Kulwant Singh Gill vs State Of Punjab on 13 September, 1990

Equivalent citations: 1990 SCR, SUPL. (1) 426 1991 SCC SUPL. (1) 504, AIRONLINE 1990 SC 177

Author: K. Ramaswamy

Bench: K. Ramaswamy, M.H. Kania, K.N. Saikia

PETITIONER:
KULWANT SINGH GILL

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT13/09/1990

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
KANIA, M.H.
SAIKIA, K.N. (J)

CITATION:
1990 SCR Supl. (1) 426 1991 SCC Supl. (1) 504
JT 1990 (4) 70 1990 SCALE (2)597

ACT:
Civil Services: Punjab Civil Services (Punishment and Appeal) Rules, 1970: Rules 5(iv), 5(v), 8 and 9--Penalties --Withholding of increments with cumulative effect--Whether amounts to major penalty --Procedure to be followed in such cases.

HEADNOTE:
The appellant, while working as Inspector, Food and Supplies, was found to have purchased sub-standard wheat and hence chargesheeted for misconduct. He submitted his explanation. Though Rules 8 and 9 of Punjab Civil Services (Punishment and Appeal) Rules, 1970 envisage the procedure to conduct an enquiry into the misconduct, the disciplinary authority, only on considering the explanation, found that that the appellant committed a minor misconduct. Accordingly, an order was passed for stoppage of two increments with

cumulative effect. Appellant filed a suit for declaration that the said order imposed a major penalty which was illegal in the absence of an enquiry under Rules 8 and 9. The Trial Court granted a decree invalidating the said order.

On appeal, the District Court confirmed the decree. However, on second appeal, the High Court held that the penalty imposed was a minor penalty within the meaning of Rules 5(iv) of the Rules obviating the need to make regular enquiry. Aggrieved, the appellant has preferred this appeal, by special leave.

Allowing the appeal,

HELD: 1. Withholding of increments of pay simpliciter without any hedge over it certainly comes within the meaning of Rule 5(iv) of the Punjab Civil Services (Punishment and Appeal) 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 insi-

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dious 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.

2. 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 the impugned order would come within the meaning of Rule 5(v) of the Rules, and the imposition of major penalty without enquiry is per se illegal.

Sarwan Singh v. State of Punjab & Ors., ILR 1985 2 P & H 193, overruled.

3. Rules 8 and 9 admittedly envisage, on denial of the charge by the delinquent officer, to conduct an enquiry giving reasonable opportunity to the presenting officer as well as the delinquent officer to lead evidence in support of the charge and in rebuttal thereof, giving adequate opportunity to the delinquent officer to cross-examine the witnesses produced by the Department and to examine witnesses if intended on his behalf and to place his version; consideration thereof by the enquiry officer, if the disciplinary authority himself is not the enquiry officer. A report of the enquiry in that behalf is to be placed before the disciplinary authority who then would consider it in the manner prescribed and pass an appropriate order as per the

procedure in vogue under the Rules. The gamut of this procedure was not gone through. Therefore, the issuance of the notice and consideration of the explanations not a procedure in accordance with Rules 8 and 9.

4. The Trial Court rightly granted the decree, and it is restored. The judgment and the decree of the High Court is vitiated by manifest illegality and is set aside. At this distance of time it is not expedient to direct an enquiry under Rules 8 and 9 of the Rules.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No 2960 of 1987.

From the Judgment and Order dated 18.2. 1986 of the Punjab & Haryana High Court in R.S.A. No. 3204 of 1984.

o K. Khuller and R .C. Kohli for the Appellant. C.M. Nayar for the Respondent.

The Judgment of the Court was delivered by K. RAMASWAMY. J. This appeal by special leave is against the judgment and decree dated February 18, 1986 in Second Appeal No. 3204 of 1984 of Punjab & Haryana High Court at Chandigarh. The appellant/plaintiff while was working as Inspector. Food and Supplies at Algaon. the Director. Food and Supplies. Punjab on June 10. 1976 visited the place and found him to have purchased sub-standard wheat landing him in receiving a charge sheet on June 29. 1976 for his miscon- duct. The appellant had submitted his explanation. Rules 8 and 9 of the Punjab Civil Services (Punishment and Appeal) Rules. 1970 for short 'the Rules' envisage the procedure to conduct an enquiry into the misconduct. But the disciplinary authority. on consideration of the explanation found that the appellant committed a minor misconduct. Accordingly by order dated April 12. 1977 directed stoppage of two incre- ments with cumulative effect. The appellant laid the suit for a declaration that the offending order amounts to major penalty and imposition thereof without conducting enquiry as enjoined under Rules 8 and 9 is illegal. On contest by the respondent state, the trial court held that the impugned order amounts to major penalty and granted a decree invali- dating the order. On appeal, though the Distt. Court confirmed, on further Second Appeal the High Court held it to be minor penalty within the meaning of Rule 5(iv) of the Rules obviating the need to make regular enquiry. Assailing the legality thereof this appeal has been filed. The only question that needs decision is whether stop- page of two increments with cumulative effect is a major penalty'? Admittedly Rules 8 and 9 envisage conducting an enquiry into misconduct after giving an opportunity to the delinquent employee in the manner prescribed therein and on establishing the charge to pass an appropriate order impos- ing a major penalty prescribed in either clauses V to IX or minor penalty under clauses I to IV of Rule 5 of the Rules. If it is a minor penalty indisputably the need to conduct regular enquiry has been dispensed with. Rule 5 prescribes the penalties thus:

"5. Penalties:--The following penalties may, for good and sufficient reasons. and as

hereinafter provided. be imposed on a Government employee. namely:

Minor Penalties

(i) Censure;

(ii) withholding of his promotions;

(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence of 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 the expiry of such period, the reduction will or will not have the 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 a bar to the promotion of the Government employee to the time-scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government 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 be a disqualifica- tion for future employment under the Government;

(ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Govern-

ment'.

Clauses VI to IX are not relevant to the facts of the case. 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 inde- pendent head of penalty and it could be imposed as punish- ment 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 fails 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. With- holding 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 appel- lant 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 pealed off its true colour or its resultant effects would become apparent. When we broach the problem from this per- spective 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 & Ors., I.L.R. 1985 2 P & H. 193, 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 withhold 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, of earning future incre- ments in the time scale of pay even permanently with ex- pressly stating so. This preposterous consequences 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 hold- ing 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.

The further contention of Shri Nayar that the procedure under Rule 8 was followed by issuance of the show cause notice and consideration of the explanation given by the appellant would meet the test of Rules 8 and 9 of the Rules is devoid of any substance. Conducting an enquiry, dehorse the

rules is no enquiry in the eye of law. It cannot be countenanced that the pretence of an enquiry without reason- able opportunity of adducing evidence both by the Dept. as well as by the appellant in rebuttal, examination and cross-examination of the witnesses, if examined, to be an enquiry within the meaning of Rules 8 and 9 of the Rules. Those rules admittedly envisage, on denial of the charge by the delinquent officer, to conduct an enquiry giving reason- able opportunity to the presenting officer as well as the delinquent officer to lead evidence in support of the charge and in rebuttal thereof, giving adequate opportunity to the delinquent officer to crossexamine the witnesses produced by the Dept. and to examine witnesses if intended on his behalf and to place his version; consideration thereof by the enquiry officer, if the disciplinary authority himself is not the enquiry officer. A report of the enquiry in that behalf is to be placed before the disciplinary authority who then would consider it in the manner prescribed and pass an appropriate order as per the procedure in vogue under the Rules. The gamut of this procedure was not gone through. Therefore, the issuance of the notice and consideration of the explanation is not a procedure in accordance with Rules 8 and 9. Obviously, the disciplinary authority felt that the enquiry into minor penalty is not necessary and adhering to the principles of natural justice issued the show cause notice and on receipt of the reply from the delinquent officer passed the impugned order imposing penalty thinking it to be a minor penalty. If it is considered, as stated earlier, that it would be only a minor penalty, the proce- dure followed certainly meets the test of the principles of natural justice and it would be a sufficient compliance with the procedure. In view of the finding that the impugned order is a major penalty certainly then a regular enquiry has got to be conducted and so the impugned order is clearly illegal. The Trial Court rightly granted the decree. The judgment and the decree of the High Court is vitiated by manifest illegality. At this distance of time it is not expedient to direct an enquiry under rules 8 and 9 of the Rules. The appeal is accordingly allowed and the judgment and decree of the High Court is set aside and that of the trial court is restored but in the circumstances without costs.

G.N. Appeal allowed.