

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 6589 of 2011

Surekha Nishad widow of late Bhanu Prasad Nishad, aged about 46 years, R/o village Teram, Tahsil Gharghoda, District Raigarh (CG)

---- Petitioner

Versus

1. State Of Chhattisgarh through Secretary, Tribal Welfare Department, D.K.S. Bhavan, Raipur (CG)
2. Commissioner, Tribal Development, Raipur (CG)
3. Assistant Commissioner, Tribal Development, Raigarh, District Raigarh (CG)
4. Collector (Tribal Development), Raigarh, District Raigarh (CG)
5. Block Education Officer, Tanmar, District Raigarh (CG)

---- Respondents

For Petitioner	:	Mr. Manoj Kumar Sinha, Advocate
For State	:	Ms. Abhyunati Singh, P.L.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

29/08/2019

1. The challenge in the present writ petition is to the order Annexure P-1 dated 19.03.2010 whereby the deceased employee i.e. the original petitioner Bhanu Pratap Nishad, Assistant Teacher was inflicted with an order of punishment of stoppage of two annual increments with cumulative effect. The authorities have also for the period between 30.04.2001 till the petitioner was reinstated in service has been held to

be treated as continuous in service but the employee would not be entitled for back wages applying the principle of "No work no pay".

2. Counsel for the petitioner, at the outset, submits that the subsequent imposition of punishment which too is a major punishment has been done without conducting a departmental inquiry and therefore the said order of punishment is not sustainable. Counsel for the petitioner relies upon the judgment of the Supreme Court in the case of Kulwant Singh Gill Vs. State of Punjab, 1991, Supp. (1) SCC 504.
3. Counsel for the petitioner further submits that non-granting of back wages to the petitioner is bad in law as once when the writ petition i.e. WPS 4468/2005 at the first instance stood allowed on 09.02.2010, the petitioner would have been entitled for all the benefits as if the order of termination was never in existence. Thus, prayed for quashment/modification of the impugned order to the aforesaid extent.
4. State counsel, on the other hand, opposing the petition submits that firstly the impugned order being an appealable order, the writ petition deserves to be rejected on this ground. The second contention of the State counsel is that the petitioner was found guilty of the charges on the basis of the statements which were recored before the Disciplinary Authority and therefore, it cannot be said that the order is bad in law or without any basis. It is also the contention of the State counsel that the impugned order has been passed dealing with all the aspects and for this reason also it does not warrant interference.
5. So far as the punishment is concerned, it is by now well settled principle of law that the punishment of stoppage of increment with cumulative effect is always considered to be a major punishment category. The

service rules governing the field clearly stipulate the procedure to be followed before imposition of a major penalty which is prescribed under Rule 14 of the Rules of 1966. The requirement under Rule 14 of the Rules of 1966 is for appointment of an Inquiry Officer and a Presenting Officer and the petitioner being granted an opportunity to defend himself on the alleged charges which were levelled against the petitioner. Admittedly, in the instant case, neither was there any Inquiry Officer appointed nor was there any Presiding Officer appointed to present the case of the petitioner. The Disciplinary Authority seems to have taken a decision on the basis of the statements of the persons who were also not permitted to be cross examined by the petitioner while defending himself.

6. In one of the recent decisions of this Court in WPS No. 6122/2018 dated 19.09.2018 in the case of Arun Kumar Pathak Vs. State of Chhattisgarh where the punishment of 2 annual increments with cumulative effect was imposed, this Court in paragraphs-6 to 8 has held as under:

“6. It is by now well settled principles of law and it does not need much deliberation as to whether the major punishment could have been inflicted upon an employee without even issuing of show cause notice or without calling for an explanation and also without conducting any sort of enquiry either preliminary or departmental.

7. This view of the Court stands fortified from the judgment of Supreme Court in case of Kulwant Singh Gill Vs. State of Punjab, 1991, Supp. (1) SCC 504 and in the judgment of Patna High Court in case of Ashwani Kumar Verma Vs. the State of Bihar & Ors. 2017 SCC online Pat 2403.

8. Subject to verification, this Court is of the opinion that the impugned order in the aforesaid factual matrix of the

case may not be sustainable and the same deserves to be and is accordingly set aside.”

7. In view of the aforesaid legal position as it stands, the impugned order as regards the punishment of stoppage of two annual increments with cumulative effect is not sustainable and the same deserves to be and is accordingly set aside.
8. So far as the claim of the petitioner for grant of back wages and other benefits for the intervening period between the date of dismissal till the date of reinstatement is concerned, this Court is not inclined to interfere with the said finding for the reason that the said relief was prayed for by the petitioner in WPS No. 4468 of 2005 and the Writ Court had only allowed the writ petition and quashed the order of termination. The Writ Court had not granted the benefit of consequential relief particularly that of back wages. Since the Writ Court at the first instance had not granted the said benefit to the petitioner, this Court finds it difficult to grant the said benefit at this juncture. Moreover, the respondents have themselves fairly held that the intervening period shall be counted as continuous for all practical purposes for pension and retiral dues except for grant of back wages to the deceased employee. Thus, the said claim of the petitioner stands negated.
9. As a consequence of the impugned order dated 19.10.2010 so far as the punishment of stoppage of two annual increments with cumulative effect getting quashed, the petitioner would be entitled for the benefits that she would otherwise have got had the order of punishment not been imposed and she would also get the actual monetary benefits pursuant to that while fixing the death cum retiral benefits payable to the petitioner.

10. The Department is directed to process the case immediately so far as the benefits that the petitioner would get at the earliest preferably within a period of 3 months from the date of receipt of copy of this order.

11. The writ petition accordingly stands allowed in part.

**Sd/-
(P. Sam Koshy)
Judge**

Khatai