

CM No.1337-C of 2017 in/and
RSA No.1981 of 1996

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 03.02.2017

CM No.1337-C of 2017 in/and
RSA No.1981 of 1996

State of Punjab & another

...Appellants

Vs.

Jagdish Chander

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.S.Chahal, Advocate, for the applicant-respondent.

RAJIV NARAIN RAINA, J. (ORAL)

CM No.1337-C of 2017

Notice of the application to the non-applicant respondent.

Mr. Anil Sharma, Additional Advocate General, Punjab, who is present in Court, accepts notice on behalf of the non-applicant/appellants and submits that he has no objection if the main appeal be heard today itself.

Consequently, the application is allowed and the arguments in the main appeal heard.

RSA No.1981 of 1996

It is a matter of surprise, and unfortunately so, that the Additional District Judge, Gurdaspur did not even care to read the bare provisions of Rule 5(v) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, when he allowed the appeal and set aside the judgment and decree of the trial court and consequently the punishment order inflicted on the plaintiff-respondent, which adverse order was challenged in the suit. Rule (v) of the rules prescribes punishment of reduction to a lower stage in the time-scale of a pay for a specified period, with further directions as to

whether or not the Government employee will earn increments of pay during the period of such reduction 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.

I can visualize the lower appellate court, if at all it picked up the rule book to acquaint himself with the wording of the bare Rule 5, he stopped short at the end of reading the list of minor punishments from (i) to (iv) of Rule 5 which enumerates punishment of withholding of increments as minor. The Judge restricted his understanding to Rule 5(iv) and hurriedly concluded that there is no punishment prescribed in the rules of withholding increments of pay with cumulative or permanent effect. His search stopped within the minor penalties and thereby reached an illogical conclusion that punishment imposed withholding increments with permanent effect could not be imposed. The lower appellate court paid no regard to the first of the list of Major Penalties in Rule 5(v) and what the rule signifies and authorizes without reading even a single precedent of this Court, rulings of the Supreme Court and other High Courts from the sea of case law on the subject existing and available in the Reports interpreting Rule 5(v) of the Rules, 1970 settling the issue before hazarding the appellate judgment on November 23, 1996.

Such punishment was and is eminently available to disciplinary authority on proof of commission of major civil misconduct committed by a delinquent employee. The work in first appeal shows complete lack of probity and a spirit of inquiry and utter disregard to the law and the same, therefore, cannot be sustained in law or in fact being an order rendered *per incuriam*.

Accordingly, the State appeal has to succeed. The judgment of the lower Appellate Court is set aside and that of the trial Court is restored. The suit is dismissed.

03.02.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>