

(1984) 11 BOM CK 0076

In the Bombay High Court

Case No : Writ Petition No. 71/B of 1978

Ishwarlal J. Naik

APPELLANT

Vs

Development Commissioner cum Secretary, Edu. Dept. and
Others

RESPONDENT

Date of Decision : 16-11-1984

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (1985) 1 BomCR 138

Hon'ble Judges : G.D. Kamat, J;D.M. Rege, J

Bench : Division Bench

**Advocate : Party in Person, for the Appellant; J. Dias, Government Advocate for
respondent Nos. 1 to 5, for the Respondent**

Judgement

D.M. Rege, J.—This petition by a Lecturer in Government College, Daman, can be disposed on an extremely short point.

2. The petitioner was a Lecturer in Class I gazetted post in the Government Arts and Science College, Daman, in the pay scale of Rs. 400-950 after being selected for the same. The said pay scale was revised on 1st May, 1975, to Rs. 700-40-900-EB-40-1100-50-1300. On that date he was also to cross the Efficiency Bar, On 22-7-1974 a penalty of withholding one increment was imposed on him. On his representations to the President of India, the President of India by his order dated 31-3-1977 had set aside the said penalty. In this case we are not much concerned with the said order of the President. It is not disputed that on 1st May, 1975, the petitioner was entitled to cross the Efficiency Bar. According to him, he was not given any increment due to him on 1st May, 1975, nor the second increment falling due to him on 1st May, 1976. Admittedly, he was not intimated about any order withholding his Efficiency Bar. After he made certain representations against withholding of his said increments, the petitioner was informed by an order dated 10th September, 1976 (exhibit "H" to the petition) in reply to the petitioner's representation dated 31st July, 1976,

that "since your performance in the college at the time of crossing the E.B. was not satisfactory necessary order for raising efficiency bar was not issued". Subsequently, by another order dated 30th September, 1977, the petitioner was informed that the request of the petitioner in his application dated 16th July, 1977, to release the increments cannot be considered as he has not been found fit by Departmental Promotion Committee for the purpose.

3. In passing we may mention that thereafter the petitioner's services were terminated sometime on 10th June, 1976, against which the petitioner had preferred a writ petition in this Court, being Writ Petition No. 84 of 1977. The said Writ Petition was ultimately decided in favour of the petitioner and the Court by its order dated 8th August, 1983, quashed the said order of termination and reinstated the petitioner with back wages.

4. After the petitioner filed the said writ petition challenging his termination, that the petitioner filed the present petition on 12th June, 1978, mainly challenging the said orders dated 10-9-1976 and 30-9-1977 withholding his Efficiency Bar and increments due to him therein.

5. For the disposal of this petition, it is not necessary to go into all the details mentioned by the petitioner in his petition. In our view, the petition can be disposed of on a very short point.

6. It is not disputed that the petitioner's Efficiency Bar was withheld under the said two letters dated 10th September, 1976 (exhibit "H" to the petition) and 30th September, 1977 (exhibit "G" to the petition) only on the ground that his performance in the college at the time of crossing the Efficiency Bar was not satisfactory. Although no affidavit-in-reply has been filed by the respondents in this petition, the learned Government Pleader has from the records of the case with him, pointed out that the said order came to be passed in view of adverse remarks appearing in the petitioner's confidential report for the years 1973-74 and 1974-75. It is not disputed that the said adverse remarks were communicated to the petitioner. According to the petitioner, he had made a representation against the said adverse remarks to the Government and the same has as yet remained to be disposed of. The learned Government Pleader fairly stated that from the records there was nothing to show whether and if so how the petitioner's said representation to the Government was disposed of. Since there is no affidavit-in-reply by the respondents in this case denying the averment by the petitioner that his representation has remained to be disposed of till today, we will have to accept the said averment by the petitioner as correct. On that basis, it is now well settled that if the representation of the officer against the adverse remarks be not disposed of the said adverse remarks could not be acted upon. The authority if required for the proposition, was to be found in the decision of the Supreme Court in the case of *Gurdial Singh Fijji Vs. State of Punjab and Others*, where the following observations appear :---

"The principle is well-settled that in accordance with the rules of natural justice,

an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. Unfortunately, for one reason or another, not arising out of any fault on the part of the appellant, though the adverse report was communicated to him the Government has not been able to consider his explanation and decide whether the report was justified." (underlining supplied)

In that view of the matter, the above orders of the Government contained in the letters dated 10th September, 1976 (exhibit "H" to the petition) and 30th September, 1977 (exhibit "G" to the petition) cannot be sustained and deserve to be quashed. If the said orders were quashed, the Efficiency Bar in the case of the petitioner as on 1-5-1975 on the petitioner's scale of pay would stand lifted and the petitioner would be entitled to claim increments due to him as on the crossing of the Efficiency Bar on 1-5-1975.

7. The next contention of the petitioner was that he should also be awarded interest on his said claims, according to him, for no fault of his and illegally the Government authorities had withheld his increment falling due on 1st May, 1975, and 1st May, 1976. He has pointed out that the order withholding the Efficiency Bar of the petitioner due to him as on 1st May, 1975, and 1st May 1976, made on the ground that the petitioner's performance at the college was not satisfactory, which was based on the adverse remarks against him in his confidential report for 1973-74 and 1974-75 as made under the two letters, was made to the knowledge of the authorities without disposing of his representation against the said adverse remarks. The authorities, therefore, must be taken to know, that their said order was illegal and was not justified. He also pointed out that the order terminating his services was also quashed by this Court ordering his reinstatement and payment of back salary. He, therefore, contended that under the circumstances this was a just case where the Court in exercise of its powers should also award interest to the petitioner on the amount due.

8. The learned Government Pleader has opposed the application by pointing out that so far as the Efficiency Bar was concerned even if in 1975 he was held to be not entitled to cross the Efficiency Bar in 1976 and every year thereafter the petitioner was entitled to have the said question considered. He further pointed out that in June 1976 his services were terminated and, therefore, in any event from that date he was not entitled to any increment.

9. Looking to the manner in which the petitioner's Efficiency Bar was unjustifiably and illegally withheld till today as discussed above, in our view, this case would be a fit case to award interest on the amount due to the petitioner. In that view of the matter, we feel that it would be proper to award to the petitioner interest on the amount due as claimed by him.

10. The result, therefore, is that the rule is made absolute in terms of prayers C (i), (ii), (iii) and (iv). The respondents to pay to the petitioner's costs of the petition.