HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.19519 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 not restoring the deferred increments, after completion of punishment period, as illegal, arbitrary and contrary to law and in violation of principles of natural justice and, consequently, direct the respondents to restore the deferred increments, re-fix his pay and grant retirement benefits.

The case of the petitioner is that, initially, he was appointed as cleaner in the respondents-corporation, promoted as painter and Leading Hand. His limited grievance before this Court is that while he was working in the respondents-corporation, an enquiry was initiated against him and penalty of deferring his annual increments for a period of 3 months, 6 months, 9 months and 1 year, which will have no effect on his future increments, respectively, were separately imposed against him, and these punishments are without having any effect on his future increments, on the allegation that he involved in some minor irregularities. After expiry of the period of punishment, the respondents ought to have restored the deferred increments without effect on his future increments forthwith but they did not do so and fixed his pay, despite there being a representation of the petitioner, therefore the action of the respondents is arbitrary and illegal.

The respondents filed counter, denying material allegations of the petition, while admitting imposition of aforesaid penalties and specific penalties imposed against the petitioner were stoppage of increments with and without cumulative effect and his annual increments were deferred up to 01.01.2014; before expiry of which, the petitioner retired from service and, therefore, the petitioner is not entitled for fixation of pay and restoration of deferred increments and finally prayed to dismiss the Writ Petition.

Sri P. Govindarajulu, learned counsel for the petitioner, during course of argument at the stage of admission, reiterated the contentions urged in the grounds of writ petition and prayed to allow the writ petition; whereas, Sri A. Ravi Babu, learned standing counsel for respondents-corporation, contended that the petitioner retired during subsistence of his punishment and, hence, restoration of increments cannot be done.

According to the petitioner, the 3rd respondent, imposed penalty of stoppage of annual increment for a period of six months without cumulative effect on 28.06.2007; imposed penalty of stoppage of annual increment for a period of six months without cumulative effect on 28.06.2007; imposed penalty of stoppage of annual increment for a period of six months without cumulative effect on 20.07.2007; imposed penalty of stoppage of annual increment for a period of three months on 24.04.2010; imposed penalty of stoppage of annual increment for a period of three months without cumulative effect on 24.04.2010 and, finally, imposed penalty of censure on 18.10.2010.

Thus, the stoppage of annual increments under various penalties referred above is without cumulative effect and the final order dated 18.10.2010 was only a censure but earlier, on 24.04.2010, stoppage of annual grade increment for a period of three months was imposed and that will have the effect of postponing his future increment for a period of three months, which means up to 24.07.2010 the petitioner was not entitled to claim any increment. In such case, the Apex Court in ***State of Punjab Vs. Jaswant Singh Kanwar***[1], while drawing distinction between stoppage of annual increment with cumulative effect and without cumulative effect, 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.

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 view of the distinction drawn by the Apex Court, when penalty of stoppage of annual increment or postponement of increment was imposed, it will have no effect on future salary, after expiry of the period of stoppage of the increments. In ***V. Ramachander Vs. Regional Manager, A.P.S.R.T.C. Nizamabad and another***[2] this Court, relying on its earlier decision in ***Managing Director A.P.S.R.T.C. Vs. M. Shankaraiah***[3], held that when an employee is ordered to be reinstated with continuity of service by labour court, setting-aside order of removal, the employee is entitled to all notional increments during the period he was out of service but in the instant case increments were postponed or deferred as a measure of minimum penalty; after expiry of period of deferment, the employee is entitled to increments since stoppage was without consecutive effect. Thus, after 24.07.2010, the petitioner became entitled to claim increments as per his entitlement and the loss was only during the period of subsistence of penalty. After expiry of the period of penalty, the respondents ought to have sanctioned his annual increments, as per his entitlement, but here the respondents did not fix his pay nor sanctioned any increments, which he is entitled, as per rules and such action of the respondents is illegal and arbitrary. Therefore, the respondents are directed to restore the deferred increments of the petitioner since the punishment was only minor penalty *i.e.,* stoppage of annual increments without cumulative effect by fixing his pay and settle all his retirement benefits within a period of three (3) months from the date of receipt of a copy of this order.

With the above direction, the Writ Petition is disposed of.

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

M. SATYANARAYANA MURTHY, J

Date: 25-04-2016.
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

357

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WRIT PETITION No.19519 OF 2014

Date.25-04-2016

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[1] 2014 (13) SCC 622

[2] 2000 (6) ALD 83

[3] 1999 (4) ALT 89