

(1953) 11 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 514 of 1953

Des Raj Kirpa Ram

APPELLANT

Vs

Punjab State

RESPONDENT

Date of Decision : 18-11-1953

Acts Referred:

Government of India Act, 1935 — Section 96B

Citation : AIR 1954 P&H 134

Hon'ble Judges : Kapur, J

Bench : Single Bench

Advocate : I.D. Dua, for the Appellant; S.M. Sikri, General, for the Respondent

Final Decision : Dismissed

Judgement

Kapur, J.—This is a plaintiff's appeal against an appellate decree of District Judge Ishwar Das dated 25-5-1953 confirming the decree of the trial Court dismissing the plaintiff's suit with costs.

2. The facts of the case are that the plaintiff is a Drawing Master in the grade of Rs. 50-3-80/4-100. In February 1951 certain teachers were given promotion into the next grade of Rs. 105-7-140 and the plaintiff was not given this promotion which he claims to be contrary to the rules made by the Punjab Government, and he brought a suit on 21-12-1951 for declaration that he was entitled to be placed in the grade of pay of Rs. 105-7-140 in order of his seniority. Both Courts below have decided the case against the plaintiff and he has come up in appeal to this Court.

3. Mr. Dua has relied on Rule 7-A which was added by a notification of the Punjab Government dated 25-10-1948, which is No. 7094 (G) - 48/57526. This rule provides :

"7-A. Without prejudice to the provisions of Rule 7 no order imposing the penalty specified in Clause (i), (ii) or (iv) of Rule 4 (other than an order based on facts which have led to his conviction in a Criminal Court or an order superseding Him

for promotion to a higher post on the ground of his unfitness for that post) on any Government servant to whom these rules are applicable shall be passed unless he has been given an adequate opportunity of making any representation that he may desire to make and such representation, if any, has been taken into consideration before the order is passed:

* * *

The penalties are provided in Rule 14-10 of Chapter 14 of Civil Service Rules (Punjab), Volume I of 1941. The reference is to Sub-clauses (i), (ii) and (iv) of this rule, and it is submitted that there has been a violation of this rule inasmuch as the plaintiff was not given an opportunity to show cause before action was taken against him.

The learned Advocate-General has relied on Rule 6(2) of the Punjab Subordinate Educational Service Rules, which provides :

"6 (2). Promotions to the higher grades of the Service shall be by (a) seniority and record and/or (b) by selection from amongst such members who not only improve their educational qualifications beyond the level of their seniors, but whose work is definitely considered to be of a consistently outstanding character: Provided that not more than one-third of the total number of vacancies available for promotion shall be given by selection."

4. But in my opinion in this case it is not necessary to go into either one or other of the contentions, which have been raised. Their Lordships of the Privy Council in -- AIR 1937 31 (Privy Council) have held that the terms of Section 96B, Government of India Act, 1915, contain a statutory and solemn assurance that the service, though at pleasure, will not be subject to capricious or arbitrary action and will be regulated by rule but that does not import a special kind of employment with an added contractual term that the rules are to be observed, and they also held that a breach of the rules did not give a cause of action to the aggrieved servant.

Lord Roche delivering the Judgment of their Lordships at p. 34 said

".....control by the Courts over Government in the most detailed work of managing its services would cause not merely inconvenience but confusion."

and at p 34 his Lordship said :

"But while thus holding on the clear facts of this case, as they now appear from the evidence, as they similarly held in -- AIR 1937 27 (Privy Council) their Lordships are unable as a matter of law to hold that redress is obtainable from the Courts by action."

It may be, as was observed in that case, that there has been a serious and complete failure to adhere to important and indeed fundamental rules, but that by itself is not a ground for the Courts to interfere with the orders of the Education Department. Without expressing any opinion on whether there has

been any breach or not, I would dismiss this appeal following the judgment of their Lordships of the Privy Council -- AIR 1937 31 (Privy Council) which was followed in -- Naubat Rai Vs. Union of India (UOI) and Another, but in the circumstances of this case I leave the parties to bear their own costs throughout.