
(1955) 09 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 33 of 1955

S. Akhtyar Singh	Vs	APPELLANT
Inspector General of Police, Punjab		RESPONDENT

Date of Decision : 05-09-1955

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1956 P&H 10

Hon'ble Judges : Bhandari, C.J.;Khosla, J

Bench : Division Bench

Advocate : B.S. Chawla, for the Appellant; S.M. Sikri, General, for the Respondent

Final Decision : Dismissed

Judgement

Khosla, J.—This is a petition under Article 226 of the Constitution by an officer of the Police who is aggrieved by an order reducing him in rank.

2. Objection was taken by the learned Advocate-General that this petition could not be entertained on the short ground that the order challenged was passed before the coming into force of the Constitution. The order which the petitioner seeks to challenge was admittedly passed in July, 1949. Indeed, there are two orders which affect the petitioner's rank. The first of these is dated 16-4-1948 and the second was passed in July, 1949.

3. The facts briefly are that the petitioner was recruited in the Police Force in April 1837 as an Assistant Sub-Inspector of Police. He was confirmed in this post in 1940 and in 1941 he was promoted to the rank of officiating Sub-Inspector. He was confirmed as Sub-Inspector in 1941 and two years later in 1946 he was promoted to the rank of Selection Grade Sub-Inspector.

This was his substantive rank. In 1947 he was promoted as Officiating inspector and In the same year five criminal cases were instituted against him and an order of suspension was passed by the Department. While these cases were

pending an order was passed on 16-4-1948 reverting him to the post of Selection Grade Sub-Inspector. The criminal cases against the petitioner failed and he was acquitted in 1949.

After this order he was appointed as Sub-Inspector of Police in July 1949. This was the last order passed against the petitioner which affected him adversely and this is the order which he now seeks to challenge. This order was made before 26-1-1950 i. e., before the Constitution came into force and therefore no application under Article 226 of the Constitution lies to challenge the order.

4. The petitioner's case is that he was pursuing the remedy of a departmental appeal and after the dismissal of the appeal he sent up a representation or a memorial, and since his failure to get redress from the Department became final after 26-1-1950 he is competent to maintain the present petition.

5. Now, when a person files a petition under Article 226 of the Constitution he seeks to challenge the original order which affects him and it is this order which furnishes him with a cause for moving this Court. The order on appeal is not the order which he seeks to challenge. The rule which applies to civil appeals does not apply to applications for writs and in an application for writ it is clearly understood that it is the original order which is being challenged because it is that order which affects the petitioner adversely and it is that order which is either without Jurisdiction or manifestly unjust.

A Division Bench of this Court held in --Sita Ram v. Union of India" AIR 1955 Pun 57 (A), that the Constitution is not retroactive and is not applicable to a case where the cause of action arose before the coming into force of the Constitution. The Court was considering the case of a Railway servant who was removed from service without complying with the provisions of Article 311 of the Constitution. The Court held that since the order of removal was passed before the Constitution came into force non-compliance with the provisions of Article 311 of the Constitution did not furnish a cause of action to the Railway servant.

In -- "Sohan Lal v. Sm. Gur Devi" AIR 1951 Pun 310 (B) Kapur J. held that a petition under Article 220 of the Constitution questioning the validity of an order passed before 26-1-1950 did not lie to the High Court. A reference may also be made to -- "Mahabir Parshad v. Commr. of income tax" AIR 1953 Pun 16 (C), which is a case dealing with the Income Tax Act.

6. " Naresh Chandra Sanyal Vs. The Union of India and Others, is a case almost on all fours with the present one. The petitioner in that case, Naresh Chandra Sanyal, was employed in the Railway Department. He was reverted to an inferior rank by an order passed on 1-9-1949. He preferred an appeal and while the appeal was pending the Constitution came into force.

The appeal was subsequently dismissed. The Railway employee moved the High Court under Article 226 of the Constitution. Bose J. dismissed the application and held that since the order by which the petitioner was affected adversely was

passed before the coming into force of the Constitution no application for writ lay. Bose J. observed:

"Mr. Santosh Kumar Basu on the other hand has pointed out that the order of the appellate, authority was passed on 1-12-1950 and as the petitioner also challenges that order and asks for relief in respect of that appellate order which was passed after the Constitution, this application is maintainable at least so far as the relief with regard, to the appellate order is concerned.

It may be pointed out, however that the petitioner cannot get complete relief by merely getting rid of the appellate order. He has also to get rid of the original order of reduction which was passed on 19-8-1949. Unless it can be shown that the order of 19-8-1949 was an "ultra vires" order, this Court will not have any jurisdiction to interfere with that order."

It seems to me that the petitioner cannot invoke the provisions of Article 226 of the Constitution in respect of the orders passed in 1948 and 1949.

7. There is one other ground on which this petition is liable to be dismissed, namely the inordinate delay in moving, this Court under Article 228 of the Constitution. The case of the petitioner was finally disposed of by the Department in 1951 and after that nothing whatever remained to be done. The fact that the petitioner sent up a memorial does not excuse the delay.

He moved this Court as late as February 1955 and this Court will not grant any relief in the extraordinary discretion conferred by Article 226 of the Constitution when an aggrieved party comes after such long delay. We considered this matter only a few days ago in -- Kundan Lekha v. State of Punjab", Civil Writ Appln No. 252 of 1954 (Punj); (E), and approved of the principle laid down in -- " Gandhinagar Motor Transport Society Vs. State of Bombay, and "Sayeed Mohd. Khan v. State of Bhopal" AIR 1954 Bho 1 (G).

The Bombay case related to the case of a Government servant who spent some time in filing a memorial which he need not have filed under the rules and the Bombay High Court refused to grant the relief on this ground. In the present case there has been much greater delay and I would not be prepared to interfere with the de- partmental orders even If the orders had been passed after the coming into force of the Constitution.

8. The result is that I would dismiss this petition but make no orders as to costs.

Bhandari, C.J.

9. I agree.