(2015) 03 JH CK 0081

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6351 of 2003

Subhra Gupta APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 24-03-2015

Acts Referred:

Citation : (2015) 03 JH CK 0081

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : Vaibhav Kumar, for the Appellant; Ajit Kumar, A.A.G., Advocates for the Respondent

Final Decision : Allowed

Judgement

Rongon Mukhopadhyay, J.—In this writ application, the petitioner has prayed for quashing of memo No. 28-41/03-2341 dated 19.09.2003 issued by the District Superintendent of Education, Dhanbad (Respondent No. 3) whereby and whereunder four annual increments have been stopped with cumulative effects.

2. The writ petitioner had joined her services in the year 1978 as an Assistant Teacher in Primary School, Kapasara Govindpur, in the district of Dhanbad and subsequently she was transferred to Middle School, Barmasia, Dhanbad as an Assistant Teacher on 13.08.1982. An inspection was made in Middle School, Barmasia, Dhanbad on 28.08.2003 and it was detected that the petitioner was sleeping and in terms of the inspection report a show cause notice was issued to the petitioner by the respondent No. 3 vide memo No. 2114 dated 01.09.2003. Reply to the show cause followed on 05.09.2003 in which the petitioner enumerated several grounds to highlight the fact that she has been falsely implicated at the instance of the Headmaster. Upon consideration of the show cause an order as contained in memo No. 28-41/03-2341 dated 19.09.2003 was passed in which a penalty of stoppage of four yearly increments with cumulative effect was passed.

3. Heard Mr. Vaibhav Kumar, learned counsel for the petitioner and Mr. Ajit Kumar, learned A.A.G. for the respondents.

4. The learned counsel for the petitioner has assailed the impugned order dated 19.09.2003 by submitting that on 28.08.2003 in course of inspection the petitioner was found sleeping but from the inspection report dated 01.09.2003, it appears that the In-charge Headmaster had categorically stated that the petitioner was sleeping during the leisure hours and as such the subsequent finding that the petitioner was sleeping during teaching hours was absolutely in contrast to such findings noted above. It has also been submitted by the learned counsel for the petitioner that an explanation was called for from the petitioner based on the findings of the inspection report dated 01.09.2003 and the petitioner had given the clarification with respect to the findings in the inspection report but while issuing the memo dated 19.09.2003 the respondent No. 3 has not considered the show cause submitted by the petitioner in its proper perspective. It has also been submitted that the petitioner has been fastened with stoppage of four yearly increments with cumulative effect without holding a regular departmental proceeding and as such the learned counsel for the petitioner contends that the said punishment can be construed to be a major penalty and, therefore, it was incumbent upon the concerned authorities to conduct a regular departmental proceedings against the petitioner.

5. The learned counsel for the State while relying on the counter affidavit has submitted that the inspection report revealed that the petitioner was found sleeping during teaching hours and in such circumstances, the petitioner was rightly handed out a minor penalty as punishment vide memo dated 19.09.2003. Controverting the arguments advanced by the learned counsel for the petitioner it has been submitted by the learned counsel for the respondents that the Bihar State (Rajayakrit) Primary School Teachers (Transfer and Disciplinary Proceedings) Rules 1994 envisages at Rule 8 the penalties which can be imposed and stoppage of increment either with cumulative or with non-cumulative effect would amount to a minor penalty. It is, therefore submitted that since a minor penalty has been imposed upon the petitioner there was no necessity of holding a regular departmental proceedings and as such no infirmity or illegality in the memo dated 19.09.2003 gets attracted.

6. It is an admitted position that pursuant to the inspection report dated 01.09.2003 the petitioner was provided with a show cause notice to which the petitioner duly replied and consequent to the same the memo as contained in memo No. 28-41/03-2341 dated 19.09.2003 was passed in which four yearly increments with cumulative effects was handed out to the petitioner by way of a minor penalty. The respondents have tried to defend the memo dated 19.09.2003 by harping on the fact that since the penalty imposed was minor in nature as such there was no necessity of holding a regular departmental enquiry. Rule 8 of the Bihar State (Rajaykrit) Primary School Teachers (Transfer and Disciplinary Proceedings) Rules 1994 depicts penalty which can be termed as

minor and major penalties. Stoppage of increments whether with cumulative or non-cumulative effects has been construed to be a minor penalty not necessitating holding of a regular departmental proceeding. The order impugned has been passed as a minor penalty taking shelter to the recourse to stoppage of increments which has been construed as a minor penalty in Rule 8 of the Bihar State (Rajaykrit) Primary School Teachers (Transfer and Disciplinary Proceedings) Rules 1994. If the punishment imposed would have been merely withholding of increments of pay simpliciter the same would clearly come within the ambit of a minor penalty as envisaged in Rule 8 but the impugned order has fastened upon the petitioner a penalty of stoppage of four yearly increments with cumulative effect and withholding of the said increments would in a way resultantly affect the petitioner in his future scale of pay and in such circumstances it cannot be construed to mean that the same is a minor penalty.

7. In this context reference may be made to the case of Kulwant Singh Gill Vs. State of Punjab, (1991) 61 FLR 635 : (1990) 4 JT 70 : (1990) 2 SCALE 597 : (1991) 1 SCC 504 Supp : (1990) 1 SCR 426 Supp : (1990) 3 SLJ 135 wherein while considering the withholding of two increments was a major penalty or not in view of Rule 8 and 9 of the Punjab Civil Services (Punishment and Appeal) Rules 1970 it was held as follows:--

"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 of 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 to two years the clock starts working from that stage afresh. The insidious effect to 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. When we broach the problem from this perspective the effect is as 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 effects, 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 garb 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."

8. The learned counsel for the State has submitted that the proposition which has been laid down by the Hon''ble Supreme Court in the above mentioned judgment is not applicable in the facts and circumstances of the present case as separate Rules guide the service conditions of the petitioner than that of the case which has been referred to by the learned counsel for the petitioner but the said argument cannot be accepted solely on the ground that under the guise of imposing a minor penalty, a major penalty had been inflicted upon the petitioner.

9. It would thus mean that penalty imposed upon the petitioner of withholding of four yearly increments cannot be termed as a minor penalty as has been mentioned in Rule 8. It can thus be concluded based on the discussion above that the stoppage of four yearly increments with cumulative effects against the petitioner is construed to mean that it is a major penalty imposed against the

petitioner. Once it is held that the punishment imposed upon the petitioner is a major penalty Rule 8 once again comes into play as it has been mentioned in the said Rules that before imposition of a major penalty a regular departmental proceeding has to be conducted.

10. The respondents had on the assumption that the stoppage of four yearly increments with cumulative effects would constitute a minor penalty had foregoed a regular departmental proceeding and had passed the impugned order based on the show cause submitted by the petitioner to the inspection report.

11. Therefore, the automatic fall out of the finding of this Court is that the punishment imposed upon the petitioner was a major penalty which requires a regular departmental proceeding and the same having not been conducted the impugned order dated 19.09.2003 cannot be allowed to be sustained. Accordingly, this application is allowed and the order dated 19.09.2003 as contained in memo No. 28-41/03-2341 dated 19.09.2003 is, hereby, quashed and set aside.