

State of Punjab

v.

Jaswant Singh Kanwar

(Supreme Court Of India)

HON'BLE MR. JUSTICE H.L. DATTU HON'BLE MR. JUSTICE DIPAK MISRA

Civil Appeal No. 5523 Of 2013 (Special Leave Petition (Civil) No. 9338 Of 2012) | 17-07-2013

1. Delay condoned. Leave granted. This appeal is directed against the judgment and order passed by the High Court of Judicature of Punjab and Haryana at Chandigarh in State of Punjab v. Jaswant Singh (LPA No.898 of 2011, order dated 24-5-2011 (P&H)) dated 24-5-2011. By the impugned judgment and order (LPA No.898 of 2011, order dated 24-5-2011 (P&H)), the High Court has affirmed the order passed by the learned Single Judge in (Jaswant Singh Kanwar v. State of Punjab, WP (C) No.5130 of 1999, order dated 23-11-2010 (P&H)), dated 23-11-2010 and has reached the conclusion that the respondent is entitled to increments during the period of suspension from 17-2-1988 to 7-1-1993 apart from the pay and allowances which is not more than the subsistence allowance already paid to Jaswant Singh Kanwar, the respondent.

2. The respondent was working as an Assistant Controller (Finance & Accounts) in the Office of General Manager, Punjab Roadways, Chandigarh, State of Punjab. A physical verification of accounts in the office of the respondent was carried out by the Inspection Committee, which revealed that there was a shortage of cash and the three cashiers under the control and supervision of the respondents had embezzled a sum of Rs.3,97,646.70p. Keeping the aforesaid aspect in view, the disciplinary authority had initiated disciplinary enquiry proceedings by issuing charge memo. During the pendency of the disciplinary proceedings, the disciplinary authority thought it fit to keep the respondent under suspension by its order dated 17-2-1988 and thereafter the charge-sheet was framed and served upon the respondent.

3. For the purpose of departmental inquiry, the disciplinary authority had appointed an enquiry officer to inquire into the allegations made in the charge

memo which is supported by the statement of imputation. The enquiry officer after enquiry had found that the respondent is not guilty of the charges alleged against him in the charge memo. However, after the receipt of the enquiry officer's report, the disciplinary authority did not concur with the opinion in the enquiry report for more than one reason and accordingly, thought it fit to issue show-cause notice to the respondent, inter alia, directing him to show cause as to why the report of the enquiry officer should not be rejected and proceeded to hold with the available evidence on record that the respondent is guilty of the charges levelled against him in the charge memo. The petitioner submitted his reply on 15-10-1992. After receipt of the reply to the show-cause notice so issued, the disciplinary authority by its order dated 4-5-1994, has thought it fit to impose major penalty of stoppage of two increments on the respondent with cumulative effect and has treated the suspension period from 17-2-1988 to 7-1-1993 as leave of the kind due.

4. Thereafter the respondent on 15-9-1994 made a representation before the authorities against treating the said period of suspension as leave of the kind due. However, the disciplinary authority did not allow the said request made by the respondent delinquent officer.

5. Being aggrieved by the finding of the disciplinary authority, the respondent approached the High Court by way of an appeal. Before the High Court, the learned counsel for the respondent herein sought permission to withdraw the writ petition so as to make representation before the petitioner herein for consideration of his case.

6. The Department by its order dated 22-10-1998, after reconsidering all the aspects of the case has allowed the pay and allowances not more than the subsistence allowance already paid to the respondent during the period of suspension. Further the Department once again clarifies that the period of suspension shall not be treated as a period spent on duty.

7. The respondent, thereafter, had approached the High Court by a writ petition, inter alia, requesting the Court to direct the disciplinary authority for grant of increments for the aforesaid period i.e. from 17-2-1988 till 7-1-1993. The High Court, while allowing the writ petition has passed the following order (Jaswant

Singh Kanwar v. State of Punjab, WP (C) No.5130 of 1999, order dated 23-11-2010 (P&H):

“ ... In the present case, the impugned order (Annexure P-5) was passed on 22-10-1998. Thereafter, the petitioner has been acquitted in the criminal proceedings as well. Therefore, acquittal of the petitioner in the criminal case and the fact that his co-employee Assistant Cashier, who had embezzled the funds, has been granted benefit of increments, can be considered as a mitigating circumstance and the doctrine of proportionality can be invoked.

Taking the facts and circumstances of the case in view, the order of punishment dated 22-10-1998 (Annexure P-5) is modified to the extent that for the period of suspension, the petitioner will not be entitled to pay and allowances not more than the subsistence allowance so paid. However, the petitioner is held entitled to the increments which have accrued to him during the period of this suspension.” (emphasis supplied)

8. Aggrieved by the said order (Jaswant Singh Kanwar v. State of Punjab, WP (C) No.5130 of 1999, order dated 23-11-2010 (P&H)) passed by the learned Single Judge, the State had filed an appeal before the Division Bench of the High Court. The Division Bench has affirmed the orders (Jaswant Singh Kanwar v. State of Punjab, WP (C) No.5130 of 1999, order dated 23-11-2010 (P&H)) passed by the learned Single Judge. The State is now before us in this appeal, by special leave.

9. We have heard Shri Ajay Kapur, learned Senior Counsel appearing for the State and Shri Paramjit Batra, learned counsel appearing for the respondent. We have also carefully gone through the orders passed by the High Court.

10. The only issue which arises for consideration is whether an official placed under suspension by the disciplinary authority is entitled for grant of increments during the period of suspension.

11. To analyse the above proposition, the dictionary meaning of suspension is required to be set out. The term “suspend” would mean “to debar usually, for a time, from any privilege, the execution of an office or from the enjoyment of an income”. It is temporary deprivation of office or privilege. By reason of suspension, the powers, functions and privileges remain in abeyance but one continues to be subjected to the same discipline and penalties and to the same authorities. The above definition makes it clear that during the period of suspension, all the privileges and benefits attached to the office are temporarily suspended unless the period of suspension is considered as the period spent on duty.

12. In the instant case, the High Court has concurred with the finding of the disciplinary authority and has come to the conclusion that the period of suspension is not the period spent on duty.

13. “Increment” has a definite concept in service law jurisprudence, It is an increase or addition on a fixed scale; it is a regular increase in salary on such a scale. As noted by this Court in *SBI v. Central Govt. Labour Court* ((1972) 3 SCC 595), under the labour and industrial laws, an increment is when in a timescale of pay an employee advances from the lower point of scale to the higher by periodic additions. In other words, it is addition in the same scale and not to a higher scale. An increment is an incidence of employment and an employee gets an increment by working the full year and drawing full salary. During the period of suspension, the contract of service remains suspended. The order of suspension by the departmental enquiry has the effect of temporarily suspending the relations between the master and servant with the consequence that the servant is not bound to render service and, therefore, the petitioner as an employee is not entitled to increments during this period which is taken as period not spent on duty.

14. The disciplinary authority by its order has imposed stoppage of two increments with cumulative effect as a major penalty for the offences alleged against the petitioner. The principle of stoppage of increment is laid down in *Kulwant Singh Gill v. State of Punjab* (1991 Supp (1) SCC 504 : 1991 SCC (L&S) 998 : (1991) 16 ATC 940), where 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 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 timescale 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 timescale 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 timescale of pay as a measure of penalty. The stoppage of increment is only a major penalty which keeps the petitioner away from the benefits that would have accrued to him during the suspension period. It is not a new penalty imposed or the same offence in respect of the same subject-matter.

15. In our view, the High Court has failed to note the very purpose of the stoppage of increment imposed as a major penalty by the disciplinary authority. The grant of increment after the order of suspension by the authority with the concurrent finding of the period not spent on duty and more so when the order of termination is not declared illegal or void ab initio would not only defeat the very purpose of levying penalties but would also jeopardise public interest and administration of justice.

16. A careful reading of the language employed in Rule 4.9(a) of the Punjab Civil Service Rules Volume I, Part I read with Rule 7.3-B(1) would stipulate the conditions on which service counts for increments in a time-scale. The aforesaid provision suggests that only the period spent on duty in a post would be counted for the purpose of increments. Rule 7.3-B(1) would further stipulate that upon reinstatement of a suspended employee, the competent authority shall consider and make a special order regarding the pay and allowances to be paid to the government employee for the period of his absence from duty including the period of suspension, preceding his dismissal, removal or compulsory retirement, as the case may be and whether or not the said period shall be treated as a period spent on duty. The competent authority in the present case after a careful consideration, in accordance with the rules had although thought it fit to grant the pay and allowances not exceeding the subsistence allowance already granted to the respondent during the period of suspension but has not granted increments for the period of suspension i.e. the period not spent on duty.

17. It is an admitted fact that the respondent was kept under suspension pending departmental inquiry with effect from 17-2-1988. The disciplinary authority, by its order dated 22-10-1998 has imposed a major penalty on the respondent by way of stoppage of two increments with cumulative effect. But subsequently, the disciplinary authority and the High Court have concurred that the period of suspension was period not spent on duty and, therefore, keeping in view the rules applicable and the general principles of service law jurisprudence, the respondent would not be entitled to any increment during the aforesaid period of suspension.

18. We, therefore, cannot sustain the orders passed by the courts below.

19. Accordingly, while allowing the appeal, we set aside the orders passed by the learned Single Judge (Jaswant Singh Kanwar v. State of Punjab, WP (C) No.5130 of 1999, order dated 23-11-2010 (P&H)) as affirmed by the Division Bench I of the High Court. No costs. Ordered accordingly.