
(1965) 03 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1985 of 1964

Harbans Lal Amar Chand

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 08-03-1965

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : AIR 1966 P&H 46

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Advocate : Abnasha Singh, for the Appellant; M.S. Punnu, Dy. Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

P.C. Pandit, J.—This order will dispose of three connected writ petitions (Civil Writs Nos. 1985, 1987 and 2241 of 1964) under Articles 226 and 227 of the Constitution, which are directed against the order D/- 31-8-1962/4-9-1962 passed by the Director of Public Instruction, Punjab, respondent No. 2.

2. According to the petitioners, they were teachers in the Government Primary Schools in the erstwhile Pepsu State. They joined the Government service in the Education Department in years 1946-1947. After qualifying in the Junior Vernacular/J. T. Examinations in the years 1950-53, they were given the grade of Rs. 50-100 with effect from 15-9-1953 and their seniority in the said grade was finally fixed by the erstwhile Pepsu Government. The Pepsu State was merged in the Punjab State on 1-11-58. Their grade was subsequently revised to Rs. 60-120 with effect from 1-5-1957. They were further promoted to the grade of Rs. 120-175 with effect from 1-3-1959. These promotions were given in accordance with their relative seniority in the service. This seniority had been correctly fixed by the Pepsu Government in view of their total strength of service in the Department, the dates of passing of the Junior Vernacular/ J.T. Examinations and the dates of their being placed in the grade of Rs. 50-100. In

1962 the seniority list of a number of J. B T. Teachers of Patiala Division was changed, which adversely affected the petitioners. In consequence of this change, the petitioners were reverted to the grade of Rs. 60-120 by the impugned order D/- 31-8-1962/4-9-1962. This reversion was with retrospective effect from 1-3-1959. It was also directed that the excess amount drawn by the petitioners, that is, the difference in the salary in the grade of Rs. 120-175, which they had drawn over three years, and the salary of the lower grade of Rs. 60-120 be recovered from them. Thereafter, the petitioners filed appeals before the Education Minister and the same had not been disposed of so far in spite of repeated reminders. The Department was, however, taking steps to effect the recovery of excess amount of pay from them. This led to the filing of the present writ petitions.

3. In the return filed by the Director of Public Instruction, Punjab, it is stated that no final seniority list of J V./J. T, Teachers (Men) was inherited from the erstwhile Pepsu State at the time of the merger of States on 1-11-1956. Consequently, the question of final fixation of seniority did not arise. The promotion of the petitioners to the grade of Rs. 120-175 was provisional, subject to the condition that --

"Should any of the official be subsequently found to be not entitled to promotion on seniority and record basis, he shall be liable for reversion and the overpayment made to him on this account would be recovered."

Since no final seniority list of J. T. J. V. Teachers was drawn by the erstwhile Director of Public Instruction, Pepsu, a decision was taken by the Director, Public Instruction, Punjab, that the seniority of such teachers appointed before 1-1-1956, who were awarded regular grade from a particular date, but were actually adjusted at a later date, might be determined from the dates on which they were actually adjusted in the regular grade and had begun to draw their pay. It was in view of this that the seniority of the petitioners was fixed with effect from the dates from which they were regularly paid instead of 15-9-1953. It was admitted that the petitioners' seniority was changed from the one given in the provisional seniority list prepared by the Director, Public Instruction, Pepsu. It was further admitted that the appeals filed by the petitioners against the impugned order were pending and were being examined.

4. Learned counsel for the petitioners has raised the following contentions before me :--

(1) That the Director of Instruction, Punjab, had no jurisdiction to revise the seniority list fixed by the Pepsu Government, which was final and not provisional, as alleged by Respondent No. 2;

(2) That if it was held that Respondent No. 2 could revise that list, then this jurisdiction was a limited one and could be exercised only to correct factual errors or some glaring and palpable mistakes established to the full and personal satisfaction of the succeseor-Head of Department as mentioned in the letter

dated 8-8-1957 (annexure "A" to the writ petition) from the Secretary to Government, Punjab, Integration Department, to all Heads of Departments, and the note dated 16-4-1962 of Shri Balwant Singh, Joint Director, Public Instruction, Punjab, which was approved by the Director, Public Instruction, Punjab;

3. That if it was held that Respondent No. 2 had unlimited jurisdiction, even then he could not lay down different principles for fixing the seniority, which amounted to discrimination and his order would, therefore, be hit by the provisions of Article 16 of the Constitution. Learned counsel submitted that at the time when the petitioners were awarded the grade of Rs. 50-100 with effect from 15-9-1953, in the said order of the Director of Public Instruction, Pepsu, it was mentioned that disciplinary action, would be taken against those petitioners who joined late. The petitioners immediately on receipt of these orders joined their respective posts. The following teachers, who though joined late, were not reverted by the impugned order dated 31-8-1962/4-9-1962 and had been shown senior to the petitioners :--

S. Name of teachers and Schools. Date of No. joining. 1. Gurbaksh Singh P/S, Ahmedpur. 8-12-1954. 2. Mukhtiar Singh, P/S, Pharwahi. 1-10-1954. 3. Chander Bhan, P/S, Thuliwal. 19-11-1953. 4. Ram Saran Thuliwal. 5-12-1953. 5. Dalip Singh, Hathan. 14-10-1953. 6. Dev Raj Langarian. 21-9-1953, 7. Munish Rai. 24-9-1953. 8. Om Prakash Tandon. 20-12-1954.

(4) That the impugned order reduced the petitioners in rank with retrospective effect and was visited with penal consequences, inasmuch as the petitioners had been asked to refund the difference in the grade of Rs. 120-175, which they had drawn for over three years, and the salary of the lower grade Rs. 60-120. Thus, the provisions of Article 311(2) of the Constitution were attracted and since no opportunity was given to the petitioners before the impugned order was passed, therefore, the same was liable to be quashed.

5. Taking the last contention first, the relevant portion of the impugned order runs thus--

"Consequent upon the change in the seniority list of J. B. T. Teachers of Patiala Division, following teachers who were promoted to 120-175 grade with effect from 1-3-1959 under this office Memo No. E II-13/257-59, dated 25-3-1960 and now got low positions in the seniority list are hereby reverted with effect from the date of their promotion and the excess amount drawn by them be recovered and refunded into treasury : -- * * * * *

* * * * *

A bare reading of this order would show that the petitioners were being reverted retrospectively with effect from 1-3-1959, which was the date of their promotion to the grade of Rs. 120-175. They were further asked to refund the excess amount drawn by them. Now the question arises? whether this is a reduction in

rank coupled with penal consequences, because if that be so then, admittedly, the provisions of Article 311(2) would be applicable. In the present case, it is nobody's position that the petitioners were placed in the grade of Rs. 120-175 on a substantive basis and, as such, the reduction in rank simpliciter would not attract the provisions of Article 311(2) of the Constitution. The fact, however, remains that this reduction has been made with retrospective effect and the petitioners have been asked to refund the excess amount drawn by them. The question arises whether such a reduction in rank is visited with penal consequences? The reply is given by the Supreme Court in *Parshotam Lal Dhingra v. Union of India* AIR 1958 S C 38, where it is mentioned thus at p. 49, column 2--

"* * * *

* * * *

But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus, if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under terms of the contract of employment or under the rules, in truth and reality the government has terminated the employment as and by way of penalty."

From these observations, it is quite clear that in a case where the order entails or provides for the forfeiture of the pay of an employee, then that order of reduction would be deemed to have been visited with penal consequences. In the instant case, the impugned order specifically directs the petitioners to refund the excess amount received by them during the last three years. As such, due to this direction, the impugned order reducing the petitioners in rank is accompanied with penal consequences. Consequently, the provisions of Article 311(2) of the Constitution would be attracted.

6. Learned counsel for the State contended that the loss of pay mentioned in the observations of the Supreme Court, reproduced above, referred to loss of pay in the substantive rank of the employee. This, however, is contrary to the plain language employed in the above observations. The learned fudges have laid down that where the loss of seniority in the substantive rank was involved, then such an order was visited with penal consequences. They did not say that the loss of pay should also be in the substantive rank. The words "substantive rank"

only go with the words "loss in the seniority."

7. It was then submitted that the petitioners were asked to refund the excess amount in terms of the contract arrived at between the Government and the petitioners at the time of their provisional promotion to the grade of Rs. 120-175, when they were specifically told that if any of them was subsequently found to be not entitled to promotion on seniority and record basis, he would be liable for reversion and the overpayment made to him on that account would be recovered. Since the petitioners were being directed to return the overpayment in terms of the contract, therefore, the reduction in rank was not accompanied with penal consequences.

8. There is no force in this contention as well. In the first place, it is extremely doubtful if this condition imposed by the Government at the time of their provisional promotion and during the course of their employment can be said to be "a term of the contract of employment." as mentioned in the Supreme Court ruling. Secondly, it has not been proved on the record that the petitioners had actually given their consent to this condition. Even in the supplementary affidavit dated 18-2-1965 filed by the Director, Public Instruction, Punjab, it is stated that there was no receipt of the petitioners on the record to show that the promotion order (provisional) was received by them. Thirdly, this condition was being imposed unilaterally by the Government and obviously the petitioners could not have refused to accept the same, since they could not afford to lose the promotions that were being given to them. Fourthly, the learned counsel for the State has frankly conceded that he could not point out any rule under which such a condition was being imposed at the time of the provisional promotion. He could not even point out any precedent to this effect. Fifthly, the condition directing the refund of the money, which had been earned by the petitioners on account of the promotion in the higher grade was in my opinion harsh, unfair and unjust.

9. It was next contended by the learned counsel for the State that the impugned order did not reduce the petitioners to any lower rank, since they were not occupying any higher rank when this order was passed. They were teachers before the impugned order and remained so after the passing of the same. In this connection, reliance was placed on a Supreme Court ruling reported as *The High Court, Calcutta Vs. Amal Kumar Roy*, .

10. There is no merit in this contention. The petitioners were being reverted from the grade of Rs. 120-175 to Rs. 60 120. By this order, they were being placed in a different cadre, which was lower than the earlier one. There can be so many grades amongst the teachers. It cannot be said that all the grades form one rank. The higher grade teachers obviously form a higher rank than the lower grade. The Supreme Court authority has no application, because there the question of the seniority in the same cadre was involved.

11. The next argument of the learned counsel was that this action by the Department was not being taken by way of punishment for reasons personal to

the petitioners but on account of administrative adjustments consequential on the revision of the seniority list. This was in effect scrapping the provisional promotion order from the date from which it took effect, according to the provisions made in the order itself. Reliance for this submission was placed on two authorities, namely, *Benukar Mahata Vs. State of West Bengal and Others*, , and *State of Punjab Vs. Jagdip Singh and Others*, .

12. This contention is also without any substance. The Supreme Court has clearly laid down in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, , that where the reduction in rank was one by way of punishment, then the provisions of Article 311(2) were attracted. There it was not said that the action taken should be by way of punishment for reasons personal to the petitioner, like misconduct, etc. In *Benukar Mahata Vs. State of West Bengal and Others*, , all that was laid down was that in order that the provisions of Article 311 of the Constitution might be attracted, the reduction in rank had to be by way of penalty. Where reduction resulted from a normal step taken in the course of office administration to rectify an error or a mistake and there was no penalty involved in the re-adjustment, there was no reduction in rank within the meaning of Article 311 of the Constitution and the procedure prescribed in Clause (2) of that Article need not be followed. This authority does not support the contention now being raised by the learned counsel for the State. In *State of Punjab Vs. Jagdip Singh and Others*, , reference was made to a single Bench decision of the Madras High Court in *Devasahayam v. State of Madras* AIR 1958 Mad 53, which was later affirmed in Letters Patent Appeal. In the Madras case, the question was whether loss of seniority which resulted from readjustment and refixing of seniority inter se between certain officers in the service would amount to a reduction in rank so as to attract the application of Article 311(2). This question is not involved in the present case. Moreover, the Supreme Court itself has stated in their judgment that they were not called upon to express a definite opinion on the question now being urged by the learned counsel for the State.

13. Lastly, it was submitted that in any case only the direction with regard to the refund of the money by the petitioners and their reduction in rank with retrospective effect should be deleted from the impugned order and the rest of the order should not be interfered with.

14. I am, however, not prepared to split up the impugned order into two parts. Since this order of reduction in rank visits the petitioners with penal consequences, therefore, the provisions of Article 311(2) of the Constitution apply to the same. The whole order, in so far as it affects the petitioners has to go, because before passing the same, the authorities concerned had not afforded the petitioners a reasonable opportunity of showing cause against the action proposed to be taken in regard to them. The impugned order, consequently, deserves to be quashed on this ground alone.

15. In view of this finding, it is not necessary to decide the other contentions raised by the learned counsel for the petitioners.

16. The result is that these petitions succeed and the impugned order, dated 31-8-1962/4-9-1962, in so far as it affects the petitioners, is hereby quashed. In the circum stances of these cases, however, I will make no order as to costs in these proceedings.