

Punjab State and others *v.* Ram Lubaya (G. C. Mital, J.)

there with the revisional Court to put that Court back to its jurisdiction. The availability of the appellate remedy in such circumstances cannot be a clog to the exercise of the revisional jurisdiction. As has been noticed earlier the jurisdiction was assumed by the Court under section 2 and not inter-linked with section 3 of the Act. That is a material irregularity, so patent on the record.

(11) It not only is a material irregularity in the exercise of its jurisdiction but is rather in forsaking it to give an out of shape colour to its order. In such a situation an order passed under section 2 cannot be visited with a deemed result that it would tantamount to a decree within the meaning of section 2 of the Code of Civil Procedure as it would not mean a formal decision which conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. The impugned order having failed to conform to the standards of a decree as known to section 2 of the Code of Civil Procedure. The preliminary objection thus raised by the respondents is over-ruled. And once that is done the automatic result is that the impugned order has to be set aside, for, the impugned order is not in conformity with sections 2 and 3 of the Act.

(12) Resultantly, this petition succeeds and the impugned order is hereby set aside. The trial Court will now proceed in accordance with law. No costs.

N.K.S.

Before G. C. Mital, J.

PUNJAB STATE and others,—*Appellants.*

versus

RAM LUBAYA,—*Respondent.*

Regular Second Appeal No. 1563 of 1981.

May 4, 1982.

*Punjab Civil Services (Punishment and Appeal) Rules, 1970—
Rule 5—Penalty of stoppage of increments with cumulative effect*

imposed on a Government employee—Such penalty—Whether a 'major punishment' within the meaning of Rule 5.

Held, that a comparative reading of sub-rules (iv) and (v) of Rule 5 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 shows that while in sub-rule (iv) only withholding of increments of pay is permissible, under sub-rule (v), which is a major penalty, there is reduction to a lower stage in the time-scale of pay for a specified period and it is to be specified in the order whether the employee will be earning increments during the period of reduction and whether the reduction will or will not have the effect of postponing the future increments of his pay. As provisions have been made in sub-rule (v), similar provisions could have been made in sub-rule (iv) also, if different eventualities were considered to flow by passing different kinds of orders and in that case the rule framers would have specifically provided so. On a literal reading of sub-rule (iv) as also the practical application of the same, if simple order of withholding of increments of pay is passed then such an order does not amount to withholding of increments with cumulative effect. It appears that the rule framers only wanted to provide imposition of minor penalties under sub-rule (iv) of withholding of increments without cumulative effect so that there is a temporary loss to the employee not having a permanent effect on his increments; whereas sub-rule (v) provides for making a permanent loss in the increments and that is why it was included in the category of 'major penalties'. It is, therefore, held that withholding of increments with cumulative effect would not be covered by sub-rule (iv) of Rule 5 and may fall under sub-rule (v) and would not be a minor penalty. (Para 7).

Regular Second Appeal from the decree of the order of the court of Shri M. S. Luna, Additional District Judge, Jullundur, dated the 18th day of December, 1980, affirming with costs that of Shri J. P. Mehmi, Sub-Judge, 2nd Class, Jullundur, dated the 28th July, 1980, partly decreeing and partly dismissing the plaintiff's suit and holding that the portion of the impugned order which stops the three increments of the plaintiff with cumulative effect is against the rule and the same is therefore struck down and in other words the increments of the plaintiff shall be deemed to have been withheld with non-cumulative effect and further ordering that so far the remaining prayer of the plaintiff for declaration that the impugned order dated 15th November, 1977 passed by the General Manager, Punjab Roadways, Jullundur, withholding his three increments with future effect is illegal, wrong and against the rules is concerned, the same is dismissed and the parties are left to bear their own costs.

Jagat Singh Bawa, Advocate, for the Appellants.

Ravi Nanda & S. S. Mahajan, Advocates, for the Respondents.

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JUDGMENT

Gokal Chand Mital, J.—

(1) Whether stoppage of increments with cumulative effect is a 'major punishment' within the meaning of rule 5 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter called the Rules), is the meaningful point which arises for consideration in this appeal.

(2) Ram Lubhaya was a Conductor in the Punjab Roadways. On 25th January, 1974, a show-cause notice was served on him, containing some allegations and his explanation was sought. He submitted his explanation of innocence on 25th May, 1974. By order dated 15th November, 1977, issued by the General Manager, Punjab Roadways, Jullundur, his explanation was found to be unsatisfactory and the punishment of stoppage of three increments with cumulative effect was imposed on him. Ram Lubhaya filed the present suit to impugne the withholding of three increments with cumulative effect on the ground that it amounts to a major punishment and since under the Rules the procedure for awarding 'minor punishment' was followed, the impugned order was illegal and without jurisdiction. The suit was opposed by the State and it was pleaded that the stoppage of increments with cumulative effect is a minor penalty and was even otherwise valid. On the contest of the parties, the following issues were framed :—

(1) Whether the order No. 2898, dated 15th of November, 1977, passed by the General Manager, Punjab Roadways, Jullundur is illegal and void ? OPP

(2) Relief ?

(3) After the evidence was led, the trial Court by judgment and decree, dated 28th July, 1980, came to the conclusion that the penalty of withholding of increments with cumulative effect is a major punishment and withholding of increments without cumulative effect is a minor punishment and since the procedure for awarding the major punishment was not followed, therefore, it struck down part of the impugned order relating to the cumulative effect and held that the increments of the plaintiff shall be deemed to have been withheld without cumulative effect. Against the aforesaid judgment and decree, the State of Punjab went up in

appeal which was dismissed by the Additional District Judge on 18th December, 1980. This is the second appeal by the State of Punjab.

(4) In order to appreciate the point involved, it will be useful to notice Rule 5 of the Rules, which is reproduced below:—

“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 or 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 to that grade, post or Service;
- (vii) compulsory retirement;
- (viii) removal from service which shall not be a disqualification for future employment under the Government;

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(ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government."

It shows that the first four penalties are considered minor whereas the remaining penalties are considered major. It is admitted on both ends that for imposition of major penalties, the procedure prescribed in Rules 8 and 9, is to be followed which means a regular departmental enquiry in which all material collected against the employee has to be handed over to him and his witnesses are examined and he is allowed to cross-examine and produce his defence. As against the above, for imposition of minor penalties the procedure is contained in Rule 10 which only provides that the allegations are to be supplied to the employee and his written explanation called and then a decision is taken whether he is guilty of the same or not. Therefore, it is clear that while for the imposition of major penalties, there is a regular procedure; for the imposition of minor penalties summary procedure is adopted. In the present case, it is not disputed that summary procedure for imposition of minor penalties was followed and not the one which is for imposition of major penalties.

(5) While according to the State, the penalty of withholding of increments with cumulative effect is a minor penalty covered by sub-rule (iv), according to the counsel for the employee it falls in major penalties covered by sub-rule (v). Sub-rule (iv) provides for imposition of penalty of withholding of increments and it does not say in terms with or without cumulative effect. It is again not disputed by the counsel for the State that if the penalty of withholding of increments is imposed, it means with a non-cumulative effect.

(6) Before proceeding further, it will have to be understood as to what is the effect of withholding of increments simpliciter, 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 increments for the past two years during which period they remained withheld.

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.

(7) The next question would be whether both the penalties would be minor penalties and come within the purview of sub-rule (iv) or only the first one would come within sub-rule (iv). A comparative reading of sub-rules (iv) and (v) shows that while in sub-rule (iv) only withholding of increments of pay is permissible, under sub-rule (v), which is a major penalty, there is reduction to a lower stage in the time-scale of pay for a specified period and it is to be specified in the order whether the employee will be earning increments during the period of reduction and whether the reduction will or will not have the effect of postponing the future increments of his pay. As provisions have been made in sub-rule (v), similar provisions could have been made in sub-rule (iv) also, if different eventualities were considered to flow by passing different kinds of orders and in that case the rule framers would have specifically provided so. On a literal reading of sub-rule (iv) as also the practical application of the same, so far, it is not disputed on behalf of the State that if simple order of withholding of increments of pay is passed then such an order does not amount to withholding of increments with cumulative effect. It appears that the rule framers only wanted to provide imposition of minor penalties under sub-rule (iv) of withholding of increments without cumulative effect so that there is a temporary loss to the employee not having a permanent effect on his increments; whereas sub-rule (v) provides for making a permanent loss in the increments and that is why it was included in the category of 'major penalties'. Similar point arose before a Division Bench of the Mysore High Court and a Single Bench of the Calcutta High Court and they also came to the conclusion that imposition of penalty of withholding of increments with cumulative effect is different from the penalty of withholding of increments with non-cumulative effect and has far reaching consequences. Reference in this connection may be

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made to (1) *C. Veera Chowdaiah v. State of Mysore and another* (1) and *Alakendu Sarkar v. State of West Bengal and others* (2), I am in agreement with the aforesaid two decisions and conclude that withholding of increments with cumulative effect would not be covered by sub-rule (iv) and may fall under sub-rule (v) and therefore, would not be a minor penalty.

(8) The learned counsel for the State has relied upon a Full Bench judgment of this Court in *Malvinderjit Singh v. State of Punjab and others* (3). There the only point considered was whether Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 provided adequate opportunity to defend or not. It was ruled that it was with regard to the imposition of minor penalties and opportunity to make representation was considered to be sufficient and it was not necessary that the employee should be supplied with the copy of the report or the substance of the adverse findings or the material on which they were based, which procedure was to be followed for imposition of major penalties. It is true that there the punishment awarded was for withholding of increments with cumulative effect but the precise point which is before me was not even remotely raised or decided and, therefore, that decision is of no assistance in deciding the present case.

For the reasons recorded above, I answer the point in the affirmative and hold that the stoppage of increments with cumulative effect is a major punishment. Accordingly, the appeal is dismissed with costs.

N. K S

Before M. M. Punchhi, J.-

SHANTI DEVI and others,—Petitioners.

versus

DHARAM PAL and others,—Respondents.

Civil Revision No. 278 of 1982

May 4, 1982.

Code of Civil Procedure (V of 1908) as amended by Act 104 of 1976—Section 60 and Order 33 Rule 1—Indigent person—Determination of—Property exempt from attachment in execution of a decree,

(1) 1973 (1) S.L.R. 241.

(2) 1981 (2) S.L.R. 33.

(3) 1970, S.L.R. 660.