

RSA-72 of 1995

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

RSA-72 of 1995

Reserved on: 16.01.2024

Pronounced on: 29.01.2024

Haryana State and another

.....Appellants

Versus

Karam Chand (now deceased) represented by his LRs

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Ms. Harsh Rekha Kapoor, AAG, Haryana.

Mr. Subhash Ahuja, Advocate,
for the respondents.

NAMIT KUMAR, J.

1. This regular second appeal is directed against the judgment and decree dated 14.08.1992 passed by the Court of learned Sub Judge IInd Class, Hisar, whereby suit for declaration filed by the respondent(s)/plaintiff was decreed as well as against the judgment and decree dated 06.05.1993 passed by the Court of learned Additional District Judge, Hisar, whereby appeal filed by the appellants/defendants against the judgment and decree dated 14.08.1992, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. The facts relevant for disposal of this regular second appeal are that plaintiff Karam Chand filed suit for declaration that the impugned orders of defendant No.2 dated 18.5.1975, 18.6.1975, 8.7.1975, 9.1.1976, 19.2.1976 and 24.7.1980, whereby the

plaintiff was stopped at the first efficiency bar at the stage of Rs. 130/- in the pay scale of Rs. 110-4-130/5-160/5-225 for one year each time, are wrong, illegal, *mala fide*, against the service Rules and instructions of the State Government and are not binding on the rights of the plaintiff and the plaintiff is entitled to cross the efficiency bar on due date i.e. 22.10.1970. It was pleaded that plaintiff joined the service of defendant no. 2 in the pay scale of Rs. 110-4-130/5-160/5-225 and he was due to cross the efficiency bar w.e.f. 22.10.1970. However, the case was kept pending till 18.5.1975, when defendant no.2 passed an order vide which the plaintiff was stopped at the efficiency bar w.e.f. 22.10.1970. Similarly vide orders dated 18.6.1975, 8.7.1975, 9.1.1976 and 19.2.1976 the plaintiff was stopped at the efficiency bar for one year due on 22.10.1970, 22.10.1971, 22.10.72, 22.10.1973 and 22.10.1974. Later, by order dated 24.7.1980 the plaintiff was stopped at the efficiency bar due on 22.10.1973, 22.10.1976, 22.10.1977. 22.10.1978 and 22.10.1979 and ultimately by order of defendant no.2 dated 19.10.1984, issued with endorsement No.5235-37/SK, BC dated 19.10.1988 the plaintiff was allowed to cross the efficiency bar at the stage of Rs. 130/- per month in the pay scale of Rs. 110-4-130/5-160/5-225, raising his pay to Rs. 160/- per month w.e.f. that date. The plaintiff filed an appeal to the Commissioner, Hissar Division against the order dated 18.5.1975 but the same was dismissed on technical ground that since in the meantime by virtue of Rule 2 of the Punjab Civil Services (Punishment & Appeal) Haryana Second Amendment Rules, 1974 issued with the Haryana Government notification No.GSR-130/-constitution/Article. 187, 309

and 318/Amd. (2)74 dated 31.10.1974 stoppage at efficiency bar under the provisions of rule 4.8. of the Punjab Civil Services Rules volume -1 part-1 or analogous provisions of any other rules on the ground of unfitness to cross the bar, did not amount to the punishment and therefore, the Commissioner observed that the order was not appealable and dismissed the appeal on this ground. Defendant no.2 vide two subsequent orders dated 9.1.1976 and 19.2.1976 stopped the plaintiff again at bar due on 22.10.1973 and 22.10.1974. Thereafter the plaintiff submitted memorial to the Govt. of Haryana through proper channel under the instructions issued with erstwhile Punjab Govt. Notification No. 9369-G-51/1-681 dated 12.2.1952 against the orders of defendant No.2 dated 18.5.1975, 9.1.1976 and 19.2.1976 but the same were rejected and intimation was sent to the plaintiff by defendant no.2 vide his memo No. 608/SK, BC dated 25.1.1985 through Tehsildar Fatehabad. According to the plaintiff, the impugned orders were passed without giving him any opportunity of being heard and the same are illegal, void, *mala fide* against the service rules and therefore, these are liable to be set aside.

3. Defendants filed written statement taking preliminary objections that the suit is not maintainable as the plaintiff has challenged all these orders in one suit and actually he should have filed separate suits; that the suit is time barred; that the plaintiff has no cause of action; that the civil Court has no jurisdiction to try this suit; that the suit is not properly valued. On merits it was pleaded that the plaintiff was to cross first efficiency bar in the pay scale of Rs. 110-4-130/5-160/5-225 w.e.f.

22.10.1970 raising his pay to Rs.135/- but by the orders of defendant No.2 dated 18.5.1975, 18.6.1975, 8.7.1975, 9.1.1976 and 19.2.1976 the plaintiff was stopped at the efficiency bar. Later by order dated 24.7.1980 he was stopped at the efficiency bar due on 22.10.1975, 22.10.1976, 22.10.1977, 22.10.1978 & 22.10.1979 and ultimately order of defendant No.2 dated 19.10.1984, issued with endorsement No.5235-37/SK.BC dated 29.10.1984 the plaintiff was allowed to cross efficiency bar at the stage of Rs. 130/-per month w.e.f. 01.10.1980, raising his pay to Rs.160/- per month w.e.f. that date. It was admitted that the plaintiff preferred an appeal to the Commissioner, Hissar Division but the same was rejected vide order dated 27.12.1975. However, the plaintiff did not file any departmental appeal against the orders dated 9.1.1976 and 19.2.1976 passed by the Collector, Hissar. The plaintiff is governed by the Punjab Revenue Class-II Service Rule, 1966 and now by the Haryana Revenue Patwaris (Group-C) Services Rules, 1981. It was pleaded that the plaintiff was rightly withheld at the stage of his crossing bar as he was not competent to fulfil his duties and, therefore, the defendant prayed that the suit may be dismissed.

4. Plaintiff filed replication. On the pleadings of the parties the lower Court framed the following issues: -

1. Whether the orders of defendant No.2 dated 18.5.75, 18.6.75, 8.7.75, 9.1.76, 19.2.76 & 24.7.80 are wrong, illegal, biased, arbitrary, *mala fide* against the service rules and instructions of the state Govt., and, therefore not binding on the rights of the plaintiff as alleged in para nos.4 to 7 of the plaint? OPP

2. Whether the suit is not maintainable in the present form? OPD

3. Whether the plaintiff cannot challenge, all the impugned orders dated 18.5.75, 18.6.75, 8.7.75, 9.1.76, 19.2.76 and 24.7.80 in the present suit, if so to what effect? OPD

4. Whether the suit is time barred? OPD

5. Whether the plaintiff has got no cause of action? OPD

6. Whether the civil court has got no jurisdiction to try the present suit? OPD

7. Whether the proper court fee has not been fixed in the present case, if so, to what effect? OPD

8. Relief.

5. Parties led their oral and documentary evidence.

6. After hearing learned counsel for both the parties, trial Court vide judgment and decree dated 14.08.1992 decreed the suit of the plaintiff.

7. Feeling aggrieved against the said judgment and decree of the trial Court, defendants preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 06.05.1993.

8. Learned counsel for the appellants-State contended that the judgments and decrees passed by both the Courts below are against law and the evidence on record. She further contended that Courts below have not appreciated that the suit filed by plaintiff-Karam Chand was barred by limitation as the impugned orders were passed from years 1975 to 1980 whereas the suit was filed in the year 1986. She further contended that stoppage of crossing of efficiency bar does not come under the definition of punishment, therefore, no show-cause notice was required to be given to the plaintiff. She further contended that the

judgments and decrees of the Courts below are based on surmises and conjectures, therefore, the same are liable to be set aside.

9. On the other hand learned counsel for the plaintiff/respondents supported the judgment and decrees passed by the Courts below. He contended that suit filed by the plaintiff was well within limitation. In support of his contention he placed reliance upon the judgment of the Hon'ble Supreme Court in ***S.S. Rathore v. State of Madhya Pradesh, AIR 1990 SC 10*** and judgment of this Court in ***Punjab State v. Hardev Singh, 1997(2) SCT 101*** to contend that cause of action shall first arise only when the remedies available to the public servant under the relevant Service Rules as to redressal are disposed of. Learned counsel while relying upon the judgment of the Hon'ble Supreme Court in ***O.P. Gupta v. Union of India and others, 1987(4) SCC 328*** and judgments of this Court in ***Sube Singh v. State of Haryana, 2001(3) SCT 370*** and ***Gopi Ram v. Registrar Co-operative Societies and another, 1992(5) SLR 550*** contended that the order of stoppage of increment at the efficiency bar on the ground of unfitness cannot be passed without complying with the principles of natural justice. He further submitted that even if the stoppage of increment at the efficiency bar is not taken as a punishment, yet the appellants were duty-bound to follow the principles of natural justice as the same affects the rights of the plaintiff.

10. I have heard learned counsel for the parties and perused the record.

11. Plaintiff (now deceased through his LRs) filed a suit seeking declaration to the effect that the impugned orders of defendant No.2 dated 18.05.1975, 18.06.1975, 08.07.1975, 09.01.1976, 19.02.1976 and 24.07.1980 whereby the plaintiff was stopped at the first efficiency bar at the stage of Rs.130/- in the pay scale of Rs. 110-4-130/5-160/5-225 for one year each time, are wrong, illegal, *mala fide* against the Service Rules and instructions of the State Government and are not binding on the rights of the plaintiff and the plaintiff is entitled to cross the efficiency bar on due date i.e. 22.10.1970.

12. Contention of learned counsel of the appellants-State that suit of plaintiff-Karam Chand was barred by limitation as first efficiency bar of the plaintiff was stopped vide order dated 18.05.1975 and whereas the suit was filed in the year 1986, cannot be accepted in the view of the judgment of the Hon'ble Supreme Court in ***S.S. Rathore (supra)***, wherein the Hon'ble Supreme Court has held as under: -

“20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

22. It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation.”

To the similar effect is the judgment of this Court in **Hardev Singh's** case (supra).

13. Plaintiff filed an appeal before the appropriate authority, which was dismissed being not maintainable. Thereafter, he submitted a memorial to the Government of Haryana under the instructions issued by the erstwhile Punjab Government notification contained in memo No.9369-G-51/1-681 dated 12.02.1952, which was also rejected. The intimation regarding rejection of memorial was given to the plaintiff on 15.03.1985 by defendant No.2. Thereafter, he filed civil suit on 07.03.1986, which was within the prescribed period of limitation of three years. Thus, the suit filed by the plaintiff was within limitation.

14. Before introduction of an explanation in the Punjab Civil Services (Punishment & Appeal) Rules, 1952 by notification dated 31.10.1984, stoppage of a person at the stage of crossing of efficiency bar was a punishment and the authorities were bound to serve a show-cause notice upon the employee before passing such orders. In the present case, plaintiff-Karam Chand was to cross the efficiency bar at Rs.130/- w.e.f. 22.10.1970. Vide order dated 18.05.1973 (Ex.P1),

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dated 18.06.1975 (Ex.P3) he was stopped at the efficiency bar w.e.f. 22.10.1971 onwards; vide order dated 08.07.1975 (Ex.P4) he was stopped at the efficiency bar w.e.f. 22.10.1972 onwards; vide order dated 09.01.1976 (Ex.P6) he was stopped at the efficiency bar w.e.f. 22.10.1974; vide order dated 24.07.1980 (Ex.P7) he was stopped at the efficiency bar w.e.f. 22.10.1975 onwards. Thus, the efficiency bar of the plaintiff was stopped before the aforesaid amendment introduced by the Government whereby stoppage of cross of efficiency bar was declared to be non-punitive. Therefore, the department was duty-bound to give notice to the plaintiff before the stoppage of crossing of efficiency bar and a prejudicial order could not have been passed without hearing the plaintiff. As per Government Instructions, stoppage of cross of efficiency bar should be decided before the due date and in any event it should take six months. In the present case, orders of stoppage of efficiency bar of the plaintiff were passed after lapse of several years, which is in violation of the Government Instructions.

15. Moreso, even if the stoppage of increment at the efficiency bar is not taken to be a punishment, yet the appellants were duty-bound to follow the principles of natural justice as the same affects the rights of the plaintiff. Hon'ble Supreme Court in ***O.P. Gupta's*** case (supra) has held as under: -

“16. It is a fundamental rule of law that no decision must be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case. Both the Privy Council as well as this Court have in a series of cases required strict adherence to the rules of natural justice where a public authority or body has to deal with

*rights. There has ever since the judgment of Lord Reid in **Ridge v. Baldwin** LR [1964] AC 40 been considerable fluctuation of judicial opinion in England as to the degree of strictness with which the rules of natural justice should be extended, and there is growing awareness of the problems created by the extended application of principles of natural justice, or the duty to act fairly, which tends to sacrifice the administrative efficiency and despatch, or frustrates the object of the law in question. Since this Court has held that Lord Reid's judgment in **Ridge v. Baldwin** should be of assistance in deciding questions relating to natural justice, there is always 'the duty to act judicially' whenever the rules of natural justice are applicable. There is therefore the insistence upon the requirement of a 'fair hearing. In the light of these settled principles, we have no doubt whatever that the Government acted in flagrant breach of the rules of natural justice or fair play in passing the impugned order. We do not see why the principles enunciated by the Court in **M. Gopala Krishna Naidu v. State of Madhya Pradesh**, [1968] 1 SCR 355 should not apply with equal vigour to a case like the present. There is no reason why the power of the Government to direct the stoppage of increments at the efficiency bar on the ground of unfitness or otherwise after his retirement which prejudicially affects him should not be subject to the same limitations as engrafted by this Court in **M. Gopala Krishna Naidu** while dealing with the power of the Government in making a prejudicial order under FR 54, namely, the duty to hear the Government servant concerned after giving him full opportunity to make out his case."*

16. Concurrent findings have been recorded by both the Courts below that orders stopping the plaintiff to cross efficiency bar were illegal and against the service rules; suit was maintainable in the present

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form; suit was within limitation and the civil Court had jurisdiction to try the suit of the plaintiff.

17. Learned counsel for the appellants-State has failed to show that the findings recorded by Courts below are perverse or erroneous or based on misreading, non-reading or mis-appreciation of the material evidence on record.

18. In view of above, no question of law, muchless substantial question of law arises or has been raised by learned State counsel for consideration in the present appeal. No other point has been urged.

19. Dismissed.

29.01.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No