HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.21453 of 2010

ORDER:

1. This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with I.D.No.111 of 2005 on the file of the Labour Court, Godavarikhhani, and to quash the award dated 26.12.2007 passed therein, and consequently, to direct the respondent to restore the deferred one year annual increment with all consequential benefits including fixation of pay and arrears.

2. Heard Sri P. Govinda Rajulu, learned Counsel for the petitioner and Sri A.Ravi Babu, learned Standing Counsel for the respondent.

3. It is the case of the petitioner that he was appointed as a conductor in the respondent-Corporation and while he was working as such, the respondent issued a charge sheet on 11.12.1992 on the allegations of some cash and ticket irregularities. The petitioner submitted his explanation to the charge sheet on 5.1.1993, denying the charges. Being not satisfied with the explanation submitted by the petitioner, the respondent without conducting any enquiry, has straight away passed final order dated 19.1.1993 imposing major punishment of deferment of his annual increment for a period of one year, which shall have effect on his future increments. The same

was confirmed in the appeal. Aggrieved by the same, the petitioner filed I.D.No.111 of 2005 before the Labour Court. But the labour Court dismissed the I.D. Aggrieved by the same, the petitioner filed this writ petition.

4. 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 respondent 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 contended that no punishment of stoppage of increment with cumulative effect can be imposed without conducting any enquiry.

5. The learned Standing Counsel for the respondent has contended that there is a delay of more than 10 years in approaching the Labour Court and that the punishment was imposed by the respondent on 19.1.1993 and the same was confirmed by the appellate authority on 10.11.1995 and thereafter, the petitioner filed I.D. in the year 2005 and the I.D. was dismissed on 26.12.2007 and after three years, the petitioner filed this writ petition, and on this ground alone, this writ petition is liable to be dismissed, and the award impugned

[1] 1990(2) SCALE 597

needs no interference. The learned Standing Counsel has relied on a judgment of the Full Bench of this court in ***P.V.Narayana v. APSRTC, Hyderabad***[2].

6. 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 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

[2] 2013(4) ALD 386 (FB)

to the language which if pealed 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 respondent imposed punishment on 19.1.1993, the petitioner availed the remedy of appeal and thereafter, the petitioner has preferred I.D. in the year 2005 and after dismissal of I.D. in the year 2007, the petitioner approached this Court. 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.

7. Accordingly, the Writ Petition is allowed modifying the punishment of deferment of one annual increment with cumulative effect to that of deferment of one annual increment without cumulative effect, without any monetary benefits, but with notional fixation of pay. No order as to costs. Pending miscellaneous applications, if any, shall stand closed in consequence.

ABHINAND KUMAR SHAVILI, J

Date: 4.10.2018
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HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

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Nn.