

CASE NO.:
Appeal (civil) 5162 of 2006

PETITIONER:
DHARAMPAL ARORA

RESPONDENT:
PUNJAB STATE ELECTRICITY BOARD & ANR

DATE OF JUDGMENT: 22/11/2006

BENCH:
Dr. AR. LAKSHMANAN & TARUN CHATTERJEE

JUDGMENT:

J U D G M E N T
(@ SLP(C) No.21904 OF 2004)

Dr. AR. Lakshmanan, J.
Leave granted.

This appeal is directed against the final order of the High Court of Punjab and Haryana dated 13.2.2004 passed in Regular Second Appeal No.2332 of 1987. The appellant was working as an Assistant Revenue Accountant with the Punjab State Electricity Board. He was suspended vide order dated 26.8.1974. He was charge-sheeted vide Memo dated 24.9.1974. Thereupon, he was reinstated in service vide order dated 25.8.1975. The appellant was due to cross the efficiency bar w.e.f. 4.10.1974 but he was allowed to cross efficiency bar w.e.f. 1.4.1976 vide order dated 10.10.1980 passed by the respondent-Board. The period from 4.9.1974 to 30.9.1975 was treated as a non-duty period. An inquiry was held and an order was passed on 16.3.1984 whereby one annual grade increment of the appellant was stopped with future effect. The appellant filed a Civil Suit in the court of Senior Sub Judge, Patiala on 28.4.1984. The suit was filed for declaration and other incidental reliefs. The learned Trial Judge by judgment dated 12.3.1985 dismissed the suit filed by the appellant-plaintiff. Against the judgment and decree of the Trial Court, the appellant filed the first appeal before the Additional District Judge. Before the Additional District Judge, the appellant had specifically argued that the claim of the appellant was that he was deemed to have crossed the efficiency bar w.e.f. 4.10.1974 and that he was entitled to full pay and allowances for the suspension period from 4.9.1974 to 30.9.1975. A further submission was made that the order dated 16.3.1984 was illegal because not only that the order was not speaking order but also that no show cause notice was served upon the appellant by the punishing authority after the report of the Inquiry Officer was submitted and further that the copy of the report of the Inquiry Officer was also not supplied to the appellant. The Additional District Judge categorically gave a finding that:- "So far as the copy of the inquiry report and the show cause notice is concerned, admittedly no copy of the report of the Inquiry Officer was supplied to the plaintiff after the inquiry report was submitted by the Inquiry Officer nor any show cause notice was given to the plaintiff by the

Punishing Authority prior to passing the impugned order dated 16.3.1984."

Despite the said finding, the First Appellate Court held that it was not essential for the Punishing Authority to supply the copy of the report of the Inquiry Officer to the appellant-plaintiff or to give him show cause notice prior to the passing of the impugned order. The Court also held the view that the report of the inquiry is to be furnished to the employees and show cause notice required to be given only in the case of major punishment. According to the First Appellate Court, since only minor punishment was imposed, there was no need of furnishing the copy of the inquiry report or to give a show cause notice to him before imposing the punishment against the appellant. In the result, the first appeal was dismissed by the Additional District Judge. Against the order of the Additional District Judge, the appellant filed Regular Second Appeal before the High Court, which was dismissed by the High Court in limine at the admission stage. Against the order of the High Court, the appellant filed special leave petition no.2288/88, in which leave was granted by this Court and the special leave petition was registered as Civil Appeal no.2549/88. This Court, while disposing the appeal, passed the following order:

"The appeal is directed against the order dated 28th November, 1987 of the Punjab and Haryana High Court summarily dismissing the Second Appeal of the appellate herein.

In view of our decision in Kulwant Singh Gill vs. State of Punjab (1991(Suppl)(1) SCC 5043), an order withholding increments with permanent effect is a major punishment. In these circumstances it appears to us that the order of summary dismissal was not justified and the case ought to have been disposed of on merits after giving reasons as the learned District Judge, in his judgment, which was unsuccessfully challenged before the High Court, took the view that the punishment in question, which was of stopping increments with permanent effect, was a minor punishment and that view is incorrect.

In view of our decision referred to above, we set aside the impugned order and remand the case to the High Court for disposal according to law after giving reasons. We have not considered the rest of the contentions of the parties and these may be urged before the High Court.

The appeal is disposed of with no order as to costs."

After the remand, the matter came up for consideration before the High Court for final hearing. The High Court formulated following two substantial questions of law:

"(a) Firstly, that stoppage of annual grade increment with future effect is a major punishment and as such proper procedure prescribed under Regulation 8 of 1971 Regulations ought to have been followed and since there was violation of the said Regulation, order dated 16.3.1984 imposing penalty is illegal and unsustainable. The counsel relied upon a judgment in Kulwant

Singh Gill versus The State of Punjab
(Judgment Today 1990 (4) SC 70) for
a proposition that stoppage of annual grade
increment with cumulative effect is a major
punishment.

(b) Secondly, it was submitted by the
learned counsel for the appellant that order
dated 10.10.1980 (Exhibit P-10) vide which
the appellant had been allowed to cross
Efficiency Bar with effect from 1.4.1976
instead of 4.10.1974 is legally unsustainable
and the appellant was entitled to cross the
Efficiency Bar with effect from 4.10.1974."

After hearing the arguments of the counsel appearing for
the respective parties, the High Court observed on question
of law no.1 as under:

"It needs to be noticed that sub rules (iv), (v)
of Rule 5 and Rules 8 and 9 of 1970 Rules
are in pari materia with provisions contained
in 1971 Regulations. The judgment of the
Division Bench in Sarwan Singh vs. State of
Punjab & Ors. (ILR 1985 (2) P & H 193) was
overruled by the Supreme Court in Kulwant
Singh Gill's case (supra). Learned counsel for
the respondent-Board also could not submit
gainful argument to successfully refute the
contention of the counsel for the appellant.
The findings of the courts below on issue
no.1 are thus reversed and it is held that
stoppage of annual grade increment with
cumulative effect is a major punishment and
the same, in the present case, having been
inflicted without holding a regular inquiry in
terms of Regulation 8 of 1971 Regulations
cannot legally be sustained. The suit of the
plaintiff-appellant is decreed to this extent."

So far as the second question of law is concerned, the High
Court held that the appellant has not filed the suit seeking
declaration to the effect that order dated 10.10.1980 is null
and void and, therefore, the said relief cannot be granted to
him unless the order dated 10.10.1980 is set aside. Since
the said order was not assailed by the appellant-plaintiff
and the suit having been filed on 4.5.1984 i.e. after more
than three years of the passing of the order Exhibit P-1, the
High Court held that that the suit was clearly time barred.
The High Court has further observed that even if viewed
from any angle, the appellant-plaintiff could not be granted
any relief in this behalf, and rejected the contention of the
appellant on this point. Resultantly, the Second Appeal
was partly allowed and the judgment and decree passed by
the courts below were set aside to the extent indicated
above and the suit of the appellant stood decreed for
declaration to the effect that the order no.222/CAO dated
16.3.1984 stopping his one annual grade increment with
future effect was declared to be illegal and void.

Aggrieved against the judgment passed by the High Court,
the plaintiff preferred the above Civil Appeal in this Court.
We heard Mr. R.K. Kapoor, learned counsel for the
appellant and Mr. H.M. Singh, learned counsel for the
respondents. Both the learned counsel drew our attention
to the findings rendered by the courts below and also the
documents. We have also carefully perused the judgment

passed by the High Court. As already noticed above, the High Court on issue no.1 has categorically held that the stoppage of annual grade increment with cumulative effect is a major punishment and the same in the present case having inflicted without holding a regular inquiry in terms of Regulation 8 of 1971 Regulations, the said departmental proceedings cannot be legally sustained. By holding so, the High Court decreed the suit of the plaintiff to the said extent.

When a particular inquiry is held against the appellant with respect to a given set of allegations and the final order of punishment is imposed by order dated 16.03.1984 and when the said final order dated 16.03.1984 was set aside, the appellant was entitled for all the consequential benefits. In the instant case, the appellant had specifically challenged the final order of punishment dated 16.03.1984 and also the action of the respondent-authorities in denying the claim of crossing the Efficiency Bar w.e.f. 4.10.1974 instead of 1.04.1976 and the said action was specifically challenged then merely because the order of the said action dated 10.10.1980 was not mentioned or challenged does not mean that the appellant could be denied the relief of crossing the Efficiency Bar w.e.f. 4.10.1974. In our view, the appellant could not be refused the substantial relief merely on technicalities when the specific claim and relief was claimed in the suit though the date of the order was not mentioned. Therefore, the claim of the appellant could not be said to be time-barred particularly when the order denying the benefit of crossing the Efficiency Bar w.e.f. 4.10.1974 was passed by considering the suspension period as non-duty period.

It would be relevant to reproduce here the order dated 10.10.1980 whereby the appellant was denied the benefit of crossing the Efficiency Bar w.e.f. 04.10.1974 and was allowed to cross the Efficiency Bar only w.e.f. 01.04.1976. "Punjab State Electricity Board

Office Order No.419/EA-3187 Dated
10/10/80

Sh. Dharam Paul Arora Assistant Revenue Accountant (now posted against the post of Head Office Assistant) in the pay scale of Rs. 160-10-250/15-400 is hereby allowed to cross Efficiency Bar with effect from 1.4.76 raising his pay from Rs.250/- P.M. to 265/- P.M. instead of 4.10.74 by considering his suspension period as 'non-duty period' with effect from 4.9.74 to 30.9.75 and his record being unsatisfactory.

2. This issues with the approval of Chief Accounts Officer, PSEB, Patiala.

Sd/-
Sr. Accounts Officer/Estt

A/c,
PSEB,
Patiala."

From the above, it is clear that it was continuation of the same charges that the appellant was denied the benefit of crossing the Efficiency Bar from the date he was entitled to. It would be relevant to mention here that the appellant was

served with the charge sheet by department on 24.09.1974 and it was the same charge sheet which ultimately led to the infliction of the final penalty against the appellant by order dated 16.03.1984.

Therefore, once the final order goes, all the orders from the date of charge sheet upto the date of the passing of the final order become a nullity and redundant.

Since the final order dated 16.3.1984 itself was set aside by the High Court, we need not go into any other question raised in this appeal or considered by the High Court, which in our opinion is wholly unnecessary in the facts and circumstances of the case.

We, therefore, hold that the appellant will be entitled to all the monetary benefits for the period from 4.10.1974 to 30.9.1975 along with crossing of efficiency bar w.e.f. 4.10.1974 instead of 1.4.1976. The Civil Appeal stands allowed to the extent indicated above. No costs.