

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.9612 OF 2013

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, came to be filed questioning the order dated 10.11.2010 whereby the 3rd respondent imposed punishment of deferring annual increment for two years with cumulative effect that will have effect on future increments on the petitioner.

The averments made in the affidavit filed in support of the writ petition would show that initially petitioner was appointed as casual driver in the respondent-Corporation and thereafter in the month of April, 2003 his services were regularized. It is the case of the petitioner that on 05.06.2010, after performing his duty, he was forced to perform double duty. As such, he left MGBS to Vijayawada along with contract driver M.S.Ravi Kumar. When he reached Golkpudi before Vijayawada, two buffaloes came in front of the bus and hit the running bus, which resulted in an accident causing damage to the bus. It is his case that there was no rash and negligence on his part and the accident was only due to buffaloes coming on to the road. It is further stated that the petitioner himself informed about the incident to the patrolling police, who called the owner of the buffaloes to the police station where he stated that there was no fault on the part of the bus driver. He did not file any complaint in this regard. While things stood thus, the third respondent, without conducting any investigation, issued a charge sheet and thereafter appointed an Enquiry Officer to conduct the enquiry. The Enquiry Officer

conducted the enquiry and submitted a report to the third respondent. The petitioner submitted his objections before the enquiry officer. However, without considering the same, the third respondent issued final order No.01/187 (34) 2010-BKP dated 10.11.2010 for deferment of annual increment for a period of two years with cumulative effect. Challenging the same, the present writ petition is filed.

A counter came to be filed by the respondent-Corporation disputing the averments made in the affidavit filed in support of the writ petition. It is stated that investigation was conducted and a charge sheet came to be issued calling for the explanation of the petitioner. Based on the report of the Enquiry Officer, the impugned order is passed. It is also stated that challenging the impugned order, the petitioner preferred departmental, which was dismissed vide order dated 13.01.2011. Aggrieved by the same, petitioner preferred a Revision Petition wherein the Reviewing Authority reduced the punishment of deferment of increment for a period of two years to that of one year with cumulative effect, taking into consideration the clean service record of the petitioner. Hence, it is urged that the impugned order warrants no interference.

Learned counsel for the petitioner mainly submits that the impugned order dated 10.11.2013 came to be passed without issuing any show cause notice to the petitioner. It is his case that the report of the Enquiry Officer, is in violation of the principles of natural justice and hence seeks to set aside the same.

The only question that arise for consideration in this writ petition is ‘whether any show cause notice was issued to the petitioner prior to passing of the order, imposing punishment?’

Though a counter has been filed disputing the averments made in the writ petition, but the same is silent as to whether any show cause notice was issued to the petitioner before passing an order imposing punishment. Identical case came up for consideration before this Court in W.P.No.17698 of 2013 wherein this Hon’ble Court after referring to the judgments of the Supreme Court in ***Kulwant Singh Gill vs. State of Punjab***¹ and ***Executive Director, Syndicate Bank vs. K.C. Arya***² and also the Regulations of the respondent-Corporation, modified the punishment imposed on the petitioner therein. Relevant portion of the order reads as under:

“ ... I deem it appropriate to dispose of the Writ Petition by modifying the punishment of deferment of increment for a period of one year which shall have its effect on his future increments is modified and shall be read as stoppage of increment for a period of one year simplicitor without any effect on his future increments and pay. The final order dated 15.02.1993 passed by the disciplinary authority as confirmed by the review authority by the order impugned is set aside to the extent indicated above.”

Another ground urged by the learned Standing Counsel for the respondent-Corporation is that there is abnormal delay in filing the writ petition. It is his case that no explanation is forthcoming from the petitioner, for such abnormal delay in challenging the

¹ 1990 II LLN 1019

² 1996-LLJ-2-727

proceedings. The aspect of delay came up for consideration before a Division Bench of this Court in W.A.No.340 of 2006 & batch, which were disposed of by a common judgment dated 10.04.2006. Relevant observations made by the Division Bench are as follows:

“The learned Standing Counsel appearing for the appellant-Corporation contended that the learned single Judge ought not to have allowed the delayed Writ Petition and when the respondents did not avail the remedy of appeal available under Rules 22 and 29 of the Regulations.

In regard to the delay, the appellant cannot take recourse to any action which is contrary to law and affects the substantive rights of the employees. And, when it is found that the impugned action is wholly unsustainable, there cannot be any bar for exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India irrespective of the remedies as available under the Regulations. In fact, it is the consistent erroneous stand all along of the appellant-corporation that in such a situation, the penalty imposed would only fall within the minor penalty; hence no regular enquiry need be necessary. We do not find any legal justification in support of the stand taken by the appellant-Corporation. Having regard to the aforesaid reasons and in view of the principles as laid down by the Apex Court, we hold that under Rule 8 (iv) of the Regulations framed by the Corporation itself in withholding of increments with cumulative effect would squarely be a major penalty and it would attract the regular procedure under the Regulations for an enquiry after following due notice and opportunity.”

Having regard to above, it would be appropriate to dispose of the present Writ Petition by modifying the punishment imposed on the petitioner as follows:

“The punishment of deferment of increment for a period of one year which shall have its effect on his future increments is modified and shall be read as stoppage of increment for a period of one year simplicitor without any effect on his future increments and pay. The final order dated 10.11.2010 and modified by the review authority is set aside to the extent indicated above.”

Accordingly, the Writ Petition is allowed-in-part, as indicated above. Further, the respondent-Corporation is directed to re-fix the scale of pay of the petitioner as per the above directions and pay the difference amount to him as early as possible preferably within a period of three months from the date of receipt of a copy of this order.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

17.04.2017
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JUSTICE C. PRAVEEN KUMAR