



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-1024-2006 (O&M)
Reserved on: 28.11.2024
Pronounced on: 04.12.2024

State of Punjab and anotherAppellants

Versus

Wazir Singh ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Nitesh Sharma, DAG, Punjab
for the appellants-State.

Mr. Manmeet Singh Rana, Advocate
for the respondent.

HARPREET SINGH BRAR, J.

1. The appellants through instant second appeal are seeking setting aside of judgment and decree dated 01.12.2005 passed by learned Additional District Judge, Ferozepur, whereby, the appeal filed by respondent-plaintiff has been allowed and the judgment and decree dated 03.06.2005 passed by Civil Judge, (Senior Division), Ferozepur have been overturned.

2. Succinctly, the facts as per the plaint are that the respondent-plaintiff joined Punjab Roadways department as a Conductor on 10.07.1981. In the year 1983, a report was made against him by Inspectorate/Checking Staff, subsequent to which, the General Manager, Punjab Roadways, Ferozepur forfeited one increment of the respondent-plaintiff with future effect vide order dated 30.09.1983. Similar punishment was levied upon the respondent-plaintiff vide order dated 27.05.1986 on the basis of another report made by the checking staff. Despite several requests made to the General Manager by the



respondent-plaintiff, his case was never taken up. Even the legal notice served upon the appellants-defendants requesting for release of full pay allowances went un-answered. Affronted by the same, the respondent challenged the legality of orders dated 30.09.1983 and 27.05.1986, both passed by General Manager, Punjab Roadways, Ferozepur, by way of a civil suit instituted in the year 2002. It was submitted therein that before passing the impugned orders, neither any departmental inquiry was conducted nor was any charge-sheet served upon him as required by punishment and appeal rules.

3. Upon notice issued to the appellants-defendants in the civil suit filed by the respondent-plaintiff, they appeared before the Court and filed their written statement. Therein, preliminary objections were taken citing that the suit was barred by limitation. It was also pleaded that the impugned orders were passed in accordance with the service rules and even valid show-cause notices were served upon the respondent-plaintiff before passing the impugned orders. It was also pleaded that the respondent-plaintiff never replied to the show-cause notices. It was further submitted that since there was no recurring cause of action, the suit was liable to be dismissed. From the pleadings of the parties, as many as seven issues were framed including the issue of relief. Thereafter, the evidence of the parties was considered and ultimately, the suit of the respondent-plaintiff was dismissed on the grounds that respondent-plaintiff failed to challenge the impugned orders within stipulated period even after having knowledge of the same. It was further held that specific orders of punishment were passed by the defendants department after issuing show cause notices to the respondent-plaintiff, to which he did not file any reply and thus inadvertently admitted allegations against him.

4. Aggrieved by the decision of the learned trial Court, the



respondent-plaintiff preferred an appeal before the learned Additional District Judge, Ferozepur, wherein, the decision of the learned trial Court was overturned on the grounds that since a major penalty was imposed upon the respondent-plaintiff, it was mandatory for the department to follow due procedure of law and hold a regular inquiry and subsequently, give due opportunity of hearing to the delinquent official to produce evidence. It was also observed that the delinquent official, i.e., the present respondent was required to be given a personal hearing. On the issue of limitation, it was noted by the learned lower Appellate Court that there was a continuing wrong against the respondent-employee, he could not be deprived from the benefits on the question of delay. Qua relief, it was held that the respondent-plaintiff was entitled to the arrears and other benefits only with effect from 30.05.1999, i.e., three years prior to the filing of the suit. In the instant regular second appeal, the appellants-defendants have impugned the judgment and decree passed by the lower Appellate Court.

5. Learned State counsel for the appellants vociferously contended that the learned Additional District Judge, Ferozepur erred by ignoring the fact that the suit was filed by the respondent after an inordinate delay of 16 years from passing of the last impugned order and the same was barred by limitation. Further submitted that show-cause notices were duly served upon the respondent before passing the impugned orders of punishment and he chose not to reply to the same. It was also argued that the respondent did not avail the departmental remedies available to him before approaching the Civil Court.

6. Learned counsel for the respondent contended that once it has been established that the penalty imposed was major in nature and due procedure was not followed, the impugned orders passed by the appellants are rendered



void ab initio. Therefore, no interference is warranted by this Court in the judgment & decree passed by the learned ADJ, Ferozepur.

7. In view of the judgments passed by the Hon'ble Supreme Court in ***Pankajakshi (Dead) through Legal Representatives and others Vs. Chandrika and others (2016) 6 SCC 157, Randhir Kaur Vs. Prithvi Pal Singh and others (2019) 17 SCC 71*** and ***Gurbachan Singh (dead) through LRs Vs. Gurcharan Singh (dead) through LRs and others***, questions of law are not required to be framed in second appeal before the Punjab and Haryana High Court whose jurisdiction is circumscribed by provisions of Section 41 of the Punjab Act, however, since this Court vide order dated 21.08.2006 has already framed the substantial questions of law as mentioned below, the same is being taken up for consideration herein: -

2. *Whether the suit of the respondent-plaintiff is barred by limitation?*

3. *Whether the impugned orders of punishment passed by the appellants-defendants were wrongly set aside since the respondent-plaintiff had not filed a reply to the show cause notice served upon him?*

8. I have heard the learned counsel for the parties and perused the paper-book with their able assistance. Both the above-mentioned issues are being dealt with at once since they are intertwined. At the outset, it is apposite to scrutinize the legality of the impugned orders passed by the department. It has remained undisputed that as per the penalty imposed by the appellants/employers, two increments of the respondent/employee were stopped with cumulative effect. The penalty imposed clearly falls within the ambit of major penalty. It is trite law that whenever the State or its department imposes a major penalty on an employee as per the service rules, the department is bound to follow due procedure of law and thus, hold a regular



inquiry where due opportunity is given to the penalized employee to put forth his case including an opportunity of personal hearing. The same has been discussed at length by the Hon'ble Supreme Court in the case of **Kulwant Singh Gill v. The State of Punjab, 1990(2) CLR 686**, wherein, following observations were made: -

“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 forms which he was reduced, with or without further directions regarding conditions of restorations 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. Clause 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 (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. Withholding of increments of pay simpliciter without any hedge over it certainly comes within the meaning of Rules 5(iv) of the Rules. But when penalty was imposed withholding two increments i.e. for two years with cumulative effect, it would



*indisputably means that the two increments earned by the employee were 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 and Ors., ILR 1985(2) P&H 193** speaking for the division bench, while considering a similar question, in paragraph 8 held that the stoppage of increments with cumulative effect , by no stretch of imagination falls within clause (v) of Rules 5 of 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 is 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 withheld 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 the 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 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 storage of increments, of earning future increments in the time scale of*



pay even permanently without expressly stating so. This preposterous consequence 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.

5. The further contention of Shri Nayar that the procedure under Rule 8 was followed by issuance of the show cause notice and consideration of the explanation given by the appellant would meet the test of Rules 8 and 9 of the Rules is devoid of any substance. Conducting an enquiry, de hors the rules is no enquiry in the eye of law. It cannot be countenanced that the pretense of an enquiry without reasonable opportunity of abducting evidence both by the Dept. as well as by the appellant in rebuttal, examination and cross-examination of the witnesses, if examined, to be an enquiry within the meanings of Rules 8 and 9 of the Rules. Those rules admittedly envisage, on denial of the charge by the delinquent officer, to conduct an enquiry giving reasonable opportunity to the presenting officer as well as the delinquent officer to lead evidence in support of the charge and in rebuttal thereof, giving adequate opportunity to the delinquent officer to cross-examine the witnesses produced by the Dept. and to examine witnesses if intended on his behalf and to place his version; consideration thereof by the enquiry officer, if the disciplinary authority himself is not the enquiry officer. A report of the enquiry in that behalf is to be placed before the disciplinary authority who then is to consider it in the manner prescribed and to pass an appropriate order as per the procedure in vogue under the Rules. The gamut of this procedure was not gone through. Therefore, the issuance of the notice and consideration of the explanation is not a procedure in accordance with Rules 8 and 9. Obviously, the disciplinary authority felt that the enquiry into minor penalty is not necessary and adhering to the



principles of natural justice the show cause notice and on receipt of the reply from the delinquent officer passed the impugned order imposing penalty thinking it to be a minor penalty. If it is considered, as stated earlier, that it would be only a minor penalty, the procedure followed certainly meets the test of the principles of natural justice and it would be a sufficient compliance with the procedure. In view of the finding that the impugned order is a major penalty certainly then a regular enquiry has got to be conducted and so the impugned order is clearly illegal.”

9. In the present case, on the question of legality of the orders passed by the Department imposing penalty on the respondent, this Court finds itself in affirmation of the observations made by the learned Additional District Judge, Ferozepur while holding the said orders illegal. It is conceded that no regular inquiry was held before imposing the penalty on the respondent-employee and only show-cause notices (Ex.P6 & P7) were served upon him before passing the impugned orders. Although, the respondent-plaintiff chose not to file any reply to the show-cause notices but it has been admitted on record that both the impugned orders vide which a major penalty was imposed upon the respondent, were passed without following due procedure of law. In light of the aforesaid discussion, the impugned orders dated 30.09.1983 and 27.05.1986 are illegal, null and void.

10. It further transpires that the impugned orders vide which one increment each was stopped with cumulative effect, were passed on 30.09.1983 and 27.05.1986 respectively, whereas, the suit for declaration challenging the same was filed on 30.05.2002, i.e., way outside the stipulated period of 3 years. However, it is pertinent to note here that there was a continuing wrong against the respondent-plaintiff which resulted in a recurring cause of action every month he was paid salary as per calculations made in effect of the illegal



impugned orders. It has also come to the fore that the respondent made various representations before the appellants-department seeking redressal of his grievances before serving a legal notice dated 26.03.2002. Since it has been already held that the impugned orders vide which the penalty was imposed upon the respondent-employee are illegal and thus, void in the eyes of law, he cannot be denied redressal merely on the question of delay, especially when there is a recurring cause of action. The view taken by this Court in the present case finds resonance with an earlier view taken by a Co-ordinate Bench of this Court in the case of **Neeti Rajan Singh v. State of Punjab and Another, 2003(2) SLR 574**, wherein, following was observed:

*“14. Now the only question to be seen is whether the suit filed by the appellants is time barred. The order vide which it was stated that the extra ordinary leave period for pursuing higher studies which had been granted to the appellant would not be counted towards increments was passed on 21.4.1982. The present suit for declaration had been filed on 2.2.1991 i.e. beyond a period of three years. It has been observed by the Hon'ble Apex Court in **M.R. Gupta v. Union of India and others, 1996(1) SCT 8 (SC) : 1995(4) RSJ 502** that the appellant's grievance was that his pay fixation was not in accordance with the rules and as such, there was a continuing wrong against him which gave rise to a recurring cause of action each time he was paid salary which was not computed in accordance with the rules. Therefore, as long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to the rules. Thus, he was getting less salary every month and a fresh cause of action has arisen to him every month. He had also made representation/letters dated 28.2.1985 and 25.11.1988 and then gave legal notice dated 16.7.1990. Thus, he had been clamouring to seek redress from the respondents although he fulfils all the conditions. So, he cannot be deprived from the benefits on the question of delay. It has been held by this Court in **State of Punjab and others v. Jagdish Ram Mittal,***



1989(1) RSJ 41 that there is no limitation for challenging a void order.”

11. As a sequel to the above discussion, no reason is made out to warrant any interference in the judgement and decree dated 01.12.2005 passed by learned Additional District Judge, Ferozepur.

12. Resultantly, the instant second appeal is hereby dismissed.

(HARPREET SINGH BRAR)
JUDGE

04.12.2024
Neha

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