207 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8979 of 2012.
Date of Decision: 21.02.2018.

Vijay Kumar
... Petitioner

Versus

State of Punjab and others ... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. M.S. Rana, Advocate,
for the petitioner.

Ms. Sudeepti Sharma, Addl. AG, Punjab.

JITENDRA CHAUHAN.J.

This civil writ petition has been filed for quashing the order dated 29.05.1979, (Annexure P-1) and the order dated 28.06.1979 (Annexure P-2) passed by respondent No.3 vide which annual increments of the petitioner were stopped with cumulative effect.

It is asserted that the orders dated 29.05.1979 (Annexure P-1) and 28.06.1979 (Annexure P-2) vide which three annual increments with cumulative effect were stopped being in the nature of major punishment could not have been passed without conducting a regular departmental inquiry and without affording an opportunity of hearing. He relies upon **Kulwant Singh Gill vs. The State of Punjab 1990(6) SLR 73.**

On the other hand, the learned State counsel contends that since the petitioner did not submit reply to the show cause notices, the orders Annexure P-1 and P-2 have been rightly passed by the respondents. At the time of passing the impugned orders, stoppage of increment with cumulative effect was a minor punishment. It has been further submitted that there is delay of 38 years in filing the present writ petition challenging the orders, Annexures P-1 and P-2. The present writ petition is liable to be dismissed on the ground of delay and laches alone.

Heard.

In paragraph No.4 & 5 of the judgment passed in **Kulwant Singh Gill's case (supra),** it was 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.
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> 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 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.

The further contention of Shri Nayar that the procedure under Rule 8 was followed by issuance of the show cause notice and consideration of the explanation given by the appellant would meet the test of Rules 8 and 9 of the Rules is devoid of any substance. Conducting an enquiry, de-horse the rules is no enquiry in the eye of law. It cannot be countenanced that the pretence of an enquiry without reason- able opportunity of adducing evidence both by the Dept. as well as by the appellant in rebuttal, examination and cross-examination of the witnesses, if examined, to be an enquiry within the meaning of Rules 8 and 9 of the Rules. Those rules admittedly envisage, on denial of the charge by the delinquent officer, to conduct an enquiry giving reason- able opportunity to the presenting officer as well as the delinquent officer to lead evidence in support of the charge and in rebuttal thereof, giving adequate opportunity to the delinquent officer to cross examine the witnesses produced by the Dept. and to examine witnesses if intended on his behalf and to place his version; consideration thereof by the enquiry officer, if the disciplinary authority himself is not the enquiry officer. A report of the enquiry in that behalf is to be placed before the disciplinary authority who then would consider it in the manner prescribed and pass an appropriate order as per the procedure in vogue under the Rules. The gamut of this procedure was not gone through. Therefore, the issuance of the notice and consideration of the explanation is not a procedure in accordance with Rules 8 and 9. Obviously, the disciplinary authority felt that the enquiry into minor penalty is not necessary and adhering to the principles of natural justice issued the show cause notice and on receipt of the reply from the delinquent officer passed the impugned order imposing penalty thinking it to be a minor penalty. If it is considered, as stated earlier, that it would be only a minor penalty, the procedure followed certainly meets the test of the principles of natural justice and it would be a sufficient compliance with the procedure. In view of the finding that the impugned order is a major penalty certainly then a regular enquiry has got to be conducted and so the impugned order is clearly illegal. The Trial Court rightly granted the decree. The judgment and the decree of the High Court is vitiated by manifest illegality. At this distance of time it is not expedient to direct an enquiry

> under rules 8 and 9 of the Rules. The appeal is accordingly allowed and the judgment and decree of the High Court is set aside and that of the trial court is restored but in the circumstances without costs."

On behalf of the State, it is asserted that it was a minor punishment, however, considering the ratio of law laid down in **Kulwant Singh Gill's case (supra)** that argument is of no consequence. Admittedly, no regular inquiry in the matter was conducted. There is nothing on record to establish that the orders (Annexure P-1 and P-2) were ever communicated to the petitioner. It is settled proposition of law that the back drop of laches is not the rule of law but is purely the rule of procedure. In a case where the aggrieved person has substantial question of law or fact whereupon adjudication is sought, the relief against grossly illegal order is not to be refused, on the ground of delay and laches. The plea of laches is thus rejected. Consequently, the present writ petition is disposed of and the orders, Annexures P-1 and P-2 are quashed. The respondents/State is at liberty to initiate fresh proceedings against the petitioner as per law, if so advised.

21.02.2018. **(JITENDRA CHAUHAN)**
SN **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No