

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

CWP No.7410 of 2016
Date of decision: 18.04.2017

Director, State Transport, Punjab and anr.

.... Petitioners

vs

President/General Secretary, Punjab Roadways
Karamchari Dall, Punjab and anr.

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ajaib Singh, Addl. AG, Punjab.

RAJIV NARAIN RAINA, J. (ORAL)

There is no reason to keep this case pending since it has to be dismissed on merits. The State has filed the writ petition against the award passed by the Presiding Officer, Labour Court, Chandigarh in IDR No.151 of 2009 praying that it deserves to be set aside. The respondents have remained without service of notice due to incorrect address. The office report on the summons confirms that on the record of the High Court the process serving agency notes that there is no person of the name of the respondent working with the Punjab Roadways. Attempts to serve have borne no fruit. Even presently, the first respondent remains unserved for want of correct address.

I do not find any necessity to issue fresh notice to the affected respondent because I am of opinion that the petition deserves to be dismissed on the short ground that the respondent was inflicted major punishment under clause (v) of Rule 5 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 withholding one increment with

cumulative effect and the order is not sustainable in law. The punishment order has been passed without holding a regular inquiry and the procedure prescribed in Rule 8 and 9 have not been observed. The law is clear on the subject matter as held by the Supreme Court in Kulwant Singh Gill vs. The State of Punjab, 1991 SCC Supl. (1) 504 : 1991(1) RSJ 413 (SC) that withholding increments with permanent effect is a major penalty which cannot be imposed without conducting an enquiry and if it is inflicted the order is per se illegal and void. In this case the grievance of the respondent employee has been espoused by the Union of workman to make it a industrial dispute under Section 2 (k) of the Industrial Disputes Act,1947 in support the case of the workman before the Labour Court.

The Labour Court has set aside the punishment order bearing No.28842 dated 15.11.1985 etc. and has directed the punishing authority, namely, the Punjab Roadways to determine the arrears of increments, which were stopped as a result of the illegal order, effective from the date of demand notice i.e. 25.01.2008 and not prior thereto. Three months time was given for implementation of the award dated 14.10.2014 and I see no reason why the award should not be upheld as it is based on sound reasons.

The only question which remains to be examined is whether the parties should be put back to the position where the error occurred by following the principle evolved in Managing Director ECIL v. B. Karunakar, AIR 1994 SC 1074 by granting liberty to the management to conduct an inquiry on the misconduct allegedly committed by the workman, who was a conductor in the Punjab Roadways accused of defalcation of money, so as to cure the lacuna.

I have considered this aspect. Far too much time has elapsed

between the infliction of punishment and its cure if the principle in *Karunakar* is followed. Having regard to the fact that the punishment order was passed in the year 1985 i.e. 32 years ago, it will serve no useful purpose to make such an order when oral or documentary evidence may not be available or witnesses found to depose.

The writ petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

18.04.2017

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| 1. <i>Whether speaking/non-speaking?</i> | <i>Yes</i> |
| 2. <i>Whether reportable/non-reportable?</i> | <i>No</i> |