

In the High Court of Punjab and Haryana, at Chandigarh

**Civil Writ Petition No. 4286 of 2000
And Other Connected Cases**

**Reserved On: 10.01.2023
Date of Decision: 25.01.2023**

Kapil Dev and Others

... Petitioner(s)

Versus

The State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sapan Dhir, Advocate
for the petitioner(s) (In CWP-4286-2000, CWP-2731-2000,
CWP-2352-1995 and COCP-1905-2013).

Mr. Baljinder Singh, Advocate
for the petitioner(s) (In CWP-3024-1995, CWP-8484-2020,
and CWP-23293-2011).

Mr. Rajesh Tushar, Advocate
for Mr. Roshan Lal Sharma, Advocate
for the petitioners.

Mr. Inderjit Singh, Advocate
for the petitioner(s) (In CWP-5592-2000).

Mr. Kapil Kakkar, Advocate
for the petitioner (In CWP-27058-2013 and CWP-7621-2020).

Mr. Charanpreet Singh, Assistant Advocate General,
Punjab.

Mr. B.S.Patwalia and Mr. Akshit Pathania, Advocates
for the respondent No.4, 9 and 18 (In CWP-16563-2000).

Anil Kshetarpal, J.

1. The learned counsel representing the parties are *ad idem* that
these writ petitions (details whereof are at the foot of the judgment) involve

Identical issues, therefore, these can conveniently be disposed of by a

common judgment.

2. Basically, these writ petitions are off-shoot of the judgment passed by the Supreme Court in ***Saroj Rani and Another v. State of Punjab and Others (1999) 6 SCC 637*** which was disposed of with the following directions:-

“35. For the aforesaid reasons emerging from the facts and circumstances of this case, we issue the following directions:-

- (1) All vacancies on the post of Assistant/Senior Assistants prior to 21st January, 1991 are to be filled up by those who qualified by passing the examination and exemptees would have no claim on such vacancies.*
- (2) All vacancies after 21st January, 1991 shall be filled in the ratio of 70 per cent and 30 per cent between exemptees and qualifiers in the examination, respectively, for each year in question till all the existing qualifiers are absorbed.*
- (3) All promotions or reversions made have to be readjusted within the aforesaid frame work, irrespective of any interim orders then in force.*
- (4) Any incumbent who worked on the post of Assistant/Senior Assistant on account of promotion orders and in case they have to be reverted or have been reverted, any salary or consequential amount paid to such employees for working on the post of Assistant/Senior Assistant shall not be taken back from*

them. Similarly, if any employee gets promotion to the post of Assistant/Senior Assistant from an earlier date, he/she will not be entitled to any arrears of salary.

(5) State shall complete this exercise of promotion on the above said formula on or before the 31st December, 1999, till then the existing arrangement shall continue.

(6) So far two appellants in the appeal of Ravi Lamba, since they were promoted prior to 21st January 1991, for which there is no dispute and their reversion order being held illegal, they may be promoted forthwith and they may not be asked to wait for the final exercise of promotion in all other cases.”

3. It would be noticed here that after a long drawn litigation in the first and second rounds, the Supreme Court decided the dispute between the group which had passed the examination under the Punjab State Assistant Grade Examination Rules, 1984 (hereinafter referred to as “the 1984 Rules”) and the group which was granted exemption from appearing in the examination under Rule 12 of the 1984 Rules. Pursuant to the directions of the Supreme Court, the exercise was carried out in various departments. The challenge is to the consequential orders passed in furtherance thereto. The services of the employees are governed by the Punjab Social Welfare Department (Class-III) Service Rules, 1973 (hereinafter referred to as “the 1973 Rules”). Rule 9(iv) of the 1973 Rules provides that the post of Assistants, Accountants, Cashiers and Junior Auditors shall be filled 75% by

having not less than five years experience, whereas, the remaining 25% posts shall be filled by direct recruitment. As per the stand of the State, at the relevant time, there were 55 sanctioned posts of Assistants in the department. However, as on 01.01.1986, 88 persons were working as such on the common cadre posts as these persons were promoted/recruited by direct appointment, before the promulgation of the Assistant Grade Examination, to the post next to the Clerk, namely Assistant/Accountant/Investigator/ Research Assistant/Cashier/Statistical Assistant etc. which have equivalent pay scales and are inter-transferable. Hence, as per the common seniority list, the revised pay scale of Rs.1800-3200 was given to 55 Senior Assistants as identified on 01.01.1986, whereas, the remaining were adjusted in the pay-scale of Rs.1500-2640 against the other posts. In the month of December, 1984, the State of Punjab introduced the Assistant Grade Examination by making a provision in the Rules, 1984.

4. Prior to the aforesaid 1984 Rules, the promotions to the post of Assistant from that of Clerk were made on the basis of seniority-cum-merit, having the requisite experience and qualification. After the introduction of the 1984 Rules, the State made a provision for bringing up the meritorious and efficient employees to the promoted posts through examination. Subsequently, the rigors of the rules were sought to be relaxed. On 05.12.1984, the first amendment in the 1984 Rules was brought, which protected the seniority of those who failed to clear the Assistant Grade Examination in the first attempt. It was provided that if one qualifies the test within first two attempts, he shall be assigned the seniority in the cadre of

Assistants in accordance with the seniority in his substantive post. In the month of September, 1985, instead of two chances, four chances were allowed by amending the Rules. By another amendment in the year 1986, five chances were substituted instead of four chances. Though this process continued, however, still there were a large number of Clerks who could not qualify the examination inspite of their long service. In the year 1991, the government took a conscious decision to exempt all such employees, who have had completed 18 years of service as Clerk, from taking recourse to examination for promotion. Such notification was issued in exercise of powers under Rule 12 of the 1984 Rules. This led to litigation between the various groups. In *Surinder Jit Singh and Others v. State of Punjab and Others 1994 (4) SLR 702 (Punjab and Haryana) (FB)*, the Court upheld the validity of the notification granting exemption. Still the litigation continued. Ultimately, the cases were finally settled by the Supreme Court with the directions which have already been quoted above.

5. Pursuant thereto, the necessary exercise has been undertaken and a detailed order has been passed on 17.02.2000. Most of these writ petitions have been filed challenging the correctness of the aforesaid consequential exercise undertaken by the departments. These writ petitions have come up for final disposal after a period of 23 years. In the meantime, most of the petitioners and the private respondents, on attaining the age of superannuation, have retired from service. In these circumstances, this Court is called upon to adjudicate the rights between the various groups.

6. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-books and examined the written

arguments.

7. The learned counsel representing the parties have submitted that the petitioners were promoted as Assistants/Accountants prior to the introduction of the 1984 Rules. They claim that the total cadre posts in the Punjab Department of Welfare (Social Welfare) (Class-III) Service Rules, 1983 (hereinafter referred to as “the 1983 Rules”) were 94 and not 55 as claimed by the department. They rely upon the 1983 Rules. It is further contended that the petitioners’ pay should be re-fixed by granting them the pay-scale of Rs.1800-3200 w.e.f. 01.01.1986 and ultimately, their due retiral benefits should be directed to be released. One of the learned counsel has also stated that the order passed is in violation of the principles of natural justice as they were not granted an opportunity of hearing. In the alternative, it is contended that since the petitioners have already retired, therefore, the State should not be permitted to order recovery from the petitioners by placing reliance upon the judgment in *State of Punjab and Others v. Rafiq Masih (White Washer) and Others (2015) 4 SCC 334*.

8. On the other hand, the learned counsel representing the private respondents contend that the Assistant Grade Examination was first introduced w.e.f. 11.04.1984. After a long drawn litigation, the matter was concluded in *Saroj Rani’s case (supra)*. The date of promotion of the petitioners is sought to be changed in an exercise undertaken by the department in compliance of the final judgment. They contend that there is no scope for issuance of a writ as prayed for by the petitioners.

9. Having analyzed the arguments of the learned counsel representing the parties, it would be noted that there is no force in the

arguments of the learned counsel representing the petitioners that the total cadre posts in the 1983 Rules were 94. The department, via an affidavit, has submitted that prior to 12.04.1984 the total cadre strength was 55, however, 88 persons were working on the said posts i.e. beyond the sanctioned cadre strength. Thus, 33% employees who were working beyond the sanctioned strength were required to be adjusted against vacancies arising in the future. Hence, the argument of the learned counsel representing the petitioners that they were promoted prior to the introduction of 1984 Rules cannot be accepted because the petitioners who were promoted prior to the 1984 Rules but beyond the cadre strength were required to be adjusted in the subsequent years as and when the vacancy become available. The department, in these writ petitions, has already undertaken the said exercise by passing a detailed order in this respect on 17.02.2000. It would be noted here that reference to the 1983 Rules by the learned counsel representing the petitioners does not have any substance because the services of the petitioners were governed by the 1973 Rules and not by the 1983 Rules. Along with the written arguments, a copy of the alleged 1983 Rules has been attached, whereas, the entire case of the petitioners in the writ petitions is, in fact, based upon the 1973 Rules. It is evident that in the year 1983, the Model Service Rules were framed by the Department of Social Welfare, Punjab, however, there is no material to prove that these rules were ever enforced. While filing the reply, the State has categorically stated that these Rules have not yet been notified. Thus, the reliance placed by the learned counsel representing the petitioners on the 1983 Rules is neither correct nor justified.

petitioners that an opportunity of hearing has not been given to the petitioners, it would be noted that now, at this stage, it will not be appropriate to remit the matter back to the concerned authority. The right of hearing is a facet of the principles of natural justice. The Court, in the facts of the case, can ensure the application of such principles in order to advance the cause of justice. However, the application of principles of natural justice is based upon the facts and circumstances of each individual case. There is a series of decision by the Supreme Court to hold that in the peculiar facts of any case, the Court can dispense with the application of the same particularly when the result is inevitable. Reliance in this respect can be placed upon the judgment of the Supreme Court in ***State of U.P. v. Sudhir Kumar Singh and Others* 2020 SCC Online Supreme Court 847**. The relevant para 39 of the said judgment is extracted as under:-

“39. An analysis of the aforesaid judgments thus reveals:

- (1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.*
- (2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in*

public interest.

- (3) *No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.*
- (4) *In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.*
- (5) *The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.”*

11. It is evident that the Supreme Court has held that natural justice is a flexible tool in the hands of the judiciary to reach out in appropriate cases to remedy injustice. However, the breach of the rule of *audi alteram partem* cannot, by itself, without any consequential adverse impact being

shown, lead to the conclusion that prejudice is thereby caused.

12. Now, the crucial question arises as to “What is the appropriate relief which should be granted to the parties in the peculiar facts of the case?” As already noticed, majority of the petitioners as well as the private respondents, on attaining the age of superannuation, have already retired. In *Saroj Rani’s case (supra)*, the Supreme Court directed that those incumbents who have worked on the post of Assistants/Senior Assistants on account of the promotional orders in their favour and subsequently, they have to be reverted or have been reverted back to their original post, then, the salary or the consequential amount paid to them shall not be recovered. Similarly, if any such employee gets promotion to the post of Assistant/Senior Assistant from an earlier date, he/she shall not be entitled to any arrears of salary. Thus, akin to the facts in which the interim order was passed by the Supreme Court, the petitioners have worked on the post of Assistant/Senior Assistant and have already retired in the present case. Hence, it would not be appropriate to permit the State of Punjab to effect any recovery from them at this stage. The question is “Whether the State should be permitted to refix their salary which would result in reduction of their pensionary benefits?” In the facts of the case, this Court is of the considered view that such a course of action shall not be a viable solution.

13. Keeping in view the aforesaid facts, it is ordered that neither there shall be any recovery on account of change in the date of promotion nor the private respondents who have not worked on the posts shall be entitled to any such salary. However, they shall be granted the notional consequential reliefs including the retiral benefits, which shall be paid to

them. In other words, no recovery shall be made from the retirees as a consequence of this judgment. Further, no arrears of salary for the period for which the private respondents, in fact, never worked shall be payable to them. However, the said period shall be counted notionally for the purpose of enhancing their retiral/pensionary benefits, if any. This exercise should be completed, positively, within a period of three months from today.

14. With the observations made above, all the writ petitions and the contempt petition are disposed of.

(Anil Kshetarpal)
Judge

January 25, 2023
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No

Sr. No.	Case No.	Party’s Name
1.	CWP-3024-1995	Prem Singh Sodhi v. State of Punjab and Others
2.	CWP-2352-1995	Raman Kumar Sharma and Others v. Punjab State and Others
3.	CWP-2731-1995	Raman Kumar Sharma and Others v. The State of Punjab and Others
4.	CWP-5592-2000	Jaswant Kaur v. State of Punjab and Another
5.	CWP-7621-2000	Ajaib Singh v. State of Punjab and Others
6.	CWP-7783-2000	Karnail Singh v. State of Punjab and Others
7.	CWP-8484-2000	Prem Singh Sodhi and Another v. State of Punjab and Others
8.	CWP-16563-2000	Jasbir Kaur and Others v. State of Punjab and Others
9.	CWP-17413-2000	Raj Rani and Others v. State of Punjab and Others
10.	CWP-23293-2011	Prem Singh Sodhi v. State of Punjab and Others
11.	COCP-1905-2013	Gurnam Singh and Another v. Gurkirat Singh
12.	CWP-27058-2013	Swaran Singh v. State of Punjab and Others

(Anil Kshetarpal)
Judge

January 25, 2023
“DK”