

MADHYA PRADESH HIGH COURT

Lal Audhraj Singh

Vs.

State of M. P

Misc. Petn. No. 425 of 1966, Decided on 6.5.1967 against the order of Government
(P.V. Dixit, C.J. and R.J. Bhawe, J.)

06.05.1967

JUDGMENT

Dixit, C.J.

1. The petitioner in this case seeks a writ of certiorari for quashing an order passed by the Government on 21st December 1965 withholding "with cumulative effect" one increment in his scale of pay as the Assistant Conservator of Forests.

2. On 27th January 1954, when the applicant was holding the post of Range Officer, he was charged for negligence in the discharge of his duties in that he failed to inspect a coupe between 13th May 1952 and 22nd February 1953, which alleged failure resulted in illicit extraction and removal of material from the coupe by a Forest Contractor. By the charge sheet served on the applicant, he was also asked to show cause why he should not be dismissed from service or awarded one of the punishments detailed in rule (1) Para 3 of Part I, Serial No. 13 of the Book Circular of the Madhya Pradesh Government. The petitioner gave his reply on 4th March 1954 denying the allegation of negligence. Nothing happened thereafter till 15th April 1963. In the intervening period of over nine years from 27th January 1954, the petitioner was promoted in 1956 to the post of Assistant Conservator of Forests in the grade of Rs. 250-25-400-EB-30-580. After his promotion, he continued to get his increments in the pay-scale of Assistant Conservator of Forests and was allowed to cross the Efficiency Bar from 4th February 1961. The petitioner says that he was also confirmed in the post of Assistant Conservator of Forests from 1st April 1958. In the return filed by the State, nothing has been said with regard to the confirmation of the petitioner in the post of Assistant Conservator of Forests. On 15th April 1963, a notice was again issued to the petitioner by the Government asking him to show cause why his two

increments in his scale of pay as Assistant Conservator of Forests should not be withheld for the very negligence which formed the subject-matter of the notice issued to him on 27th January 1954. The applicant gave his explanation, and thereafter the impugned order was passed on 21st December 1965.

3. Sri G. P. Singh, learned counsel appearing for the petitioner, assailed the order of the Government withholding the petitioner's increment contending that when despite the alleged negligence which formed the subject-matter of the charge-sheet dated the 27th January 1954, no action was taken against the applicant for nearly nine years and that when, on the other hand, he was promoted as Assistant Conservator of Forests, allowed the annual increments, and was also permitted to cross the Efficiency Bar, it must be taken that the Government condoned the negligence alleged against the petitioner, namely, that between 13th May 1952 and 22nd February 1953 he failed to inspect the coupe in question; and that the negligence having been thus condoned could not subsequently be made a ground for imposing on the petitioner the punishment of the withholding of one increment. It was also urged that the petitioner was not given an effective opportunity to which he was entitled under rule 55-A of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, which were in force till 13th August 1965, and/or under rule 13 (1)(a) of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1965, of showing cause against the proposed punishment of the withholding of increments. It was said that an enquiry was held in 1954 by an officer of the Forest Department in regard to the charge of negligence against the petitioner mentioned in the notice dated the 27th January 1954 and a report was submitted to the Government; that the petitioner asked for a copy of this report when he received the notice dated the 15th April 1963 but the same was not supplied to him; and that thus the petitioner was at no time in possession of the material on the basis of which the charge of alleged negligence was based, and in the absence of this material he was not in a position either to controvert the charge or to show that he did not merit the proposed punishment of "withholding of his increments".

4. In our judgment, the contentions advanced on behalf of the petitioner must be given effect to. It is well settled that a master cannot impose any punishment on a servant for a misconduct which he has condoned. The subject of condonation has been discussed at length in a number of English cases (see *Horton v. McMurtry*.¹ *Phillips v. Foxall*,² *Boston Deep Sea Fishing and Ice Co. v. Ansell*.³ *Bettie v. Parmmenter*⁴ *Federal*

Supply etc. v. Angehrn and Piel,⁵ *London General Omnibus Co. Ltd. v. Holloway*⁶ *Hanley v. Pease and Partners Ltd.*⁷ The principle that merges from these cases has long been adopted in India, see *L.W. Middleton v. H. Playfair*;⁸ and *District Council, Amraoti v. Vithal Vinayak Bapat*,⁹. In the Nagpur case. Bose, J. said –

"Once a master has condoned any misconduct which would have justified dismissal or a fine, he cannot, after such condonation, go back upon his election and claim a right to dismiss or to impose a fine or any other punishment in respect of the offence which has been condoned."

Here, the negligence, which formed the basis of the notice issued to the petitioner on 27th January 1954 asking him to show cause why he should not be dismissed or given one of the lesser punishments detailed in rule (1) Para 3, of Part I Serial No. 13 of the Book Circular of the Madhya Pradesh Government, was clearly condoned by the Government when no action of any kind was, for over a period of nine years, taken against the petitioner on the charge of negligence and when, on the other hand, he was promoted in 1956 to the post of Assistant Conservator of Forests and also received after promotion annual increments and was allowed to cross the Efficiency Bar. The promotion given to the applicant, the annual increments allowed to him as well as the crossing of the Efficiency Bar can only be explained on the basis that the negligence, for which the petitioner was charged in 1954 and which the Government thought serious enough to entail his dismissal, was condoned by the Government.

It is not as if the Government was not aware of the fact that the applicant had been charged with negligence, and that a notice had been issued to him to show causa why he should not be dismissed from service. The notice dated the 27th January 1954 was issued to the applicant by a responsible officer, namely, the Divisional Forest Officer, Mandla Division. It is not also the case of the opponent that the petitioner was promoted to the post of Assistant Conservator of Forests in ignorance of the notice issued to him by the Divisional Forest Officer on 27th January 1954. We are far from saying that once a person is promoted, then there is a condonation of the lapses or misconduct on his part prior to his promotion. But if the lapse or misconduct is one which is known to the authority before the person is promoted and not one which comes to light subsequent to the promotion, and if the authority concerned knowing of this lapse or misconduct promotes the civil servant without any reservation, then it must be taken that the lapse or misconduct has been condoned. In our opinion, having regard to the circumstances in which the petitioner was promoted to the post of

Assistant Conservator of Forests and given annual increments and allowed to cross the Efficiency Bar, it must be held that the negligence, which formed the basis of the notice issued to the petitioner on 27th January 1954, was condoned by the Government. The negligence having been condoned could not clearly be used subsequently for awarding any punishment to the petitioner.

5. The petitioner's grievance that he was not given an effective opportunity of showing cause against the proposed punishment of withholding of his increments is also substantial. Under rule 55-A of the M. P. Civil Services (Classification, Control and Appeal) Rules, which were in force before 13th August 1965, such a punishment could be imposed on any Government servant only after giving him an adequate opportunity of making a representation that he desired to make and after taking into consideration such representation, if made. So also, under rule 13(1) (a) of the M. P. Civil Services (Classification, Control and Appeal) Rules, 1965, the punishment of withholding of increment can be imposed only after the Government servant is informed in writing of the proposal to take this action against him and of the allegations on which it is proposed to be taken and given an opportunity to make any representation he may wish to make and after taking into consideration such representation, if made. No doubt, it is not necessary to hold a departmental enquiry for imposing on a Government servant the punishment of withholding an increment. But he is clearly entitled to an effective opportunity of meeting the allegations on which it is proposed to withhold his increment. Merely giving a notice to the Government servant saying that he is guilty of certain lapse or misconduct and asking him to show cause against the punishment of withholding of increments is not sufficient. The Government servant must be informed of the allegations against him and the material on which they are based. In the present case, the second notice, which was issued to the applicant on 15th April 1963, was, as stated in the return itself, on the basis of the report of enquiry which was held in July 1954. A copy of that report should have been supplied to the petitioner for enabling him to meet the charge of negligence leveled against him and to show that he did not deserve any punishment.

6. For these reasons, our conclusion is that the order dated the 21st December 1965 of the Government imposing on the applicant the punishment of withholding of one increment is vitiated and cannot be allowed to stand. The result is that this petition is allowed, and the order dated the 21st December 1965 of the State Government is quashed. The petitioner shall have costs of this petition. Counsel's fee is fixed at Rs.

75. The outstanding amount of security deposit shall be refunded to the petitioner.

Petition allowed.

Cases Referred.

1. (1860)2 LT 297
2. 1872-7 QB 666
3. 1888-89 ChD 339 at p. 358
4. 1889-5 TLR 396
5. 1910-80 LJPC 1, 8
6. 1912-2 KB 72;
7. 1915-1 KB 698 at p. 705
8. AIR 1925 Cal 87
9. AIR 1941 Nag 125