
(2004) 11 P&H CK 0059
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2502 of 2003

Smt. Kamlesh Jain

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 09-11-2004

Acts Referred:

Citation : (2005) 140 PLR 397

Hon'ble Judges : V.M. Jain, J;S.S. Saron, J

Bench : Division Bench

Advocate : Vikas Chatrath, for the Appellant; Rajbir Sehrawat, Sr. Deputy Advocate, General for Respondent Nos. 1 and 2 and Sumeet Goel, for the Respondent

Final Decision : Allowed

Judgement

S.S. Saron, J.—This order will dispose of C.W.P. Nos. 2502 and 2627 of 2003 as they involve somewhat identical facts.

C.W.P. No. 2502/2003

Petitioner-Smt. Kamlesh Jain seeks a writ in the nature of certiorari for quashing the memo dated 27.12.2661 (Annexure P-2) where the Director Legal Audit Examinations, Haryana has reduced the pay scale of the petitioner's husband, namely, Sudershan Kumar (Clerk) and has further ordered recovery.

2. Sudarshan Kumar, Clerk, husband of the petitioner was appointed as a Peon on 8.8.1967 in Municipal Committee, Kalanwali (respondent No. 3). He was promoted to the post of Clerk on 1.12.1969, He unfortunately died in harness on 14.12.2000 and his widow Smt. Kamlesh Jain (petitioner) has been appointed as a Peon on compassionate ground on 21.9.2001 in the Municipal Committee, Kalanwali.

C.W.P. No. 2627/2003:

Petitioner-Om Parkash seeks a writ in the nature of mandamus directing the

respondents to grant revised pensionary benefits on revision of pay scale on superannuation of the petitioner on 31.7.2001 by stepping up the pay at par with his juniors, i.e., respondents No. 4 and 5 along with 18% interest on delayed revised pensionary benefits. He also prays for issuance of a writ of certiorari for quashing the order issued by the Secretary Municipal Committee, Kalanwali (respondent No. 3) vide which the pay scale of the petitioner has been reduced and recovery has been ordered. Petitioner-Om Parkash was appointed as a Peon in Municipal Committee, Kalanwali on 1.5.1964. He was promoted to the post Clerk on 1.3.1967. He superannuated from service on 31.7.2001. Respondents No. 4 and 5, namely, Krishan Kumar and Janak Raj were appointed as Clerks on direct recruitment on 31.8.1968 and 12.4.1968 respectively. They are presently working in the office of Municipal Committee, Kalanwali. It is stated that they are drawing higher pay scale than the petitioner on the plea that the petitioner is a promotee from the post of Peon (Class - "D") to the post of Clerk (Clerk - "C" post). Even otherwise the petitioner is senior to respondents No. 4 and 5 in the cadre of Clerks.

3. The common case of the petitioners in both the petitions is that some Clerks, who were appointed directly and presently working in the office of the Municipal Committee, Kalanwali had been granted first and second Higher Standard Pay Scale and had also been granted the grade of Assured Career Progression Scheme, 1998 ("ACP Scheme" for short) applicable w.e.f. 1.1.1996 had been reduced arbitrarily and without giving any notice.

4. The pay of the petitioner's husband (in C.W.P. No. 2502 of 2003) who was granted first/second Higher Standard Pay applicable w.e.f. 1.1.1994 and the benefit under the ACP scheme had been reduced arbitrarily while fixing the pension benefits to the petitioner who is widow of Sudarshan Kumar on the plea that her husband was a promotee from the post of Peon (Class "D" post) to the post of Clerk (Class "C" post) was not entitled to the grant of Higher Standard Pay Scale and grant of ACP benefits.

5. The case of Om Parkash (in C.W.P. No. ,2627 of 2003) is that respondents No. 4 and 5 in the said petition were drawing higher pay than the petitioner on the plea that the petitioner was a promotee from post of Peon (Class "D" post) to the post of Clerk (Class "C" post). Even though the petitioner was senior to them in the cadre of Clerks.

6. The pay scales of Clerks, it is stated, were revised w.e.f. 1.1.1986 in the grade of Rs. 950-1500 which were adopted by the Municipal Committee, Kalanwali vide order dated 3.8.1987. The petitioner's husband (in C.W.P. No. 2502 of 2003) was granted one additional increment after 8 and 18 years of set vice in pursuance of the Haryana Government Finance Department letter dated 7.8.1992. Later on, it was decided to grant Higher Standard Pay Scale to Group "C" and Group "D" employees on completion of 10 years and 20 years or more of regular satisfactory service vide Finance Department letter dated 8.2.1994 applicable w.e.f. 1.1.1994. Subsequently, a clarification was also issued on

29.12.1995 because of some defects/anomalies that were pointed out and pertained to the persons who had been promoted from Group "D" to Group "C".

7. On notice written statement has been filed by the Secretary, Municipal Committee, Kalanwali (respondent No. 3) in which the particulars as regard the service conditions of the respective petitioners are not disputed. It is however, submitted that the benefit under ACP Scheme has not been reduced arbitrarily while fixing family pension to Smt. Kamlesh Jain (petitioner in C.W.P. No. 2502 of 2003) Widow of Sh. Sudarshan Kumar. It is submitted that Sudarshan Kumar was appointed as Peon on 5.8.1967 in the pay scale of Rs. 30-35 and thereafter he was promoted to the post of Clerk/Mohharar on 22.10.1967. Therefore, Sudarshan Kumar, husband of Smt. Kamlesh Jain had taken one promotional scale and was not entitled to the second Higher Standard Scale of Rs. 1400-2600 but was entitled to the First Higher Standard Scale of Rs. 1200-2060. As such the second Higher Standard Scale of Rs. 1400-2600 which was wrongly given to the husband of the petitioner was withdrawn.

8. Insofar as Om Parkash, petitioner (in C.W.P. No. 2,627 of 2003) is concerned, it is stated that the action of the official respondents is legal and valid. Besides, the Haryana Municipal Employees Pension and General Provident Fund Rules, 1993 ("Rules for short) as quoted by the petitioner Om Parkash are inapplicable as it is stipulated therein that any employee should not have got any "promotional scale/higher time scale/selection grade in his service career" to be entitled to the Higher Standard Scale as provided for in the Rules. In fact, such an employee should have completed 20 years or more of regular satisfactory service before 1.1.1994 to be allowed such second Higher Standard Pay Scale. It is stated that Om Parkash, petitioner was appointed as Peon on 1.5.1964 in the pay scale of Rs. 30-35 and was promoted to the post of Clerk/Mohharar on 1.4.1967 in the pay scale of Rs. 50-100. Since Om Parkash, petitioner has got one promotional scale, therefore, he was entitled to the first Higher Standard Scale of Rs. 1200-2040 of the clerical scale. The second Higher Standard Scale of Rs. 1400-2600 was wrongly given to the petitioner and the same was withdrawn.

9. Shri Vikas Chatrath, learned counsel appearing for the petitioners in both the petitions contended that the action of the respondents in withdrawing the second High Standard Scale without show cause notice and in violation of the principles of natural justice is illegal and arbitrary. It is contended that the respective petitioners were entitled to an opportunity of hearing in case the second Higher Standard Scale was to be withdrawn. Thus, it is contended, has affected the civil rights of the respective petitioners and, therefore, the impugned action of the respondents is liable to be quashed.

10. In response, Shri Rajbir Sehrawat, Senior Deputy Advocate General, Haryana appearing for the State and Shri Sumeet Goel, Advocate, appearing for the Municipal Committee, Kalanwali have contended that the fixation was wrongly done and the facts being quite evident, the petitioners are not entitled to an opportunity of hearing and the principles of natural justice are inapplicable to the

case in hand.

11. We have given our thoughtful consideration to the respective contentions of the learned counsel appearing for the parties.

12. During the course of hearing, a reference has been made to a Division Bench judgment of this Court in the case of Suraj Bhan v. State of Haryana 2001(2) S.C.T. 708, wherein in a similar controversy in respect of Class-IV employees who were promoted as Clerks but were denied the Higher Standard Pay Scale on the ground that they were promoted from Peons was held to be discriminatory. On the strength of the said judgment, it is contended by the learned counsel for the petitioners that in case an opportunity of hearing had been given to the respective petitioners, they could have shown that the action of the respondents is illegal. It is not in dispute that the ratio of the said judgment in Suraj Bhan's case (supra) applies to the case in hand. Besides, Special Leave to Appeal (C) No. 10740 of 2001 against the said judgment has been dismissed by the Hon'ble Supreme Court of India on 16.7.2001. However, Shri Rajbir Sehrawat, learned Senior Deputy Advocate General has contended that SLPs in some other connected petitions which were allowed on the basis of the judgment in Suraj Bhan's case (supra), are pending before the Supreme Court of India.

13. In the afore-noticed circumstances, it is appropriate to note that in Suraj Bhan's case (supra), this Court in a case where Peons were promoted to the post of Clerks has held that to say that because the petitioners therein were promotees and, therefore, they were given a lower scale, indeed, would not be correct. It was observed that it was a case of fixation of pay and had some difference arisen in fixation of the pay of the juniors, the onus would be different but the question was that merely because the petitioners in the said case were promotees, they could not be given lesser pay scale. It may be noticed that the Finance Department issued letter dated 7.8.1992 whereby one additional increment after 8 and 18 years service was given. Later on, in terms of letter dated 8.2.1994 which was applicable from 1.1.1994 the grant of Higher Standard Pay Scale was regulated in the following manner:-

"With effect from first January, 1994 or thereafter, as the case may be the grant of higher standard scale will be regulated as under:-

(i) every employee of Group "C" and "D" category who has not got any promotional scale/higher time scale/selection grade in his service career and has completed twenty years or more of regular satisfactory service before 1.1.94 will be allowed with effect from 1.1.994 in place of his present pay scale the second higher standard pay scale specified in column 4 of the enclosed Annexure with respect to the pay scale of the post applicable from 1.1.1994 and has not got any promotion or promotional scale/higher time scale/selection grade in his service career will be allowed the aforesaid second higher standard scale from the first day of the month following the month in which he completes such service.

(ii) every employee of group "C" and "D" Category who has not got any

promotion or promotional scale/higher time scale/selection grade in his service career and has completed ten years or more but less than twenty years regular satisfactory service before 1.1.1994 will be allowed w.e.f. 1.1.1994 in place of the present pay scale the first higher standard scale specified in column 3 of the enclosed Annexure with respect to the pay scale of the post applicable from 1.1.1986. An employee who completes such regular satisfactory service of ten years after 1.1.1994 and has got any promotion or promotional scale/higher time scale/selection grade in his service career will be allowed the aforesaid first higher standard scale from first day of the month following the month in which he completes such service.

(iii) every employee of group "C" and "D" category who has completed twenty years or more of regular satisfactory service before 1.1.1994 but has got only one promotion or promotional scale/higher time scale/selection grade in the service career will be allowed w.e.f. 1.1.1994 in place of his present pay scale the first higher standard scale specified in column 3 of the enclosed Annexure with respect to the pay scale of the post applicable from First January, 1986. An employee who completes such regular satisfactory service of twenty years after 1.1.1994 but has got only one promotion or promotional scale/higher time scale/selection grade/higher standard scale in his service career will be allowed the aforesaid first higher standard scale w.e.f. first day of the month following the month in which he completes such service."

Subsequently, a clarification had been given on 29.12.1995 because of some defects/anomalies that were pointed out and pertaining to the persons who have been promoted from Group "D" to Group "C". It is mentioned as under:"

"Similar is a promotee to the post held by him whereas his junior colleague in the cadre is a direct recruit to that post. There are cases where promotional post carries lower pay scale than the higher standard pay scale granted to the Government Employee in his lower post and causes real hardship to such employees on promotion to the higher post. In such situation para 12 of the letter dated 8.2.1994 has created hurdle for stepping up of the pay scale/pay of the senior to the level of his junior of fixation of pay in promotional posts. Cases of hardship have also arisen where a Government employee getting increments under open-ended scales as per instructions contained in F.D. letter dated 14.5.1991 are promoted to higher posts and their pay in the higher post cannot be refixed with reference to the pay which they would have drawn but for their promotion to the higher posts. These matters have been considered further and on reconsideration, the following clarifications have been given, which read as under :-

"Point Raised Clarification 6. There are employee who were 6. Promotion in such like cases from Group initially appointed as Peon or Daftri. "D" to Group "C" is to be considered as non- Some were already matriculates and existent while granting higher standard pay few others passed matriculation scales in Group "C" posts. Total service in examination during the service. On a particular Group

is to be kept in view. the basis of provisions contained in Employees who have completed 10 years or their service rules, they were pro- more and 20 years or more of regular moted as Clerks i.e. from Group "D" satisfactory service in Group "C" are to be to Group "C" posts. Such employees granted 1st or 2nd higher standard pay have completed more than 10 to 20 scales, as the case may be, years of regular satisfactory service subject to conditions." on or after 1.1.1994. Whether promotion of such employees posts is to be considered as bar for the grant of higher standard pay scales?

14. The aforesaid letters were considered in Suraj Bhan s case (supra) and it was observed that from the above it was clear that if a person was promoted from Group "D" to Group "C" his total service in a particular group was to be kept in view and the employee who had completed 10 years of regular service in Group- C were to be granted first Higher Standard Pay Scale. In the two cases in hand, it is the case of the petitioner Smt. Kamlesh Jain (in C.W.P. No. 2502 of 2003) that her husband had completed more than 24 years of regular satisfactory service as a Clerk. He was promoted as a Clerk on 22.10.1987 and he died in harness on 14.12.2000. However, from 1967 to 1.1.1994 he had completed 20 years of service. Similarly, Om Parkash petitioner (in C.W.P. No. 2627 of 2003), it is contended, was promoted as Clerk on 1.4.1967 and he had completed 20 years of service before 1.1.1994.

15. In terms of the clarification issued on 29.12.1995, the promotion in such like cases from Group "D" to Group "C" was to be considered non-existent while granting Higher Standard Pay Scales in Group "C" Posts and total service in a particular group was to be kept in view. It was clarified that employees who had completed 10 years or more and 20 years or more of regular satisfactory service in Group "C" were to be granted first or second Higher Standard Pay Scale as the case may be subject to conditions. This is what has been held in Suraj Bhan's case (supra) wherein reliance was placed on the judgment of the Supreme Court in the case of Kamlal and Ors. v. Union of India 1999(3) S.C.T. 731 (S.C.) which, it was observed, was concerned with the similar situation where some relief was given to the direct recruits and not to the promotees. The Supreme Court held that birth mark has no relevance and promotees were entitled to the benefits that were granted to similarly situated persons. To explain this position, the petitioners were entitled to a hearing. It is the case set up by the learned counsel for the petitioners that in case hearing was granted to the petitioners, they could have explained the correct position. We are of the view that the respondents before reducing the pay scales ought to have given an opportunity of hearing to the respective petitioners to meet their case. It has repeatedly, been held that the rule of audi alteram partem is a part of the concept of rule of law and is not an empty formality. In State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, the Hon"ble Supreme Court recognised the applicability of the rule to administrative actions and observed as follows:-

"An order by the State to the prejudice of a person in derogation of his vested

rights may be made only in accordance with the basic rules of justice and fair play. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice."

16. In *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, Constitution Bench of the Supreme Court gave new dimension to the rules of natural justice, the following observations are apposite:-

"The aim of the rule of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it, the concept of natural justice has undergone a great deal of change in recent years.

In the past only two rules were recognised but in course of time many more subsidiary rules came to be added to these rules. Till very recently it was the opinion of the Courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice there is no reason why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry."

17. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, the Supreme Court observed:-

"Although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. The principle of *audi alteram partem*, which mandates that no one shall be condemned unheard, is part of the rules of natural justice.

Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The inquiry must, always be: does fairness in action demand that an opportunity to be heard should be given to the person affected?

The law must now be taken to be well settled that even in an administrative

proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable."

18. Therefore, the rules of natural justice have been, duly recognised by the Courts and when an executive authority takes action affecting a person of his civil rights, the affected person has a right to explain the circumstances that the impugned action by which his rights are likely to be affected is not warranted. This has been accepted to be the facet of the principles of natural justice and the rule of audi alteram partem. The violation of the same vitiates an impugned action.

19. In the cases in hand, as already noticed, the husband of the petitioner Smt. Kamlesh Jain (in C.W.P. No. 2502 of 2003) and petitioner Om Parkash (in C.W.P. No. 2627 of 2003) were initially working as Peons and thereafter were promoted to the post of Clerks in the Municipal Committee, Kalanwali. They were granted the second Higher Standard Scale of Rs. 1400-22600 which was withdrawn on the plea that being promotees they were not entitled to the said benefit. However, those Clerks, who were directly recruited, were given the said benefit. Therefore, we are of the view that the petitioners were at least entitled to a hearing before the impugned action was taken. It appears to be a case of discrimination. However, since it is the case of the State that SLPs in the connected matters are still pending, we would invalidate the action of the respondents only on the plea that the petitioners were not given an opportunity to explain their position which is in violation of the principles of natural justice and at the same time leave the respondents to pass fresh orders after consideration of their cases.

20. For the foregoing reasons, the present writ petitions are allowed and the impugned action of the respondents in withdrawing the benefit of second Higher Standard Scale and refusing the pay and ordering recovery is quashed being in violation of the principles of natural justice and the respondents would be at liberty to pass fresh order after affording an opportunity of hearing to the petitioners in accordance with law. There shall be no order as to costs.