**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 2878 of 2019

Madankumar Hiralalji Jaiswal,
Aged 61 years, Occu. Retired,
R/o. Datta Nagar, Lakhada,
Washim, Tq. and Dist. Washim. **... Petitioner**

... Versus ...

(1) State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai – 32.

(2) Additional Commissioner,
Amravati Division, Amravati.

(3) Zilla Parishad, Washim,
Through its Chief Executive Officer,
District – Washim. **... Respondents**

Mr. C. R. Sharma, Advocate h/f Mr. T. U. Tathod, Advocate for the petitioner
Mr. N. S. Rao, A. G. P. for the State/respondents 1 and 2
Mr. M. L. Vairagade, Advocate for respondent 3

**CORAM : ROHIT B. DEO AND
ANIL L. PANSARE JJ.**

DATED : 3-8-2022

ORAL JUDGMENT (Per : Rohit B. Deo, J.)

Rule. Rule made returnable forthwith. With consent, the petition is finally heard.

2. The petitioner is a superannuated employee of the Zilla Parishad, Washim.

3. The petitioner is assailing order dated 9-1-2019 issued by respondent - 3, Zilla Parishad whereby penalty of withholding of one increment with permanent effect is imposed.

4. Indubitably, the Zilla Parishad has followed the procedure prescribed for imposition of minor penalty. It is common ground, that regular departmental enquiry, which is the prerequisite for imposing major penalty, was not conducted.

5. The limited issue which needs answer is whether withholding of increment with permanent or cumulative effect is a major penalty. If the answer is in the affirmative, the punitive order impugned will have to be set aside since the due process for imposition of major penalty is not followed. It would be apposite to consider Rule 4 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 (hereinafter referred to as the 'Rules') which deals with the nature of the penalties. Rule 4 reads thus :

> ***4. Nature of penalties.*** *- Without prejudice to the provisions of any law for the time being in force, the following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Parishad servant, namely :-*

(i) censure;

(ii) withholding of increments or promotion;

(iii) recovery from pay of the whole or part of any pecuniary loss caused to the Zilla Parishad by negligence or breach of orders;

(iv) reduction to a lower service, grade or post or to a lower time scale, or to a lower stage in a time scale;

(v) compulsory retirement;

(vi) removal from service which shall not be a disqualification for future employment;

(vii) dismissal from service which shall ordinarily be a disqualification for future employment;

(viii) fine not exceeding rupees ten in respect of a Parishad servant belonging to the District Service (Class IV) and fine not exceeding rupees twenty-five in respect of temporary Parishad servant belonging to the District Technical Service (Class III) or District Service (Class III).

Explanation. - The Following shall not amount to a penalty within the meaning of this rule, namely :-

(i) withholding of increments of a Parishad servant for failure to pass a departmental examination in accordance with the rules or orders governing the service or post or the terms of his appointment;

(ii) stoppage of a Parishad servant at the efficiency bar in the time scale on the ground of his unfitness to cross the bar;

(iii) non-promotion, whether in a substantive or officiating capacity, of a Parishad servant after consideration of his case, to a service grade or post for promotion to which he is eligible;

(iv) reversion to a lower service, grade or post of a Parishad servant, officiating in a higher service, grade or post on the ground that he is considered after trial, to be unsuitable for such higher service, grade or post or on administrative grounds unconnected with his conduct;

(v) reversion to his permanent service, grade or post, of a Parishad servant appointed on probation to another service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing probation;

(vi) compulsory retirement of a Parishad servant in accordance with the provisions relating to his superannuation or retirement;

(vii) termination of services -

(a) of a Parishad servant appointment on probation during or at the end of the period of probation, in accordance with the terms of his appointment or the rules and orders governing probation; or

(b) of a temporary Parishad servant on grounds unconnected with his conduct.

Rule 6 prescribed the procedure for imposing major penalties and reads thus :

6. Procedure for imposing major penalties. *- (1) No order imposing on a Parishad servant any of the penalties specified in clauses (iv) to (vii) of Rule 4 shall be passed except after an inquiry held, as far as may be, in the manner hereinafter provided.*

(2) The Disciplinary Authority shall frame definite charges on the basis of the allegations on which the inquiry is

proposed to be held. Such charges, together with a statement of the allegations on which they are based, shall be communicated in writing to the Parishad servant; and he shall be required to submit within such time as may be specified by the Disciplinary Authority, to such authority a written statement of his defence, and also to state whether he desires to be heard in person.

(3) On receipt of the written statement of defence or, if no such statement is received within the time specified under sub-rule (2), the Disciplinary Authority may itself inquire into the charges not admitted in the statement or if it considers it necessary so to do, appoint an Inquiry Officer for that purpose.

(4) The Parishad servant shall, for the purpose of preparing his defence, be permitted to inspect and take extracts from such official records, as he may specify :

Provided that, such permission may be refused if, for reasons to be recorded in writing, in the opinion of the Disciplinary Authority, or as the case may be, the Inquiry Officer, such records are not relevant for the purpose or it is against the public interest to allow the Parishad servant access thereto.

(5) The Disciplinary Authority may nominate any person to present the case in support of the charges before the authority inquiry into the charges (hereinafter referred to as "the Inquiring Authority"). The Parishad servant may present his case with the assistance of any other Parishad servant, but shall not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority as aforesaid is a legal practitioner or the Disciplinary Authority, having regard to the circumstances of the case, so permits.

(6) The Inquiring Authority shall, in the course of the inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges. The Parishad servant shall be entitled to cross-

examine witnesses examined in support of the charges and to give evidence in person. The person presenting the case in support of charges shall be entitled to cross-examine the Parishad servant and the witnesses examined in his defence. If the Inquiring Authority, declines to examine any witness on the ground that his evidence is not relevant or material, it shall record its reasons therefor in writing.

(7) At the conclusion of the inquiry, the Inquiring Authority shall prepare a report of the inquiry, record its findings on each of the charges together with reasons therefor. If in the opinion of such authority, the proceedings of the inquiry establish charges different from those originally framed, it may record findings on such charges :

Provided that, findings on such charges shall not be recorded unless the Parishad servant has admitted the facts constituting them or has had an opportunity of defending himself against them.

(8) The record of the inquiry shall include -

(i) the charges framed against the Parishad servant and the statement of allegations furnished to him under sub-rule (2);

(ii) his written statement of defence, if any;

(iii) the oral evidence taken in the course of the inquiry;

(iv) the documentary evidence considered in the course of the inquiry;

(v) the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry; and

(vi) a report setting out the findings on each charge and the reasons therefor.

(9) The Disciplinary Authority shall, if it is not the Inquiring Authority, consider the record of the [inquiry] and record its findings of each charge.

(10) (i) If the Disciplinary Authority, having regard to its findings on the charges, is of the opinion that any of the penalties specified in clauses (iv) to (vii) of Rule 4 should be imposed, it shall -

> *(a) furnish the Parishad servant a copy of the report of the Inquiring Authority, and where the Disciplinary Authority is not the Inquiring Authority, a statement of its findings together with brief reasons for disagreement, if any, with the findings of the Inquiring Authority; and*
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> *(b) give him a notice stating the penalty proposed to be imposed on him and calling upon him to submit within a specified time such representation as he may wish to make on the proposed penalty, provided that such representation shall be based only on the evidence adduced during the enquiry.*

(ii) The Disciplinary Authority shall consider the representation, if any, made by the Parishad servant in response to the notice under clause (i) and determine what penalty, if any, should be imposed on the Parishad servant and pass appropriate orders on the case.

(11) If the Disciplinary Authority, having regard to its findings is of the opinion that any of the penalties specified in clauses (i) to (iii) and clause (viii) of Rule 4 should be imposed, it shall pass appropriate orders in the case.

(12) Orders passed by the Disciplinary Authority shall be communicated to the Parishad servant who shall also be supplied with a copy of the report of the Inquiring Authority and, where the Disciplinary Authority is not the Inquiring Authority, a statement of its findings together with brief reasons for disagreement, if any, with the findings of the

Inquiring Authority, unless they have already been supplied to him.

6. Conjoint reading of Rules 4 and 6 reveal that penalties specified in clauses (iv) to (vii) of Rule 4 are treated as major penalties and regular and structured departmental enquiry in consonance with Rule 6 is required to be conducted before imposing such major penalty. Clause (iv) refers to a reduction to a lower service, grade or post or to a lower time scale or to a lower stage in time scale. It is well settled, that if the increment is withheld with cumulative or permanent effect, the result is akin to reduction of pay scale. Such penalty has a cascading effect. Suffice it to refer to the following observations of the Apex Court in ***Kulwant Singh Gill Vs. State of Punjab [1991Supp(1) SCC 504]*** in which considering similar provisions of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, the Apex Court articulated thus :

"2. The only question that needs decision is whether stoppage of two increments with cumulative effect is a major penalty? Admittedly Rules 8 and 9 envisage conducting an enquiry into misconduct after giving an opportunity to the delinquent employee in the manner prescribed therein and on establishing the charge to pass an appropriate order imposing a major penalty prescribed in either clauses (v) to (ix) or minor penalty under clauses (i) to (iv) of Rule 5 of the Rules. If it is a minor penalty indisputably the need to conduct

regular enquiry has been dispensed with. Rule 5 prescribes the penalties thus:

"5. Penalties.- The following penalties may, for good and sufficient reasons, and as hereinafter provided, be imposed on a Government employee, namely :

MINOR PENALTIES

(i) Censure;

(ii) withholding of his promotions;

(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 employee will earn increments of pay during the period of such reduction 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;

(vi) reduction to a 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 or 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 reduced and his seniority and pay on such restoration 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."

3. Clauses (vi) to (ix) are not relevant to the facts of the case.

4. 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. 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 falls 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 peeled 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, (sic stoppage) of earning future increments in the time scale of pay even permanently without 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."*

7. The order impugned is, therefore, clearly unsustainable and is set aside.

8. We note that the petitioner has superannuated. In this view of the matter, we are not inclined to reserve liberty with respondent 3, Zilla Parishad to initiate fresh disciplinary action by taking recourse to the procedure prescribed for imposing major penalty.

9. The petition is allowed in the aforestated terms.

(Anil L. Pansare, J.) **(Rohit B. Deo, J.)**

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