

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

RSA No.4608 of 2015 (O&M)

Date of Decision: 27.4.2017

Parveen Kumar and others

... Appellants

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.R.K.Malik, Sr. Advocate with
Mr.S.S.Kharb, Advocate for the appellants

Mr. R.T.Redhu, DAG, Haryana for respondents

...

RAJIV NARAIN RAINA, J. (Oral)

1. This Regular Second Appeal arises out of a suit filed jointly by 43 plaintiffs before the Civil Court at Chandigarh in Civil Suit No.168 of 30.11.2000. The question of discrimination arose in the suit between the plaintiffs and other similarly situated police officials when for the same incident of participating in the strike resorted to by policemen in Haryana in 1991, different authorities in different ranges and districts had taken different views and expressed divergent opinions in the matter of imposing punishments to the delinquent employees all of whom were placed in the same circumstances vis a vis the State-wide strike.

2. The history of the case is a chequered one and is not necessary to be traversed again since the same has been dealt with in detail by the trial court and the first appellate court. Apart from unequal punishments awarded to similarly situated persons, an anomaly has also arisen between those policemen who were regular employees of the

police department at the time of dismissal for participating in a strike and the enlisted constables, like the plaintiffs, the present appellants who were still on probation and were discharged under Rule 12.21 of the Punjab Police Rules, 1934 (for short “the Rules of 1934”) as applicable to the State of Haryana. The regular policemen were dismissed by invoking the provisions of Article 311 (2) (b) of the Constitution of India thereby dispensing with enquiry.

3. As the drama unfolded by passage of time the blow softened and the regular police officials were reinstated in service with 50% back wages by operation of orders passed by this Court many years ago. The similarly situated persons in other districts who were probationers were also reinstated in service, but had to face enquiries for the commission of grave misconduct of participating in the State-wide strike before their cases for confirmation could be considered.

4. The present suit arises out of action taken by the Superintendent of Police, Kurukshetra. The plaintiffs have been reinstated in service prior to the filing of the suit for declaration challenging the enquiry report dated 17th July, 1997, vide the order dated 20th August, 1997 passed by the Superintendent of Police, Kurukshetra, the order dated 27th March, 1998 passed by the Deputy Inspector General of Police and the order dated 13th July, 1995 passed by the Director General of Police, Haryana affirming the punishment orders but they have been deprived of 50% back wages whilst others like them in other districts have not been denied.

5. The important milestones in the case start from the event of discharge from service on 30th October, 1991. It was during the pendency of the first appeal that the then Director General of Police

passed the order dated 16th December, 2004 granting 50% backwages for the period when the appellants were out of service. The appeal was dismissed as withdrawn. Subsequently, the order dated 16th December, 2004 was withdrawn by the successor Director General of Police, Haryana. The concession given to other policemen of payment of 50% back wages on reinstatement hold steadfast. Pliantiffs want the same treatment in their own probationary group in other districts and their regular police officials.

6. Feeling aggrieved by the unfair discrimination, the appellants filed writ petition against the order which was dismissed with liberty to revive the civil appeal whiuch had been withdrawn when favourable orders were illegally recalled by the successor-in-interest being the Director General of Police, Haryana. The appellants approached the first appellate court in terms of the orders passed by the High Court, and the appeal was entertained and the first appellate court proceeded to decide it on merit. The appeal had been dismissed on 23rd July, 2014, against which the present appeal has been preferred.

7. The learned Civil Judge (Jr.Division) vide judgment dated 22nd March, 2004 took cognizance of the multifarious litigations in writs and appeals before the High Court and the peculiar situation arising out of mass dismissal of policemen during the strike of 1981 and held that the question of discrimination in the matter of punishments could not be looked into by the civil court as it involved principles of Articles 14 and 16 of the Constitution of India. The trial court, therefore, abstained itself from commenting upon the same. However, the trial court found that the enquiries were conducted according to the procedure prescribed as opportunities of cross-examination of witnesses were given to the

delinquents and the punishments were imposed in accordance with law on each of the plaintiffs belonging to the Kurukshetra Police and in appeal before the Director General of Police, Haryana punishment of stoppage of two increments with cumulative effect was reduced to stoppage of one increment. The case of the appellants is that the relief of 50% backwages was granted to the police officials of other districts, the same relief was required to be granted to the appellants and the way, they have been discriminated and differentiated was not justified. The first surge of writ petitions preferred by the police constables who were discharged from service during probation invoking Rule 12.21 of the Rules of 1934 was dismissed by the learned Single Judge of this Court by giving direction that these employees will remain under suspension and will be granted subsistence allowance and the department will hold regular enquiry against them. The State of Haryana preferred an *intra court* appeal which was dismissed. That is how the enquiry followed and punishment imposed. The misconduct of the policemen involved in the strike was the same whether they were regular or probationers except the different provisions were invoked to bring the services to an end one by constitutional methods and one by resort to Rule 12.21 of the Rules of 1934. The plaintiffs pleaded that once compromise had been arrived at between the Haryana Police Sangathan and the Government of Haryana, the plaintiffs were also entitled to the same benefits as were granted to other employees. The applications of the plaintiffs besides other 12 constables of the same District were taken on record in LPA No.918 of 1996 and in lieu of statement given by Mr.Hawa Singh Hooda, Advocate General, Haryana, the Division Bench granted 50% backwages alongwith continuity of service to the similarly situated

police officials. However, these agitating employees who were dealt with by different yardsticks have not been granted the relief.

8. The plaintiffs earlier filed CWP No.686 of 1992 (Ram Pal and others vs. State of Haryana and others) wherein vide order dated 31st July, 1995 this Court quashed the orders of punishment by holding that they would not be entitled to reinstatement directly in service, but would be deemed to be continued under suspension and it would be open to the department to hold enquiry and pass appropriate orders within six months from the date of receipt of the order. The High Court ordered that the plaintiffs would not be entitled to salary and other monetary benefits from the date of dismissal till the date of order. As to what treatment the plaintiffs should be meted out for the period of suspension, shall be decided by the disciplinary authority at the time of passing fresh order. In view of the order, the plaintiffs were allowed to join services. In appeal filed by the State against the order of the learned Single Judge of this Court in LPA No.150 of 1996, the operation of the order dated 31st July, 1995 was stayed vide order dated 2nd March, 1996. However, this order was vacated on 10th December, 1996 and the plaintiffs were reinstated in service in 1997.

9. The police officials who were dismissed from the police force under Article 311 (2) (b) of the Constitution of India filed LPA No.918 of 1996 and they were given benefits of 50% backwages with continuity of service vide order dated 29th April, 1997. This gave rise to separate classes of police personnel, one under Article 311 (2) (b) of the Constitution of India and the others under Rule 12.21 of the Rules of 1934, and therefore, the plaintiffs would not be automatically entitled to

get benefit of the judgment passed in LPA No.918 of 1996 on 29th April, 1997.

10. Mr.Malik, learned Sr. Counsel appearing for the appellants argued that hundreds of employees were discharged/dismissed from service under Article 311 (2) (b) of the Constitution of India on the ground of the same misconduct. Such regular employees were taken back in service with 50% back-wages without awarding any punishment. In other districts, other than Kurukshetra even employees on probation who were also discharged under Rule 12.21 of the Rules of 1934, were reinstated in service and granted 50% back-wages during the period they remained out of service. Once, the former Director General of Police, Haryana had granted 50% back-wages vide order dated 16th December, 2004, the successor-in-interest could not withdraw the same order on the same material on record when passed with a conscious mind.

11. On these premises, the judgments of the trial court and the lower appellate court dismissing the appeal and affirming the order of the trial court are challenged on the ground of violation of Article 14 of the Constitution of India which provisions take precedents over all other rights, duties and liabilities of employees working under the State. The basic issue was that the punishing authority did not care to treat the plaintiffs as similarly situated employees were dealt with by the police department. Even if it is assumed that the enquiry proceedings are not flawed and the steps have been followed to the tee, even then the plaintiffs had the right to assert that their right to equality of treatment are beyond the face of the enquiry, on the ground of unfair discrimination.

When the principles of unfair discrimination are invoked and proved

beyond doubt, then the Civil Court ought not to sit back and refuse to apply the principles of Article 14 of the Constitution since the Subordinate Courts are equally protectors of the law and are duty bound to give effect to Article 14 of the Constitution in the same manner as this Court is called upon to in original writ proceedings and in appeals. The trial court has surrendered and refused to exercise its jurisdiction vested in it while the appellate court has not entered upon any discussion on principles of equality and has limited his jurisdiction to hold that the enquiry has been conducted manifestly in a fair and proper manner which is not open to be tinkered with.

12. If this principle is to be upheld with eyes shut, then there will be a further invidious and hostile bifurcation among a homogeneous class of discharged probationers who have been reinstated and they can be treated differently in the same police force. This means that there will be intra class discrimination between the probationers and the appellants and regular police officials who were involved in the same incident which has been pardoned by the State in a compromise reached between the Haryana Police Sangathan and the State Government. This is like standing on a beach looking to the heavens and not the horizon. The procedural milestones in the departmental enquiry are like the waves on a beach, while the relief lies in the distant horizon with a rainbow connecting the rights of the plaintiffs, their own peer group of probationers in other districts who were also dismissed and returned with 50% back wages and the regular officials who have been treated differently and more advantageously. Thereby making Kurukshetra an island in the State of Haryana. Even in the matter of punishments, the provisions of Article 14 of the Constitution of India are applicable and it

would be an abdication of constitutional duty in the court, that is, to uphold the Constitution and the laws.

13. I have therefore no hesitation in accepting this appeal by applying the principle of equal treatment to avoid violation of Article 14 of the Constitution of India of those who are similarly circumstanced and must suffer discriminatory treatment inter-districts in the Haryana police department.

14. For the above reasons, this appeal is allowed and the judgments and decrees of the courts below are set aside and the official respondents are directed to extend the benefit of continuity of service with 50% back-wages to be deposited in the Provident Fund as extended to their counterparts in other districts.

27.4.2017
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No