

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.22377 of 2002

ORDER:

This writ petition is filed seeking to issue a writ of mandamus, declaring the action of the 2nd respondent in imposing a major punishment without conducting departmental enquiry, vide office order, dated 13.12.1993, as arbitrary and illegal, and set aside the same with all consequential benefits including arrears.

Heard Sri P.Govinda Rajulu, learned counsel for the petitioner and Sri A.Ravi Babu, learned standing counsel for the respondents.

It has been contended by the petitioner that he was appointed as a conductor in the respondent corporation and while he was working as a driver, the respondents issued a charge sheet on 03.11.1993, framing two Articles of charges. The petitioner has submitted his explanation to the charge sheet on 19.11.1993, denying the charges. Not satisfied with the explanation submitted by the petitioner, the disciplinary authority has straight away imposed a punishment on 13.12.1993, imposing penalty of deferment of his annual increment for a period of one year, which shall have effect the postponement of his future increments. The petitioner further submitted that on the same identical set of charges, a criminal case was registered against the petitioner in CC.No.802/1993 and the competent criminal court was pleased to acquit the petitioner, vide its judgment, dated 24.09.1997. There afterwards, the petitioner has preferred an appeal to the appellate authority on 01.11.1997, but so far, the appeal has not been decided. In those set of circumstances, the present writ petition is filed, challenging the punishment of deferment of

annual increment. In other words, it is a punishment of deferment of annual increment for a period of one year with cumulative effect.

The learned counsel for the petitioner would contend that imposing of punishment of deferment of annual increment for a period of one year with cumulative effect is a major penalty, and the respondents ought not to have imposed a major penalty without conducting a detailed departmental enquiry. In support of his contention, the learned counsel has relied upon a judgment of the Hon'ble Supreme Court in *Kulwant Singh Gill v. State of Punjab*¹ and contends that no punishment of stoppage of increment with cumulative effect can be imposed without conducting any enquiry.

The learned standing counsel for the respondents has contended that there is a delay of more than 9 years in approaching this court and the punishment imposed by the respondents is on 13.12.1993 and the petitioner has filed this writ petition in 2002 and on this ground only this writ petition is liable to be dismissed and no interference is called for. The learned counsel has relied on a judgment of the Full Bench of this court in *P.V.Narayana v. APSRTC, Hyderabad*².

In *Kulwant Singh Gill v. State of Punjab* (1 supra), the Hon'ble Supreme Court held as under:

“Withholding of increments of pay simpliciter undoubtedly is a minor penalty within the meaning of Rule 5(iv). But sub-rule (v) postulates reduction to a lower stage in the time-scale of pay for a specified period with further directions as to whether or not the Government employee shall earn increments of pay during the period of such reductions and whether on the expiry of such period the reduction will or will not have

¹ 1990(2) SCALE 597

² 2013(4) ALD 386 (FB)

the effect of postponing the future increments of his pay. It is an independent head of penalty and it could be imposed as punishment in an appropriate case. It is one of the major penalties. The impugned order of stoppage of two increments with cumulative effect whether would fall within the meaning of Rule 5(v)? If it so fails Rules 8 and 9 of the Rules require conducting of regular enquiry. The contention of Shri Nayar, learned counsel for the State is that withholding two increments with cumulative effect is only a minor penalty as it does not amount to reduction to a lower stage in the time-scale of pay. We find it extremely difficult to countenance the contention. With- holding of increments of pay simpliciter without any hedge over it certainly comes within the meaning of Rule 5(iv) of the Rules. But when penalty was imposed withholding two increments i.e. for two years with cumulative effect, it would indisputably mean that the two increments earned by the employee was cut off as a measure of penalty for ever in his upward march of earning higher scale of pay. In other words the clock is put back to a lower stage in the time- scale of pay and on expiry of two years the clock starts working from that stage afresh. The insidious effect of the impugned order, by necessary implication, is that the appellant employee is reduced in his time-scale by two places and it is in perpetuity during the rest of the tenure of his service with a direction that two years' increments would not be counted in his time-scale of pay as a measure of penalty. The words are the skin to the language which if peeled off its true colour or its resultant effects would become apparent. When we broach the problem from this perspective the effect is as envisaged under Rule 5(v) of the Rules. It is undoubted that the Division Bench in *Sarwan Singh v. State of Punjab & Ors.*, I.L.R. 1985 2 P & H. 193, P.C. Jain, A.C.J. speaking for the division bench, while considering similar question, in paragraph 8 held that the stoppage of increments with cumulative effect, by no stretch of imagination falls within clause (v) of Rule 5 or in rule 4.12 of Punjab Civil Services Rules. It was further held that under clause (v) of Rule 5 there has to be a reduction to a lower stage in the time-scale of pay by the competent authority as a measure of penalty and the period for which such a reduction is to be effective has to be stated and on restoration it has further to be specified whether the reduction shall operate to postpone the future increments of his pay. In such cases withholding of the increments without cumulative effect does

not at all arise. In case where the increments are withhold with or without cumulative effect the Government employee is never reduced to a lower stage of time scale of pay. Accordingly it was held that clause (iv) of Rule 5 is applicable to the facts of that case. With respect we are unable to agree with the High Court. If the literal interpretation is adopted the learned Judges may be right to arrive at that conclusion. But if the effect is kept at the back of the mind, it would always be so, the result will be the conclusion as we have arrived at. If the reasoning of the High Court is given acceptance, it would empower the disciplinary authority to impose, under the garb of stoppage of increments, of earning future increments in the time scale of pay even permanently with expressly stating so. This preposterous consequences cannot be permitted to be permeated. Rule 5(IV) does not empower the disciplinary authority to impose penalty of withholding increments of pay with cumulative effect except after holding inquiry and following the prescribed procedure. Then the order would be without jurisdiction or authority of law, and it would be per se void. considering from this angle we have no hesitation to hold that the impugned order would come within the meaning of Rule 5(v) of the Rules; it is a major penalty and imposition of the impugned penalty without enquiry is per se illegal.”

This court, having considered the rival submissions made by the parties, is of the considered view that though the respondents have imposed a punishment on 13.12.1993, the petitioner was tried in a criminal court on the very same set of facts in CC.No.802/1993 and the competent criminal court has acquitted the petitioner, vide its judgment, dated 24.09.1997, and there afterwards, the petitioner has preferred an appeal on 01.11.1997, but no orders have been passed so far on the appeal, hence, there is no delay, as contended by the learned standing counsel for the respondents. Therefore, following the judgment of the Hon'ble Supreme Court in *Kulwant Singh Gill v. State of Punjab* (1 supra), this writ petition is liable to be allowed.

Accordingly, the writ petition is allowed, the impugned order, dated 13.12.1993, is set aside. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

ABHINAND KUMAR SHAVILI ,J

Date: 16.08.2018
Dsr

