

PUNJAB AND HARYANA HIGH COURT

Sawaran Singh Sub Inspector Food

Vs

State of Punjab

Civil writ petition No. 352 of 1984

(Prem Chand Jain, A.C.J. & I.S. Tiwana, J.)

16.02.1985

JUDGMENT

Prem Chand Jain, A.C.J.

1. The significant legal question which needs determination in this petition is, whether stoppage of increments with cumulative effect is a major penalty ?

2. The petitioner was working as a Sub Inspector in the Food and Supplies department. H along with other four Sub special from Phagwara Railway station to (sic) on 5th April, 1978. For this purpose, 8800 bags of wheat were dumped at the railway station. out of this, 8170 bags were loaded in the wheat special as a result thereof 630 bags ought to have been left behind, but instead of 666 bags were found left behind on the platform and as such there was an excess of 36 bags. This excess was brought to the notice of the District Food and Supplies controller. Finding that these 36 bags were kept behind for mis-appropriation, a charge-sheet was served on the petitioner in the first week of July 1978. The petitioner filed a detailed reply to that charge-sheet. Thereafter, a show-cause notice was served on the petitioner for showing cause as to why on the basis of the charges levelled in the charge-sheet, his two increments be not stopped with cumulative effect. the petitioner submitted a reply to the show-cause notice, but finding the same unsatisfactory, the Director of Food and Supplies, Punjab respondent No. 2, imposed the penalty of stopping of two increments with cumulative effect.

3. Feeling aggrieved from the order of respondent No. 2, the petitioner preferred an appeal, but the same was rejected by respondent No. 1. Still aggrieved, the petitioner has filed this petition, calling in question the legality of the orders of the respondents No. 2 and 1, copies Annexures P-1 and P-3 respectively. As is evident from the question of law framed, the only point that needs determination is whether the imposition of penalty of stoppage of increments with cumulative effect is a major punishment. If the answer is in the affirmative, then there is no gainsaying that the impugned orders have to be set aside, as no departmental enquiry was conducted. Mr.M.S. Kang, learned counsel appearing for the petitioner, had submitted that stoppage of increments with cumulative effect is a major punishment and as no departmental enquiry had been initiated, the order passed by respondent No. 2 was illegal and without jurisdiction. In support of his

contention, the learned counsel had placed reliance of two Single Bench Judgment of this court *Punjab State and others v. Ram Lubhaya*¹, and *Balkar Singh v. Chief Engineer*²

We have heard the learned counsel for the parties. There is no gainsaying that the two judgments, to which our attention has been drawn by the learned counsel for the petitioner, do support his contention, but Mr. A.S. Sandhu, learned additional Advocate General, had contended that the view taken in the two judgments, does not lay down a correct law. What was sought to be argued by the learned State counsel was, that the stoppage of increments is a minor penalty and merely this fact that this has been made with cumulative effect, would not make major penalty.

6. On consideration of the entire matter, we find that the contention of the learned counsel for the state has considerable force. Rule 5 of the Punjab civil Services (Punishment and Appeal) Rules, 1970 (hereinafter referred to as the Rules), prescribes the minor and major penalties and the relevant portion of the Rule is in the following terms :-

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

Minor penalties

- (i) Censure;
- (ii) Withholding of his promotion;
- (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 expiry of such period, the reduction will or will not have 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 abated to the promotion of the Government employee to time scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of restoration regarding conditions of restoration to the graded or post or Service from which the Govt. 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"

From the bare perusal of the aforesaid rule, it would be evident that item (iv), which talks of withholding of increments of pay, is a minor penalty. However, what was sought to be argued by Mr. Kang, was that by making the withholding of increments with cumulative effect, the penalty would become major and would fall under item

(v). This contention, on the face of it, is untenable, as item (v) is an independent clause covering entirely a different situation and does not cover the case of stoppage of increments with cumulative effect. The power of withholding increments is given under Rule 4.7 of the Punjab Civil Service Rules, Volume I and is in the following terms :-

4.7. An increment shall ordinarily be drawn as a matter of course, unless it is withheld. An increment may be withheld by a competent authority if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments".

It is under this rule that a competent Authority is empowered to withhold an increment of a Government employee. The competent Authority again is empowered under this Rule to state the period of which it is withheld and also whether the postponement shall have the effect of postponing future increments. When the competent Authority exercises his powers under this rule, it is then that it makes an order of stoppage of increments with cumulative effect. But for the purposes of penalty, as it remains a minor penalty, as it falls under clause (iv), which talks of withholding of increments of pay.

8. So far as the penalty referred to under clause (v) is concerned, the power is referable to Rule 4.12, the relevant portion of which is in the following terms :-

"4.12(1) If a Government employee is reduced as a measure of penalty to a lower stage in his time - scale, the authority, ordering such reduction shall state the period for which it shall be effective and whether, on restoration the period of reduction shall operate to postpone future increments and, if so, to what extent.

(2) If a Government employee is reduced as a measure of penalty to a lower service, grade or post, or to a lower time-scale, the authority ordering the reduction may or may not specify the period for which the reduction shall also state if that authority shall also state whether, on restoration, the period of reduction shall operate to postpone future increments, and if so, to what extent"

A bare perusal of the aforesaid rule goes to show that it envisages entirely a different situation and the stoppage of increments with cumulative effect

by no stretch of imagination can fall within clause (v), or Rule 4.12 under clause (v), there has to be 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. This clause envisages reduction to a lower stage, which in the case of withholding of increments with cumulative effect does not at all arise. In cases where the increments are withheld with or without cumulative effect, the Government employee is never reduced to a lower stage. In this view of the matter, we find that stoppage of increment with cumulative effect is a minor penalty and would fall under clause (iv) and not under clause (v) which is part of penalty. In the view we have taken, with respect we find that the views enunciated in enunciated in Ram Lubhaya's case (supra) does not lay down a correct law and is accordingly over-ruled. Further, in Balkar Singh's case (supra), there is no discussion on this aspect of the matter and the learned Singh Judge has merely followed the decision in Ram Lubhaya's case (supra), with the result that the decision in Balkar Singh's case (supra) is also over-ruled.

9. No other point arises for consideration.

10. For the reasons recorded above, we find no merit in this petition. And, consequently, dismiss the same, but without any order as to costs.

I.S. Tiwana, J. –

11. I agree

Petition dismissed.

Cases Referred.

11983 (2) S.L.R. 410

21983(2) S.L.R.684