

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 2654 of 2013**

Tarachand Verma S/o Lakhanlal Verma, Aged about 52 years, R/o Shanti Nagar, Near Church, Raja Talab Road, Civil Lines, Police Station and Post Civil Lines, Raipur, Civil and Revenue District Raipur, Chhattisgarh.

---Petitioner

Versus

- 1.State of Chhattisgarh, Through the Secretary, Water Resources Department, Capital Complex, Mahanadi Bhawan, Naya Raipur, Police Station and Post Raipur, Civil and Revenue District Raipur , Chhattisgarh.
- 2.Chhattisgarh Public Service Commission, Through Secretary, Public Service Commission, Raipur, Distt. Raipur, Chhattisgarh.
- 3.Engineer-in-Chief, Mahanadi Project, Water Resources Department, Raipur, Distt. Raipur, Chhattisgarh.

---Respondents

For Petitioner :- Mr. Manoj Paranjpe, Advocate

For Respondents 1 & 3/State :-

Mr. Sunil Otwani, Addl. A.G.

For Respondent 2 :- Mr. A.S. Kachhwaha, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

15/09/2021

1. Invoking extraordinary jurisdiction of this Court, the petitioner herein has called in question the legality, validity and correctness of impugned order dated 13/05/2005 (Annexure P/1) by which the State Government has inflicted major penalty of stoppage of two increments with cumulative effect upon him.

2. Petitioner, while he was working as Assistant Engineer in the Department of Water Resources, was sent on deputation as Incharge Executive Engineer in Municipal Corporation, Jagdalpur wherein he was subjected to Disciplinary Proceeding in which enquiry was conducted and on 16/08/2011 (Annexure R/5) the Urban Administration Department submitted the enquiry report to the Department of Water Resources. Thereafter, the Department of Water Resources on 06/07/2012 (Annexure R/6) made consultation with Chhattisgarh Public Service Commission that on account of certain misconduct, respondent No. 1 Department of Water Resources proposed to inflict the penalty of stoppage of two increments with non-cumulative effect upon the petitioner. Thereafter, the Public Service Commission by its

memo dated 03/08/2012 (Annexure R/7) recommended/advised that since charges No. 1 and 3 have been found proved against the petitioner, therefore, major penalty may be inflicted upon him. Accepting the said recommendation/advice of the Public Service Commission, respondent No. 1 Department of Water Resources by impugned order dated 13/05/2013 (Annexure P/1) imposed the punishment of stoppage of two increments with cumulative effect upon the petitioner which is a major penalty under Rule 10 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter, the Rules of 1966) and as per the decision rendered by the Supreme Court in the matter of **Kulwant Singh Gill v. State of Punjab**¹.

3. Mr. Manoj Paranjpe, learned counsel for the petitioner, would submit that the consultation made by respondent No. 1 from Public Service Commission proposing to impose minor penalty upon the petitioner was a consultation under Rule 16(1)(e) of the Rules of 1966 which provides for procedure for imposing minor penalty of stoppage of two increments with non-cumulative effect and it was not a consultation made under Rule 15(3)

¹ 1991 Supp. (1) SCC 504

of the Rules of 1966 and the recommendation/advice of the Public Service Commission was not even binding on the State Government particularly when the Government itself is of the opinion that minor penalty has to be imposed upon the petitioner, but the State Government acted upon the recommendation of Public Service Commission and treating it as mandatory imposed major punishment upon the petitioner which is liable to be set aside. He would rely upon the decision rendered by the Supreme Court in the matter of **A.N.D'Silva v. Union of India**² to buttress his submission.

4. Mr. Sunil Otwani, learned State counsel, would submit that the State Government had proposed imposition of minor penalty vide its memo dated 06/07/2012 (Annexure P/6), however, since Public Service Commission had recommended/advised to impose major punishment, therefore, acting upon the said recommendation, the State Government imposed major penalty upon the petitioner which is strictly in accordance with law.

5. Mr. A.S. Kachhwaha, learned counsel for respondent No. 2 Chhattisgarh Public Service Commission, would also submit that punishment of

2 AIR 1962 SC 1130

stoppage of two increments with cumulative effect has rightly been imposed upon the petitioner.

6.I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

7.It is quite apparent from the record that on 06/07/2012 (Annexure P/6), respondent No. 1 Department of Water Resources made consultation from the Public Service Commission proposing to impose minor penalty of stoppage of two increments with non-cumulative effect considering the proven misconduct of the petitioner which is said to have been proved against him but on 03/08/2012 (Annexure R/7), Public Service Commission made the following recommendation :-

“आयोग का अभिमत है की - आरोप क्रमांक 01 एवं आरोप क्रमांक 03 प्रमाणित पाये गये हैं। जिनके फलस्वरूप उपचारी को "लघुशास्ति" देते हुए दो वार्षिक वेतनवृद्धि असंचयी प्रभाव से रोके जाने की शास्ति दी गई है। यदि गंभीर आरोपों में से आधे आरोप सिद्ध पाये जाने पर भी "लघुशास्ति" दी जाती है तो अनुशासन का प्रयोजन सिद्ध नहीं होता। अतः श्री टी सी वर्मा, सहायक अभियंता /प्रभारी कार्यपालन अभियंता, नगरपालिक निगम जगदलपुर को "दीर्घशास्ति" अर्थात दो वेतनवृद्धि संचयी प्रभाव से रोके जाने का दंड दिया जाने का परामर्श दिया जाता है। ”

8. After considering the aforesaid recommendation, respondent No. 1 Department of Water Resources by impugned order dated 13/05/2005 (Annexure P/1) imposed major penalty upon the petitioner by holding as under :-

"4/ प्रकरण में नगरीय प्रशासन विभाग से प्राप्त जानकारी के आधार पर श्री टी. सी. वर्मा, सहायक अभियंता / तत्का कार्यपालन अभियंता, नगरपालिक निगम, जगदलपुर द्वारा वित्तीय क्षती पहुंचाने सम्बन्धी तथ्य स्पष्ट नहीं पाये जाने बल्कि प्रक्रियात्मक त्रुटि होना परिलक्षित होने के कारण दो वार्षिक वेतनवृद्धि असंचयी प्रभाव से रोके जाने का प्रावधिक निर्णय लिया गया, लिए गए प्रावधिक निर्णय के तारतम्य में, छ. ग. लोक सेवा आयोग, रायपुर का अभिमत चाहा गया।

5/ प्रावधिक निर्णय के परिप्रेक्ष्य में लोक सेवा आयोग द्वारा अभिमत दिया की - आरोप क्रमांक 01 एवं आरोप क्रमांक 03 प्रमाणित पाये गये हैं। जिनके फलस्वरूप उपचारी को "लघुशास्ति" देते हुए दो वार्षिक वेतनवृद्धि असंचयी प्रभाव से रोके जाने की शास्ति दी गई है। यदि गंभीर आरोपों में से आधे आरोप सिद्ध पाये जाने पर भी "लघुशास्ति" दी जाती है तो अनुशासन का प्रयोजन सिद्ध नहीं होता। अतः श्री टी सी वर्मा, सहायक अभियंता /प्रभारी कार्यपालन अभियंता, नगरपालिक निगम जगदलपुर को "दीर्घशास्ति" अर्थात् दो वेतनवृद्धि संचयी प्रभाव से रोके जाने का दंड दिया जाने का परामर्श दिया जाता है।

6/ श्री टी. सी. वर्मा, सहायक अभियंता / तत्का कार्यपालन अभियंता, नगरपालिक निगम, जगदलपुर के विरुद्ध लोक सेवा आयोग के परामर्शानुसार दो वेतनवृद्धि संचयी प्रभाव से रोके जाने का प्रावधिक निर्णय लिया गया। "

9. As noticed herein-above, the State Government while accepting the recommendation of the Public Service Commission imposed penalty of stoppage of two increments with cumulative effect upon the

petitioner which tantamounts to major punishment in view of the decision of the Supreme Court in the matter of Kulwant Singh Gill (supra).

10. At this stage, it would be appropriate to notice Rule 15(3) of the Rules of 1966 which provides for the procedure for imposing punishment and proviso to Rule 15(3) provides for consultation with Public Service Commission, which states as under :-

"15. Action on the inquiry report – (1) XXX

(2) XXX XXX XXX

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Rule 10 should be imposed on the Government servants, it shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty [but in doing so it shall record reasons in writing] :

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant."

11. Similarly, Rule 16(1)(e) provides for the procedure for imposing minor penalties and also provides for consultation with Public Service Commission, which states as under :-

"16. Procedure for imposing minor penalties.

- (1) Subject to the provisions of sub-rule (3) of Rule 15, no order imposing on a

(e) consulting the commission where such consultation is necessary."

(supra) while considering Article 320(3) of the Constitution of India held that UPSC is not an appellate authority over the Enquiry Officer and held as under :-

"This letter expressly states that telephone connections were granted to Khiali Ram and Shyam Lal after receiving illegal gratification and that other instances referred to in the appendix were similar to those cases in which illegal gratification was alleged. This letter, in our judgment, does not justify the inference that the Enquiry Officer regarded the charges as primarily of illegal gratification or corruption: nor is it possible to accept the submission that the charges were so framed that the appellant was misled into believing that the charges primarily were of obtaining illegal gratification. As already observed, the charges were of irregularities committed by the appellant, the first being with the object of securing illegal gratification and the second substantially of negligence and thereby acting so as to enable his subordinates to receive illegal gratification. It is also clear from the Appendix which sets out the allegations and especially heads (1) and (2) that the charges against the appellant were that he had committed irregularities by granting, contrary to the orders passed by the Postmaster General, telephone connections out-of-turn to certain applicants. The Enquiry Officer found ten out of the eleven instances set out in head No. 1 and both the instances under head No. 2 proved. The Union Public Service Commission agreed with that

view. The charge of irregularities was therefore established against the appellant. In the view of the Enquiry Officer the motive for granting irregular connections was also established, but the Union Public Service Commission expressed a different view. By Art. 320(3) of the Constitution it is provided that the Union Public Service Commission shall be consulted in all disciplinary matters affecting a person serving under the Government of India in a civil capacity, but the Union Public Service Commission is not an appellate authority over the Enquiry Officer. It is unnecessary for the purpose of this case to consider whether in making their recommendations or tendering their advice the Union Public Service Commission may express a conclusion on the merits of the case as to the misdemeanour alleged to have been committed by a public servant different from the conclusion of the Enquiry Officer. "

13. Similarly, in the matter of N. Rajarathinam v. State of T.N. and Another³, Their Lordships of the Supreme Court have held that view of the Public Service Commission is only recommendatory and the Government is not bound to accept the recommendation of the Public Service Commission, which states as under :-

"3... It is true that the Tamil Nadu Public Service Commission had recommended to take a lenient view in the matter but the Government had not accepted the recommendation. The view of the Public Service Commission being only recommendatory, the Government was not bound to accept the recommendation made by the Public Service Commission."

14. In the matter of Shrikrishna Agrawal v. State of Madhya Pradesh through Secy. To Govt. of Madhya Pradesh and Others⁴, the Madhya Pradesh High Court has held as under :-

"25. The learned Deputy Government Advocate contended that an inference that the State Government acted mechanically on the advice of the Public Service Commission without applying its own mind should not be drawn merely because it acted on such advice, and he relied in that connection on a decision of the Punjab High Court in J. L. Mair v. State of Punjab⁵. In that case it was held that if considering the advice of the Public Service Commission and other relevant materials the State Government takes a decision it cannot be said that the decision is mala fide. 26. An inference that the Government acted mechanically on the advice of the Public Service Commission without applying its own mind to the case is not to be drawn too readily from the mere fact that it acted on such advice. Looking to the advisory functions assigned to the Commission under the Constitution it is obvious that the Government is not only expected to take into consideration such advice before taking a final decision but it is also expected to give due weight to it. In fact Article 323 requires that where the advice of the Commission is not accepted the reasons for such non-acceptance are to be laid before the Legislature. It is thus incumbent on the State Government to assign reasons where it does not choose to act on the advice of the Commission. But the Government is not expected to abdicate its functions in regard to the appointment and promotion in favour of the Public Service Commission. Here in this case the Return as pointed above indicates that the State Government considered the concurrence of the Public Service Commission indispensable or in

4 AIR 1970 M.P. 62

5 AIR 1968 Punj. 324

other words sine qua non for promotion of the petitioner. This was clearly a misconceived notion of the Government which must be dispelled. As pointed out above the Public Service Commission is merely to be consulted and has tendered its advice, it is for the Government to take a decision after due consideration of it. 27. We must, therefore, say that if the Government reverted the petitioner under erroneous impression that the concurrence of the Commission was necessary for petitioner's promotion and that he was bound to be reverted where no such concurrence was given the reversion was not justified."

15. A conspectus of the aforesaid judgments rendered by the Supreme Court as well as by the Madhya Pradesh High Court would show that the recommendation of Public Service Commission is recommendatory in nature and it only performs an advisory function. The Government is not bound to accept the recommendation of the Public Service Commission it has the discretion to consider the recommendation of Public Service Commission in accordance with law.

16. Reverting to the facts of the case in light of the aforesaid settled position, it is quite vivid that though the State Government proposed to impose minor penalty of stoppage of two increments with non-cumulative effect upon the petitioner, yet by accepting the recommendation made by the Public Service Commission, the State Government inflicted major penalty of stoppage of

two increments with cumulative effect upon the petitioner which could not have been imposed. As such, the impugned order dated 13/05/2005 (Annexure P/1) is liable to be set aside. There is one more reason for setting aside the impugned order which is that respondent No. 1 Department of Water Resources made consultation with Public Service Commission which appears to have been accepted also but there is nothing on record to show that the recommendation/advice of the Public Service Commission has been conveyed to the petitioner, which ought to have been done, as such, the petitioner has been deprived of an opportunity to make representation in respect of the recommendation/advice of the Public Service Commission.

17. The Supreme Court in the matter of **Union of India v. R.P. Singh**⁶ relied upon its decision in the matter of **S.N. Narula v. Union of India**⁷ and held that the advice of UPSC, if sought and accepted, the same, regard being had to the principles of natural justice, is to be communicated to delinquent officer before imposition of punishment.

6 (2014) 7 SCC 340

7 (2011) 4 SCC 591

18. Consequently, the impugned order dated 13/05/2005 (Annexure P/1) passed by the State Government imposing major punishment of stoppage of two increments with cumulative effect imposed upon the petitioner is hereby quashed and matter is remitted to the State Government/respondent No. 1 to supply the copy of the recommendation/advice of the Public Service Commission to the petitioner and thereafter, petitioner will make a representation within two weeks and his representation will be duly considered and decided by the Disciplinary Authority by passing a fresh order within two months from the date of filing of the said representation keeping in view that the advice of Public Service Commission which is recommendatory in nature.

19. Accordingly, the writ petition is allowed to the extent indicated herein-above. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet