

Before J.S. Narang and Baldev Singh, JJ

AZAD PARVINDER SINGH,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. NO. 5779 OF 2004

9th September, 2005

Constitution of India, 1950—Art. 226—Punjab Civil Services Rules, Part I, Vol. I.—Rl. 4.10—Petitioner applying for the post of S.S. Master in two categories—Punjab failing to make the grade in the B.C. category—In the dependent of Ex-serviceman category he was found to have made the grade higher than the last selected candidate—Petitioner not considered in the said category—No rule that a person who is eligible to apply under two categories can chose to apply only in one and would not be considered in the other—On directions of High Court respondents issuing order of appointment to the petitioner and he joined the post—Person junior to petitioner earned increments during the difference of the appointment period between the two—Lapse on the part of respondents in not considering the claim of petitioner in the dependent of Ex-serviceman category—No fault of the petitioner—Petition allowed holding the petitioner entitled to the relief of fixation of pay by granting two pre-mature increments with effect from the date of his joining so as to make the salary of petitioner equal to the salary of person immediately junior to the petitioner.

Held, that the case of the petitioner would fall within the ambit of Note 4 of the rule 4.10 of the Punjab Civil Service Rules Vol. I, Part I while exercising the power under this rule. It is admitted case that if the petitioner had been considered along with others in December, 2001 in the dependent category, the petitioner would have earned appointment along with others. It is also admitted case by the respondents that the petitioner has made the grade higher than the last selected candidate in the dependent category. It is obvious that the person junior to the petitioner has earned the increments during the difference of the period between the two. It is also the admitted case that the petitioner after being selected, has been placed at merit No. 2-A, obviously the seniority also must have been accorded accordingly. It is a case where no fault is attributable to the petitioner.

Admittedly, the petitioner did apply in the two categories ; well a person who is eligible to apply in both the categories cannot be restrained as no such rule is applicable that a person who is eligible to apply under two categories can chose to apply in one and would not be considered in the other. If that be so, it is incumbent upon the respondents to have considered the case of the petitioner while awarding the grade in the dependancy category. Such dereliction on the part of the concerned quarters has caused the damage to the petitioner apart from the time loss but, of course, monetary loss as well.

(Para 13)

Further held, that the respondents did commit the lapse in not considering the claim of the petitioner in the dependency category. Of course, upon the direction of this Court, the claim of the petitioner was examined, looked into by the respondents and the lapse has been rectified. Such rectifiable act would have been honestly accepted if the respondents had exercised their power envisaged under rule 4.10 of the Rules. The lapse on the part of the respondents having been established, the rigour of arbitrariness would have to be diluted with the principle of fairness, equality of treatment. Thus, it requires that the State must act with some rationale and with the principles which are non-discriminatory.

(Paras 13 and 14)

M.L. Sachdeva, Advocate, for the petitioner.

Ashok Aggarwal, Addl. Advocate General, Punjab, for the State.

JUDGMENT

J. S. NARANG, J.

(1) The short claim of the petitioner is that her pay need to be fixed by way of granting two increments pursuant to which the pay would become equal to the pay of the juniors to the petitioner.

(2) The petitioner passed B.Ed. examination in the year 1999 by securing 65.75% marks, obviously he secured Ist Division. He was appointed as teacher in Modern Senior Secondary School, New Shalle, District Gurdaspur. He taught the subject of Social Studies from 1st April, 1992 to 8th October, 2001.

(3) The petitioner belongs to Chang Caste which is recognised as Backward Class by Government of Punjab. A certificate in this regard had been issued by Tehsildar, Gurdaspur. The Department of Education Punjab, published an advertisement in the Tribune dated 28th June, 2001 for filling various categories of posts of Lecturers and Masters/Mistresses. The qualification for the post of Social Studies Masters (Male), had been duly indicated. The petitioner being eligible having fulfilled the requisite qualifications applied for the post of Social Studies Masters (Male). He had also applied against the post meant for the Ex-servicemen (dependent) (Backward Class) Category. The father of the petitioner had retired as Havaldar from the military service and the petitioner was the only dependent child and that no other dependent had availed benefit of employment or the reserved vacancy/posts under the Punjab Recruitment of Ex-servicemen Rules, 1982.

(4) The petitioner was called for the interview wherein he had participated. He was surprised to find that the persons with lower merit had been selected in the category of Ex-servicemen (dependent) (Backward Class) but the petitioner had been ignored.

(5) The representation dated 6th March, 2002, was submitted with respondent No. 2, disclosing the claim of the petitioner. A specific plea had been taken that in view of the criteria laid down pursuant to a judgment of this Court rendered in re : **Major Singh and another versus State of Punjab, CWP No. 18331 of 2004**, the petitioner would make a grade in the interview to the extent of 45.31% whereas the last candidate in the aforestated category, inducted by the respondents into the service, had secured 44.90%. It has been averred that even if the petitioner is given zero marks in the interview even then he would make the grade accordingly.

(6) On account of inaction on the part of the respondents for not having taken any decision on the representation of the petitioner, CWP No. 7850 of 2002, had been filed in this Court which was disposed of,—*vide* order dated 5th December, 2002, with a direction to the respondents to pass an appropriate speaking order upon the representation made by the petitioner, within a period of four months from the date a certified copy of the order is brought to their notice. The respondents concluded that the petitioner would secure 47.31% against the aforestated dependent category.

Resultantly, the petitioner was granted merit No. 2-A in the dependent category. As a sequel thereto, the name of the petitioner was recommended for issuance of a letter of appointment which was issued by Director Public Instructions (Secondary Education) Punjab,—*vide* letter dated 16th July, 2003. Upon verification of the professional certificate, the order of appointment was issued on 12th August, 2003, and the petitioner joined upon the post.

(7) It was found that similarly situated candidates selected prior to the petitioner had been given the appointment order in December, 2001. In view of the rule 4.10 of the Punjab Civil Service Rules, Vol. I, Part-I, the competent authority is competent to grant pre-mature increment. the aforestated rule reads as :

“4.10. Subject to any general or special orders that may be made by the competent authority in this behalf, an authority may grant a premature increment.

Note. 1. a proposal to grant an increment in advance of the due date should always be scrutinized with specially jealousy as it is contrary to the principle of a time-scale of pay to grant an increment before it is due. Such a grant should not be made or advised except in very rare circumstances which would justify a personal pay to a Government employee whose pay is fixed.

Note 2. The expression “scale of pay” represents the maximum of the scale which is to be taken into account for determining the authority competent to sanction increments rather than the stage of it.

Note. 3. The grant of premature increments to members of the Provincial Civil Medical Service is governed by the rules in Appendix XI to the Punjab Medical Manual.

Note 4. In the case of increments granted in advance, it is usually the intention that the Government employee should be entitled to increments in the same manner as if he had reached his position in the scale in the ordinary course and in the absence of special orders to the contrary he should be placed on exact the same footing, a regards further increments, as a Government employee who has not risen.”

(8) Learned counsel for the petitioner has argued that for no fault of the petitioner, the petitioner has been made to suffer accordingly. Similarly situated persons had been allowed to join in December, 2001 whereas the petitioner was allowed to join on 13th August, 2003, pursuant to the consideration of representation by virtue of the order passed by this Court in CWP No. 7850 of 2002 decided on 5th December, 2002. Thus, the petitioner is entitled to the relief of fixation of pay by granting two premature increments so that the pay of the petitioner becomes equal to the persons junior to the petitioner.

(9) On the other hand, the respondents have contested the plea of the petitioner by way of filing a detailed written statement. It is the stand of the respondents that the petitioner applied for the post of S.S. Master in two categories i.e. Backward Class category and Ex-servicemen dependent class category. Admittedly, the petitioner could not make the grade in Backward Class category, being lower in merit. However, in the dependent category, he was found to have made the grade higher than the last selected candidate. The petitioner cannot be given the benefit of pay fixation at par with the so called juniors who were appointed in December, 2001 because of his own fault as he had applied in two categories. By applying the principle "No work, No Pay", the petitioner is not entitled to the relief claimed.

(10) Learned counsel for the petitioner has argued that the aforestated rule is absolutely clear as the petitioner is entitled to the increments as if he had reached his position in the scale in the ordinary course and ordinarily no special orders would have been required for placing the petitioner exactly in the same footings as his juniors. The fault has been fairly admitted by the respondents as the petitioner did make the grade much higher than the last candidate selected in the category. It has been further argued that in view of the dicta of the Hon'ble Supreme Court, no one would be made to suffer the act of arbitrariness on the part of the State. Article 14 strikes at arbitrariness in regard to the State action and ensures fairness and equality of treatment. The act of the State must be based on some rationale and that the principles which are non discriminatory. In the case at hand, the petitioner had participated alongwith others and had applied for being considered in the dependent category but the respondents failed to grant the grade, which the petitioner was entitled to. A specific emphasis has been made to Note 4 to rule 4.10 as

extracted above. In support of his contention he has placed reliance upon the following judgments :

- (i) **E.P. Royappa versus State of Tamil Nadu, (1)**
- (ii) **Menaka Gandhi versus Union of India, (2), and**
- (iii) **R.D. Shetty versus The International Airport Authority of India and others, (3)**

(11) It has been further agued that so far as the applicability of principle of "No work no pay" is concerned, it is the settled law that this principle would be applicable in a case where an employee voluntarily abstains from discharging the duties assigned to him but not in a case where the employee is kept away from duty or is prevented or rejected being ineligible to discharge the duties of a particular post due to an act or omission attributable to the employer. In support of his contention, learned counsel has placed reliance upon a judgment of the Hon'ble Supreme Court rendered in re : **Peluru Ramkrishnaiah and others versus Union of India and another (4) and State of Haryana etc. versus O.P. Gupta etc. (5).**

(12) Learned Additional Advocate General has argued that the case of the petitioner is not covered by virtue of the dicta of the Hon'ble Supreme Court. In the first instance, the petitioner applied in both the categories and he was considered in the backward class category where he could not make the grade as he was far below in merit than the last selected candidate in that category. However, upon consideration of the claim of the petitioner, it was found that he would make the grade in Ex-servicemen (dependent) (backward Class) and that he had secured marks higher than the last selected candidate in that category. Resultantly, the petitioner was given the appointment in the post of S.S. Master and he joined on 13th August, 2003. The fault on the part of the respondents has not been really spelt out or made out as the confusion was caused at the instance of the petitioner when he applied under both the categories.

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- (1) AIR 1974 S.C. 55
 - (2) AIR 1978 S.C. 597
 - (3) AIR 1979 S.C. 1628
 - (4) AIR 1990 S.C. 1673
 - (5) 1996 (2) S.L.R. 466

(13) We have heard learned counsel for the parties and have also perused the paper book as also the dicta of the Hon'ble Supreme Court upon which reliance has been placed by the learned counsel for the petitioner. We have also perused rule 4.10 of the Punjab Civil Service Rules Vol. I, Part-I, *prima facie*, the case of the petitioner would fall within the ambit of Note 4 of the aforesaid rule while exercising the power under rule 4.10. It is the admitted case that if the petitioner had been considered along with others in December, 2001 in the dependent category, the petitioner would have earned appointment along with others. It is also the admitted case by the respondents that the petitioner has made the grade higher than the last selected candidates in the dependent category i.e. he secured 47.31% and that the last selected candidate secured 44.90%. It is obvious that the person junior to the petitioner has earned the increments during the difference of the period between the two. It is also the admitted case that the petitioner, after being selected, has been placed at merit No. 2-A, obviously, the seniority also must have been accorded accordingly. It is a case where no fault is attributable to the petitioner. Admittedly, the petitioner did apply in the two categories; well a person who is eligible to apply in both the categories cannot be restrained as no such rule is applicable that a person who is eligible to apply under two categories can choose to apply only in one and would not be considered in the other. If that be so, it is incumbent upon the respondents to have considered the case of the petitioner while awarding the grade in the dependency category. Such dereliction on the part of the concerned quarters has caused the damage to the petitioner apart from the time loss but, of course, monetary loss as well. The time loss suffered by the petitioner has been perhaps compensated by way of according seniority accordingly, the monetary loss, which has been suffered due to omission/negligence on the part of the respondent, deserves to be granted. The perusal of the aforesaid rules shows that such kind of a situation can be remedied by the respondents as the framers of the rule must have visualized such situation. It goes without saying that such power ought to be exercised by examining the facts of each case and, of course, where the inaction or lapse on the part of the respondents is attributable from the admitted facts. In the case at hand, the respondents did commit the lapse in not considering the claim of the petitioner in the dependency category. Of course, upon the direction of this Court, the claim of the

petitioner was examined, looked into by the respondents and the lapse has been rectified. Such rectifiable act would have been honestly accepted if the respondents had exercised their power envisaged under Rule 4.10 of the aforestated rules.

(14) In view of the admitted facts and the lapse on the part of the respondents having been established, the rigour of arbitrariness would have to be diluted with the principle of fairness, equality of treatment. Thus, it requires that the State must act with some rationale and with the principles which are non discriminatory.

(15) The petition is allowed and the respondents are directed to grant the relief of increments to the petitioner so as to make the salary of the petitioner equal to the salary of the person immediately junior to the petitioner with effect from the date of joining by the petitioner. The arrears, if any, in this regard shall be paid to the petitioner without interest. No order as to costs.

R.N.R.

Before S.S. Nijjar & Nirmal Yadav, JJ.

CHHAJU RAM HANS,—*Petitioner*

versus

HIGH COURT OF PUNJAB AND HARYANA,—*Respondent*

C.W.P. No. 16117 of 2004

1st September, 2005

Constitution of India, 1950—Art. 226—Punjab Civil Services Rules, Vol. I, Part I, Rls. 4.14(1 & 2), 4.4 (a) (i) and 2.48—Punjab Government Circular letter dated 21st June, 2000—Promotion of petitioner to the post of an officiating Reader from the post of Sr. Assistant—One junior Reader promoted from the post of Superintendent Gr. II drawing higher salary than the petitioner—Challenge thereto—Rl.3.13 of Rules provides that unless the lien of an employee is suspended under Rl.3.14 or transferred under Rl.3.16, a Government Employee holding substantively a permanent post retains the lien on that post—Under Rl.4.14 (i) & (ii) read with Rl.4.4 (a)(i), petitioner was entitled to draw the presumptive pay