HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.34783 OF 2014

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, 1949 is filed by the petitioner, to issue a writ of *mandamus* by declaring the action of the respondents in withdrawing the sanctioned increments from 01.04.2000 to 01.04.2003, recovering subsistence allowance pertaining to the suspension period and denial of leave encashment of earned leave during the suspension period as arbitrary, illegal and violative of Articles 14, 16, 21 and 300-A of the Constitution of India.

The case of the petitioner, in brief, is that initially he joined as daily wage worker in the office of A.P. State Civil Supplies Corporation at Kurnool and, after regularization of his services, promoted as Assistant/Accountant Grade-III in the scale of Rs.425-650/- on 28.02.1984 and, consequently, promoted as Accountant Grade-II on 26.06.1989. However, he was placed under suspension with effect from 29.09.1996 on account of lodging a criminal case against him, after getting acquittal he was reinstated into service on 11.12.1997. Again, he was placed under suspension on 29.12.1999 on the ground that he has diverted P.D.S. Rice to black market, MLS Point, Nandikotkur. While the petitioner was under suspension, his annual grade increments due in April of respective years were released without framing any charges and the enquiry officer, who was appointed to conduct enquiry against the petitioner, submitted his report on 30.09.1999. It is the specific case of the petitioner that the enquiry officer without recording evidence of any of the witnesses found him guilty. Thereafter, a show-cause notice dated 08.01.2003 was issued to the petitioner calling for his explanation and the petitioner submitted his explanation on 21.01.2003. The disciplinary authority without considering his contentions concluded that the charges were held proved and imposed punishment of stoppage of 2 annual grade increments with cumulative effect and the period of suspension was treated as '*not on duty*'. However, the petitioner did not prefer any appeal against the penalties imposed against him.

While the matter stood thus, the respondents issued impugned proceedings dated 11.07.2014 proposing to withdraw the sanctioned increments and other benefits extended to the petitioner. Aggrieved thereby, the present Writ Petition is filed contending that the increments were released and all other benefits were extended even for the suspension period, the respondents are not entitled to recover the disputed amounts, withdrawing the benefits extended to the petitioner, and such action is arbitrary, illegal and violative of principles of natural justice.

The 2nd respondent filed counter denying material allegations while admitting that the disciplinary proceedings were initiated against the petitioner imposing penalty of stoppage of 2 annual grade increments with cumulative effect, treated the period of suspension as '*not on duty*'. It is specifically contended that as per F.R. 24(5)(a), a suspended employee is not entitled to claim any benefit during his suspension period. Therefore, issued proceedings for recovery of Rs.7,35,906/- towards subsistence allowance, differential pay and allowances, differential CPF from 01.04.2000 to 01.04.2003. Thereby the proceedings issued by the respondents are in accordance with the Fundamental Rules and not liable to be quashed and prayed to dismiss the writ petition.

Undisputedly, an enquiry was initiated against the petitioner and, after due enquiry, the penalty of stoppage of 2 annual grade increments with cumulative effect was imposed treating the period of suspension as '*not on duty*' and the order attained finality since no appeal has been preferred by the petitioner. The respondents released increments and other benefits during the period of suspension though the petitioner is not entitled to claim any benefit during his suspension period. Learned counsel for the respondents has drawn the attention of this Court to Fundamental Rule 24.5 which contemplates that any case falling under Sub-Rule 4 the period of absence from the duty including the period of suspension preceding his dismissal, removal or compulsory retirement as the case may shall not be treated as period spent on duty but the Government may direct that the period of absence from duty including the period of suspension preceding his dismissal or removal or compulsory retirement as the case may be.

Thus, it is clear from the F.R. 24.5, the Government employee is not entitled to claim any benefit during the period of suspension. The issue is no more *res-integra* in view of the decision of the Apex Court in ***State of Punjab Vs. Jaswant Singh Kanwar***[1], where at Paragraphs 14 and 15 it was held as follows:

> 14. "Increment" has a definite concept in service law jurisprudence. It is an increase or addition on a fixed scale; it is a regular increase in salary on such a scale. As noted by this Court in State Bank of India Vs. The Presiding Officer, Central Government Labour Court, Dhanbad and Another (1972 3 SCC 595), under the Labour and Industrial Laws, an increment is when in a time scale of pay an employee advances from the lower point of scale to the higher by periodic additions. In other words, it is addition in the same scale and not to a higher scale. Increment is an incidence of employment and an employee gets an increment by working the full year and drawing full salary. During the period of suspension, the contract of service remains suspended. The order of suspension by the departmental enquiry has the effect of temporarily suspending the relations between the master and servant with the consequence that the servant is not bound to render service and, therefore, the Petitioner as an employee is not entitled to increments during this period which is taken as period not spent on duty.
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> 15. The disciplinary authority by its order has imposed stoppage of two increments with cumulative effect as a major

penalty for the offences alleged against the Petitioner. The principle of stoppage of increment is laid down in the case of Kulwant Singh Gill Vs. State of Punjab (1991 Suppl. (1) SCC 504), where 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 stoppage of increment is only a major penalty which keeps the Petitioner away from the benefits that would have accrued to him during the suspension period. It is not a new penalty imposed for the same offence in respect of the same subject matter."

In the facts of the decision cited supra, Rule 4.9(a) of the Punjab Civil Service Rules Volume-I, Part-I read with Rule 7.3(B)(1) came up for consideration and held that during suspension period, the employee is not entitled to claim any benefits in view of temporary suspension of relationship of master and servant. Apart from that, in the present case the order of penalty passed by the disciplinary authority against the petitioner attained finality but contrary to Rule 24.5 of the Rules, the respondents released increments and extended all consequential benefits during the suspension period, when stoppage of two annual grade increments with cumulative effect and treating the period of suspension as '*not on duty*' is a part of punishment, thereby not entitled to claim any benefits during the subsistence of period of penalty. Therefore, by applying the principle laid down by the Apex Court in the decision cited supra, I hold that the order passed by the 2nd respondent is free from any illegality and not liable to be set-aside or quashed by exercising the power of judicial review under Article 226 of the Constitution of India. Therefore, I find no ground to grant any relief in the writ petition and the writ petition is liable to be dismissed.

Accordingly, the Writ Petition is dismissed.

In consequence, miscellaneous petitions, if any, pending in this Writ Petition, shall stand dismissed. No order as to costs.

M. SATYANARAYANA MURTHY, J

Date: 19-04-2016.
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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[1] (2014) 3 SCC 622