJANTHRI)**
PA **JUDGE**