



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Civil Writ Petition No. 11880/2018

Shri Mohan Mali S/o Shri Ram Singh Mali, Aged About 31 Years,  
R/o Village- Rangama Tal Opposite Mandrayal Road Kanta, Tehsil  
And District- Karoli.

-----Petitioner

Versus

Judge, Industrial Dispute Tribunal Cum Labour Court, Jodhpur,  
Jodhpur

-----Respondent



For Petitioner(s) : Mr. Kuldeep Mathur  
For Respondent(s) : Mr. Himanshu Shrimali

**JUSTICE DINESH MEHTA**

**Judgment**

**05/11/2020**

1. The present writ petition is directed against the order dated 07.08.2018, passed by the Judge, Industrial Tribunal-cum-Labour Court, Jodhpur, whereby petitioner's services have been terminated with immediate effect.

2. Mr. Kuldeep Mathur, learned counsel for the petitioner submitted that petitioner has challenged the above referred order of termination, so also the orders dated 07.08.2018 (31.07.2018), whereby two annual grade increments of the petitioner without cumulative effect have been stopped by each of the order.

3. The facts apropos are set out hereunder:

3.1 The petitioner was appointed by order dated 22.08.2016 as a Class-IV employee in furtherance of regular selection process.



Initially he was allowed to join as a probationer for a period of two years.

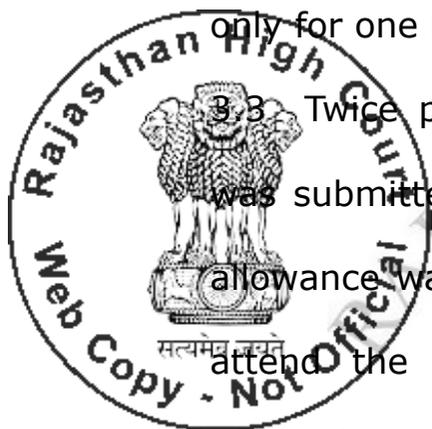
3.2 All went well, till the petitioner received a notice dated 11.06.2018 issued by the respondent requiring the petitioner to give his explanation, as to why proceedings under Rule 17 CCA be not taken, as on 29.05.2018, he remained present in the office only for one hour and that too without uniform.

3.3 Twice petitioner took time for filing reply and ultimately it was submitted on 26.06.2018 stating interalia that since uniform allowance was not given to him, a probationer, he was unable to attend the office in uniform and prayed that the proposed proceedings be dropped.

3.4 The respondent passed an order dating it as '31.07.2018' (signed on 07.08.2018) and punished the petitioner by stopping two annual grade increments without cumulative effect. As the petitioner was a probationer, the penalty was inflicted with a stipulation that the same will be given effect as and when annual increments would be payable.

3.5 Surprisingly another notice of the same date (11.06.2018) was issued to the petitioner with an allegation that on 08.06.2018 he remained absent without any prior intimation.

3.6 The petitioner took two adjournments and then filed a reply dated 26.06.2018 to the said notice and stated that he was at respondent's own residence from 6:00 am to 9:00 am and from 11:00 am to 3:00 pm, so also from 6:00 pm to 9:30 pm on that particular day.





3.7 The respondent-Presiding Officer passed yet another penalty order and stopped two annual grade increments without cumulative effect, as and when it becomes due.

3.8 Similar notice of even date (11.06.2018) was also issued by the respondent, interalia, seeking petitioner's explanation, as to why he remained absent without leave on 11.06.2018.

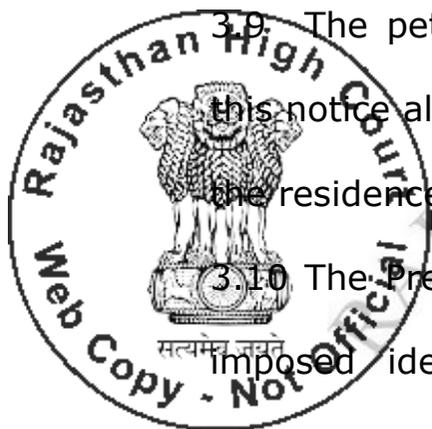
3.9 The petitioner filed his reply on 26.06.2018 in response to this notice also and submitted that he had discharged his duties at the residence of the respondent and while giving specific timings.

3.10 The Presiding Officer passed third order on 07.08.2018 and imposed identical punishment upon the petitioner - namely stopping two annual grade increments without cumulative effect from the date when it becomes due.

3.11 Even after passing three penalty orders on the same date, the Presiding Officer proceeded to dispense with petitioner's services with one stroke of pen.

4. Mr. Mathur painstakingly submitted that a low paid employee at the lowest rung has been thrown out of the employment, simply because of the highhanded attitude of the respondent, who is none other than a judicial officer that too dealing with cases of industrial and labour disputes.

5. Mr. Mathur argued that the respondent was at least required to consider and deal with the reply filed by the petitioner before imposing penalty. He pointed out that all the impugned orders have been passed on the same date and in a mechanical manner and contended that they have been passed with premeditated mind.





6. Learned counsel for the petitioner, submitted that three orders of stopping annual grade increments were nothing, but a ground prepared to oust the petitioner from service. He emphatically submitted that the petitioner had furnished due explanation and that he had given duties at no other place than respondent's own house on the relevant dates, yet the respondent officer brushed aside the reply and passed penalty orders.

7. It was alternatively submitted that at the best the respondent could have marked leave and held the petitioner absent without leave'. Such harsh action of stoppage of two annual grade increments for each day's alleged leave that too three in number, demonstrates vindictiveness of the respondent.

8. Mr. Shrimali, learned counsel for the respondent submitted that as the petitioner had got an alternative and efficacious remedy by way of statutory appeal, this Court should not exercise its writ jurisdiction under Article 226 of the constitution.

9. It was meekly argued that the petition suffers from misjoinder of cause of action, inasmuch as petitioner has challenged all the orders in one petition.

10. But for the preliminary objections so raised, Mr. Shrimali had hardly any thing to offer to justify the orders impugned, given a rather unusual factual backdrop.

11. Heard.

12. Though, the matter had come up on board for consideration of the second stay petition, but having regard to the peculiar facts and more particularly the fact that the petitioner, a probationer is working at the strength of an interim order of the Court, I feel that it will not be appropriate to keep the sword of damocles hanging



over his head. Hence, with the consent of learned counsel for the parties, the matter was finally heard.

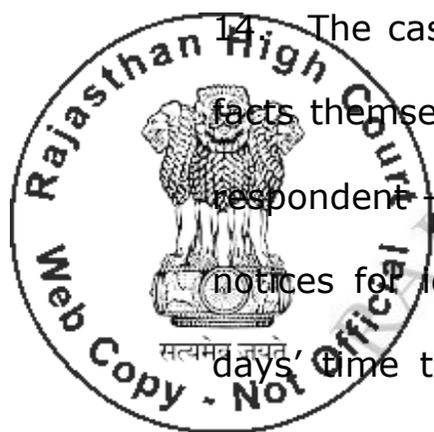
13. Final decision of the case at hands was deemed imperative, lest the respondent, who is bestowed the duty of deciding industrial and labour disputes will himself generate more disputes of like nature.

14. The case at hands does not need much deliberation, as the facts themselves speak volumes about the fanciful attitude of the respondent – Presiding Officer. The respondent firstly issued three notices for identical breach for different dates giving only three days' time to show cause. Thereafter he passed three different orders on a single day, slapping three penalties of stoppage of two annual grade increments, knowing it fully well that petitioner being a probationer was not even entitled for annual grade increments.

15. It is noteworthy that the first notice bearing No.309/2018 was issued on 11.06.2018, alleging that petitioner had come only for an hour on 29.05.2018. Another notice was issued on the same date, alleging that petitioner remained absent without leave on 08.06.2018 and third notice too was issued on the very same date, alleging that petitioner remained absent without intimation on 11.06.2018.

16. It is strange that the learned Judge began the battle by triggering three notices on 11.06.2018 for a purported breach relating to 29.05.2018; 08.06.2018 and 11.06.2018. Had he been bonafide even a single notice would have sufficed.

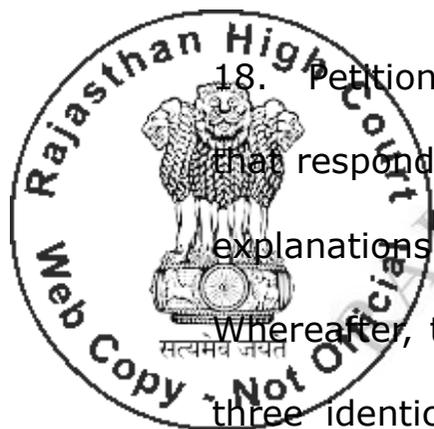
17. A careful reading of all the notice (dated 11.06.2018) shows that petitioner's explanation was elicited in 3 days to show why





proceedings under Rule 17 of the CCA Rules for penalising the petitioner, may not be initiated. It will be useful to reproduce relevant part of the notice, which reads thus:-

"अतः आप इस सम्बन्ध में तीन योम में अपना स्पष्टीकरण पेश करे कि क्यों नहीं आपके विरुद्ध नियम 17 सीसीए रूल्स के तहत कार्यवाही कर दण्डित किया जावे।"



18. Petitioner sought time on 2-3 occasions, perhaps in a hope that respondent will cool down. Ultimately replies rather four line explanations to all the notices were filed on 26.06.2018. Whereafter, the respondent herein took 11-12 days' time to pass three identical orders (each of four lines) of stoppages of two annual grade increments.

19. One would be at a loss to comprehend that why notice was issued belatedly on 11.06.2018 for purported breach of 29.05.2018. Irrespective of the date of breach, all the three notices came to be issued on 11.06.2018. Receiving three notices, one after another would make anyone lose his balance and peace, what to talk of Class-IV employee.

20. Then, the learned Judge does not deal, with much less dialate upon the response given by the petitioner, that the petitioner was at his (respondent's) residence only, doing daily chores.

21. First order though has been dated as 31.07.2018, but a careful reading reveals that the same was signed on 07.08.2018. Even numbers of all the three penalty orders are continuous.



22. Having passed three orders of penalty, respondents made them the ground for getting rid of the petitioner or to bring an abrupt end to his services, branding it to be 'not satisfactory'.

23. Be that as it may, three orders in effect amounts to stoppage of six annual grade increments. Having regard to the nature of allegations levelled in the notices and the language used therein, the penalty is not only highly disproportionate, but is also in violation of principles of natural justice.

24. It is pertinent to note that the notice was only issued to show cause, why proceedings for punishment under Rule 17 of CCA Rules may not be taken, to which the petitioner responded by giving a three line explanation with a request that the action proposed in the notice be dropped.

25. The respondent has not considered the explanation furnished by the petitioner and has proceeded with predetermined mindset, which is evident from the fact that immediately upon passing of the impugned order on 07.08.2018 itself, he scooped the petitioner out of the service.

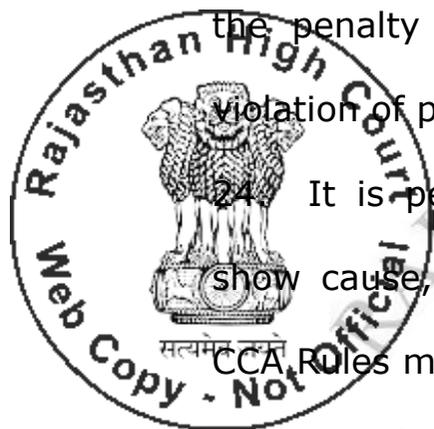
26. In view of the aforesaid, all the three impugned orders dated 07.08.2018 imposing penalty are hereby quashed and set aside.

27. Since these orders form the fulcrum of the impugned termination order dated 07.08.2018 (Annex.6), the same also falls flat on the ground, as the foundational orders have been quashed.

28. No other reason or material has been brought on record to show that petitioner's services were not satisfactory.

29. The writ petition is allowed with cost.

30. Though, the harassment and agony, which the petitioner might have suffered in the hands of respondent – who is otherwise





responsible of dealing with industrial and labour disputes, is immeasurable. But, the ends of justice would not meet, if in a case like this, token cost is not imposed upon the respondent.

31. Hence, a sum of Rs.20,000/- is awarded as a cost of litigation to the petitioner. Same shall be recovered in two installments from salary of the respondent – the author of the orders, personally.

32. A copy of this order be sent forthwith to the Secretary Law and Justice and to the Registrar General of the High Court for doing the needful. A copy of the order instant be also placed in Service Record of the respondent.

33. Stay petitions also stand disposed of accordingly.

**(DINESH MEHTA),J**

161-Ramesh/-

