

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.4451 of 2006

ORDER:

The petitioner workman filed this writ petition, under Article 227 of the Constitution of India, to declare the final order, dated 10.10.1998, in Proceedings No.01/ 2(6)/ 98-DM:BNS issued by the respondent as illegal, and arbitrary and set the same aside and grant the consequential benefits including arrears.

2. I have heard the submissions of *Sri S.A.K.Mynuddin*, learned counsel appearing for the petitioner and of *Sri A.Ravi Babu*, learned Standing Counsel for the respondent-APSRTC (now TSRTC). I have perused the material record.

3. To begin with, it is appropriate to refer to the charge formulated against the petitioner, which reads thus:

For having driven the Vehicle No.AP 9 Z 1517 in a rash and negligent manner without taking any precautionary measures while parking the vehicle on platform due to which one passenger who is waiting at bus station Bhainsa as a result of which injuries caused to the passenger at about 20.00 hours on 13.4.1998 while performing 12.00 hours Kubeer (S) service, which is a serious misconduct in terms of Reg. 28 (ix) of APSRTC Employees (Conduct) Reg., 1963.

The penalty that was imposed without conducting a domestic enquiry reads thus:

Withholding the annual increment for a period of one year, which shall have its effect of postponing future increments.

4. The counsel for the workman contended as follows:

The Depot Manager of the Corporation/ Respondent herein having issued a charge sheet and having received the explanation of the petitioner/ driver, without considering the explanation, issued final order dated 10.10.1998, imposing the penalty of withholding the annual increment for a period of one

year, which shall have its effect of postponing future increments. Thus, a major penalty was imposed without conducting an enquiry. The penalty imposed is a major penalty under the Regulations and that for imposing such penalty, a domestic enquiry must invariably be held and that in the case on hand, admittedly, no enquiry was held, but, a major penalty was imposed and, therefore, the proceeding impugned is liable to be set aside.

5. On the other hand, the learned counsel for the respondent/ Corporation submitted as follows:

Part - IV of the Regulations deals with 'Discipline and Penalties'. As per item (iv) of clause 1 of regulation 8, withholding of increments is a minor penalty. Regulation 12 deals with the procedure for imposing penalties. Regulation 12 (2) says that no order imposing on an employee any of the penalties specified in items (vii) (viii) and (ix) of Clause 1 of Regulation 8 shall be passed except after an enquiry is held as far as may be in the manner provided in the Regulations. Therefore, for imposing penalties under the items (vii), (viii) and (ix) of Clause 1 of Regulation 8 only a domestic enquiry is a condition precedent. However, for imposing a penalty under item (iv) of clause 1 of regulation 8, namely, withholding of increments, no enquiry is contemplated under the Regulations. Further, Regulation 16 dealing with 'withholding of increments' mandates that in ordering the withholding of an increment, the authority passing the order shall state the period for which it is withheld and whether the postponement shall have the effect of postponing future increments. In view of the Regulations, the penalty imposed by the disciplinary authority is a minor penalty. Therefore, no domestic enquiry was necessary for imposing such penalty. Hence the writ petition is liable to be dismissed.

5.1 The learned counsel for the Corporation while disputing the correctness of the submissions of the learned counsel for the petitioner and

while reiterating the stand of the Corporation that the penalty imposed is a minor penalty alternatively contended that in case, this Court comes to the conclusion that the penalty imposed is a major penalty, the matter may be remitted with directions to the Disciplinary Authority to impose an appropriate punishment, which the Corporation intends to impose, by following the procedure under the Regulations,.

6. In the light of the facts and the submissions, the important question is whether the punishment, viz., 'withholding the annual increment for a period of one year, which shall have its effect of postponing future increments' is a minor penalty or a major penalty, as per the Regulations of the Corporation.

7. Before proceeding further, it is necessary to refer to the relevant Regulations. Part-IV of the Regulations deals with 'discipline and penalties'.

The following Regulations read thus:

8. Penalties:

(1) The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon an employee, namely:-

- (i) censure;
- (ii) withholding of the privilege of free passes or privilege ticket orders or both for travel on the railway or the bus services of the Corporation, as the case may be, in the case of employees to whom such privilege or privileges are admissible;
- (iii) fine, in the case of persons for whom such penalty is permissible under these Regulations, vide sub-clause (3);
- (iv) withholding of increments;
- (v) recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by an employee's negligence or breach of orders;
- (vi) suspension, where a person has already been suspended under Regulation 18 pending enquiry into his conduct, to the extent considered necessary by the authority imposing the penalty;
- (vii) reduction to a lower rank in the seniority list or to a lower post or timescale, whether in the same class of service or in another class, or to a lower stage in a time-scale;
- (viii) removal from the service of the Corporation which does not disqualify from future employment;
- (xi) dismissal from the service of the Corporation which ordinarily disqualifies from future employment.

12. Procedure for imposing penalties:

- (1) No order imposing any of the penalties specified in items (i) to (vi) of clause (I) of Regulation 8 shall be passed except after ---

(a) the employee concerned is informed in writing of the proposal to take action against him and of the allegations on which action is proposed to be taken and is given an opportunity to make any representation he may wish to make; and

(b) such representation, if any, is taken into consideration by the authority imposing the penalty.

The record of proceeding in such cases shall include a copy of the intimation to the employee of the proposal to take action against him, a copy of the statement of allegations communicated to him, his representation, if any, the findings arrived at on the allegation with reasons therefore and the orders passed on the case by the authority competent to impose the penalty.

- (2) No order imposing on an employee any of the penalties specified in items (vii) (viii) and (ix) of clause (1) of regulation 8 shall be passed except after
- (3) The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges and communicated to the employee charged together with statement of the allegations or a copy of the report on which each charge is based, and of any other circumstances which it is proposed to take into consideration in passing orders on the case.
- (4) The employee shall be required within such time as may be considered by the enquiring authority reasonably adequate in the circumstances of the case (ordinarily not less than seven clear days from the date he receives the charge sheet) to put in a written statement of his defence.
- (5) The employee charged shall, if he so desires, for the purpose of preparing his defence, be permitted to inspect and take extracts from such official records as he may specify,

Provided that the enquiring authority, may, for reasons to be recorded in writing, refuse him such access if in its opinion –

(c) such records are not relevant for the purpose of or it is against the public interest to allow access thereto;

(d) Such records are of a secret or confidential nature, provided that the substance of such records is communicated to the delinquent employee

- (6) If within the prescribed time or such further time as the Enquiring Authority may allow no written statement in defence is filed and no request for being heard in person is received, the Enquiring Authority may proceed to record his findings without holding any further enquiry.
- (7) If the employee charged desires to be heard in person, or if the Enquiring Authority considers it necessary to hear him in person, he shall be so heard by the Enquiry Authority. If he desires that an oral Enquiry be held or if the Enquiring Authority or the authority competent to impose the penalty considers it necessary an oral Enquiry may be held by the Enquiring Authority into such charges as are not admitted.
- (8) The Enquiring Authority shall in the course of the Enquiry consider such documentary evidence and take such oral evidence as may be relevant or material to the charges. The employee concerned shall be entitled to cross examine any witness examined by the enquiring authority. If the Enquiring Authority declines to examine any witness, it shall record its reasons in writing.

- (9) The statements made by the employee and the witnesses, if any, shall be recorded either in English or in the language in which they are made, according as the Enquiring Authority may decide. The Enquiring Authority may put such questions as it may deem necessary to the employee or to the witnesses, to elicit information on any points which, in its opinion, require clarification. The statement so recorded shall be read over to the deponent and; if necessary or the Enquiring Authority may make a memorandum of the objection, if any, raised by the deponent and add such remarks as it may consider necessary. The statement shall then be signed by the deponent, by the employee charged, if he himself is not the deponent, and by the Enquiry Authority. The employee charged may, if he so desires, be allowed to take copies of the statements so recorded.
- (10) At the conclusion of the Enquiry, the Enquiring Authority shall prepare a report of the enquiry, record its findings on each of the charges with reasons therefor, and forward the proceedings of the enquiry to the authority competent to impose the penalty, unless the Enquiring Authority is itself competent to do so. The proceedings of the enquiry shall contain the charges framed against the employee along with the grounds of the charge, the written statements, if any filed in defence, the oral evidence taken during the enquiry, the documentary evidence considered in the course of the enquiry, the orders if any, made by the Enquiring Authority in regard to the enquiry, and a report setting out the findings on each charge and the reasons therefore.
- (11) If in the opinion of the Enquiring Authority the proceedings of the enquiry establish charge different from those originally framed, it may record findings on such charges, provided that findings on such charges shall not be recorded unless the employee has admitted the facts constituting them or has had an opportunity of defending himself, against them.
- (12) The authority competent to impose the penalty shall, if it is not the Enquiring Authority, consider the proceedings of the enquiry and record its findings on each charge.
- (13) The authority competent to impose the penalty shall then determine what penalty, if any, should be imposed on the employee, and pass appropriate orders on the case. If the penalty proposed to be imposed is one of the penalties specified in items (vii) (viii) and (ix) of the Regulation 8, he should be given an opportunity to show cause why the said penalty should not be imposed.
- (14) If the authority competent to impose the penalty having regard to its findings is of the opinion that any of the penalties specified in items (i) to (vi) of Clause (1) of Regulation 8 would be adequate, it shall pass appropriate orders on the case."

16. Withholding of increments:

In ordering the withholding of an increment, the authority passing the order shall state the period for which it is withheld and whether the postponement shall have the effect of postponing future increments.

8. I have gone through all the relevant Regulations including the Regulations referred to supra. A plain reading of the relevant regulations makes it manifest that for imposing upon an employee any penalty specified in items (vii), (viii) and (ix) of clause 1 of Regulation 8, an enquiry has to be held in the manner prescribed. However, for imposing other specified penalties, no enquiry is contemplated under the Regulations. Item (iv) of clause 1 of regulation 8, dealing with 'withholding of increments' does not make a distinction between 'withholding of increments' and 'withholding of increments with cumulative effect'. All kinds of penalties whether cumulative or not are comprised in the said item of Clause 1 of Regulation 8 dealing with 'withholding of increments'. Further, Regulation 16 dealing with 'withholding of increments' mandates that in ordering the withholding of an increment, the authority passing the order shall state the period for which it is withheld and whether the postponement shall have the effect of postponing future increments. In that view of the matter, the learned counsel for the respondent/ Corporation contends that the penalty imposed is categorised as a minor penalty in the Regulations. Per contra, the learned counsel for the workman/petitioner reading the items (vii), (viii) and (ix) of Clause 1 of Regulation 8 would contend that the penalty imposed not being 'withholding of increments' simpliciter and being one of withholding increments with cumulative effect is a major penalty, even as per the Regulations of the Corporation, and that the Regulations are to be read in entirety and harmoniously and that if the Regulations are so read, it is clear that the penalty imposed is a major penalty.

9. In the case on hand, while imposing the punishment of withholding the annual increment for a period of one year, which shall have its effect of postponing future increments, the Corporation followed Regulation 8(1)(iv) dealing with the penalty of withholding increments and Regulation 16, whereby the authority passing the order of withholding an increment is required to state

the period for which it is withheld and its effect on postponing the future increments.

10. Now that the Regulations are examined, it is now necessary also to deal with the decisions cited by the learned counsel.

10.1 In *Executive Director, Syndicate Bank v. K.C.Arya*¹, relied upon by the learned counsel for the Corporation, the facts are as under: 'A penalty of withholding of one increment with cumulative effect was imposed upon the delinquent employee of the Syndicate Bank separately in two proceedings and the procedure that was adopted for imposing the said penalty was that prescribed for imposing minor penalty in the Regulations; two separate writ petitions were filed by the employee; the High Court allowed the writ petitions on the ground that the penalty is a major penalty and it could be imposed only after following the procedure laid down for imposing of a major penalty; a Division Bench of the High Court dismissed the appeals (L.P.As) preferred by the Bank; therefore, the Bank preferred the appeals before the Supreme Court.' In this setting of facts of the cited case, the Supreme Court first noted that the scheme of Regulations differ from that of the Punjab Rules, which were considered in the case of *Kulwant Singh Gill v. State of Punjab*² [1991 supp (1) SCC 504], because in Regulation No.4(b) of the Regulations of the Syndicate Bank, it is expressly provided that withholding of increment of pay with cumulative effect is a minor penalty. The Supreme Court then further noted that since Regulation 4(b) of the Regulations expressly prescribes that withholding of increment with cumulative effect is a minor penalty, which was not so in Rule 5(iv) of the Punjab Rules, as emphasized in *Kulwant Singh Gill*'s case (2 supra), and held that the imposition of the said penalty of withholding of increment with cumulative effect by following the procedure prescribed for imposition of minor penalties cannot be held to be in violation of the

¹ 1996 (2) LLJ 727

² 1991 supp (1) SCC 504

Regulations of the Syndicate Bank and allowed the appeals and set aside the orders of the learned Single Judge as well as the Division Bench of the High Court.

10.2 However, a learned Single Judge of this Court in *S.K.Mastan v. Managing Director, APSRTC*³, while dealing with the Regulations of the Corporation, having noted that the 3rd respondent-management did not hold a regular departmental enquiry envisaged under the regulations before imposing a penalty of denial of two increments with cumulative effect as a disciplinary measure against the petitioner, held that it is well settled that denial of increments with cumulative effect would tantamount to major penalty, and such penalty cannot be imposed by the disciplinary authority without holding a regular departmental enquiry in terms of relevant service regulations. In this cited case, as no regular enquiry as envisaged under the Regulations was admittedly held, the learned judge quashed the impugned proceedings of the Corporation.

10.3 In *Depot Manager, APSRTC, Anantapur v. K.Adi Reddy*⁴, a Division Bench of this Court, while dealing with the scope of the Regulations, held that withholding of increment with cumulative effect would be a major penalty attracting regular procedure for an enquiry under the regulations.

10.4 In *P.V.Narayana v. A.P.State Road Transport Corporation rep. by its Managing Director*⁵, while answering a reference, the learned Judges of a Full Bench of this Court noted that a learned Single Judge, by order under reference, dated 17.7.2012, held that withholding of increment with cumulative effect is a major punishment under the APSRTC Regulations and the Labour Court committed an error in holding that stoppage of increment with cumulative effect is a minor penalty. The Full Bench having noted that though,

³ 1999 (2) ALD 586

⁴ 2006 (4) ALT 566 (D.B)

⁵ 2013 (3) ALT 711 (F.B)

in the reference, it is not concerned with the said question, however, went on to briefly refer to the said issue having found that the same has a relevance to the core issue referred to the Full Bench for resolution.

10.4.1 It is apposite to note that the Full Bench while dealing with the Regulations of the Corporation held as follows: “Regulation 8(1) (iv) of the Regulations provides for imposing of penalty of withholding of increments. Clause (1) of Regulation 12 provides that the punishments covered by Regulation 8(1)(i) to 8(1)(vi) shall not be imposed except after the employee concerned is informed in writing of the proposal to take action against him and of the allegations on which action is proposed to be taken and is given an opportunity to make any representation he may wish to make and such representation, if any, is taken into consideration by the authority imposing the penalty. Clause (2) of Regulation 12, however, provides that no order imposing any of the penalties specified in items (vii) to (ix) of Clause (1) of Regulation 8 shall be passed on an employee except after an enquiry is held as far as may be in the manner provided. Regulation 8(1)(iv) does not specify whether withholding of punishment (sic. increment) is with cumulative or without cumulative effect. Clause 1 (vii) of Regulation 8 provides the penalty of reduction to a lower rank in the seniority list or to a lower post or time scale, whether in the same class of service or in another class, or to a lower stage in a time scale.”

10.4.2 It is apt to also note that the Full Bench noted that in Kulwant Singh Gill's case (supra) the Supreme Court held that withholding of an increment which had the effect of reduction to a lower stage in the time scale was a major penalty and required prior enquiry and that therefore, it would be incumbent on the part of the Corporation to conduct a detailed enquiry before imposing the penalty of withholding of increments with cumulative effect. In the case under consideration of the Full Bench, the Corporation has not

conducted any enquiry as required in law but imposed the major penalty of withholding of increments with cumulative effect and that before the Labour Court the judgment of the Supreme Court in Kulwant Singh Gill's case (1 supra) was not considered and that the Labour Court considering the decision of the Supreme Court in Executive Director, Syndicate Bank and others v. K.C.Arya and another) where in the regulation of the Bank specifically provided that withholding of increment with or without cumulative effect is a minor penalty, held that the punishment imposed is a minor penalty. Thus, the Full Bench of this Court considered both the decisions in Kulwant Singh Gill's case and K.C.Arya's case and the Regulations of the Corporation and finally held as follows:

“ In Y.Rangareddy v. The A.P.S.R.T.C Nizamabad Region rep. by its Regional Manager, Nizamabad (2) W.P.No.17698 of 2000 dated 30.10.2008 a learned Judge of this Court following the law laid down in Kulwant Singh Gill's case (1 supra) held that withholding of increments simpliciter is a minor punishment under Regulation 8(1)(iv) of the Regulations, but once such withholding of increments is to have effect on future increments, it would amount to a major punishment and fall under Regulation 8(1)(vii). Obviously, because such punishment would amount to reduction to a lower stage specified in Clause 1(vii) of Regulation 8 in a time scale, in which event, Clause (2) of Regulation 12 will come into operation which says that no order imposing penalties specified in items (vii), (viii) and (ix) of clause (1) of Regulation 8 shall be passed except after an enquiry is held. As held by the Supreme Court in Kulwant Singh Gill's case (1 supra) imposing of punishment of withholding of an increment which has effect on future increments amounts to a major punishment and the same cannot be imposed without conducting prior enquiry. Therefore, the Division Bench held that withholding of an increment which has effect on future increments amounts to a major punishment under the APSRTC's Regulations, requiring prior enquiry. A Division Bench of this Court dealing with a batch of cases in Depot Manager, APSRTC, Anantapur District v. K.Adi Reddy (3) 2006(4) ALT 566 (D.B) = 2006 (4) ALD 501 (D.B) affirmed the said principle. After referring to the above decisions, the learned Single Judge by the order under reference dated 17.7.2012 held that under the APSRTC's Regulations withholding of an increment with cumulative effect would be a major penalty, therefore, the Labour Court ought not to have taken contrary view by relying upon the Regulations of

Syndicate Bank which have no application to the Corporation and to the said extent the order of the Labour Court is not justified.”

In view of the decision of the Full Bench which squarely covers the issue, this Court holds that the penalty imposed in the instant case, viz., ‘withholding the annual increment for a period of one year, which shall have its effect of postponing future increments’, is a major penalty and the Corporation ought not to have imposed the said penalty without holding an enquiry by following the procedure prescribed under its Regulations.

11. On the above analysis, this Court finds that the Writ Petition has to succeed. However, since the major penalty that was imposed without an enquiry deserves to be set aside and as a sequel, an appropriate punishment has to be now imposed against the delinquent employee, the matter requires to be remitted to the Disciplinary Authority for doing the needful in the matter in accordance with the Regulations of the Corporation and the procedure established by law.

12. In the result, the Writ Petition is allowed and the proceeding/final order, dated 10.10.1998, in Proceedings No.01/ 2(6)/ 98-DM:BNS issued by the respondent is hereby set aside and the matter is remitted to the Disciplinary Authority for doing the needful in the matter in accordance with the Regulations and the procedure established by law.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

22nd February, 2017
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