

Supreme Court of India

Executive Director, Syndicate ... vs K.C. Arya And Anr. on 19 August, 1994

Equivalent citations: (1996) IILLJ 727 SC

Author: S Agrawal

Bench: S Agrawal, M Mukherjee

JUDGMENT Mr. S.C. Agrawal, J.

Leave granted.

1. We have heard learned Counsel for the parties.

2. K.C. Arya, respondent No. 1 in both the appeals, was employed with the Syndicate Bank Two separate disciplinary proceedings were initiated against him under the Syndicate Bank Officer-Employees (Discipline and Appeal) Regulations, 1976, hereinafter referred to as 'the Regulations'. The penalty of withholding of one increment with cumulative effect was imposed on him separately in both the proceedings. The procedure that was adopted for imposing the said penalty was that prescribed for imposing a minor penalty in the Regulations. Being aggrieved by the imposition of the said penalty, the respondent moved the High Court of Punjab and Haryana by filing separate writ petitions under Articles 226 and 227 of the Constitution of India. The said writ petitions, which were numbered as Civil writ petition 2577 of 1992 and 14748 of 1981, were allowed by a learned Single Judge by his judgment dated January 11, 1993 on the ground that the penalty of withholding of one increment with cumulative effect is a major penalty and it could be imposed only after following the procedure laid down for imposition of a major penalty. Letters Patent Appeals were filed by the appellants against the said judgment of the learned Single Judge in both the cases but the same were dismissed in limine by the Division Bench of the High Court by orders dated April 2, 1993. The appellants have filed these appeals against the said orders of the Division Bench of the High ; Court.

3. The question which arises for consideration is whether in the context of the Regulations, the penalty of withholding of an increment of; pay with cumulative effect is a major penalty. Regulation 4 of the Regulations defines the penalties (minor as well as major) which may be imposed on an officer employee. The provisions relevant for the purpose of the present; case are:

Regulation 4:

MINOR PENALTIES

(b) Withholding of increments of pay with or without cumulative effect;

MAJOR PENALTIES

(e) Reduction to a lower grade or post, or to a lower stage in a time scale;

4. In order to hold that withholding of an increment with cumulative effect is a major penalty, the High Court has placed reliance on the decision of this Court in *Kulwant Singh Gill v. State of Punjab*, 1991 Supp (1) S.C.C. 504. In that case the Court has considered the provisions contained in Clauses (iv) and (v) of Rule 5 of the Punjab Civil Services (Punishment and Appeals) Rules, 1970, which read as under:

Rule 5 MINOR PENALTIES

(iv) Withholding of increments of pay:

MAJOR PENALTIES

(v) reduction to lower stage in a 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.

5. The Court has held that the penalty of withholding of two increments with cumulative effect falls within Rule 5(v) inasmuch as the effect of such an order by necessary implication is that the employee is reduced in his time scale by two places and it is in perpetuity during the rest of the tenure of his service. While so holding the Court has emphasised that "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.

6. Shri Madhava Reddy, the learned senior counsel for the appellants, has submitted that the scheme of the Regulations differs from that of the Punjab Rules which were under consideration in *Kulwant Singh Gill's* case (supra) because in Regulation 4(b) of the Regulations it is ; expressly provided that withholding of increment of pay with cumulative effect is a minor penalty. The submission of Shri Reddy is that in view of such an express provision in the Regulations it is not necessary to consider whether withholding of an increment with cumulative effect could constitute the major penalty of reduction to a lower grade of post or a lower stage of time scale under Regulation 4(e) of the Regulations. The submission of Shri Reddy is further that since Regulation 4(b) of the Regulations differs from Rule 5(iv) of the Punjab Rules the decision in *Kulwant Singh Gill's* case (supra) would not be applicable to the present case.

7. We find considerable substance in these contentions. Since Regulation 4(b) of the Regulations expressly prescribes that withholding of the increment with cumulative effect is a minor penalty which was not so in Rule 5(iv) of the Punjab Rules, as emphasised in *Kulwant Singh Gill's* case (supra), we are of the view that insofar as the Regulations are considered withholding of an increment with cumulative effect is to be treated as a minor penalty and the imposition of the said penalty by following the procedure prescribed for imposition of minor penalties cannot be held to be in violation of the Regulations.

8. The appeals are, therefore, allowed, the orders of the learned Single Judge as well as the Division Bench of the High Court are set aside and the writ petitions filed by respondent No. 1 are dismissed. No order as to costs.