
(2012) 09 JH CK 0077

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2576 of 2009

Gokul Chandra Mahto

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:

Citation : (2013) 1 AJR 348 : (2012) 4 JLJR 474

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : A.K. Sahani, for the Appellant;

Final Decision : Allowed

Judgement

Aparesh Kumar Singh

1. Heard learned counsel for the parties. The petitioner is aggrieved by the order of punishment as contained in Memo No. 715 dated 03.06.2008 passed by the Respondent No. 3, the District Superintendent of Education-cum- Sub-Divisional Education Officer, Bokaro whereby the punishment of withholding two annual increment with cumulative effect has been awarded and also it has been held that petitioner is not entitled for salary for the suspension period.

2. The case of the petitioner is that the petitioner was posted as In-charge Headmaster in Upgraded Middle School, Podudih, Chas at the relevant point of time and during the course of inspection, the school was found closed. Lapses were found on the part of the petitioner in making no efforts towards enrollment of students in school and thereby he was found to have committed dereliction in duty and disobedience to the orders of superior authorities in connection with scheme for "School Chale Abhiyan, 2006". Accordingly, petitioner was put under suspension on 13.05.2006. He was served charge sheet under Form-Ka with the aforesaid allegation. The petitioner denied all such allegations made against him through reply which according to the petitioner is also annexed as Annexure-D to the supplementary counter affidavit. After elapse of more than ten month, the

suspension of all 13 teachers including the petitioner was revoked(Annexure-4). However, it has been submitted on the part of the petitioner that the impugned order dated 03.06.2008 has been passed by the District Superintendent of Education-cum- Sub-Divisional Education Officer, Bokaro imposing the aforesaid punishment, on the basis of the enquiry report and upon review of the evidences by the department. The petitioner contends that no proper enquiry was held giving him reasonable opportunity to defend himself and no copy of the enquiry report or second show cause was served upon to enable him to file reply to the second show cause. It is submitted that by the impugned order a major punishment has been imposed in the nature of withholding of two increments with cumulative effect, which can be done only by a full dress enquiry proceeding as such punishment has everlasting effect not only till his retirement but even in consequential post retirement benefit. His scale of pay will be reduced by two increments for the rest of his service career. Learned counsel for the petitioner submits that withholding of two increments with cumulative effect has been held to be a major penalty in a judgment delivered by Hon''ble Supreme Court in a case of Kulwant Singh Gill Vs. State of Punjab, .

3. The respondents have appeared and filed their counter and supplementary counter affidavit wherein it has been reiterated that during the course of inspection by the inspection team, the school was found close on 24.04.2006 and the concerned teachers including the petitioner were put under suspension by Deputy Commissioner, Bokaro vide letter dated 27.04.2006 and charges in Form-K. were served upon the petitioner vide Memo No. 1054 dated 15.05.2006, which is as follows:-

- (a) the school was found closed on 24.04.2006
- (b) effective efforts were not done under the programme "School Chalen Hum"
- (c) slackness towards his duties
- (d) disobedience of order of higher authorities.

4. Subsequently, the suspension of the petitioner was revoked vide order dated 05.03.2007 and under Rule 8 sub rule (iii) of Disciplinary Action Rule, 1994, the petitioner was awarded with punishment withholding two annual increments with cumulative effect as well as the payment of salary of suspension period will not be paid vide Memo No. 715 Bokaro dated 03.06.2008.

5. By way of supplementary counter affidavit, it has further been stated that punishment awarded to the petitioner is a minor punishment after observing all the rules of procedures and after considering the show cause reply of the petitioner dated 17.07.2006.

6. After hearing counsel for the parties and going through the impugned order and the relevant materials on records, it appears that the punishment in the nature of withholding two annual increments with cumulative effect has been awarded against the petitioner. From perusal of the impugned order, it appears

that enquiry report was submitted by the Conducting Officer and evidences were also reviewed by the Department. However, the Disciplinary Authority in the impugned order does not disclose any reason while imposing the aforesaid punishment. However, from the punishment awarded as aforesaid and ratio laid down by the Hon"ble Supreme Court in a case of Kulwant Singh Gill (Supra), it is clear that the penalty imposing withholding of two increments with cumulative effect has insidious effect and the salary of the petitioner is reduced in his time scale by two places and it is in perpetuity during the rest of the tenure of his service. The relevant paragraph-4 of the judgment is quoted hereinbelow:-

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. 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 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 V. 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 (v) 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 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,

7. It, therefore, appears that by the impugned order the respondents-Disciplinary Authorities have Imposed a major punishment without following the procedure for imposing of such punishment in the nature of full dress enquiry. It is apparent from the averment made in para-14 of the supplementary counter affidavit filed by the respondents that in the similar circumstances in a case of Jain Lal Ram Vrs. State of Jharkhand being W.P.(S) No. 1145 of 2009, the matter has been remanded back to the Disciplinary Authority. Although, the respondents have taken a plea of alternative remedy, but since impugned order in the nature of major penalty has passed without following the procedure established by law denying proper opportunity to the petitioner to defend himself as required in a full dress enquiry and without service of the enquiry report including second show cause before imposing such punishment, the plea of alternative remedy is not sustainable.

8. In the circumstances, the impugned order of punishment dated 03.06.2008 cannot be sustained in law. Moreover, the impugned order is a non speaking order passed in mechanical manner without showing reason for imposing of such penalty by the Disciplinary Authority. In totality of circumstances, the impugned order is quashed and the matter is remanded back to the Disciplinary Authority to proceed afresh in accordance with law by framing proper charges and giving proper opportunity to the petitioner as per the Rules. This writ petition is allowed in the aforesaid terms.