

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.40276 OF 2018

ORDER:

Heard Mr.V.Narasimha Goud, learned counsel for petitioner and Mr.N.Vasudeva Reddy for respondents.

With the consent of both sides, the matter has been decided at the admission stage.

The petitioner has assailed in this writ petition the order dated 08.05.2017 of 3rd respondent imposing punishment of withholding of annual increment for two years with cumulative effect without conducting any disciplinary enquiry, which was confirmed by the 2nd respondent by order dated 15.02.2018.

Learned counsel for petitioner contended that withholding of annual increments with cumulative effect is a major penalty and without holding a disciplinary enquiry giving opportunity to the petitioner to adequately defend himself therein, such order could not have been passed. Learned counsel also placed reliance on the judgment of the Hon'ble Supreme Court in *KULWANT SINGH GILL Vs. STATE OF PUNJAB*¹, wherein the Supreme Court held that when penalty was imposed withholding two increments with cumulative effect, it means, two increments earned by the employee were cut off as a measure of penalty for ever in his upward march of earning higher scale of pay. It held that 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. It held that such consequences cannot be permitted to be permeated without a

¹ 1991 Supp (1) SCC 504

disciplinary enquiry conducted, after following prescribed procedure and such order is without jurisdiction and per se void.

Learned counsel for respondents does not dispute the above legal position.

In the instant case, as per Regulation 8 of Employees (Classification, Control and Appeal) Regulation, 1967, though withholding of an increment is considered as a minor penalty, reduction of the time scale is considered as a major penalty, for which an enquiry is held to be mandatory under Regulation 12(2).

Since admittedly no such disciplinary enquiry has been conducted before imposing punishment, the writ petition is allowed and the order dated 18.05.2017 passed by the 3rd respondent, as confirmed on 15.02.2018 by the 2nd respondent, is set aside and the respondents are directed to conduct disciplinary enquiry into the allegation against the petitioner by issuing a charge memo, receive explanation from the petitioner thereto; allow evidence to be led by petitioner in his defence to the evidence produced by respondents, consider the same and then pass a reasoned order and communicate it to the petitioner. This exercise shall be done within four months from the date of receipt of a copy of this order. The petitioner shall be restored the benefit of the said increments. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

M.S. RAMACHANDRA RAO, J

Date: 13.11.2018
Prv

