Supreme Court of India
Punjab State Elect.Board Now ... vs Raj Kumar Goel on 29 August, 1947
Author: D Misra
Bench: Dipak Misra, Vikramajit Sen

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8366 OF 2014
[Arising out of S.L.P. (Civil) No. 1638 of 2014]

Punjab State Electricity Board
Now Punjab State Power Corporation Ltd. ... Appellant

Versus

Raj Kumar Goel ... Respondent

J U D G M E N T

Dipak Misra, J.

Leave granted.

In this appeal, by special leave, the assail is to the judgment and decree dated 25.07.2013 passed by the learned Single Judge of High Court of Punjab and Haryana at Chandigarh in R.S.A. No. 796 of 2012 whereby the High Court has affirmed the judgment and decree passed by the Courts below. The broad essential facts which are to be stated for adjudication of this appeal are that the respondent-plaintiff joined the services of the appellant – Punjab State Electricity Board (for short 'the Board') on 17.12.1984 as Lower Division Clerk. As the respondent-plaintiff remained absent from duty without sanctioned leave from 9.7.1987 for a considerable time, a disciplinary proceeding was initiated against him. After following due procedure as envisaged under Punjab State Electricity Board Employees (Punishment & Appeal) Regulations, 1971, the competent authority imposed the punishment of stoppage of five annual increments without cumulative effect and further the period of absence mentioned in the Show Cause Notice was directed to be treated as non-duty period.

4. Being aggrieved by the aforesaid punishment, the respondent filed Suit No. 155 of 2006 for declaration that the manner in which the said order of punishment was sought to be implemented by the authorities was illegal and absolutely unjustified. It was averred in the plaint that the effect of stoppage of five increments without cumulative effect should mean that the Board shall release each year's increment before stoppage of increment in the ensuing year. It is apt to state here that the respondent did not challenge the findings recorded by the disciplinary authority nor did he call in

question the quantum of punishment inflicted on him vide order dated 9.8.2002.

5. The Board entered contest in the suit and explained the position as regards the nature of punishment contending, inter alia, that the effect of an award of stoppage of five increments without cumulative effect would mean that increments for period of five years would be released all together at the end of five years and as such, no illegality and/or irregularity has been committed by the Board in implementation of its orders.

6. The learned Civil Judge, Senior Division, Patiala framed five issues which basically pertain to a singular compartment, namely, whether the plaintiff is entitled for declaration to the effect whether the defendants wrongly and illegally had implemented order No. 329 dated 9.8.2002 as a consequence of which the plaintiff has suffered future loss and, if so, to what relief he was entitled to.

7. The learned trial Judge on the basis of material brought on record decreed the suit by directing payment of arrears accruing due to respondent from the date of accrual (at the end of each year and before stoppage of next increment) till its realization with interest @ 18% per annum. The finding recorded by the learned trial Judge was to the following effect: “As per Punjab State Electricity Board Employees (Punishments & Appeal) Regulations; 1971, withholding of increments of pay without cumulative effect comes within the definition of minor penalties. Moreover, 5 increments were stopped without cumulative effect, but in this way implementation order shows that actually 15 increments of plaintiff have been stopped and he has suffered major financial loss. With regard to the authorities relied upon by counsel for plaintiff these are not directly applicable to the present case and it is only guidance to this Court how to interpret the words and phrases as enshrined in rules. Certainly this Court has to take guidance of such authorities to interpret the words when there is no earlier interpretation by Hon’ble High Court or Hon’ble Supreme Court of India, nor brought to the notice of this Court. In considered view of this Court, the defendants have wrongly implemented the order dated 09.08.2002. Plaintiff is certainly entitled for decree of declaration to this effect and he is entitled for restoration of his increments after every one year of its stoppage.”

8. Being aggrieved, the appellant-Board preferred Civil Appeal No. 9 of 2009 before the learned Additional District Judge, Patiala, who by judgment and decree dated 23.8.2011 dismissed the appeal.

9. Being dissatisfied with the dismissal of appeal the Board preferred R.S.A. No. 796 of 2012 before the High Court. The learned Single Judge appreciated the reasoning given by the courts below and came to hold that the manner in which the order was sought to be implemented would result in stoppage of fifteen increments of the respondent, which is against the spirit of the order of punishment and, in fact, tantamounts to imposition of stoppage of increments with cumulative effect. The aforesaid conclusion ultimately led to the dismissal of the appeal in limine, for the learned Single Judge did not find any substantial question of law involved in the second appeal.

10. We have heard learned counsel for the parties and perused the record.

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[1] 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 [pic]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." After so observing, the Court treated the said punishment to be a major penalty. In said case while interpreting clause (V) of Rule 5 of the same regulations, the Court did not accept the reasoning of the judgment rendered by the Division Bench of the Punjab and Haryana High Court in Sarwan Singh v. State of Punjab and Ors.[2] At this juncture, reference to Punjab State & Others v. Ram Lubhaya[3] would be apposite. The High Court has correctly opined as follows: "Before proceeding further, it will have to be understood as to what is the effect of withholding of increments simpilciter, i.e. 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 increment for the past two years during which period they remained withheld..." In Rangnath Rai v. State of Bihar[4], the Court while interpreting the withholding of increments with cumulative effect opined that the increments earned by an incumbent were cut off as a measure of penalty forever in his upward march for earning higher scale of pay. The clock is put back to a lower stage in the time scale of pay and on expiry of the punishment period the clock would start working from that stage afresh and, therefore, the effect of stoppage 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. As the increments that would have earned for those years would not be counted in the time scale of pay as a measure of penalty.

The High Court of Delhi in Uttam Kumar v. Delhi Jal Board[5] has laid down the same principle and opined that there is a distinction between the withholding of increment without cumulative effect and withholding of increment with cumulative effect. The former is in the realm of minor penalty and the later is in the compartment of major penalty. In the later one, there is permanent postponement of the increment, whereas in the former one it is for a specified period to be released after expiration of the said period.

In our considered opinion the view expressed in the aforesaid decisions is in consonance with the sound legal principle and we approve them. Coming to the facts of the present case, it can be stated with certitude that the trial Court as well as the High Court has fallen into error by opining that if the punishment of stoppage of increment without cumulative effect is imposed for a period of five years, increment is warranted to be released by the end of the year. It is an erroneous perception of the nature of punishment. When there is a stoppage of five annual increments the same are not paid during the said period and thereafter in the sixth year the increments are added up to the regular annual increment. The employee does not get the arrears. But if the punishment is not one of stoppage of increment simpliciter the employee loses the benefit in perpetuity and after expiry of five years he would start earning the increment without any addition and it would start afresh from the first stage because it is a permanent postponement.

In view of the aforesaid premises, it is clear as day that the perception of the courts below and the High Court is absolutely fallacious and therefore, the judgments and decrees passed by all the courts have to be annulled and we so do.

Consequently, the appeal is allowed, all the impugned judgments and decrees are set aside and the suit of the plaintiff stands dismissed. There shall be no order as to costs.

.....J.

[Dipak Misra] .....J.

[Vikramajit Sen] New Delhi;

August 29, 2014

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[1] 1991 Supp(1) SCC 504
[2] ILR 1985 (2) P&H 193
[3] 1983 (2) SLR 410
[4] 1997 (2) PLJR 421
[5] 2001 IVAD (Delhi) 166
