

direction to determine seniority by taking into consideration the *ad hoc* service. We have gone through the said judgment. Rule 11 of the Rules which provides for fixation of seniority and which emphatically provides that the ranking arranged by the selection Board shall not be disturbed had not been brought to the notice of the Division Bench as a result Rule 11 has not been considered or interpreted. The decision is of no assistance to the petitioners. Moreover, the Division Bench decision runs counter to the decision of the Supreme Court in S. K. Sharma's case (*supra*). It is impermissible for us to follow the Division Bench judgment not only in view of rule 11 of the Rules, but also in view of the ration of the decision of the Supreme Court in the subsequent judgment in S. K. Sharma's case (*supra*). Therefore, for the reasons aforesaid, we answer the question as below :—

“The service rendered by a person on *ad hoc* basis before his regular appointment to a cadre in civil service does not count for seniority.”

7. We, however, wish to make it clear that we do not express any opinion on the question whether the *ad hoc* service counts for leave, increment and pension. Our answer is only in relation to the counting of *ad hoc* service and fixation of seniority. As far as the fixation of pay, pension or increments are concerned, the petitioner will be at liberty to make a specific demand if he has not already been given the relief. He shall be at liberty to approach this Court if the said grievance is not redressed. This writ petition is dismissed.

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J.S.T.

Before Hon'ble Jawahar Lal Gupta, J.

SHRI SAT PAL AND OTHERS,—Petitioners.

versus

STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ Petition No. 6048 of 1991.

August 19, 1992.

*Punjab Town Improvement Act, 1922—Ss. 60, 61, 62 and 63—Remuneration payable to staff of Tribunal—Such remuneration whether a concession—Reduction of remuneration retrospectively—Whether executive has power to do so.*

*Held*, that remuneration paid to the members of the staff including the President and members of the Tribunal is not a concession, but a statutory right. It is a payment made in lieu of the duties performed. It is a right available to the employee who is called upon to perform the duties of either the President or Member of the Tribunal or as a member of the Staff. Such a statutory right can be curtailed only in accordance with the provisions of the statute and after observance of the Principles of natural justice.

(Para 8)

*Held*, that no executive order affecting the rights of a citizen can have retrospective operation. The executive does not have jurisdiction to take away the vested rights.

(Para 13)

D. S. Pheruman, Advocate, *for the Petitioners.*

Charu Tuli, AAG, (Punjab), *for the Respondents.*

#### JUDGMENT

*Jawahar Lal Gupta, J. (Oral)*

(1) The petitioners are the members of the ministerial establishment attached to the Court of the District and Sessions Judge, Amritsar, who is also exercising the powers of Land Acquisition Tribunal. By order dated January 30, 1984, the petitioners were granted remuneration at the rate of 10 per cent of the pay. *Vide* order dated August 8, 1989, this remuneration has been reduced from 10 per cent of the pay to 5 per cent with effect from January 1, 1986. Aggrieved by this order, the petitioners have approached this Court through the present writ petition. A few facts may be noticed.

(2) Land Acquisition Tribunal is constituted in terms of Section 60 of the Punjab Town Improvement Act, 1922 (hereinafter referred to as 'the Act'). The remuneration of the members of the Tribunal is fixed under Section 61. So far as the staff attached to the Tribunal is concerned provision for payment of remuneration is made under Section 62. Under Section 63 of the Act, the said remuneration is payable by the Trust. *Vide* memorandum dated October 4, 1977 (Annexure P.1), the State Government decided that the Tribunals as also the staff shall be entitled to receive remuneration at the rate of 10 per cent of the basic pay out of the funds of the Trust. So far as the Land Acquisition Tribunal, Amritsar is concerned, Mr. K. S. Bhalla, who was then the District Judge, Amritsar and President of the Land Acquisition Tribunal, sent a letter to the Government on December 5,

1979, asking its sanction for the appointment of the staff. *Vide* letter dated December 22, 1979 (Annexure P.3) the State Government informed the District and Sessions Judge that in accordance with the instructions issued by the State Government,—*vide* its letter dated October 4, 1977, the Tribunal and the staff “is entitled to receive remuneration at the rate of 10 per cent of basic pay out of the funds of respective Improvement Trust, with effect from the date, the Tribunal starts functioning.” Subsequently,—*vide* letter dated January 30, 1984, the State Government decided that the “remuneration to the Presidents, Land Acquisition Tribunals, Improvement Trusts and their staff be paid at the rate of 10 per cent of the ‘pay’ instead of ‘basic pay’ as originally mentioned in the aforesaid letter.” The term ‘pay’ was to be understood as defined under Rule 2.44 (a) of the Punjab Civil Services Rules, Volume I, Part-I. Thereafter, unilaterally without assigning any reason, the State Government issued the impugned order on August 8, 1989, by which it decided that the remuneration “to the Presidents, Land Acquisition Tribunals, Improvement Trusts and their staff be paid at the rate of 5 per cent instead of 10 per cent of the pay with effect from 1st January, 1986.” The petitioners further aver that the Registrar of this Court sent a letter dated January 19, 1990 to the Government pointing out that remuneration of 10 per cent was sanctioned by the Government and payments have been made accordingly. However,—*vide* letter dated August, 8, 1989, the reduction in remuneration has been made operative retrospectively with effect from January 1, 1986 “meaning thereby that all the payments received by the officers and the supporting staff is to be recovered.” Accordingly, it was observed that the letter may be withdrawn. The State Government having failed to do the needful, the petitioners have approached this Court through the present writ petition. It has been averred that on account of the increase in prices, the salaries and rate of fees etc. payable to the counsel have been raised upwards. However, so far as the remuneration payable to the petitioners and the Presidents of the Tribunals is concerned, it has been arbitrarily reduced by the respondents. The action has been challenged as being arbitrary and wholly unjustified.

(3) Separate written statements have been filed on behalf of the State Government and the Improvement Trust. In the written statement filed on behalf of the State Government, a preliminary objection has been raised that the petitioners have not approached this Court with clean hands. This objection has been raised on the

ground that "reduction of rate of allowance has not reduced the actual amount of remuneration." On merits, it has been *inter alia* observed that the State Government can "increase/decrease the amount of allowance. With the revision of scales of the petitioner the basic salaries have been revised upwards. The revised rate of allowance at the rate of 5 per cent of the basic pay is in no way causing any loss to the petitioners as is evident from the statement at Annexure R1/1." A reference to the said document, viz. R1/1, shows that an employee, like petitioner No. 1 who was initially drawing a basic pay in the unrevised scale at the rate of Rs. 800 P.M. was actually getting an amount of Rs. 80 at the rate of 10 per cent. The basic pay in the revised scale has been fixed at Rs. 1,680 and it appears that at the rate of 5 per cent he gets an amount of Rs. 84. The effort is to show that the petitioner is in fact getting Rs. 4 in addition to what he was originally drawing. Further more, it has also been averred that "the allowance has been reduced from 10 per cent to 5 per cent in consultation with the Examiner Local Fund Accounts-cum-Additional Director Local Government, Punjab and this decision has not resulted into loss of emoluments and rather there is increase in the salary because their basic salaries have been increased. As for the communication from the Registrar of this Court, it has been stated that the reference was examined on the basis of the figures available on record and it was proved that none of the petitioners have suffered any financial loss. On these premises, the impugned order is sought to be justified.

(4) In the written statement filed on behalf of respondent No. 2, viz. the Improvement Trust, it has been *inter alia* stated that "the right to alter the remuneration of the Land Acquisition Tribunal staff rests exclusively in the State Government and the same can be done even retrospectively."

(5) I have heard Mr. Dalbir Singh Pheruman, learned counsel for the petitioners and Mrs. Charu Tuli, learned Assistant Advocate General, Punjab, for the respondents. Learned Counsel for the petitioners has contended that the action of the State Government is wholly arbitrary and is violative of the principles of natural justice. It is also contended that the State Government has no jurisdiction to pass any order affecting the rights of the employees retrospectively. On the other hand, Mrs. Charu Tuli contends that the petitioners were being paid only an allowance, which is a concession and that the petitioners have no right to claim the allowance at a particular rate. She contends that it is the exclusive prerogative of the State Government to alter it at any time

without granting any opportunity and that even its retrospective reduction is legal and valid. She has referred to certain decisions which shall be presently noticed.

(6) A perusal of the provisions of the Act shows that the Tribunal has to be constituted for the purpose of performing the functions of the Court in regard to claims relating to the acquisition of land for the trust. Provision for the constitution of the Tribunal is made under Section 60. A person qualified for appointment as a Judge of the High Court alone can be appointed as the President of the Tribunal. Further the Presidents of the Tribunals and one of the assessors have to be appointed by the State Government. Under Section 61 of the Act, the remuneration of the members of the Tribunals "either by way of monthly salary or by way of fees or partly in one of those ways and partly in the other, as the State Government may prescribe" has to be paid. So far as the officers and servants of the Tribunals are concerned, the provision is contained in Section 62. It reads as under :—

"Officers and servants of tribunals.—(1) The President of the tribunal shall, from time to time, prepare a statement showing :—

- (a) the number and grades of the clerks and other officers and servants who in his opinion should be maintained for carrying on the business of the tribunal.
  - (b) the amount of the salary to be paid to each such clerk, officer and servant.
- (2) All statements prepared under sub-section (1) shall be subject to the previous sanction of the State Government.
- (3) Subject to any directions contained in any statement prepared under sub-section (1), and to rules made under section 73, the power of appointing, promoting and granting leave to clerks, officers and servants to of the tribunal, and the power of reducing, suspending or dismissing them, shall vest in the president of the tribunal."

(7) A perusal of the above provision would show that the President of the Tribunal has to forward a statement showing the number and grades of the Clerks and other officers and servants, who should be maintained for carrying on the business of the

tribunal, as also the amount of salary which has to be paid to each such clerk, officer and servant of the tribunal. The statements prepared under sub-section (1) are subject to the previous sanction of the State Government. Under Section 63, the remuneration has to be paid by the trust. Presumably in exercise of the power under section 62, the State Government fixed a uniform rate of 10 per cent of the basic pay as remuneration payable to the Presidents of the Tribunals and their staff. This order passed on October 4, 1977 was revised and.—*vide* letter dated January 30, 1984, the remuneration was raised from 10 per cent of the basic pay to 10 per cent of the pay as defined under Rule 2.44(a). The result was that the President and the members of the staff became entitled to get remuneration at the rate of 10 per cent of the total amount drawn by an employee every month excluding the special pay or any pay granted in view of personal qualifications. On the basis of this order, apparently, the petitioners continued to draw their remuneration at the rate of 10 per cent of their total emoluments till August, 1989 when it was reduced to 5 per cent with effect from January 1, 1986.

(8) A perusal of the provisions of the Act, as indicated above, and also the orders issued by the Government shows that the remuneration payable to the Presidents of the Tribunals and their staff is not an allowance as claimed by the learned counsel for the respondents. It is in the nature of salary as contemplated under Sections 61 and 62 of the Act. It is not a concession, but a statutory right. It is a payment made in lieu of the duties performed. It is a right available to the employee who is called upon to perform the duties of either the President or Member of the Tribunal or as a member of the staff. Such a statutory right can be curtailed only in accordance with the provisions of the statute and after observance of the principles of natural justice. So far as the present case is concerned, nothing of the sort appears to have been done. Infact, by an arbitrary executive order, the remuneration has been reduced from 10 per cent to 5 per cent without any opportunity having been granted to those, who were likely to be adversely affected, without disclosing any reason whatsoever either in the written statement or at the hearing of the case. As a result of the impugned order, the rights of the petitioners have been vitally affected.

(9) Even though on behalf of the respondents, it has been averred that the petitioners have not approached this Court with clean hands, the factual position appears to be just the other way

around. Admittedly, according to the order issued by the Government in the year 1984, the petitioners were entitled to the payment of remuneration at the rate of 10 per cent of the pay. In the chart attached with the written statement filed on behalf of the respondents as annexure R.1/1, the relevant calculations have been made on the basis of the basic pay and not on the basis of pay. Even if the error is presumed to be *bona fide*, it is apparent that no reliance can be placed on this chart. Still further, even if the figures given in this chart are assumed to be correct for the sake of argument, it is apparent that on the revision of pay scales, the petitioners would have got much higher remuneration than what is being actually paid to them. By way of illustration, petitioner No. 1 would have been entitled to the payment of Rs. 168 instead of Rs. 84 which is actually being paid to him. Therefore, it is apparent that the plea raised on behalf of the respondents is lacking in factual as well as legal basis. Factually it is based on the wrong hypothesis that the petitioners are entitled to only 10 per cent of the basic pay. In fact they were entitled to the payment of remuneration at the rate of 10 per cent of pay. Further more, instead of paying an amount of Rs. 168, Petitioner No. 1 as also various other petitioners were paid only 50 per cent of the amount due. There is an apparent loss to the petitioners and this too has been affected retrospectively. As such, it is apparent that the rights of the petitioners were vitally affected. Can such an order be passed without the grant of an opportunity ?

Mrs. Tuli, appearing for the respondents, contends on the basis of the judgment of a division Bench of this Court in *Nand Lal v. State of Punjab* (1), that the allowance being paid to the petitioners is only a concession and, therefore, it was not necessary to grant an opportunity.

(10) *Nand Lal's* case is a case where the State Government had rationalised the payment of House Rent Allowance. The Division Bench while hearing the case had found as a fact that the House Rent Allowance was not a compensatory allowance as defined under Rule 2.13 of the Punjab Civil Services Rules, Volume I, Part I, but was merely a concession. Such is not the position in the present case. Petitioners were not getting allowance. They were getting remuneration as contemplated under Section 62 of the Act. Its reduction affected their rights vitally. They have consequently a right to be heard before any order is passed to

their prejudice. No hearing having been granted, the impugned order is vitiated.

(11) Mrs. Tuli has also placed reliance on the judgment of Supreme Court in *Rajalakshmia v. State of Mysore* (2), to contend that a concession cannot be claimed as matter of right. Similarly, she has relied on the judgment of the Supreme Court in *Andhra Steel Corporation Ltd. v. A.P.S.E.B.* (3). Both these cases relate to the cases of the withdrawal of concession. In view of the finding that the remuneration payable to the petitioners was not a concession, these decisions are of no assistance to the learned counsel for the respondents.

(12) In view of the above, it is held that the remuneration payable to the petitioners and others like them including the President and Members of the Tribunal is statutorily fixed and is not a concession. Accordingly, it could not have been reduced or affected adversely except after following the principles of natural justice and in accordance with the provisions of the Act. Nothing of the sort having been done, the impugned order is vitiated.

(13) It is equally settled that no executive order affecting the rights of a citizen can have retrospective operation. The executive does not have jurisdiction to take away the vested rights. Petitioners had earned their remuneration for the period from January 1, 1986 to August 8, 1989 when the impugned order was issued. However, by the impugned order they were sought to be deprived of what they had already earned. The order suffers from lack of jurisdiction and is vitiated on that account also.

(14) Even justification sought to be given by the respondents is wholly untenable. It has been stated that the rate of remuneration has been reduced from 10 per cent to 5 per cent on the advice of the Examiner Local Fund Accounts-cum-Additional Director, Local Government. It has been further stated that the petitioners have not suffered any loss. It is the admitted position that on account of the rise in price index the pay scales of all categories of employees not only in the State of Punjab, but all over the country have been revised upwards. It is also not disputed that even the fees etc. as fixed under the relevant rules or orders have been revised. It is only in the case of the category of the petitioners that the rate of remuneration has been reduced from 10 per cent to

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(2) A.I.R. 1967 S.C. 993.

(3) 1991 (3) Supreme Court Cases 263.



5 per cent. It is apparently a loss being caused to the petitioners. The mere fact that on account of the revision of pay scales they will still get an amount equal to or a little more of what they were originally drawing is of no consequence. Accordingly, I find that there is no rationale for reduction of remuneration as ordered by the respondents.

(15) Accordingly, the writ petition is allowed. The order dated August 8, 1989 is set aside. It is directed that the petitioners shall be paid remuneration in accordance with the order dated January 30, 1984 at the rate of 10 per cent of their pay as defined under Rule 2.44 (a) of the Punjab Civil Services Rules, Vol. I, Part I. The needful shall be done within three months from the date of the receipt of a copy of this order. The petitioners shall also be entitled to their costs which are assessed at Rs. 2,000.

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S.C.K.

Before : A. L. Bahri & Ashok Khan, JJ.

POONAM YADAV,—Petitioner.

*versus*

SHRI CHARAN SINGH, HARYANA AGRICULTURAL UNIVERSITY  
AND OTHERS,—Respondents.

Civil Writ Petition No. 11775 of 1992.

September 16, 1992.

*Constitution of India, 1950—Art. 226 & 227—Admission—Petitioner seeking admission to Bachelor course of Veterinary Sciences and Animal Husbandry—Having more marks than respondent No. 4 who got admission on Compassionate grounds after an additional seat was created—Action of University denying admission to petitioner challenged—Held that action of University is arbitrary in creating additional seat.*

*Held, that the action of the University is arbitrary. Creation of a special seat for respondent No. 4 who had competed with other candidates for admission is indeed unfortunate and undesirable bringing it within the ambit of arbitrariness. From this it should not be implied that the respondent University could not create a special seat. Special seat can be created for a justifiable cause, Which we find did not exist in the present case.*

(Para 4)