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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
CWP-4295-1997 (O&M)
Date of decision: July 20, 2022

Anil Kumar Mathur

...Petitioner

versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Manohar Lall, Advocate,
For the petitioner.

Mr. R.D. Sharma, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of mandamus directing the respondents to make payments of increments to the petitioner in normal course.

2. Brief facts first. The petitioner joined as Medical Officer, HCMS-II on temporary basis on 26.10.1979. His services were regularized in the year 1985. On 22.01.1984, while posted at General Hospital, Rewari, the petitioner had conducted a post mortem examination and he found that hanging was the cause of death. Charges of misconduct were framed against the petitioner to the effect that he failed to comply with the prescribed procedure in conducting the post mortem examination of late Sh. Brahm Parkash and thus violated the provision of Rule 3.1 (ii) of the Government Employees (conduct) Rules 1986. The petitioner duly replied to the charge-sheet. Enquiry report was sent to Government and show cause notice was served on the petitioner. Reply to the show cause notice was also submitted. Thereafter, respondent No.1 passed the order dated 09.10.1996 vide which major penalty of stoppage of one increment with cumulative effect was imposed on the petitioner. Hence, the instant petition.

3. I have heard learned counsel for the parties and gone through the case file.

4. I am not interfering in the findings of the enquiry officer as the punishing authority was empowered to accept the inquiry report and accordingly, award/punishment is in terms of Punjab Civil Services (Punishment and Appeal)

Rules, 1952. Relevant whereof is reproduced hereinbelow:-

“4. Penalties

The following penalties may, for good and sufficient reason as hereinafter provided, be imposed upon members of the services to whom these rules are applicable, namely:-

- i) Censure;*
- ii) **Withholding of increments of promotion, including stoppage of an efficiency bar, if any;***
- iii) Reduction to a lower post or time-scale, or to a lower stage in a time scale;*
- iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence of breach of orders;*
- v) Suspension;*
- vi) Removal from the Civil Service of the government, which does not disqualify from future employment.*
- vii) Dismissal from the Civil Service of the government which ordinarily disqualifies from future employment.”*

5. From the reading of the above, it does appear that there is an ambiguity on awarding of punishment of stoppage of increment as to whether the same is to be read as stoppage of increment with cumulative effect or stoppage of increment without cumulative effect. In the absence of there being any clarity in the Rules, the benefit of the same must go to the Employee and not to the Employer and the punishment ought to have been on lesser side.

6. Reference may be had, in this context, to the judgment rendered by Single Bench in ***RSA No.2089 of 1972 decided on 05.12.1990*** reported as ***1991 (3) RSJ 106*** dealing with Rule 5 (v) regarding stoppage of increment with cumulative effect under the Punjab Civil Services (Punishment and Appeal) Rules 1970. As per the law laid down in the above stated case based on the decision of Hon’ble Supreme Court in ***Kulwant Singh Gill Vs. State of Punjab, 1990 (4)***

judgments today 70, it has been held that stoppage of increment with cumulative effect amounts to a major punishment. Therefore, as per my observations punishment should be on lesser side once there is an ambiguity in the Rules. The punishment imposed by the department has to be modified to withholding of one increment without cumulative effect.

7. Argument of the learned State counsel that provisions must necessarily be read as stoppage of increment with cumulative effect then only departmental enquiry is required to be conducted which is not the case herein since any proper departmental enquiry was not conducted. He submits that in case import of the Rule is to be read as stoppage of increment without cumulative effect, the same would amount to minor penalty, which does not warrant any such enquiry to be conducted.

8. Argument of the learned State counsel lacks force against the opinion already rendered in the RSA *ibid*. I am in respectful agreement with the judgment *ibid* cited by the learned counsel for the petitioner.

9. As regards the argument of learned State counsel that Rules existing as on the date of passing of the punishment order are Haryana Civil Services Punishment and Appeal Rules, 1987 and, therefore, the entire reliance by the learned counsel for the petitioner on Punjab Civil Services (Punishment and Appeal) Rules, 1952 is misplaced.

10. I do not find any substance in the argument canvassed by the learned State counsel. What has to be seen is the applicability of the Rules as on the date the departmental action was originally initiated coupled with the fact the date of occurrence of the alleged delinquency. On both counts at the relevant time, Haryana Civil Services Punishment and Appeal Rules, 1987 had not come into force and were not even contemplated at that stage. Therefore, to argue to the contrary would amount to give unfettered discretion in the hands of the department

to implement/apply the 1987 Rules retrospectively, which is not the import when the same were promulgated.

11. In the premise, impugned order is modified to the extent that stoppage of increment shall be treated as without cumulative effect and accordingly, for the subsequent period, calculations be made and arrears be given to the petitioner along with interest @ 5% P.A. with all consequential benefits. Needless to say the same shall include fixation of his pensionary benefits.

12. Disposed of accordingly.

(ARUN MONGA)
JUDGE

July 20, 2022

Vandana

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