

(2024) 05 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 373 Of 2016, IA No. 1, 600 Of 2013

MYSAR Jan

APPELLANT

Vs

J & K Handicrafts & Ors

RESPONDENT

Date of Decision : 02-05-2024

Acts Referred:

Citation : (2024) 05 J&K CK 0007

Hon'ble Judges : M.A. Chowdhary, J

Bench : Single Bench

Advocate : Shaqir Haqani, Mubashir Malik

Final Decision : Dismissed

Judgement

M. A.Chowdhary, J

1. Two future increments in favour of the petitioner-Mysar Jan, Manager Audits with the respondent- Corporation, falling due on 01.11.2013 and 01.11.2014 in the pay scale of Rs.7600-325-13450/-, were ordered to be 'postponed with cumulative effect' vide Order No. 186-JKHC of 2013 dated 23.01.2013 and she was also placed under suspension vide Order No. 210 JKHC of 2013 dated 04.03.2013 pending enquiry for misconduct/misbehaviour. These two orders have been made subject matter of this petition filed by the petitioner, asserting therein that the respondents have abused the power, misused the authority and the impugned orders are outcome of colourable exercise of powers by them, as she, while working as Manager Audits with the respondent-Corporation, had raised serious acts of misdoings and misappropriation to the tune of Rs. 18.00 crores at the hands of various officials, which led into an enquiry by the State Government and registration of case by CBI and Vigilance Organization (now ACB).

2. Pursuant to notice, respondents have filed reply, controverting all the assertions made in the petition and further alleging that the petitioner had been indulging into gross indiscipline and misconduct throughout her service and she

had been charge-sheeted, enquired into, in accordance with law and found having committed the charges and was recommended to be given major penalty by the Enquiry Officer. However, the management of the respondent-Corporation, taking a lenient/sympathetic view, had awarded minor penalty only, vide impugned order dated 23.01.2013 by withholding her two future increments with cumulative effect.

3. Learned counsel for the petitioner, instead of arguing on the merits of the case, submitted at the bar that during the pendency of this petition, the petitioner's suspension had been revoked and that she had also attained the age of superannuation, as such, all other reliefs, except releasing postponed two future increments, have been rendered infructuous, and prayed that the postponed increments be ordered to be released, so that the petitioner's pensionary benefits/terminal emoluments be worked out accordingly. He finally prayed that the petition, for the limited relief, be allowed.

4. Learned counsel for the respondent-Corporation, on the other hand, without joining the issue seriously, submitted that since the petitioner had attained the age of superannuation, the postponed increments can be considered to be released by the Corporation.

5. In view of the restricted arguments by learned counsel for the parties, it requires to be examined whether the postponed increments with cumulative effect, can be ordered to be released later, after that specified period is over. The expression "two increments postponed with cumulative effect", is thus, required to be understood.

6. This aspect of the matter is no longer res-integra, as has been considered by the Apex Court in a case of 'Punjab State Vs. Ram Lubhaya reported as (1983) 2 SLR 410', wherein the postponement of increment of an employee with or without cumulative effect, has been demonstrated and the relevant portion of which is extracted as under:-

"7. Before proceeding further, it will have to be understood as to what is the effect of withholding of increments simplicitor, ie., without cumulative effect, and with cumulative effect. For example, if an employee is getting Rs. 100 at the time of imposition of penalty of withholding of increments, and the penalty is without cumulative effect for a period of two years and the annual increments were to be of Rs. 5, then in that case for two years, he will continue to get Rs. 100 per month but after the expiry of two years, he will get at the time of next increment, Rs. 115 including the increments for the past two years during which period they remained withheld.

8. In case of withholding of increments for 'two years with cumulative effect, the employee will get Rs.100 for two years and at the third increment, he would get Rs. 105 and not Rs.115. While in the first case there will be a loss of increments for two years only and no further loss thereafter till retirement, but in the second eventuality. due to loss of two increments, there will be loss of pay for whole of

the remaining tenure of the employee which will affect his pension on his retirement Therefore, two penalties would be clearly distinct having different consequences."

Apex Court again in a case of 'Kulwant Singh Gill Vs. State of Punjab reported as 1991 Supp (1) SCC 504', has explained the implication of cumulative effect and the relevant portion of which is extracted as follows:-

"3.....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 his time-scale of pay as a measure of penalty."

Again, the Apex Court in a case titled 'Punjab State Electricity Board Vs. Raj Kumar Goel reported as (2014) 15 SCC 748', has critically analysed the implications of postponement of yearly increment with cumulative effect and the relevant portion reads as under:-

"11. At the very outset, we may clearly state there is no discord or dispute over the exposition of facts. The controversy has arisen with regard to implementation of the order of punishment imposed by the authority on the delinquent employee. The courts below have opined that though it is mentioned in the order of punishment that there is stoppage of five Increments without cumulative effect which is a minor punishment yet the manner of implementation converts it to a major punishment. There can be no cavil over the proposition that when a punishment of stoppage of an increment with cumulative effect is imposed, it is a major punishment. In this regard, we may refer with profit to the decision in Kulwant Singh Gill v. State of Punjab, 1991 Supp (1) SCC 504 wherein it has been held that withholding of increments of pay simpliciter without any hedge over it certainly would be a minor punishment but withholding of increments with cumulative effect, the consequences being quite hazardous to the employee, it would come in the compartment of major punishment. Proceeding further the two Judge Bench stated thus:

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 his 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."

Recently, the Hon'ble High Court of Madras in a case 'Karuthapandi Vs. Managing Director Tamil Nadu State Transport Corporation (Kumbakonam Ltd. & Anr. reported as 2023 SCC Online Mad 5985', relying upon aforesaid judgment of Apex Court has held in Para-13, which is relevant and will be profitable to be extracted as under:-

"13. Precisely, the above discussions would make it clear that the effect of postponement of increment with cumulative effect is that the employee is reduced in his time scale of pay for the period in question and it is in perpetuity during the rest of the tenure of his service and the increments he would have earned for those years would not be counted in his time scale of pay as a measure of penalty. Hence, I conclude by observing that when the punishment of postponement of increment of an employee with cumulative effect is in force, the question of salary review of the said employee will not arise during the said period. As such, there is no illegality or irregularity, on the part of the respondent Corporation, in fixing the date of the first salary review and second salary review of the petitioner in the facts and circumstances of this case."

7. In view of the aforesaid enunciations of law by the Apex Court and the High Court of Madras on the subject gone through with advantage and having regard to the facts of the case, the law laid down, applies in all fours to the case at hand. It is, thus, held that the penalty of awarding "two future increments with cumulative effect", imposed on the petitioner for having committed misconduct during her service, cannot be reviewed, as this penalty has implication of continuous nature and shall be perpetual during the rest of the tenure of the service of petitioner and the increments she would have earned for those two years, would not be counted in her time scale of pay as a penalty.

8. In this background of the matter, it is concluded and observed that when the punishment of withholding or postponement of increment of an employee with cumulative effect is in force, the question of salary review of the said employee will not arise for that period during service of the Government servant or at the time of fixation of retiral benefits/terminal emoluments after his/her superannuation. As such, the submission made by learned counsel for the petitioner for a direction to seek release of postponed increments with cumulative effect, cannot be ordered to be released, as the said review by the respondent-Corporation, is not legally tenable. No other point is urged by learned counsel for the parties.

9. Viewed thus, the petition is dismissed as indicated above.

10. There shall be no order as to costs.