

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No.2283 of 1990 (O&M)

Date of decision: 08.07.2015

Sh. Shiv Nath Kapoor

...Appellant

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Balbir Kumar Saini, Advocate,
for Mr. S.S. Dinarpur, Advocate,
for the appellant.

Mr. Mukesh Kaushik, DAG, Haryana.

RITU BAHRI, J.

Plaintiff-appellant has come up in regular second appeal against the judgment of reversal dated 20.08.1990 passed by the Additional District Judge, Karnal, whereby appeal filed by defendant-respondent Nos.1 and 2 against the judgment and decree dated 31.10.1988 passed by the Additional Senior Sub Judge, Panipat, has been accepted.

Shiv Nath Kapoor-plaintiff had been working as JBT Teacher in Government High School, Sanouli Khurd since July, 1973. However, he was given adverse remarks by defendant No.3 in his ACRs for the period from 1977 to 1982. The plaintiff-appellant made an application to cross the efficiency bar to the District Education officer, Karnal, which was due w.e.f. 01.04.1984. The District Education Officer, Karnal, vide letter dated 03.05.1984, informed the plaintiff-appellant that his ACRs for the period from 1977 to 1982 were not good and his work and conduct had not been found good during the above said period. SDEO, Panipat, vide letter dated

10.09.1984 informed the plaintiff that his case of efficiency bar and appeal had been rejected by the DEO, Karnal. The adverse remarks in the ACRs were hindrance to plaintiff for future promotion. These remarks were not conveyed to the plaintiff within a scheduled time.

Upon notice, the defendants-respondents filed written statement and pleaded that the plaintiff had an alternative remedy by way of filing appeal, revision and review before the competent authority against the adverse remarks in his ACRs. It was further stated that he had committed various anomalies in discharge of his duty and he had always been overlooking the same. He had failed to answer various serious anomalies committed by him. In this regard, a reminder was issued to the plaintiff on 30.04.1980, but no reply was received from him. Defendant No.3 had warned the plaintiff, vide order dated 09.08.1980, to be careful in maintaining the fees account as well as other entries in the register. He was again warned on 12.08.1980 to come to school in time.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the adverse remarks given in the ACR of the plaintiff since 1977 to 1982 are wrong, illegal and against the rules and procedure of C.S.R.? OPP
2. Whether notice under Section 80 CPC has not been served in accordance with law, if so, its effect? OPD
3. Whether the suit is not maintainable in the present form? OPD
4. Whether this Court has no jurisdiction to try this suit? OPD
5. Whether the suit is not within limitation? OPD
6. Whether the suit is bad for mis-joinder of parties? OPD

7. Relief.

Shiv Nath Kapoor-plaintiff himself stepped into the witness box as PW-1 and stated that the adverse entries since 1977 to 1982 were not intimated to him. For the first time, he came to know about the said remarks when DEO, Karnal, sent him a letter (Ex.P1). He filed an appeal in this regard, which was dismissed. Due to the adverse remarks, his increments were stopped and he could not cross the efficiency bar. Jai Bhagwan, Assistant of the office of SDEO (PW-2) stated that whole record of the plaintiff had been burnt in a fire. Rameshwar Parsad (PW-3) proved the result list (Ex.P3). Plaintiff had also tendered in evidence reply of the letter as Mark-P4.

On the other hand defendants-respondents produced Smt. Raj Kumari-defendant No.3 as DW-1, who stated that she used to enter the defects regarding working of the plaintiff in a personal diary. On 10.04.1980, plaintiff signed in her personal diary after going through the defects which were brought to his notice. She had also warned the plaintiff in writing. Trial Court observed that notes in the diary could not be considered as proper evidence as they were not maintained under any rules. The defendants-respondents, on the official side, did not produce any letter showing that the plaintiff had been informed that his work and conduct was not satisfactory. As per Ex.P3, examinations of Ist and 2nd classes were conducted and results for the years, 1973-1974, 1974-75 and 1975-76 were 100%. It was only in the year 1981-82 when the result was 60%. The trial Court held that no evidence was led to show that the adverse remarks for the year 1977 to 1982 were conveyed to the plaintiff. As per Punjab Government letter dated 11.07.1961, adverse remarks in the Annual Confidential Reports

should be communicated to the concerned person. In case of non communication of the remarks, they cannot be considered. The trial Court had referred to the judgment delivered by the Hon'ble Supreme Court in **Gurdial Singh Fijji Vs. State of Punjab etc.,** 1979 Current Law Journal (Civil) SC 234, wherein it was held that the adverse confidential reports cannot be acted upon to deny the promotional opportunity unless it is conveyed to the person concerned. Trial Court decreed the suit of the plaintiff and defendants-respondents were directed to expunge the adverse remarks given in his ACRs w.e.f. 1977 to 1982. He was allowed to cross the efficiency bar w.e.f. 01.04.1984.

Aggrieved against the judgment of the trial Court, State of Haryana went in appeal. The lower appellate Court examined the ACRs of the plaintiff-appellant for the period from 1976-77 to 1981-82, which were graded "B" i.e. "average" and not "adverse." A adverse report is "below average." As per instructions issued in the year 1981, as considered by the trial Court, only the adverse reports were required to be conveyed. Further, the lower appellate Court held that question of writing of ACRs was within the domain of the authorities concerned and the Court could not sit as Court of appeal on the subjective satisfaction of the competent authorities. Intimation with regard to the ACRs was received by the plaintiff-appellant on 03.05.1984 from the Office of DEO, Karnal and he had a right to make representation to the authorities concerned. But, no such representation was made by the plaintiff. This fact was admitted by the plaintiff while appearing as PW-1. As per letter dated 03.05.1984 (Ex.P1), the plaintiff was informed that his over all record with respect to ACRs w.e.f. 1977 to 1982 was not good, therefore, as the provisions of Rule 4.8 of Civil Service Rules, Vol. I,

Part-I, he could not cross the efficiency bar. Against this letter, the plaintiff-appellant made a representation/appeal, which was dismissed. Thereafter, vide letter dated 10.09.1984, SDEO, Panipat, had informed the plaintiff-appellant that his case of efficiency bar and appeal had been rejected by the DEO, Karnal vide order dated 05.09.1984. The order dated 05.09.1984 was the final decision taken by the authorities concerned on the representation made by the plaintiff-appellant. Moreover, the order regarding crossing of efficiency bar of an employee would not amount to imposition of punishment as was held in **Haryana Khadi and Village Industries Board, Chandigarh Vs. Sri Krishan Gopal Taneja and others**, 1985 (2) SLR 121. On the basis of above observations, the lower appellate Court came to a conclusion that the ACRs of the plaintiff for the period from 1977 to 1982 were “average” and the “average” ACRs were not adverse. Hence, they were not to be communicated to the plaintiff-appellant.

Moreover, he was warned by defendant No.3 and a noting to this effect was recorded in her personal diary. Even though this diary was not part of service record of the plaintiff, but it showed that the work and conduct of the plaintiff was being monitored and he was being warned in that regard. Vide letter dated 03.05.1984 (Ex.P1), the plaintiff was informed that he was not allowed to cross the efficiency bar and if, he had any grouse, he could make a representation in that regard. His appeal against the said letter was finally rejected.

In view of the above facts, the lower appellate Court had rightly set aside the judgment of the trial Court as the ACRs for the period from 1976-77 to 1981-82 were not adverse, therefore, they were not required to be communicated to the plaintiff-appellant. At this stage, reference can be made

to a judgment delivered by the Hon'ble Supreme Court in **Vinod Kumar Vs. State of Haryana and others**, 2014 (1) SCT 312, wherein against adverse remarks in the ACRs of police official, one representation had been rejected by the DGP after 9½ years. Thereafter, the second representation was made, whereupon adverse remarks in the ACRs were expunged. The Hon'ble Supreme Court held that the order passed by the DGP was ultra vires. In para No.18 of the judgment, the Hon'ble Supreme Court has narrated the circumstances, in which the judicial review of the administrative action can be take by the Courts, relevant extract of which, is reproduced as under:-

“18. The matter can be looked into from another angle as well. In those cases where Courts are concerned with the judicial review of the administrative action, the parameters within which administrative action can be reviewed by the Courts are well settled. No doubt, the scope of judicial review is limited and the courts do not go into the merits of the decision taken by the administrative authorities but are concerned with the decision making process. Interference with the order of the administrative authority is permissible when it is found to be irrational, unreasonable or there is procedural impropriety. However, where reasonable conduct is expected, the criterion of reasonableness is not subjective but objective; albeit the onus of establishment of unreasonableness rests upon the person challenging the validity of the acts. It is also trite that while exercising limited power of judicial review on the grounds mentioned above, the court can examine whether administrative decisions in exercise of powers, even if conferred in subjective terms are made in good faith and on relevant considerations. The Courts inquire whether a reasonable man could have come to the decision in question without misdirecting himself on the law or facts in a material respect. (See: **M.A. Rasheed & Ors. V. The State of Kerala**; (1947) 2 SCC 687). The decision of the administrative authority must be related to the purpose of the enabling provisions of Rules or Statutes, as the case may be. If they are manifestly unjust or outrageous or directed to an unauthorized end, such decisions can be set aside as arbitrary and unreasonable. Likewise, when action taken is ultra vires, such action/decision has no legal basis and can be set aside on that ground. When there are Rules framed delineating the powers of the authority as well as the procedure to be followed while exercising those powers, the authority has to act within the limits defined by those Rules. A repository of power

acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness.....”

Applying the ration of the aforesaid judgment to the facts of the present case, the plaintiff-appellant had been given average remarks in his ACRs for the period from 1977 to 1982. At the time of consideration of his case for crossing of efficiency bar, he was informed, vide letter dated 03.05.1984 (Ex.P1) that he could make a grouse against those remarks to the competent authority. The representation of the plaintiff-appellant was finally rejected by the District Education Officer (DEO) on 10.09.1984 by informing him that he was not entitled to cross the efficiency bar w.e.f. 01.04.1984.

In view of the above discussion and the law laid down by the Hon'ble Supreme Court in **Vinod Kumar's** case (supra), this Court is of the view that the the lower appellate Court has rightly set aside the judgment and decree passed by the trial Court decreeing the suit of the plaintiff-appellant by directing the defendants-respondents to expunge the remarks given in his ACRs for the period from 1977 to 1982. The competent authority, after due application of mind, had rejected the representation/appeal of the plaintiff-appellant.

After going through the impugned judgments, no illegality, much less perversity has been found therein warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

(RITU BAHRI)
JUDGE

08.07.2015

ajp