IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-22108-2015
Date of Decision: 22nd January, 2020

Balwinder Singh

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. R.K.Arora, Advocate, for the petitioner.

Mr. Charanpreet Singh, Asstt. A.G., Punjab.

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AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court challenging the charge-sheet dated 08.04.2010 (Annexure P-8), Inquiry Report (Annexure P-13) as well as the impugned order dated 04.03.2013 (Annexure P-17) passed by the Registrar Cooperative Societies, Punjab, imposing punishment for withdrawal of five annual grade increments with retrospective effect from July, 2008, which is after the date of the superannuation of the petitioner and also quashing the order dated 08.01.2015 (Annexure P-21) passed by the Appellate Authority dismissing the appeal of the petitioner being violative of the provisions of Punjab Civil Service (Punishment and Appeal) Rule, 1970 (hereinafter referred to as the '1970 Rules').

It is the contention of the learned counsel for the petitioner that the petitioner was working on the post of Inspector and was holding the additional charge of Liquidator. Petitioner has been charge-sheeted on

08.04.2010 (Annexure P-8) on the ground of negligence in performing his duties, which is based upon a letter dated 09.07.2008 (Annexure P-2), which has been sent by the Bathinda Central Cooperative Bank Limited, to the Assistant Registrar, Cooperative Societies, Bathinda, which never reached the petitioner as the Assistant Registrar Cooperative Societies, Bathinda, had returned the said letter dated 21.07.2008 (Annexure P-3) in original requesting the bank to inform as to whether the principal amount and interest upto the date when the society came under winding-up had been deposited or not. It is in pursuance thereto and with reference to the said letter dated 21.07.2008, that the communication dated 25.07.2008 (Annexure P-4) was received by the Assistant Registrar Cooperative Societies, Bathinda, leading to the passing of the order dated 29.07.2008 (Annexure P-5), whereby, the Assistant Registrar Cooperative Societies, Bathinda, exercising the powers of the Registrar Cooperative Societies, Punjab, cancelled the registration of the Kamal Brick Kiln Workshop Cooperative Industrial Society Limited.

Counsel for the petitioner contends that nothing has been done by the petitioner on his own, rather it is at the level of the Assistant Registrar Cooperative Societies, Bathinda, that the said application has been dealt with. It is also asserted that as per the allegations, not only the petitioner but also the Assistant Registrar was directed to be proceeded under the 1970 Rules, by the Financial Commissioner but it is only the petitioner who has been charge-sheeted and after holding an enquiry, where the petitioner has been held negligent merely because of the letter dated

09.07.2008 (Annexure P-2), which had never reached the petitioner, punishment of withdrawal of the five annual grade increments has been imposed and that too, retrospective w.e.f. July, 2008, vide order dated 04.03.2013 (Annexure P-17). Appeal against which preferred by the petitioner has been dismissed on 08.01.2015 (Annexure P-21). Counsel, thus, contends that the punishment as imposed upon the petitioner is not sustainable firstly on the ground that no such punishment has been provided under Rule 5 of the 1970 Rules and secondly, it cannot be and even if that punishment could be imposed, the same could not have been imposed retrospectively. Further, it is asserted that the findings as recorded by the Enquiry Officer is unsustainable as the petitioner was not involved in the process of decision making for suspending the registration of the society, which order has been actually passed by the Assistant Registrar Cooperative Societies, Bathinda, exercising the powers of the Registrar, as is apparent from the order dated 29.07.2008 (Annexure P-5). He, thus, contends that the impugned orders cannot sustain and deserves to be set aside.

On the other hand, learned counsel for the State has submitted that the petitioner has been punished as per Rule 5 Sub Rule (iv) of the 1970 Rules under which the punishment of withholding the pay with cumulative effect has been provided. It has been asserted that the authority which has the power to grant increment, has also been provided the inherent power to withdraw the same and thus, withholding increments of pay includes the power of withdrawing the same, thus, entitling the Competent Authority to impose the punishment as has been imposed upon the petitioner. He, therefore, contends that the impugned order deserves to be sustained. As regards the assertion of the counsel for the petitioner that no action has been taken against the Assistant Registrar Cooperative Societies, Bathinda, the said fact has been admitted by the respondents.

I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the pleadings and the impugned orders.

The facts as has been stated by the petitioner have not been disputed. If the basic question with regard to the competence of the authority to impose the punishment of withdrawal of five annual grade increments with retrospective effect is decided, the other aspects need not be gone into.

Rule 5 of the 1970 Rules deals with the punishment which can be imposed upon an employee. The said Rule reads as follows:-

> "**Rule 5. Penalties:** The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government employee, namely:-
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> **Minor Penalties**
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> i) Censure
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> ii) Withholding of his promotions;
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> iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;
>
> iv) Withholding of increments of pay;

Major Penalties

v) 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 employees will earn increments of pay during the period of such reduction will or will not have the effect of postponing the future increments of his pay;

vi) reduction to lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government employee to the time-scale of pay, grade, post of service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government employee was reduce and his seniority and pay on such restoration to that grade, post or service;

vii) compulsory retirement;

viii) removal from service which shall not be a disqualification for future employment under the Government;

ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government."

Perusal of the above Rule would show that the punishment as has been imposed upon the petitioner has not been specifically provided for under the punishments. Counsel for the State has tried to submit that the punishment which has been imposed upon the petitioner is of the nature of reduction in the time-scale of pay for a specified period. The said Rule would not bring within its ambit the punishment, which has been imposed in the case of the petitioner. The nearest punishment which could have been imposed upon the petitioner, if is read to be, withholding of increment of pay with cumulative effect, that punishment also could have been imposed with prospective effect and not retrospective effect. Petitioner, admittedly, had superannuated on 31.10.2012 and was granted extension for one year and the punishment has been imposed during this extension period vide order dated 04.03.2013 (Annexure P-17). It is not in dispute that during the period of extension, an employee is not entitled to the annual increment. If that be so, even if the punishment of stoppage of annual increment with cumulative effect is imposed at this stage when the employee has already superannuated, the same cannot be given effect to. It may be added here that it would not have any impact so far as the retiral benefits are concerned. If that be so, the punishment as has been imposed upon the petitioner vide order dated 04.03.2013 (Annexure P-17) cannot sustain for the primary reason that the punishment which has been imposed upon the petitioner does not find mention in the punishments as provided for under Rule 5 of 1970 Rules and specially when the Rules do not indicate that, a punishment could be imposed with retrospective effect.

In view of the above, this Court would not like to go into the other aspects, which have been highlighted by the counsel for the petitioner.

The present writ petition is allowed and the impugned order dated 04.03.2013 (Annexure P-17) passed by the Registrar Cooperative Societies, Punjab – respondent No.2 is hereby set aside. As a consequence thereto, the order dated 08.01.2015 (Annexure P-21) passed by the Appellate Authority on the appeal preferred by the petitioner cannot sustain and therefore, the same also stands quashed.

Respondents are directed to release the consequential benefits, if any, to the petitioner within a period of three months from today.

(AUGUSTINE GEORGE MASIH)
JUDGE

22nd January, 2020
Harish

Whether speaking/reasoned:	**Yes/No**
Whether Reportable:	**Yes/No**