

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 6th OF DECEMBER, 2022

WRIT PETITION NO. 16619 OF 2022

BETWEEN:-

**R.D. PACHORIYA S/O SHRI LAL
HANSH, AGED 52 YEARS,
OCCUPATION: SERVICE - POSTED
AS COOPERATIVE INSPECTOR
R/O 321 SURESH NAGAR,
THATIPUR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI D.P. SINGH- ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH
THROUGH PRINCIPAL
SECRETARY, DEPARTMENT OF
COOPERATIVE, MANTRALAYA,
GOVT. OF MADHYA PRADESH
VALLAB BHAWAN, BHOPAL
(MADHYA PRADESH)**
- 2. THE COMMISSIONER-CUM-
REGISTRAR, COOPERATIVE
SOCIETIES, VINDHYACHAL
BHAWAN, BHOPAL (MADHYA
PRADESH)**
- 3. THE COLLECTOR, GWALIOR**

**DISTRICT GWALIOR (MADHYA
PRADESH)**

....RESPONDENTS

**(SHRI S.K. SHARMA – GOVERNMENT ADVOCATE FOR
STATE)**

This petition coming on for hearing this day, the Court passed the following:

ORDER

This petition under Article 226 of the Constitution of India has been filed seeking following relief:-

1. That, the order impugned dated 30.05.2022 contained in Annexure -P/1 passed by the Respondent no.3 may kindly be quashed with all consequential effects, in the interest of justice.

2. That, the respondents may kindly be further directed to extend all consequential benefits including difference of arrears of pay with a further to pay the same alongwith interest @ 18% p.a. In the interest of justice.

3. That, any other order or direction which this Hon'ble Court deem fit and proper in the facts and circumstances of the case including the cost of litigation, may also be issued in favour of the petitioner.

2. By the impugned order dated 30th of May, 2022, Collector Gwalior has imposed the punishment of stoppage of increment with cumulative effect. The petitioner without availing the statutory remedy of appeal has approached this Court directly. Accordingly, on 11.10.2022, the following order was passed :-

The solitary ground to challenge the impugned

order dated 30.05.2022 is with regard to the competence of Collector to impose **major penalty**. It is submitted by the counsel for the petitioner that by notification dated 23.05.1996 and 10.01.1997, the powers have been delegated to Collectors to exercise powers under Rule 9 to suspend and Rule 10 to impose minor penalty on all employees of Class III and Class IV employees of all Departments, whereas by the impugned order, three increments have been withheld with cumulative effect which is major penalty in nature.

Faced with such a situation, the counsel for the State prays for and is granted a week's time to seek instructions in the matter and to place any notification by which the Collector has been empowered to impose major penalty against Class III and Class IV employees.

List on **17.10.2022**.

3. Thereafter on 17.10.2022 two weeks' time was granted to the State counsel to comply the order dated 11.10.2022. On 11.11.2022, further time was granted to the State to comply the order dated 11.10.2022. On 05.12.2022, a statement was made by the counsel for the State that in spite of various communications with the Collector, Gwalior, he has not provided any circular/instructions to show that the Collector is a competent authority to impose major penalty on Class III and Class IV Employees and, accordingly, a day's time was granted failing which, the Collector, District Gwalior was directed to remain present before this Court.

4. In the first half of the day, the counsel for the State again prayed for time and even the Collector, Gwalior was not present.

5. The only question in the present petition is with regard to competence of the Collector to pass the impugned order.

6. Accordingly, the case was passed over with a clear direction to the State counsel to either file the return or to keep the Collector, Gwalior present to substantiate his competence to pass the impugned order.

7. The case was taken up at 4 P.M. It was submitted by the counsel for the State that although they could not contact Collector, Gwalior but the OIC of the case has contacted the office of Additional Advocate General, and the return shall be prepared after the Court working hours are over. The said stand taken by the State counsel was shocking, specifically when the case has been adjourned on various occasions and it was specifically clarified in the morning session that the return has to be filed during the course of the day because the only question in the present case is with regard to the competence of the Collector to pass the impugned order and even a two line return could have been filed by the State pointing out the source of competence of the Collector. Looking to the short controversy involved in the present case, the OIC of the case was directed to directly address this Court on the question of competence.

8. Shri Akhilesh Shukla, Assistant Commissioner, Department of Cooperation, Gwalior referred to Rule 10 of Madhya Pradesh Civil Services (Classification Control and Appeal) Rules, 1966 and submitted that withholding of increment is a minor penalty and also relied upon the Notification No. C-6-7-96-3-1 dated 23-05-1996 published in Madhya Pradesh Official Gazette (Ext.) dated 10.01.1997, which deals with the delegation of powers by the State Government to Collectors to exercise their powers under Rule 9 to suspend and Under Rule 10 to impose minor penalty on all the employees of Class III and Class IV of all the

Departments (except Police workers) posted in their district w.e.f. 23.05.1996. It is the stand of the OIC that since withholding of increment with cumulative effect is a minor penalty, therefore, by virtue of the abovementioned notification, the Collector, Gwalior is competent to issue the impugned order. Since the reply given by OIC was disturbing with regard to nature of penalty, therefore, Shri S.K. Sharma, Government Advocate was directed to address this Court as to whether the stoppage/withholding of increment with cumulative effect is a major penalty or a minor penalty?

9. Shri Sharma prayed for time to file return and did not address this Court on the question as to whether withholding of increment with cumulative effect is a major penalty or minor penalty.

10. Under these circumstances, this Court is left with no other option but to decide the matter on the basis of the submissions made by the counsel for the petitioner as well as the OIC.

11. Heard the learned counsel for the parties.

12. Stoppage of increment with cumulative effect is in general a major punishment as the deferment of the increment continuously perpetuate during the rest of the entire service period of the employee and it would adversely affect his terminal benefits like gratuity, pension and others.

13. The Supreme Court in the case of **Kulwant Singh Gill v. State of Punjab** reported in **1991 Supp (1) SCC 504** has held as under:-

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 to 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 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 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* [ILR (1985) 2 P&H 193 : (1985) 1 SLJ 513 (P&H)] , 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 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.

14. The Coordinate Bench of this Court in the case of **M.M. Mudgal**

Vs. State of M.P. & Ors. reported in **ILR 2012 (MP) 2651** has held as under:-

7. Undisputedly the punishment order was issued against the petitioner after giving him a show cause. Though as per the law laid-down by the Apex Court, penalty of withholding of increment of pay with cumulative effect is deemed to be a major penalty but in the rules the same is treated as a minor penalty. Since it is not clarified whether withholding of increment or stagnation allowance, as enumerated in Rule 10(iv) of the Rules, with cumulative effect is also a minor penalty, the law laid-down by the Apex Court is required to be kept in mind and if the said law is made applicable, withholding of increment of pay with cumulative effect is deemed to be a major penalty. This has to be held so because the penalty if imposed with cumulative effect will not only cause prejudice, monetary loss to the Government employee while in service but the loss will also be caused after the retirement of the employee concerned and even the family pension will also be affected. Looking to such long effect of the penalty, it cannot be treated to be a minor penalty at all. Law in this respect has been well settled long back by the Apex Court in the case of *Kulwant Singh Gill vs. State of Punjab*, 1991 Supp(1) SCC 504, wherein the Apex Court has categorically held that if a penalty is imposed in such a manner, affecting the rights during service and even after service, it has to be treated as major penalty, which cannot be imposed without conducting a fulfilled enquiry as enumerated under Rule 14 of the Rules. Admittedly no charge-sheet was issued to the petitioner and only a show cause under Rule 16 of the Rules was given to him, which means that only a summary enquiry was conducted for imposition of a minor penalty. In the garb of minor penalty, a major penalty should not have been imposed on the petitioner.

15. The Coordinate Bench of this Court in the case of **K.R. Shankara**

Kaimal vs. State of M.P. and another reported in **1995 MPLJ (SN) 54** has held as under:-

M.P. Civil Services (CC and A) Rules, 1966, RR. 10 and 23 – *Stoppage of annual increments with cumulative effect – Punishment is major penalty – Imposition of the penalty only after notice without following procedure for major penalty is illegal.*

Stoppage of annual grade increments with cumulative effect amounts to major penalty. Imposition of such major penalty after notice without following procedure for major penalty is illegal. 1991 Supp. (1) SCC 504, 1991 MPST 650, Rel.

16. Thus, it is clear that stoppage of increment with cumulative effect is a major penalty. It is really shocking that if some mistake has been committed by an authority, then the office of Advocate General instead of suggesting him to adopt the correct mode, was unnecessarily seeking adjournment to justify the stand taken by the State Government that the stoppage/withholding of increment with cumulative effect is a minor penalty.

17. Be that whatever it may be.

18. This Court does not want to burden this judgment by discussing the role of a Government Advocate in dealing with the cases. The crux of the matter is that even according to the State, the Collector has jurisdiction to pass an order under Rule 9 and to impose a minor penalty on the Class III and Class IV employees of all the Departments (except Police Department posted in his District). Since withholding of increment with cumulative effect is a major penalty, therefore, the Collector, Gwalior has no jurisdiction to pass the impugned order.

19. Normally, this Court would not have imposed a cost, but the

manner in which this case has been handled by the respondents cannot be appreciated.

20. Accordingly, the order dated 30.05.2022 (Annexure P-1) passed by the Collector, Gwalior is hereby **quashed** and liberty is granted to the Competent Authority to take up the matter in accordance with law.

21. The petition succeeds and is allowed with cost of **Rs.10,000/-** to be deposited by OIC within a period of one week from today, before the Principal Registrar of this Court.

(G.S. AHLUWALIA)
JUDGE