
Before Swatanter Kumar & Amar Dutt, JJ.

A. D. GOUR,—*Petitioner*

versus

PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH
THROUGH ITS REGISTRAR,—*Respondent*

C.W.P. NO. 10327 OF 2003

8th July, 2004

Constitution of India, 1950—Art. 226—Down grading of A.C.Rs of a Judicial Officer on the basis of guidelines framed by the High Court which provide that if the Inspection Judge has given higher grading to an officer in the ACR in comparison to Full Court grading of the previous year, then the Full Court grading shall remain the same for the year in question was given to him in the previous year—No material before the Full Court which could constitute as a valid reason for down grading the ACRs of the petitioner—Guidelines alone the basis for down grading the ACRs of the petitioner—Such guidelines neither notified by the High Court nor brought to the notice of the members of the judicial service—Principles of natural justice place an obligation upon the administrative authorities to ensure that material matters affecting the condition of service should be brought to the notice of affected persons—Judgment of D.B. in Ishwar Chander Jain's case attained finality in which it was held that the remarks could not be down graded by the Full Court in absence of any material before it—That judgment would be binding upon the High Court—Petition allowed.

Held, that the service jurisprudence has attained a new dimension in the recent time. The consistent but developing views of the Courts adequately indicate that the rules/instructions, which would have impact or direct effect on the condition of service including consideration for promotion should be notified in a manner so as to draw a presumption that law should be known to all. Such presumption can be drawn only if the requisite instructions/guidelines or rules are notified and/or are made known to the department as per its practice and procedure, the principles of natural justice would place an obligation upon the administrative authorities to ensure that material matters

affecting the condition of service should be brought to the notice of the affected persons. This shall be moreso where even an entry which is otherwise not adverse to an officer but still is likely to cause some impediment in consideration and chances of promotion of the employee. If the employee is unaware and even upon the exercise of diligence could not come to know of such restrictions/conditions or imposition, in that event it would be unfair to that class of service in the present day, where promotion itself is so competitive and requires considerable hard work and comparative merits from the employee. It would be fair and proper that such matters, particularly the guidelines and policies of an employee, should be made known to the concerned employee in terms of publication or atleast circulation to the department. The administrative authority and/or employer has to adopt a sensitive and fair attitude towards its employees so as to satisfy the rudiments of proper employer and employee relationship.

(Para 16)

Further held, that publication and/or awareness of terms and conditions of service would satisfy a dual purpose. One that every employee would be aware as to how should he perform to be considered for promotion and the other that he would be put at notice of his lapse and would have a fair chance to improve his performance. This would encourage a fair competition as well as satisfy the ingredients of just and proper consideration. In any case, we see no harm if matters particularly the policy decision taken in confirmity with the rules when they effect the whole class of service be made known to the concerned at the earliest. The petitioner has made a specific averment that the decisions of the High Court of 1996 and 1998 were neither notified nor circulated and such non-circulation had adversely affected the right of the petitioner. If he knew about the existence of such instructions or criteria he would have taken recourse to the appropriate remedies available to him in accordance with the rules including better performance in his functioning.

(Para 17)

Further held, that the controversy arising in the present case stood settled by the judgment of the Division Bench in the case of Punjab and Haryana High Court *versus* Ishwar Chander Jain, LPA No. 148 of 1999. The Division Bench without going into the validity or otherwise of the decision of the Court of 1996, held that the remarks

could not be down graded by the Full Court in absence of any material before it. This judgment would not only be a complete guidelines itself but would be binding upon the High Court, as it has attained finality. Once the High Court has accepted the judgment, it implicitly earns an obligation of applying the same to the similarly situated persons, particularly where the affected officers approach the High Court for grant of relief in terms thereof.

(Para 19)

Further held, that law commands nothing vainly. Once the contentions of the parties have been considered and are settled by way of pronouncement of judgment, which attained finality, then its enforcement would be pious obligation of all concerned. The Court discharges functions primarily with an aim at preserving legal or by confining legislative and executive of the State within their power and in the interest of the public. Judgments say the law as it exists and applicable to the facts and circumstances of the case. To avoid discontentment and frustration amongst officers, who themselves are discharging judicial functions, should be made aware of such obligation. The administrative powers have to be exercised with an inbuilt caution and restrictions so that it do not offend law. *Lex est sanctio sanctis, jubens honesta at prohibens contraria.*

(Para 23)

P.S. Patwalia, Senior Advocate with T.P.S. Chawla, Advocate
for the petitioner.

Rajiv Atma Ram, Senior Advocate with Ms. Madhu Dayal,
Advocate for the respondent.

JUDGMENT

SWATANTER KUMAR, J.

(1) In this petition under Articles 226/227 of the Constitution of India, the petitioner Shri A.D. Gaur, Member of Haryana Judicial Subordinate Services prays that an appropriate writ, particularly in the nature of *certiorari*, be issued quashing the decision of the Full Court on the administrative side taken in its meeting held on 3rd December, 1998, vide which his annual confidential report for the year 1997-98 was down graded from "B" (Good) to "B" (Satisfactory).

The petitioner challenges this decision of the Full Court on administrative side on the ground that the same is arbitrary, contrary to the known canons of service jurisprudence and the law enunciated by the High Court itself on judicial side in the case of **Ishwar Chander Jain versus Punjab and Haryana High Court Civil Writ Petition No. 4941 of 1993** decided on 10th of September, 1998.

(2) In order to examine the merits or otherwise of this contention, it will be appropriate for us to refer to the necessary facts giving rise to this petition.

(3) The petitioner was selected as a Member of Haryana Subordinate Judicial Services in December, 1989. According to the petitioner, ever since his joining, he has been performing his duty efficiently, diligently and to the satisfaction of his superiors. During the period of his service, no departmental action was taken against him nor any complaint was pending at the relevant time. During the year 1997-98, when the petitioner was posted as Additional Civil Judge (Senior Division), Pehowa, his court was inspected by the Hon'ble Administrative Judge. Though nothing adverse was conveyed to him during the inspecting period, the petitioner was shocked to receive the letter dated 27th January, 1999, Annexure P/1 to the Writ Petition. The said memorandum reads as under :—

Re :—Annual Confidential Remarks recorded for the year ending 31st March, 1998 (1997-98).

Memorandum

Your are hereby informed that Hon'ble the Chief Justice and Judges have pleased to Record the following remarks on your work and conduct for the ending 31st March, 1998 (1997-98).

1997-98 B—Satisfactory.

(Sd) . . . ,

Registrar.

Being aggrieved from the conveyed 'B' Satisfactory remarks, the petitioner made a representation dated 8th February, 1999, and also reserved his right to file a detailed comprehensive and effective

representation on receipt of adverse material, if any, on the basis of which said remarks were recorded by the Full Court. No adverse material was provided, but the representation of the petitioner, Annexure P/2 to this petition, was rejected by order of the High Court dated 19th February, 1999,—*vide* Annexure P/3. Though orders did not specify any reason for rejecting representation of the petitioner, he filed again detailed representation dated 20th February, 1999 reiterating that the Hon'ble Inspecting Judge had expressed complete satisfaction and in fact pleased over the work of the petitioner. According to him, he learnt subsequently that the Inspecting Judge has graded the petitioner "B" + (Good) for the year 1997-98 and the same could not be down graded by the Full Court as "B" (Satisfactory) without affording an opportunity and without any material before the Full Court. In the year 2002, the petitioner was due for his promotion and officers junior to him were promoted. The petitioner thereafter learnt that as per the criteria provided by the High Court at least minimum number of five good ACRs out of the last seven years are required for promotion. This fact was not known to the petitioner, earlier, as such, could not be relied upon for declining the promotion and the grievance of the petitioner in relation to down grading of the ACR for the year 1997-98 became a matter of serious concern. The petitioner has also averred in this petition that the Full Court subsequently had decided not to down grade the ACRs of the officers on the basis of the above referred resolution and in fact a fresh resolution was passed in that behalf. The petitioner, while relying upon various judgments of the High Court as well as of the Hon'ble Supreme Court, contended that the action of the Full Court in down grading the confidential report of the petitioner for the year 1997-98 is arbitrary. The petitioner also filed another representation dated 24th September, 2002 against the same remarks, which was considered and rejected by the High Court,—*vide* its resolution dated 22nd of February, 2003. On these premises, the petitioner has claimed the limited relief that the orders rejecting his representations dated 19th February, 1999, 7th June, 1999 and 22nd February, 2003, Annexures P/3, P/5 and P/7 respectively be quashed and his confidential report for the year 1997-98 be read and construed as "B+" (Good). The petitioner has also prayed that unnotified and unpublished policy/rules for downgrading of ACRs framed by the High Court in that regard be quashed and declared as unconstitutional.

(4) Upon notice, the High Court filed a detailed reply, in which even preliminary objection was taken with regard to the maintainability of the writ petition, as no fundamental or statutory right of the petitioner has been violated. It was stated that the present petition is barred by delay and laches, as the petitioner is challenging the order of 1999 in the year 2003. Another objection that has been taken in the written statement filed by the High Court is that the petition is bad for non-joinder of necessary parties as the persons who were promoted have not been impleaded as respondents in the petition.

(5) On merits, the facts are not much in dispute. It is stated that the petitioner joined the judicial services. A Sub-Committee was formed by the High Court for framing guidelines for recording the ACRs. The Sub-Committee,—*vide* its report dated 15th February, 1996 had recommended to adopt the criteria for recording annual confidential report which was accepted by the Full Court. The relevant portion of the Committee's report reads as under :—

- (iii) If the Inspecting Judge has given higher grading to an officer in the Annual Confidential Report in comparison to the Full Court grading of the previous year, then the Full Court grading shall remain the same for the year in question, as was given to him in the previous year.”

This report of the Sub-Committee was approved by the Full Court,—*vide* its decision dated 25th July, 1996 and these guide-lines were applicable from the year 1995-96 up to the year 1997-98 and were uniformly applied to all the persons. It is not disputed that the Hon'ble Inspecting Judge has recorded the remarks for the year 1997-98 and graded the Officer as B+Good, in terms of the policy and as the grading of the petitioner for the year 1996-97 was satisfactory, it was down graded to the same remarks. All the representations submitted by the petitioner from time to time were rejected. Another Sub-Committee of the High Court,—*vide* its report dated 1st December, 1998, recommended that the previous criteria may not be enforced and the grading given by the Inspecting Judge be adopted unless there is material before the Full Court to alter the same. Relevant portion of the report reads as under :—

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“The grading given by the Inspecting Judge should be adopted by the Full Court unless some material is placed before it for upgrading or down grading the remarks given by the Hon’ble Inspecting Judge.”

This report was accepted by the Full Court in its meeting dated 21st December, 1998. The representations filed by the petitioner even thereafter were rejected by the competent authority. The main ground raised on behalf of the High Court is that the decision of the Full Court dated 1st of December, 1998 was prospective in its operation and as such the petitioner cannot claim any benefit. It is also stated that the action of the High Court is neither arbitrary nor contrary to any rules or regulations.

(6) During the course of arguments, the Court directed the respondents to produce the record in Court. Records were produced. The factual averments made in this writ petition are hardly in controversy. The basic questions that require determination by this Court in this writ petition are :—

- (i) Whether the action of the High Court in down grading the confidential report of the petitioner for the year 1997-98 from “B” (Good) to “B” (Satisfactory) in its meeting held on 3rd December, 1998 suffers from any infirmity and is liable to be set aside ?
- (ii) Whether the decision of the Full Court 21st December, 1998, in the facts and circumstances of the case, is prospective ?

Before we proceed to discuss the legal submissions raised by the parties on the question afore-referred, we would prefer to deal with the preliminary objections that have been raised by the respondent High Court.

(7) In our opinion, the writ petition neither suffers from delay and laches nor is bad for non-joinder of necessary parties. It is not in dispute the,—*vide* letter dated 27th January, 1999. Annexure P/ 1 to the writ petition, the petitioner was communicated down grading the remarks for the year 1997-98 afore-referred.

(8) Without any delay, the petitioner preferred representation against the said remarks on 8th February, 1999, which was rejected by the High Court. Thereafter a detailed representation again was filed by the petitioner on 20th February, 1999 raising two basic principles that no adverse material has been furnished to him and that he has come to know the remarks recorded by the Hon'ble Inspecting Judge. This representation was also rejected in June, 1999. The petitioner awaited for some time and when his juniors were promoted, ignoring the petitioner, he again filed representation on 24th September, 2002, as the promotion itself had taken place in September, 2002. This representation was rejected on 22nd of February, 2003 and on 29th May, 2003 the petitioner filed the present writ petition. The petitioner all throughout has been vigilant about his right, of course, he did not run to the Court in the year 1999 and waited for some time. We do not think that it was unreasonable conduct on the part of the petitioner being a judicial officer. This conduct of the petitioner must be seen in light of the averments made by him in the writ petition that the guide-lines or the criteria for promotion had not been notified, published or circulated to the judicial officers. Thus, it is obvious that the petitioner was not aware of the consequences of this report till his juniors were promoted and he was ignored.

(9) In this petition, the petitioner has not raised any claim with regard to setting aside of the promotion made in September, 2002 to the higher judicial services and has confined his relief only to the correctness of confidential report for the year 1997-1998. Once, no relief is claimed against the promoted candidates and the petitioner also does not make any prayer for grant of promotion, in our view, the selected candidates are neither necessary nor proper parties to this petition.

(10) Consequently, both these preliminary objections raised by the High Court in its written statement are without merit and are rejected.

(11) Now we proceed to answer the above formulated questions.

Whether the action of the High Court in down grading the confidential report of the petitioner for the year 1997—1998 from “B” (Good) to “B” (Satisfactory) in its meeting held on 3rd December, 1998 suffers from any infirmity and is liable to be set aside ?

(12) At the very outset, we may refer to the confidential report of the petitioner, which was produced before the Court during the course of hearing, which reads as under :—

Year	Remarks by High Court
1989-90	B-Satisfactory
1990-91	B-Satisfactory
1991-92	B-Satisfactory
1992-93	B-Plus (Good)
1993-94	B-Plus (Good)
1994-95	B Average
1995-96	B-Satisfactory
1996-97	B-Satisfactory
1997-98	B-Satisfactory
1998-99	B-Plus (Good)
1999-2000	B-Plus (Good)
2000-2001	B-Plus (Good)
2001-2002	B-Average”

(13) Amongst above, we are only concerned with the annual confidential remarks recorded by the competent authority for the year 1997-1998. There is no dispute to the fact that the Hon’ble inspecting Judge had graded the petitioner as B+ (Good) for that period. However, on the basis of the criteria approved by the Full Court in its meeting dated 25th July, 1996, wherein the Court had accepted the report of the Sub Committee dated 15th February, 1996, the Full Court had down graded the confidential record of the petitioner as “B” (Satisfactory). The Full Court had graded the petitioner as “B”

(Satisfactory) for the year 1997-1998 keeping in view the guide-lines adopted by the Full Court in para (iii) and in view of grading given to him for the year 1996-97. Under the relevant clause of the guide-lines and the criteria adopted by the Full Court, if the Inspecting Judge has given higher grading to an officer in the Annual Confidential Report in comparison to the Full Court grading of the previous year then the full Court grading shall remain the same for the year in question, as was given to him in the previous year. This alone is the basis for down grading the Annual Confidential Report of the petitioner for the relevant year. In the detailed written statement filed on behalf of the High Court, it is nowhere stated that there was any material before the Full Court on the basis of which the report of the petitioner was down graded. In other words, the sole reason and ground for variation in the Confidential Report to the disadvantage of the petitioner was adherence to the guide-lines issued in the year 1996.

(14) The record produced before us shows that on 6th April, 1998, the Hon'ble Administrative Judge of District Kurukshetra had recorded the confidential record of the petitioner for the period ending 31st March, 1998. In this report, he was graded B+ (Good). This report was placed before the Administrative Committee on 31st December, 1998 and thereafter on 15th January, 1999 it was placed before the Full Court for accepting the recommendation of the Administrative Committee. The Full Court, as already noticed, has taken the decision to down grade the ACR of the petitioner to B (Satisfactory) applying the policy decision by the Full Court which, as already noticed, was rescinded by the Full Court in its meeting dated 21st December, 1998. The fact of the matter is that there was no material whatsoever before the Administrative Committee or the Full Court which could constitute as a valid basis for down grading the confidential report of the petitioner.

(15) As is evident from the above noticed dates, the confidential report of the petitioner was down graded after a considerable period and even during the subsequent years i.e. 1998-1999, 1999-2000 and for 2000-2001 the petitioner was graded as B+ (Good) by the Full Court itself upon grading given by the Administrative Judge. It is not quite essential for us to discuss these matters in great detail as the substantial question of law involved in the present case is squarely covered on facts and law by the judgment rendered by the Letters Patent Bench in L.P.A. No. 148 of 1999 titled **Punjab and Haryana**

High Court *versus* Ishwar Chander Jain decided on 24th August, 2000. *Vide* this judgment, the Division Bench of this Court affirmed the judgment of the Single Bench passed in Civil Writ Petition No. 4941 of 1993 decided on 10th September, 1998. In somewhat similar circumstances, the Letters Patent Bench held as under :—

“...We have thoughtfully considered the respective submissions. The scheme of the Constitution envisages control of the High Courts over the Courts subordinate to them and for effectively exercising this control, each High Court has evolved its own system for inspection of the Courts subordinate to it. The system which is being followed in this Court envisages inspection of one Sessions Division by one High Court Judge for a period of one year. Ordinarily, that Judge gets an opportunity to watch and evaluate the performance of the officers of the particular Sessions Division and he alone has the authority to record their confidential reports by making an over-all evaluation of the work and performance and knowledge of law etc. If a Judge retires in the midst of the particular year, then another Judge acts as an Inspecting Judge for the remaining part of that year and in that event, he can also record the ACRs of the officers. This, however, does not mean that the Full Court has no role to play in the matter and it is bound to approve the remarks recorded by the Inspecting Judge without any modification. Rather, the Full Court has the right to make appropriate modification in the remarks recorded by the Inspecting Judge if the material placed before it justifies such variation or modification. In **Ishwar Chander Jain *versus* High Court of Punjab and Haryana** (*supra*), the Supreme Court had, while deciding the appeal filed by the respondent against order of this Court dismissing his writ petition, took note of his grievance that entry in his ACR for the year 1984-85 had been down-graded by the Full Court without any rhyme or reason and observed as under :—

“Entry for the year 1984-85 was awarded by Justice S.P. Goyal who was Inspecting Judge on 15th April, 1985. He awarded ‘B’ plus to the appellant which means

that appellant's work was good. But this entry could not be taken into consideration by the High Court as it had already taken the decision on 21st March, 1985 to dispense with the appellant's services. We are distressed to find that when the aforesaid entry for 1984-85 came up for consideration before the Full Court of the High Court, it modified the same and down-graded the entry from 'B' plus to 'C' which means the appellant's work was unsatisfactory. During the hearing we asked the learned counsel appearing for the High Court to produce material on the basis of which the High Court modified the entry given by Justice S.P. Goyal for the year 1984-85 but he was unable to place any material before us to support the decision of the High Court in modifying the entry. The modification of the entry is therefore without any material and is not sustainable in law. It is thus clear that so far as annual entry on the appellant's confidential roll is concerned there was no material against him which could show that the appellant's work and conduct was unsatisfactory."

In High Court of Punjab and Haryana through R.G. versus Ishwar Chander Jain (1) their Lordships of the Supreme Court again delved upon this issue in the context of the entries recorded in the ACR of the respondent for the year 1991-92 and observed as under :—

"This Court in earlier appeal filed by Jain against termination of his probation held that the modification of the entry by the High Court was without material and was not sustainable in law. It meant that the Supreme Court restored the grading of Jain in his ACR for the year 1984-85 as 'B'+Good. There is no indication of this in the precis prepared by the Registry which certainly would have misled many of the Judges of the Full Court. There is no ACR recorded for the year 1992-93, 1993-94, 1994-95 and for nine months of 1995-96 when the Full Court met on December, 12, 1995 In its earlier meeting on September 22, 1995 it recorded ACR for the year 1991-92 grading

(1) J.T. 1999 (3) S.C. 266

Jain as 'C'-integrity doubtful'. In coming to this conclusion Full Court relied on the inspection report prepared by the Inspecting Judge on February, 22, 1992 where he graded Jain as 'integrity doubtful' and gave his note which we have quoted above. There is no material forthcoming as to why the inspection report of February, 1992 came to be considered by the Full Court in September 1995 and why there could be no inspection from that year till the holding of the Full Court meeting. Inspection note by the inspecting judge gives an impression that he inspected the Court of Jain only in March 1992. Inspecting Judge also noted that there were some complaints which formed the subject-matter of the disciplinary proceedings against him. This also does not appear to be correct inasmuch as on the date of the inspection report no disciplinary proceedings were pending against Jain. There were also no particulars of the complaints whether these were in writing or oral and if these related to the judicial work performed by the officer. At least some of the cases in which Jain was found to have acted improperly could have been mentioned when there were many complaints from the members of the Bar. The inspection note is certainly flawed and could not have formed the basis by the Full Court to record that integrity of the officer was doubtful and to grade him 'C'. Moreover, we are told at the Bar and it was not contradicted that the Inspecting Judge took charge of Jind district only on November 21, 1991 and within three months, i.e. on February 25, 1992 gave his inspection report. This is certainly not satisfactory. The ACR for the year 1991-92 is, therefore, to be kept aside."

In U.P. Jal Nigam and others versus Prabhat Chandra Jain and others, (2) the Supreme Court considered the issue relating to modification/variation of the entries recorded in the ACRs and observed as under :—

“All what is required by the authority recording confidential in the situation is to record reasons for such down-grading on the personal file of the officer concerned and inform

him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level, the employee on his part may slacken in his work, relaxing secure by his one time achievement. This would be an undesirable situation. All the same, the sting of adverseness must, in all events, be not reflected in such variations, as otherwise they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case, we have seen the service record of the first respondent. No reason for the change is mentioned. The down grading is reflected by comparison. This cannot sustain.”

In view of the propositions laid down in the afore mentioned decisions and the fact that no material was placed before the Full Court about the work and performance of the respondent justifying modification of the remarks recorded by the Inspecting Judge, the view taken by the learned Single Judge cannot be flawed.” (Emphasis supplied by us).

(16) In the case of **UP Jal Nigam and others vs. Prabhat Chandra Jain & others** (*supra*), the Apex Court placed a dual obligation upon the authorities concerned. Firstly, that the down grading in the confidential report should be for the reasons recorded therein and secondly that the officer concerned should also be informed of such down grading. The rationale behind such direction appears to be that in a given case, an entry in the confidential report which may not look to be adverse would still adversely affect the chances of promotion of an employee in face of the criteria adopted by the authorities for promotion. The condition of service of an employee grant him legitimate right for proper and fair consideration in matters of promotion, that too in accordance with the rules. The stand of the High Court before us is that the instructions/guide-lines framed by the High Court for the purpose of promotion/designation to higher post and adoption of the criteria in 1996 and its withdrawal in 1998 was not required to be circulated or brought to the notice of the members

of the judicial service. This argument does not impress us. The service jurisprudence has attained a new dimension in the recent time. The consistent but developing views of the Courts adequately indicate that the rules/instructions, which would have impact or direct effect on the condition of service including consideration for promotion that law should be known to all. Such presumption can be drawn only if the requisite instructions/guide-lines or rules are notified and/or are made known to the department as per its practice and procedure, the principles of natural justice would place an obligation upon the administrative authorities to ensure that material matters affecting the condition of service should be brought to the notice of the affected persons. This shall be moreso where even an entry which is otherwise not adverse to an officer but still is likely to cause some impediment in consideration and chances of promotion of the employee. If the employee is unaware and even upon due exercise of diligence could not come to know of such restrictions/conditions or imposition, in that event it would be unfair to that class of service in the present day, where promotion itself is so competitive and requires considerable hard work and comparative merits from the employee. It would be fair and proper that such matters, particularly the guide-lines and policies of an employee, should be made known to the concerned employee in terms of publication or at least circulation to the department. The administrative authority and/or employer has to adopt a sensitive and fair attitude towards its employee so as to satisfy the rudiments of proper employer and employee relationship. The Hon'ble Supreme Court in the case of **Harla versus The State of Rajasthan (3)**, though their Lordships were concerned with the provisions of Opium Act, held that in absence of any special law or customs, it would be against the principles of natural justice to permit the subject of a state to be punished or penalised by laws of which they had no knowledge and of which they could not even with the exercise of reasonable diligence have acquired any knowledge. Promulgation or publication of some reasonable sort is essential.

(17) Publication and/or awareness of terms and conditions of services would satisfy a dual purpose. One that every employee would be aware as to how should he perform to be considered for promotion and the other that he would be put at notice of his lapse and would have a fair chance to improve his performance. This would encourage a fair competition as well as satisfy the ingredients of just and proper

consideration. In any case, we see no harm if matters particularly the policy decision taken in conformity with the rules when they effect the whole class of service be made known to the concerned at the earliest. In the case in hand, the petitioner has made a specific averment that the decisions of the High Court of 1996 and 1998 were neither notified nor circulated and such non-circulation had adversely affected the right of the petitioner. According to the petitioner, if he knew about the existence of such instructions or criteria he would have taken recourse to the appropriate remedies available to him in accordance with the rules including better performance in his functioning. Emphasis was placed upon the subsequent and even previous report of the petitioner wherein he has been graded 'Good' by different Hon'ble Administrative Judges.

(18) The petitioner also placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **State of U.P. versus Narendra Nath Sinha, (4)**, where confidential remarks recorded by the Reporting Officer as "**Outstanding**" was down graded by the Reviewing Officer and were accepted by the Accepting Officer. Their Loarships held that while down grading the ACR, an opportunity of hearing should have been granted to the petitioner as the entries were altered after the lapse of considerable time. The Hon'ble Supreme Court directed the Principal Secretary of the concerned Department of State Government in that case to re-consider the matter afresh. The underlying principle appears to be fairness in administrative action and to afford due opportunity to the employees whose interest are likely to suffer prejudicially.

(19) Another aspect of this case is that the controversy arising in the present case stood settled by the judgment of the Division Bench in the case of Ishwar Chander Jain (Supra). The Division Bench without going into the validity or otherwise of the decision of the Court of 1996, held that the remarks could not be down graded by the Full Court in absence of any material before it. This judgment would not only be a complete guide-lines itself but would be binding upon the High Court, as it has attained finality. Once, the High Court has accepted the judgment, it implicitly earns an obligation of applying the same to the similarly situated paersons, particularly where the affected officer approaches the High Court for grant of relief in terms thereof.

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- (i) "Wherever the rights of the parties have been settled by a judgment of the Court, the State has taken all remedies available to it in law against that judgment even upto the highest court of the land and the judgment has attained finality, then the State must accept the judgment and implement it in its true spirit and command. There is implicit obligation on the part of the State to grant same relief to other members of the cadre whose claim was based upon identical facts and points of law."

Similar view was also expressed by another Division Bench of this Court in the case of **Satyapal Singh and others versus The State of Haryana and another**. (6)

(23) Law commands nothing vainly. Once the contentions of the parties have been considered and are settled by way of pronouncement of judgment, which attained finality, then its enforcement would be pious obligation of all concerned. The Court discharges functions primarily with an aim at preserving legal or by confining legislative and executive of the State within their power and in the interest of the public. Judgments say the law as it exists and applicable to the facts and circumstances of the case. To avoid discontentment and frustration amongst officers, who themselves are discharging judicial functions, should be made aware of such obligation. The administrative powers have to be exercised with an inbuilt caution and restrictions so that it do not offend law. **Lex est sanctio sancta, jubens honesta et prohibens contraria** :

(24) Learned counsel appearing for the High Court contended that as the criteria given above was rescinded by the High Court by resolution of the Full Court dated 3rd December, 1998 and 5th January, 1999, therefore, it is said to be prospective. In support of his contention, he relied upon the judgments of the Hon'ble Supreme Court in the cases of **Ganga Ram Moolchandani v. State of Rajasthan & Ors.** (7) and **Union of India and others versus Mohd. Ramzan Khan** (8). He also contended that doctrine of prospectivity over-ruling restrict, operation of new law to the future only so that the settled matters are not disturbed and there is no impact on the past transactions. For this purpose, he also relied upon the judgments of Hon'ble Supreme

(6) 1999 (2) R.S.J. 377

(7) J.T. 2001 (5) S.C. 570

(8) AIR 1991 S.C. 471

Court in the cases **Kailash Chand Sharma etc. versus State of Rajasthan & Ors. (9)** and **Harsh Dhingra versus State of Haryana and Ors.(10)**. None of these arguments are of any help to the respondents. As already noticed, the impugned criteria of 1996 has already been withdrawn by the respondents themselves. In fact, it was done even before filing of the present writ petition, as such, the question of quashing the said criteria does not arise for determination before this Court. It is strenuously contended on behalf of the petitioner that judgment of the Letters Patent Bench in Ishwar Chander Jain's case (supra) would have to be considered by the respondents as a binding precedent and the petitioner would be entitled to the same relief, as granted in that case. This argument in our opinion has some merit. Earlier judicial pronouncements on a matter in issue also in a subsequent matter has to be respected and followed as a precedent unless it falls in an exception to the rule. No rights have been settled which could be taken adverse to the interest of the petitioner as he has been continuously making representations for seeking redress of his grievance to the appropriate authorities. Despite rejection of his representation, the petitioner would be entitled to get justice in accordance with law. In addition to this we have already held that the present petition does not suffer from the defect of delay and laches.

(25) The question with regard to the applicability of doctrine of prospectivity would be primarily academic, keeping in view the facts of the present case. We see no reasons for us to debate on this issue at any further elaboration.

(26) For the reasons afore-recorded, we allow this writ petition, quash the orders dated 19th February, 1999; 7th June, 1999 and 22nd February, 2003, Annexures P/3, P/5 and P/7 respectively and direct the Registry of the High Court to record the confidential report of the petitioner as B + (Good) for the year 1997-1998, unless some material is placed before the High Court to take any other view, as may be permissible in law.

(27) The writ is allowed in the above terms, leaving the parties to bear their own costs.

R.N.R.

(9) J.T. 2002 (5) S.C. 591

(10) J.T. 2001 (8) S.C. 296