
(2013) 04 JH CK 0082
In the Jharkhand High Court
Case No : WP (S) No. 3153 of 2006

Basudeo Mandal

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 323

Citation : (2013) 2 JLJR 635

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : J.P. Jha, for the Appellant;

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties. The petitioner has been inflicted with punishment of stoppage of two increments with cumulative effect and also refused payment of full salary apart from subsistence allowance for which he remained in jail custody by the disciplinary authority i.e. Deputy Commissioner, Dumka vide memo no. 231/R dated 19.3.2002, Annexure-1/A. His service Appeal No. 01/ 2002-03 has also been dismissed vide order dated 3.4.2006 passed by the Commissioner, Santhal Pargana Division, Dumka, Respondent No. 2 affirming the original order.

2. The petitioner has assailed the appellate order dated 3.5.2006 on the ground that punishment which has been passed is major punishment under the Department Rule imposing stoppage of two increments with cumulative effect having consequences for rest of his career. However, from perusal of impugned order, it would be clear that no full dress departmental enquiry was held before imposing the said major punishment to the petitioner and the Commissioner, Dumka has erroneously held that it is a minor punishment. It is further submitted that the petitioner had categorically stated in the writ petition. that neither proper departmental proceeding in the eye of law has been held nor the inquiry report was served upon him, which is contrary to the settled procedure

laid down for conduct of Departmental Proceeding before imposing such punishment and the same has not been denied.

3. According to the petitioner, he was implicated in a criminal case, when he was posted as Halka Karamchari of Saraiyahat Circle Office, Masalia, in P.S. Case. No. 13 of 1996 under Sections 147, 148, 149, 452, 380, 302, 323, I.P.C. Though he was convicted for sentence of death by learned Trial Court but was acquitted by the Patna High Court in appeal preferred by him. On his acquittal, he preferred an application for revocation of his suspension, which was imposed upon him during the pendency of a criminal proceeding on account of his alleged absence from the office and remaining in jail custody. However, a departmental proceeding was initiated against him in the year 2001 with certain charges of remaining absent from duty; as also being an accused in Jama P.S. Case No. 13 of 1996 and having remained absent from duty further during which period someone else was asked to discharge his duty.

4. According to him, though he explained his innocence by filing elaborate show cause giving the circumstances in which he was arrested and he had informed the Circle Officer, Masalia regarding his arrest but Deputy Commissioner by Annexure-1/A has imposed the major punishment withholding two increments with cumulative effect without any full dress departmental proceeding against him. Accordingly, he has assailed the impugned of the Commissioner, who has confirmed the original order of punishment.

5. The respondents have not been able to deny that no full dress departmental inquiry was held before imposing the punishment. Earlier vide order dated 21.11.2012 on the request of the respondents, time was allowed to bring on record the records of the departmental proceeding to substantiate their stand that full dress inquiry was held before imposing punishment. They have, however, failed to bring on record any such documents. A perusal of the appellate order also shows that the Commissioner has held that stoppage of two increments with cumulative effect comes under the category of minor punishment, which could have been inflicted without conducting departmental inquiry if the controlling officer was satisfied after show cause and explanation to the employee concerned. However, the appellate authority has also failed to consider that the order of punishment is not simply withholding of two increments but with cumulative effect. The order of withholding of two annual increments with cumulative effect cannot be said to be a minor punishment. As a consequence of such punishment would remain upon the petitioner for the rest of his career as well.

6. It is apposite to quote the opinion of the Hon''ble Supreme Court as rendered in the case of Kulwant Singh Gill Vs. State of Punjab, :-

4. Withholding of increments of. pay simpliciter undoubtedly is a minor penalty within the meaning of Rule 5(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. This 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 Rule 5(iv) of the Rules. But when 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 was 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 this 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 an envisaged under Rule 5(v) of the Rules. It is undoubted that the Division Bench in *Sarwan Singh vs. State of Punjab*, P.C. Jain, A.C.J., speaking for the Division Bench, while considering similar question, in paragraph 8 held that the stoppage of increments with cumulative effect, by no stretch of imagination falls within clause (v) of Rule 5 or 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 it 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 that 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 the 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 grab of stoppage of increments, (sic stoppage) 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 his 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.

7. In these circumstances, when the punishment in question has been imposed without full dress departmental inquiry, they are vitiated in law as well as on facts and cannot be sustained. Accordingly, the impugned order is quashed.

8. It is informed that the petitioner has already superannuated from the service. Therefore, it will be futile to allow the respondents to initiate any fresh inquiry for the alleged charges. More so, when the petitioner is found to be acquitted in the criminal offence in relation to which he was also departmentally proceeded.

9. Needless to say that the petitioner will be entitled to such consequential monetary benefits upon quashing of the impugned order, which shall be paid within a period of 12 weeks from the date of receipt/production of a copy of this order. The present writ petition stands allowed in the aforesaid terms.