

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

Date of decision: 29.03.2016

CWP No.22007 of 2014

Ravinder Singh Sandhu & others

...Petitioners

Vs.

State of Punjab & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. S.K.Pipat, Senior Advocate, with
Mr. H.K.Brinda, Advocate, for the petitioners.

Mr. Vaibhav Sharma, DAG, Punjab.

1. *To be referred to the Reporters or not? Yes.*
2. *Whether the judgment should be reported in the Digest? Yes.*

RAJIV NARAIN RAINA, J. (ORAL)

1. On 29th October, 2014, I passed the following order while issuing notice of motion:

“Notice of motion, returnable by 19.12.2014.

Ms.Monica Chhibber Sharma, DAG, Punjab accepts notice on behalf of the respondents and waives service on them. Learned State counsel prays for and is granted time to seek instructions or to file written statement justifying the action of the State in granting benefit of break-inservice of 15 days to two employees, i.e., Balkar Singh and Darshan Singh and omitting to grant similar relief to the petitioners which appears ex-facie unfair discrimination.

Mr. Manoj Kumar Pundir, Advocate undertakes to supply 3 sets of the paperbook to the learned State Counsel during the course of the day.

A copy of this order be given to the learned State Counsel under the signatures of the Bench Secretary of this Court.”

2. The State has put in appearance, but has not filed its reply so far and therefore, cannot be seen contesting the case. Besides, Mr. Pipat has passed on a copy of advice from the office of the Advocate General, Punjab, rendering opinion to the State on a reference made, that the petitioners deserve the same relief as was given to Balkar Singh and Darshan Singh as the three are similarly placed.

3. Mr. Sharma submits that the opinion rendered by the office of the Advocate General, Punjab was not final and some queries were put. The advice of the Advocate General, Punjab matters little in a case where the Court is seized of a case of unfair and unreasonable discrimination. In cases of unfair discrimination, this Court does not exercise secondary review of administrative action, but dons the robes of the administrator for a moment and exercises primary review jurisdiction under Article 14 of the Constitution seemingly in place of the administrative authority sitting over the action/s of the State to remove unfair discrimination without leaving it to the administrator to correct the wrong committed as Article 14 is intolerant toward continued deprivation of rights even for a moment after discovery of infraction by court. This is a constitutional obligation of the writ court to prevent continued breach of the equality clause in Article 14 and 16 without postponing it to a future date, a thing it can cure by itself. The writ court is the sentinel on the qui vive guarding the Constitution. For role of the writ court in secondary and primary review of administrative action; see Supreme Court judgment in Union of India

Vs. G. Ganayutham, (1997) 7 SCC 463 and Om Kumar Vs. Union of India,

(2001) 2 SCC 386 [both rulings authored by Hon. M. Jagannadh Rao, J.] lucidly explaining the two parts of Article 14, one of arbitrariness and proportionality based on applying Wednesbury principles whilst the other on hostile and invidious discrimination; arbitrary action being tested on principles of secondary review while plea of excessive or stifling discrimination by court intervention in primary review jurisdiction. One is on based on Wednesbury principles and the other I should imagine is direct action by constitutional court virtually stepping into the shoes of the administrator and signing the order holding his pen restoring the imbalance created by the bureaucrat. The imbalance that has caused grave injury to a person aggrieved. The legal position is explained thus in *Om Kumar* case:

66. It is clear from the above discussion that in India where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the Constitutional Courts as primary reviewing courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. Here the court deals with the merits of the balancing action of the administrator and is, in essence, applying “proportionality” and is a primary reviewing authority.

67. But where an administrative action is challenged as “arbitrary” under Article 14 on the basis of E.P.Royappa Vs. State of T.N. (1974) 4 SCC 3 (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is “rational” or “reasonable” and the test then is the Wednesbury test. The courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is

one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary. [In G.B. Mahajan Vs. Jalgaon Municipal Council (1991) 3 SCC 91 (SCC at p. 111).] Venkatachaliah, J. (as he then was) pointed out that “reasonableness” of the administrator under Article 14 in the context of administrative law has to be judged from the stand point of Wednesbury rules. In Tata Cellular Vs. Union of India (1994) 6 SCC 651 (SCC at pp. 679-80), Indian Express Newspapers Bombay (P) Ltd. Vs. Union of India (1985) 1 SCC 641 (SCC at p. 691), Supreme Court Employees’ Welfare Assn. Vs. Union of India (1989) 4 SCC 187 (SCC at p. 241) and U.P. Financial Corpn. Vs. Gem Cap (India) (P). Ltd. (1993) 2 SCC 299 (SCC at p. 307) while judging whether the administrative action is “arbitrary” under Article 14 (i.e. otherwise than being discriminatory), this Court has confined itself to a Wednesbury review always.

68. *Thus, when administrative action is attacked as discriminatory under Article 14, the principle of primary review is for the courts by applying proportionality. However, where administrative action is questioned as “arbitrary” under Article 14, the principle of secondary review based on Wednesbury principles applies.”*

4. On facts it may be noted that Balkar Singh and Darshan Singh did not suffer break in service of 15 days, which the petitioners were made to suffer depriving them of service benefits made available to the two employees. It is probably by reason of the advice of the Advocate General, Punjab that State has not responded in writing to this petition to oppose it. Armed with administrative precedents the petitioners are before the court claiming parity of treatment which the administration is reluctant to give on its own.

5. In order to prevent continued unreasonableness and unfair discrimination and to preserve the spirit of Article 14 of the Constitution, this petition is allowed. A direction is issued to the respondents to treat the period of break of the petitioners in identical terms as was done in the cases of Balkar

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Singh and Darshan Singh. Resultantly, the petitioners would be entitled to all the consequential benefits flowing therefrom.

29.03.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE