

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WA No. 127 of 2018**

- K.S. Gendre S/o Shri Bir Singh Gendre, Aged About 63 Years, Lecturer (Retired), R/o Ward No.14, Amapara, Balod, Tahsil And District- Balod (CG) (Petitioner)

**---- Appellant**

**Versus**

1. State Of Chhattisgarh Through The Secretary, School Education Department, Indravati Bhawan, Mantralaya, New Raipur (CG)
2. The Commissioner, Lok Shikshan Sanchanalaya Raipur (CG)
3. The District Education Officer, District Durg, (Now District- Balod) (CG)
4. The Block Education Officer, Balod, District- Durg, (Now District- Balod) (CG)

**---- Respondents**

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| For Appellant   | : | Shri D.N. Prajapati, Advocate     |
| For Respondents | : | Shri UNS Deo, Government Advocate |

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**Hon'ble Shri Ajay Kumar Tripathi, CJ**  
**Hon'ble Shri Parth Prateem Sahu, J**

**Order on Board**

**Per Ajay Kumar Tripathi, CJ**

**01/11/2018**

1. The appellant, who was holding the post of Lecturer in the High School, Badhbhum, District Balod, came to be proceeded departmentally for his bad conduct and behaviour in the office with his superiors and on the charge of approaching senior officers directly without permission. After due enquiry, the basic finding emerged against him and based on the finding of the Enquiry Officer, the Disciplinary Authority imposed punishment of withholding of three annual increments with cumulative effect.

2. The appellant was incensed because of his perception that he was entitled to certain increments by virtue of length of service and post to which he was promoted, however the concerned competent authorities were not paying any heed. He had made repeated visits to the office of the competent authorities and when he did not receive suitable response, he even called upon the superior authority. All this was treated to be misconduct on the part of the appellant, not befitting a government servant.
3. Writ application was moved against the order of punishment dated 8.7.2009 which was dismissed by the learned Single Judge taking a view that judicial review under Article 226 of the Constitution of India has to be confined to the procedural infirmities in the decision making process and not to examine the merits of decision itself. It has also been recorded by the learned Single Judge that necessary foundational pleadings were missing in the writ application, therefore, he dismissed the writ. The appellant aggrieved by such a decision has preferred this writ appeal.
4. As a proposition of law or principles which may have been taken note of by the learned Single Judge, it cannot be said to be erroneous, but in our opinion the learned Single Judge has not taken a holistic view of the matter or bothered to examine the totality of reasons which led to departmental enquiry and whether the order of punishment satisfied the principles of proportionality, meaning thereby whether the punishment on the findings was shocking to the conscience or not.
5. We have examined the records. The appellant belongs to scheduled caste category, he gained entry into service and over a period of time earned promotion to the post of Lecturer in a school. He was of the firm opinion that he was entitled to a particular pay-scale and he found certain

discrepancies in the kind of salary which he was drawing vis-a-vis some of similarly placed persons. He perceived discrimination, therefore, he started raising and agitating the issue before the superior authorities and when repeated visits did not beget him the suitable response, obviously it incensed him enough to bypass the said authority and approach a superior from whom he had better hopes and expectations. However, such indiscretion came to visit him with an order of suspension then a departmental enquiry followed by an order of punishment of withholding of three annual increments with cumulative effect, which is a major punishment.

6. We do not propose to hold that a government servant is entitled to be rude and misbehave in office or with the controlling authority but we have also noticed from the report of the Enquiry Officer that if the superior authorities had bothered to examine his grievance and taken a decision within a reasonable time or atleast passed an order whether the revision or increment which he was looking for was available to him or not, the situation could have been avoided.
7. Now, from the record it is also available that the perceived discrimination of the appellant vis-a-vis another colleague was because he had given his option under Section 22-D of the Fundamental Rules, whereas the appellant had not.
8. Be that as it may, the appellant has suffered enough, first by suspension then an enquiry followed by impugned punishment. Keeping in mind his social background and status, we feel that the punishment of withholding of three annual increments with cumulative effect will have a lifelong bearing upon his financial status which will also be reflected in his pension. Therefore, the impugned punishment is disproportionate &

shocking and being so, deserves to be modified to stoppage of one annual increment without cumulative effect.

9. Consequently, the writ petition is allowed to the extent that the punishment imposed by respondent No.3 vide order dated 8.7.2009 is modified to the extent that the order of punishment will be restricted to withholding of one annual increment with non-cumulative effect, which in our opinion will serve the ends of justice.

Sd/-  
(Ajay Kumar Tripathi)  
Chief Justice

Sd/-  
(Parth Prateem Sahu)  
Judge

roshan/-