THE HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.21630 of 2009

ORDER:

Heard Mr. G. Ravi Mohan for petitioner and Mr. N. Siva Reddy for respondents.

2. Petitioner challenges memos dated 31.12.2003 and 25.04.2004 as illegal and arbitrary to APSEB Employees (Discipline and Appeal) Regulations.

3. The circumstances relevant for disposal are a few, hence, chronologically referred to. Petitioner was appointed as Assistant Engineer in the year 1991. In due course, the petitioner was promoted as Assistant Divisional Engineer. While the petitioner was working at Nidadavolu, West Godavari District, he alleges to have suffered
ill-health and admittedly, did not attend the office for a period of eleven months. Petitioner claims to have been submitting letters for sanction of leave to superior authority, but leave was not sanctioned or refused. Be that as it may, the fact of the matter is that the petitioner, on 26.12.2001, represented to respondents to regularize his absence and issue posting orders. The second respondent through memo dated 02.02.2002, by taking note of the representation dated 26.12.2001, issued transfer and posting orders to petitioner.

The second respondent issued memo dated 06.09.2003 to petitioner and called upon his explanation for the alleged unauthorized absence from 01.08.2000 to 16.07.2001 and 28.10.2001 to 21.03.2002.

On 27.09.2003, the petitioner submitted explanation. The second respondent through memo dated 31.12.2003 imposed the following punishment on the petitioner:

"**4**) In view of the above, the Joint Managing Director (HRD, Comml,

> IPC & Reforms), AP Transco has carefully examined the explanation of the ADE and arrived at a final conclusion to confirm the punishment indicated in the Show Cause Notice.
>
> **5**) Accordingly it is ordered that two increments of Sri P. Suryachandram, ADE/E1 stopped with cumulative effect, besides treating the two spells of absence period from 1.8.2000 to 16.7.2001 in the AE Cadre and 28.10.2001 to 21.3.2002 in the ADE cadre as "Dies-Non".
>
> **6**) He is also informed that only one appeal against this order lies to the Chairman and Managing Director/AP Transco within 3 months vide Reg.18 of APSE Board Discipline & Appeal Regulations as adopted by AP Transco, if he prefers an appeal."

Petitioner filed an appeal before the first respondent and the same is confirmed by impugned memo dated 25.05.2004.

Hence, the writ petition.

4. The counter affidavit of respondents 1 and 2 is filed by the Chief General Manager, AP Transco. The counter affidavit does not dispute the chronology of dates and events referred to above but in para 10 of the counter affidavit, a reply to the legal ground urged by the petitioner is sated as follows:

> "**10**. The petitioner has submitted explanation dt. 15.11.2003 to the Fresh Show Cause Notice. After careful examination of the explanation of the petitioner, the case was referred to Chief Medical Officer/Vidyut Soudha/Hyderabad for offering his opinion on the Medical Certificates produced by the petitioner and the treatment taken by the delinquent. The Chief Medical Officer/Vidyut Soudha/Hyderabad has opined that both the medical certificates for two spells of absence period submitted by the petitioner do not warrant any such prolonged absence of work. Hence, the disciplinary authority has come to the final conclusion and confirmed the punishment of "Stoppage of Two Increments with cumulative effect" vide memo dt. 31.12.2003 besides treating the two spells of absence period from 01.08.2000 to 16.7.2001 in the AE Cadre and 28.10.2001 to 21.03.2002 in the ADE Cadre as Dies-non duly informing him that only one appeal against the final orders lies to the CMD/AP Transco within 3 months as per Reg.13 of APSE Board Discipline & Appeal regulations as adopted by A.P. Transco.
>
> The punishment awarded being a Minor penalty, there is no need to appoint an enquiry officer before awarding the punishment."

5. Mr. G. Ravi Mohan, appearing for petitioner, draws the attention of the

Court to the regulations and contends that if the increments are withheld for one year, it is treated as a minor punishment and the respondents need not conduct disciplinary enquiry, afford opportunity to petitioner but can pass appropriate orders. But, on the other hand, if the stoppage of increments is with cumulative effect, according to him, even as per the tenor of the regulations, the same shall have to be treated as major punishment and such punishment cannot be imposed without conducting enquiry. To bring home his point, learned counsel draws the attention of this Court, particularly, to the references in memo dated 31.12.2003. Learned counsel places strong reliance upon the decision of the honourable Supreme Court in **KULWANT SINGH GILL v. STATE OF PUNJAB**[1], particularly, para 4 of the decision, which reads thus:

> "**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. With- holding 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 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., 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 withhold 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."

6. Mr. N. Siva Reddy submits that the order dated 02.02.2002 cannot and could not be taken as condoning the unauthorized absence of petitioner in two spells. Therefore, show cause notice was issued, explanation received and punishment of stoppage of increments with cumulative effect was imposed. Learned counsel, after perusing the ratio laid down by the Apex Court in **KULWANT SINGH GILL's** case (1 supra) and after juxtaposing the

regulations considered by the Apex Court and the instant regulations, fairly states that the imposition of punishment of stoppage of increments with cumulative without conducting enquiry could not have been done. Learned counsel submits that, at this length of time, if the unauthorized absence is condoned the discipline in the organization is not maintained.

7. I have considered the respective submissions, perused the material available on record and the binding precedent of the honourable Supreme Court in **KULWANT SINGH GILL's** case
(1 supra). The case on hand is covered by the principle laid down by the Apex Court in **KULWANT SINGH GILL's** case (1 supra) and the orders impugned in the writ petition, no doubt, are to be set aside and matter remitted to second respondent. This Court is of the view that if the stoppage of increments is given cumulative effect, the same is vitiated for want of enquiry and opportunity to petitioner. On the other hand, if the stoppage of increments is made non-cumulative then it is a minor penalty within the jurisdiction of the authority, who imposed it and no enquiry is required. Having regard to the totality of circumstances, the punishment imposed through memo dated 31.12.2003 is made non-cumulative.

The writ petition is allowed in part as indicated above.
As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

S.V. BHATT, J

July 8, 2016
DSK

[1] 1990 (6) SLR 73