
(1966) 07 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 197 of 1965

The State of Punjab

APPELLANT

Vs

Harbans Lal

RESPONDENT

Date of Decision : 19-07-1966

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1966) 07 P&H CK 0005

Hon'ble Judges : Mehar Singh, J;D.K. Mahajan, J

Bench : Division Bench

Advocate : M.S. Pannu, for the Appellant; Abnasha Singh, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mahajan, J.—This judgment will dispose of three appeals Nos. 197,212 and 214 of 1965 under clause 10 of the Letters Patent by the State of Punjab, the Director of Public Instruction, Punjab, and the Inspector of Schools, one at Patiala and the other at Sangrur, from an order, dated March 8, 1965, of a learned Single Judge, disposing of three petitions under articles 226 and 227 of the Constitution, one by Harbans Lal, respondent in Letters patent Appeal No. 197 of 1965 Second by Kesbo Ram respondent in Letters Patent Appeal No. 212 of 1965, and third by Shamsher Singh, respondent in Letters Patent appeal No. 214 of 1965. The petitions were disposed of by the learned Single Judge by one order because the facts are practically the same and the question involved is also the same in all the petitions.

2. The respondents were teachers in the Government primary schools in the former Pepsu State, joining the service in the years 1946-1947. After qualifying in the Junior Vernacular or Junior Teachers Examinations in the years between 1950 and 1953" each was placed, from September 15, 1953, in the grade of Rs 50-100. According to them their seniority in that grade was settled by the Government of former Pepsu State. In the wake of Reorganization, Pepsu State merged with Punjab State, forming a new Punjab State on November 1, 1966.

The respondents grade was, from May 1, 1957, then revised to Rs. 60120. Subsequently, from March 1, 1959, they were promoted to the grade of Rs. 120-175, which is selection grade for their cadre. In 1962 seniority-list was revised and settled wherein the respondents have been shown much lower than in the seniority-list prepared by the former Pepsu State Government. In consequence of such revision of the seniority list, the respondents have been reverted back to the grade of Rs 60-120 by an order bearing the date of August 31/September 4, 1962, but with an additional condition that the reversion is to be operative retrospectively from March 1, 1959, the date from which they were promoted to the selection grade, and they have been directed to refund the excess amount drawn by them in the grade of Rs. 120-175 as against the grade of Rs. 60 120, It is obvious that each one of the three respondents at the time of his reversion had already drawn salary in the section grade for a little over three years. The respondents filed appeals against their reversions to the Education Minister. It appears that those appeals were still pending when they filed the petitions, out of which these appeals have arisen, in this Court. Earlier when these appeals came before Falshaw C.J. and Khanna J. for hearing on May 4, 1966, there was an adjournment to allow the decision of the departmental appeals of the respondents by the Education Minister. The return of the appellants said that although a provisional seniority-list in regard to the respondents and other teachers in their cadre had been prepared by the former Pepsu State Government, but it was not finalized on the date of merger of that State with Punjab State on November 1, 1956, in consequence of Reorganization. In paragraph 6 of their petitions the respondents said that they were promoted to the selection grade under letter No. E-II-13/257-59 of March 25, 1960, but with effect from March 1, 1959. The promotion was thus obviously retrospective. The respondents, however, did not produce a copy of that letter with the petitions. Curiously enough the appellants also did not produce that letter either, but in paragraph 6 of their return they said that the promotion of the three respondents was provisional subject to the condition-- "should any of the officials be subsequently found to be not entitled to promotion on seniority and record basis, he shall be liable for reversion and over-payment made to him on this account will be recovered". It appears further that the respondents took the stand that they were never in the knowledge of this condition with regard to their promotion to the selection grade. In other words, their position was that they were not informed of that condition and obviously they were not shown the letter in respect of their promotion to the selection grade. Consequently a supplementary affidavit of February 18, 1965, was filed by the Director of Public Instruction Punjab, appellant, in which he said "that there is no receipt of petitioner on record to show that the promotion order No. E II-13/257-59, dated 25th March 1960, was received by him. But it is presumed that as usual he must have been shown a copy of that order because the petitioner drew enhanced pay and allowance with retrospective effect from 1st March, 1959". It appears that one such supplementary affidavit was filed with each petition. This reply was obviously unsatisfactory. At the hearing of these appeals the Learned Counsel for

the appellants has shown us a copy of that letter. It is endorsed to the authorities concerned and also to a journal for publication, but it is strange that there is no material that the authorities concerned ever brought this letter to the notice of any one of the three respondents. No journal has been produced in which this letter was published so that it could be assumed that the respondents must have come to know its contents.. The Learned Counsel for the appellants has contended that a considerable number of Copies of this letter were prepared and that it is inconceivable that it should not, as such, have come to the notice of any one of the three respondents. But this is just a speculation. And it is surprising that this attitude should have been adopted on the side of the appellants when they had the material with them which would have shown conclusively whether each one of the three respondents did or did not receive or see the copy of the letter. It was in these circumstances that the learned Judge was considering the claim on the side of the respondents that they were not aware of any such condition attached to their promotion to the selection grade. The return of the appellants further said that subsequently the provisional seniority list prepared by the former Pepsu State Government was considered in the light of some appeals pending and a final decision was taken in the matter of seniority when each one of the three respondents was allotted a place much lower than in the provisional seniority list with the result that each had to be reverted and asked to refund the excess of the salary drawn. It is, however, not clear how many appeals in this respect were pending when the former Pepsu State merged with the Punjab State and to what extent the provisional seniority list prepared by the former Pepsu State Government has been disturbed in consequence of any such appeals, or whether the same has been disturbed only so far as the appellants in those appeals were concerned and not otherwise.

3. A number of matters were argued on the side of the respondents before the learned Single Judge including particularly the one affecting seniority in the final list, for their stand has been that the seniority list in the former Pepsu State was a final list and not a provisional list. However, the learned Judge had disposed of the petitions of the respondents giving them relief that their reversion is unconstitutional and contrary to law on the ground that each one of the three respondents has been visited with a penal consequence inasmuch as he has been ordered to refund the difference of salary between the two grades retrospectively and thus even for the period, at least part of the period, for which he had worked in the selection grade and earned the salary. The learned Judge tends to the opinion that no such condition, attaching to the promotion of each of the three respondents, was brought to their knowledge. The learned Judge is further of the view that the reversion of each one of the respondents must be struck down for "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 *Parshotam Lal Dhingra Vs. Union of India* (UOI), 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 18th February, 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 the higher grade was in my opinion harsh, unfair and unjust. In this approach the learned judge accepted the petition of each one of the three respondents and quashed the order of his reversion, as stated, on the ground that it was accompanied :with evil or penal consequences and thus amounted to reduction in" rank in view of the dictum of their Lordships in Parshotam Lal Dhingra"s case(supra).

4. In these appeals, as has already been, pointed out, the Learned Counsel for the appellants has tried to show that the respondents must have been in the knowledge of the contents of the letter embodying the order of their promotion with the condition as already reproduced above. But it has been pointed out that while the material has been with the appellants to establish this as a fact, they have not produced any such material to support this stand on their, side. In fact even the supplementary affidavit of the Director of Public Instruction, Punjab, is unsatisfactory and rather shows that that letter never came to the knowledge of the respondents. It is said by the Learned Counsel for the appellants, that the respondents have been drawing salary in the higher or selection grade and from this he wishes this Court to conclude that the respondents were also aware of the condition attaching to their promotion. This is obviously an untenable approach. The Learned Counsel for the appellants then falls back on a general consideration that as a large number of copies of that letter were prepared and sent to various authorities, so it is inconceivable that the respondents remained unaware of its contents. This again is a mere surmise and cannot be accepted when the appellants could have proved it as a fact that the letter in question did come to the knowledge of the respondents. Not only did the appellants not satisfy the learned Single Judge on this aspect of the case of the respondents, but even at this stage in these appeals no material has been shown to us that we may be able to take a different view of this conclusion of fact by the learned Single Judge. In the circumstances of the cases and the facts stated above, we are unable to take a view different from that of the learned Single Judge that while the respondents were promoted to the selection grade, they were never in the knowledge of the condition imposed on their promotion that they would have to refund the difference of the salary between the time scale and the selection grade in a certain contingency. Once this conclusion of the learned Single Judge

is confirmed, as in the circumstances of these cases it must be confirmed, it follows that it is a penal or evil consequence of the reversion of each one of the three respondents. No doubt the respondents were provisionally promoted and they had no right to the selection grade posts, and if their reversion was not accompanied by any penal or evil consequence, it would not be reduction in rank. However, in these cases reversion is accompanied by a penal consequence, in as much as at least a part of the salary earned by each one of the three respondents in the selection grade has been ordered to be refunded by him. This is a loss which is not permitted in view of the dictum of their Lordships in *Parshotam Lal Dhingra's case* (supra). So that the approach of the learned Single Judge is unexceptional that because of this evil or penal consequence accompanying the reversion of each one of the three respondents, the reversion, in the circumstances of these cases, must be held to be reduction in rank and cannot be maintained because the provisions of Article 311 of the Constitution have not been followed in carrying out the Same.

5. The Learned Counsel for the appellants contends that inspite of the order in regard to the refund of the excess salary received by the three respondents in the selection grade over and above the time scale grade, this is not a case of reduction in rank, and in this respect he seeks to support his argument by reference to *The State of Punjab v. Jagdip Singh A. I. R. 1904 S. C. 521*, but that case, on facts, is not parallel to the present case. In that case that their Lordships held was that the appointment or promotion initially was not valid according to law because no post existed to which appointment or promotion could be made. Consequently in such circumstances the so-called reversion in that case was really not a reversion accompanied by any penal or evil consequences. As stated, on facts there is nothing parallel in that case with facts of the present case.

6. Another argument that has been urged by the Learned Counsel for the appellants is that that part of the impugned order with regard to each respondent be struck down which demands the refund of the excess amount received by each of them. But what this Court has to see is the order as such and its effect in the light of the dictum of their Lordships in *Parshotam Lal Dhingra's case*(supra), and provisions of Article 311 of the Constitution. It has already been pointed out that once these appeals were adjourned to enable the Education Minister to decide the departmental appeals of the respondents and there was an ample opportunity for the departmental authorities to withdraw this part of the order regarding each one the respondents. The Learned Counsel appearing for the appellants has not been able to say that any step has been taken in that direction. In other words, the appellants are not prepared to withdraw this part of the order, and if this is their attitude, I do not see that the order of reduction in rank in the case of each respondent can be rendered innocuous by this Court striking out a part of that order. There has been ample opportunity with the appellants to have mended the effect of that order, but they have obviously failed to do so. There is no substance in this approach by the

Learned Counsel for the appellant.

7. In consequence, these appeals fail and are dismissed, but there is no order in regard to costs.