

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 1720 of 2008**

Laxmi Narayan Dubey, Aged about 48 years, S/o. Shri J.P. Dubey,
Assistant Professor (Economics) Govt. College, Bilha, District Bilaspur,
Chhattisgarh

---- Petitioner**Versus**

1. The State of Chhattisgarh, Through Secretary to the Govt. of Chhattisgarh, Department of Higher Education, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh.
2. The Commissioner, Department of Higher Education, Govt. Science College Parisar, Raipur, Chhattisgarh
3. The Director, Department of Higher Education, Govt. Science College Parisar, Raipur, Chhattisgarh

----Respondents

For Petitioner	:	Mr. Anurag Dayal Shrivastava, Advocate
For State	:	Mr. Ashutosh Pandey, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****20/07/2018**

1. The order under challenge is Annexure P/1 dated 13.02.2008 whereby the petitioner has been inflicted with a punishment of stoppage of three annual increments without cumulative effect.
2. The counsel for the petitioner submits that the impugned order is bad in law and is not sustainable for the simple reason that the respondents do not have any basis for issuance of the same. He submits that initially the petitioner was issued with a charge sheet for major misconduct on 29.09.2000 and the department thought it fit for conducting a departmental enquiry. Half way through the department abruptly dropped the departmental enquiry and have issued with the impugned order Annexure P/1 imposing a minor punishment as envisaged in Annexure P/1.

3. The counsel for the petitioner submits that the said impugned order is without affording any opportunity of hearing to the petitioner and is in violation of the basic principles of natural justice. He further submits that even otherwise the reading of Annexure P/1 itself would show that there is no reason assigned nor can the order said to be a speaking order so far as depicting the grounds on which the respondents holds the petitioner guilty.
4. According to the petitioner unless the respondents conduct atleast a preliminary investigation and reached to the conclusion proving the guilt against the petitioner, he cannot be inflicted with punishment, even if it is a minor punishment and thus prayed for quashment of the same.
5. The State counsel on the other side submits that Annexure R/2 is a document which is an affidavit on the part of the petitioner, wherein the petitioner has admitted most of the allegations which have been leveled against him and as such it cannot be said that the respondents have committed any error in dropping the departmental enquiry punishing the petitioner with a minor punishment and prayed for rejection of the petition.
6. Having heard the contentions put forth on either side and on perusal of record, what is undisputed is that even after the submission of the affidavit Annexure R/2 by the petitioner to the department. The respondents thought it fit for conducting a departmental enquiry against the petitioner and for which an inquiry officer and a presenting officer were appointed. The respondents were supposed to conduct the departmental enquiry and reached to a logical conclusion proving the

guilt against the petitioner if they all intended to punish the petitioner for his misdeed.

7. The respondents having not done so, minus the proceedings there does not appear to be any other material available with the respondents with which it could be said that allegations against the petitioner stands proved or by which he can be held guilty of having committed misconduct, which is alleged against the petitioner.
8. At this juncture, it would be relevant to refer to the decision of the Hon'ble Supreme Court in the case of **"O.K. Bhardwaj v. Union of India & Ors."** (2001) 9 SCC 180, wherein in paragraph No.3 of the judgment it has been held as under:-

"(3) While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with."

9. Likewise again in the case of **"State of Bihar & Anr. v. Lakshmi Shankar Prasad"** (2002) 10 SCC 351, the Hon'ble Supreme Court under similar circumstances in paragraph No.3 of its judgment has held as under:-

"3. ...After the initiation of the fresh proceeding, though an explanation was called for from the

delinquent, but the impugned order of punishment indicates that the disciplinary authority has not recorded a finding about the guilt of the delinquent of different charges which were levelled against him as well as the consideration of the explanation given by the delinquent to the charges levelled against. In such circumstances, the High Court was fully justified in interfering with the order of punishment on a conclusion that the disciplinary authority did not record a finding about the guilt of the delinquent nor has it recorded any reasoning for arriving at such conclusion.”

10. Given the aforesaid legal positions as it stands, if we peruse the facts of the present case, it stands establish that the petitioner in the instant case was prosecuted in a departmental proceedings for an act of major misconduct, but the departmental enquiry was not concluded and half way through the enquiry was dropped and the petitioner was inflicted with a minor punishment.
11. In the light of the judgment quoted herein above, this Court is of the opinion that unless and until the respondents would reach to the conclusion of holding that the petitioner guilty of the misconduct either in a preliminary enquiry or in a departmental enquiry, he could not have been inflicted with a punishment. The impugned order Annexure P/1 therefore is not sustainable and the same deserves to be and is accordingly set-aside/quashed, consequences to follow.

Sd/-
(P. Sam Koshy)
Judge

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CONT No. 336 of 2019

1. Laxmi Narayan Dubey, S/o Shri J.P. Dubey, Aged About 58 Years,
Assistant Professor Economics Government Mata Shabari Naveen
Girls P G College, Bilaspur, District : Bilaspur, Chhattisgarh

---- Applicant

Versus

1. Shri Surendra Kumar Jaiswal, Secretary To The Government Of
Chhattisgarh, Department Of Higher Education, Indrawati Bhawan,
Atal Nagar - Raipur, District : Raipur, Chhattisgarh

---Respondent

For Applicant	:	Mr. Anurag D. Shrivastava, Advocate
For State	:	Mr. Jitendra Pali, Dy. Adv. General

Hon'ble Shri Justice P. Sam Koshy

Order on Board

21.11.2019

1. The present Contempt Petition is filed alleging non-compliance of the Order dated 20.07.2018 passed in WPS No. 1720 of 2008 by his Hon'ble Court.
2. The writ petition was filed challenging the order dated 13.02.2008; whereby the petitioner was inflicted with punishment of three annual increments without cumulative effect. This Hon'ble Court had allowed the writ petition and quashed the order of punishment, thereby the petitioner became entitled for the three annual increments.
3. The applicant/petitioner has filed the present contempt petition alleging non-compliance of the said order. Per contra, the

respondents have filed their reply and submitted that the three annual increments have not been deducted. According to the counsel for the respondent, the punishment order could not be implemented inasmuch as inadvertently while implementing the benefits arising out of the revision of pay that took place from 01.01.2006, the petitioner/applicant has been granted the benefit of revised pay-scale, without making any deductions, so far as the punishment order dated 13.02.2008 is concerned.

4. At this juncture, the counsel for the petitioner/applicant submits that the revision of pay came into force in the year 2010 w.e.f., 01.01.2006. During the intervening period, the petitioner has been denied the annual increment receivable by him for the year 2009, which fell due on July, 2009.
5. From the aforesaid contentions of the counsel for the applicant, it is apparently clear that the applicant/petitioner has been granted the annual increment for the other two years.
6. Given the said facts, this Court is of the opinion that the Order passed by this Court stands complied-with.
7. However, so far as the contention of the counsel for the applicant/petitioner is concerned, as regards non-receiving of the annual increment for the year 2009, which fell due in July, 2009 is concerned, the said facts is one which can be duly verified by the respondent. The respondent/contemnor is directed to re-verify the annual increment payable to the petitioner/applicant, particularly ascertaining whether the petitioner/applicant has been granted the

benefit of annual increment for the year 2009 as regards the increment, which fell due in July, 2009 and in case, if the same is actually paid to the petitioner/applicant then nothing further has to be done.

8. However, in case if there was a stoppage of one annual increment given effect to in 2009 or applicant was denied of the said benefit and if the said benefit has not been extended to the petitioner/applicant while implementing the revised pay-scale and grant of arrears by the respondents thereof, the said difference should be paid to the petitioner/applicant, at the earliest.
9. With the aforesaid observations, the present Contempt Petition stands disposed-off.

Sd/-
P. Sam Koshy
Judge
