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(I. S. Tiwana, J.)

decree holder, who was the auction purchaser, and, therefore, the sale was null and void and the property had to be re-sold. In view of the aforesaid Supreme Court decision in *Merla Ramanna's case*, the starting point of limitation for a void sale would be when the judgment-debtor is dispossessed from the sold property. If the judgment-debtor was in possession of the property on 17th December, 1981 when the sale was confirmed by this Court, or continued to be in possession till he filed objections on 17th March, 1982, the limitation would not be deemed to have started against him. Assuming that the judgment-debtor was already out of possession, then the starting point of limitation would be 17th December, 1981 when the sale was confirmed. The objection petition by the judgment-debtor was filed within three years of the aforesaid date and, therefore, the Supreme Court decision in *Merla Ramanna's case* (supra) in no way goes against the judgment-debtor.

(10) The matter may be looked at from another angle. In *Merla Ramanna's case* (supra) the sale was confirmed on 26th June, 1936 and possession was taken on 15th December, 1936. The limitation was counted from the date of taking possession. Hence if sale is void the objections can be entertained even after confirmation of sale. Accordingly, we answer the second question in the affirmative that regarding void sales, objections can be entertained even after the confirmation of the sale.

(11) Copy of this order be sent to the Executing Court for proceeding further in accordance with law and subject to the observations made in the order. There will be no costs in these proceedings.

D. S. Tewatia, J.—I agree.

H. S. B.

Before P. C. Jain, A.C.J. and I. S. Tiwana, J.

SARWAN SINGH,—Petitioner

versus

THE STATE OF PUNJAB AND OTHERS—Respondents.

Civil Writ Petition No. 352 of 1984

February 16, 1985

*Punjab Civil Services (Punishment and Appeal) Rules, 1970—
Punjab Civil Services Rules, 1953, Volume I, Rule 4.7 and 4.12—
Stoppage of an increment with cumulative effect—Whether a major*

penalty—Such penalty—Whether falls in clause (iv) of Rule 5 of the Punishment and Appeal Rules.

Held, that the competent authority is empowered under Rule 4.7 of the Punjab Civil Services Rules, 1953, Volume I, to withhold an increment of a Government employee and it is only when the competent authority exercises powers under this rule that an order of stoppage of an increment with cumulative effect can be made. A perusal of Rule 4.12 aforesaid, however, goes to show that it envisages entirely a different situation and the stoppage of an increment with cumulative effect by no stretch of imagination falls within clause (v) of Rule 4.12. Under clause (v), 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 the pay. This clause envisages reduction to a lower stage which in the case of withholding of increments with cumulative effect does not at all arise. In this view of the matter, it has to be held that the stoppage of increments with cumulative effect is a minor penalty and would fall under clause (iv) of Rule 5 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970.

(Paras 7 & 8).

Punjab State and others v. Ram Labhaya, 1983(2) S.L.R. 410.
Balkar Singh v. Chief Engineer, 1983(2) S.L.R. 684.

OVERRULED.

Petition under Articles 226 and 227 of the Constitution of India praying that :—

- (i) that a writ in the nature of certiorari may be issued and the orders Annexure P-1 and P-3 be quashed;
- (ii) any other appropriate writ or direction on which this Hon'ble Court may deem fit and proper in the circumstances of the case may also be issued;
- (iii) filing of certified copies of annexures P-1, P-2 and P-3 be exempted;
- (iv) costs of the petition may also be awarded to the petitioner;
- (v) issuing the advance notices to the respondents may please be dispensed with;

AND

It is, further prayed that during the pendency of this civil writ petition operation of the impugned orders, Annexures P-1 and P-3 be stayed.

M. S. Kang, Advocate, for the Petitioner.

A. S. Sandhu, Additional A.G. (Pb.), for the Respondent.

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JUDGMENT

Prem Chand Jain, A.C.J.:

(1) The significant legal question which needs determination in this petition is, whether stoppage of increments with cumulative effect is a major penalty?

(2) The petitioner was working as a Sub-Inspector in the Food and Supplies Department. He along with other four Sub-Inspectors was deputed to send a wheat special from Phagwara Railway Station to Manmad on 5th April, 1978. For this purpose, 8,800 bags of wheat were dumped at the Railway Station. Out of this, 8,170 bags were loaded in the wheat special and as a result thereof 630 bags ought to have been left behind, but instead of 666 bags were found left behind on the platform and as such there was an excess of 36 bags. This excess was brought to the notice of the District Food and Supplies Officer, Phagwara, who, in turn, brought this fact to the notice of the District Food and Supplies Controller. Finding that these 36 bags were kept behind for mis-appropriation, a charge-sheet was served on the petitioner in the first week of July, 1978. The petitioner filed a detailed reply to that charge-sheet. Thereafter, a show-cause notice was served on the petitioner for showing cause as to why on the basis of the charges levelled in the charge-sheet, his two increments be not stopped with cumulative effect. The petitioner submitted a reply to the show-cause notice, but finding the same unsatisfactory, the Director of Food and Supplies, Punjab, respondent No. 2, imposed the penalty of stopping of two increments with cumulative effect.

(3) Feeling aggrieved from the order of respondent No. 2, the petitioner preferred an appeal, but the same was rejected by respondent No. 1. Still aggrieved, the petitioner has filed this petition, calling in question the legality of the orders of respondents No. 2 and 1, copies Annexures P-1 and P-3, respectively.

(4) As is evident from the question of law framed, the only point that needs determination is whether the imposition of penalty of stoppage of increments with cumulative effect is a major punishment. If the answer is in the affirmative, then there is no gain-saying that the impugned orders have to be set aside, as no departmental enquiry was conducted. Mr. M. S. Kang, learned counsel appearing for the petitioner, had submitted that the stoppage of

increments with cumulative effect is a major punishment and as no departmental enquiry had been initiated, the order passed by respondent No. 2 was illegal and without jurisdiction. In support of his contention, the learned counsel had placed reliance on two Single Bench judgments of this Court in *Punjab State and others v. Ram Lubhaya*, (1) and *Balkar Singh v. Chief Engineer*, (2).

(5) We have heard the learned counsel for the parties. There is no gainsaying that the two judgments, to which our attention has been drawn by the learned counsel for the petitioner, do support his contention, but Mr. A. S. Sandhu, learned Additional Advocate-General, had contended that the view taken in the two judgments, does not lay down a correct law. What was sought to be argued by the learned State counsel was, that the stoppage of increments is a minor penalty and merely this fact that it has been made with cumulative effect, would not make it a major penalty.

(6) On consideration of the entire matter, we find that the contention of the learned counsel for the State has considerable force. Rule 5 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter referred to as the Rules), prescribes the minor and the major penalties and the relevant portion of the Rule is in the following terms :—

“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

(1) 1983(2) S.L.R. 410.

(2) 1983(2) S.L.R. 684.

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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 not be a disqualification for future employment under the Government;
- (ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government."

(7) From the bare perusal of the aforesaid rule, it would be evident that item (iv), which talks of withholding of increments of pay, is a minor penalty. However, what was sought to be argued by Mr. Kang, was that by making the withholding of increments with cumulative effect, the penalty would become major and would fall under item (v). This contention, on the face of it, is untenable, as item (v) is an independent clause covering entirely a different situation and does not cover the case of stoppage of increments with cumulative effect. The power of withholding increments is given under Rule 4.7 of the Punjab Civil Services Rules, Volume I and is in the following terms :—

"4.7. An increment shall ordinarily be drawn as a matter of course, unless it is withheld. An increment may be withheld from a Government employee by a competent authority if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the

period for which it is withheld, and whether the postponement shall have the effect of postponing future increments."

It is under this rule that a competent Authority is empowered to withhold an increment of a Government employee. The competent authority again is empowered under this Rule to state the period for which it is withheld and also whether the postponement shall have the effect of postponing future increments. When the competent authority exercise his powers under this rule, it is then that it makes an order of stoppage of increments with cumulative effect. But for the purposes of penalty, it remains a minor penalty, as it falls under clause (iv), which talks of withholding of increments of pay.

(8) So far as the penalty referred to under clause (v) is concerned, the power is referable to Rule 4.12, the relevant portion of which is in the following terms :—

"4.12 (1) If a Government employee is reduced as a measure of penalty to a lower stage in his time-scale, the authority, ordering such reduction shall state the period for which it shall be effective and whether, on restoration the period of reduction shall operate to postpone future increments and, if so, to what extent.

(2) If a Government employee is reduced as a measure of penalty to a lower service, grade or post,, or to a lower time-scale, the authority ordering the reduction may or may not specify the period for which the reduction shall be effective; but where the period is specified, that authority shall also state whether, on restoration, the period of reduction shall operate to postpone future increments, and if so, to what extent."

A bare perusal of the aforesaid rule goes to show that it envisages entirely a different situation and the stoppage of increments with cumulative effect by no stretch of imagination can fall within clause (v) or Rule 4.12. Under clause (v), 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. This clause envisages

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reduction to a lower stage, which in the case of withholding of increments with cumulative effect does not at all arise. In cases where the increments are withheld with or without cumulative effect, the Government employee is never reduced to a lower stage. In this view of the matter, we find that the stoppage of increments with cumulative effect is a minor penalty and would fall under clause (iv) and not under clause (v) which is part of major penalty. In the view we have taken, with respect, we find that the view enunciated in *Ram Lubhaya's case* (supra) does not lay down a correct law and is accordingly over-ruled. Further, in *Balkar Singh's case* (supra), there is no discussion on this aspect of the matter and the learned Single Judge has merely followed the decision in *Ram Lubhaya's case* (supra), with the result that the decision in *Balkar Singh's case* (supra) is also over-ruled.

(9) No other point arises for consideration.

(10) For the reasons recorded above, we find no merit in this petition, and, consequently, dismiss the same, but without any order as to costs.

N. K. S.

Before J. V. Gupta, J.

CHANDER MOHAN MITTAL,—Petitioner.

versus

SHRI BIHARI LAL GUPTA,—Respondent.

Civil Revision No. 2013 of 1984.

March 1, 1985.

East Punjab Urban Rent Restriction Act (III of 1940) (as applicable to Chandigarh)—Section 15(1) (b) & (5)—Order directing ex parte proceedings against tenant passed by the Rent Controller set aside by the Controller—Landlord filing appeal against such order—Such appeal—Whether maintainable—Remedy of landlord in such cases—Whether lies in filing of revision to the High Court.

Held, that the setting aside of *ex parte* proceedings is inherent in the Rent Controller and it was in the exercise of that power that the order proceeding *ex parte* against the tenant was set aside.