
(25) In our opinion, the petitioner's case is squarely covered by the ratio of *Kanwaljit Kaur's case* (supra) and therefore, relief in terms of the prayer made by her cannot be granted, moreso, because 1974 Rules do not provide for grant of higher scales of pay to the teachers of the privately managed schools on their acquiring the higher qualification.

(26) For the reasons mentioned above, the writ petition is dismissed.

R.N.R.

Before Swatanter Kumar, J

TELU RAM—*Petitioner*

versus

LAND ACQUISITION COLLECTOR & OTHERS—*Respondents*

C.R. No. 1529 of 2000

4th January, 2001

Land Acquisition Act, 1894—Ss. 18 & 31—Acquisition of Land—Acceptance of the awarded amount of compensation without protest—After about two years, claimant making application u/s 18 for enhancement—S. 18(2) provides a period of six weeks limitation for filing a petition u/s 18—Collector has no power to condone the delay or entertain an application beyond the prescribed period of limitation—Collector rightly dismissing the application as barred by time—Having accepted the awarded compensation without protest or prejudice to his right to claim enhancement, the claimant is also debarred from claiming enhancement u/s 18 of the Act.

(Jit Singh v. Land Acquisition Collector, PWD and B&R Branch, Hissar, 1991 (2) Recent Revenue Reports 270 and Dharam Pal v. The Collector, Land Acquisition Urban Development and others, 1987 R.L.R. 249=1987 Recent Revenue Reports 356, held to be per incuriam)

Held, that under second proviso to sub-section (2) of Section 31 of the 1894 Act the Legislature in its wisdom placed a clear bar on an applicant claiming higher compensation u/s 18 of the Act, he had received the amount or any part thereof otherwise than under protest. The award was made on 19th May, 1995. The application u/s 18 was

filed on 26th August, 1999 while the petitioner had received the compensation without protest on 30th January, 1996. The claimant petitioner having accepted the compensation without protest or prejudice to his right to claim enhancement is debarred from claiming enhancement u/s 18 of the 1894 Act.

(Paras 4 & 6)

Further held, that the language of proviso (a) of sub-section (2) of Section 18 provides a period of limitation during which an applicant can file a petition from the date of Collector's award, for enhancement of the compensation awarded. Such application should be filed within six weeks from the date of the Collector's award. The date of the Collector is 19th May, 1995. Compensation was received without prejudice by the claimants on 30th January, 1996 while the application u/s 18 of the Act was filed on 26th August, 1999 much beyond the prescribed period of six weeks. There cannot be a dispute to the fact that application filed before the Collector was barred by time and the law gives no power to the Collector to condone the delay. As such the inevitable consequence was to dismiss the application as barred by time and in coming to this conclusion the Collector committed no error of jurisdiction. Once the application is beyond time, the condition precedent to filing a valid application u/s 18(1) of the Act is not satisfied.

(Paras 11 & 13)

Ashok Khubber, Advocate for the Petitioner

S.K. Vashishat, A.A.G., Haryana for the Respondent.

JUDGMENT

Swatantar Kumar, J.

(1) Learned counsel for the petitioner with tenacity argued that the Collector has no jurisdiction to dismiss an application preferred by a claimant, under Section 18 of the Land Acquisition Act, hereinafter referred to as the Act, on the ground of limitation. While panoplically advancing this argument he placed reliance upon a judgment of Single Bench of this Court in the case of *Jit Singh versus Land Acquisition Collector, PWD and B & R Branch, Hissar (1)*.

(2) In order to determine whether this argument would yield any fruitful result to the petitioner or would in entirety be an obdurate, reference to basic facts would be necessary. Land belonging to the

(1) 1991 (2) Recent Revenue Reports 270

applicant Telu Ram along with other co-owners, situated in revenue estate of village Jathlana, Tehsil Jagadhri, District Yamuna Nagar, was acquired,—*vide* Award No. 3 dated 19th May, 1995. This land was acquired for setting up 66 KVA Power Sub Station at Jathlana. Compensation was assessed at the rate of Rs. 1,50,000.00 per acre with 30% solatium and additional amount under Section 23(1-A) of the Act with effect from 3rd May, 1994 to 19th May, 1995. In addition to this, other claims of individual claimants were also settled and dealt with by the competent authority. The compensation was paid to the applicants between 3rd January, 1996 to 6th August, 1996. Dissatisfied with the extent of the amount awarded on account of compensation payable to the claimants for acquisition of their respective lands, the applicants including the petitioner preferred references under Section 18 of the Act. The Land Acquisition Collector,—*vide* his order dated 27th October, 1999 dismissed the applications as being barred by time and even on merits while relying upon Section 31 of the Act. It is this order, which has been challenged in this revision petition by one of the applicants.

(3) Now it will be appropriate to refer to the contentions raised by the learned Assistant Advocate General, Harayan. It was contended that the Collector has jurisdiction to dismiss an application presented to him after the expiry of six weeks from the date of pronouncement of the award in accordance with the provisions of Section 18 of the Act and that the applicants having the payment without prejudice to their rights and without protests the claim petition under Section 18 of the Act, was hit by the provisions of Section 31 of the Act.

(4) Under second proviso to sub-section (2) of Section 31 of the Act the Legislature in its wisdom placed a clear bar on an applicant claiming higher compensation under Section 18 of the Act, if he had received the amount or any part thereof otherwise than under protest. In the present case, it is not even disputed before me that the award was made on 19th May, 1995. The application under Section 18 was filed on 26th August, 1999 while the petitioner had received the compensation without protest on 30th January, 1996. These undisputed facts clearly show that the applicant would necessarily be debarred from claiming higher/enhanced compensation under Section 18 of the Act before the Collector, having received their amount of initial compensation without protest. The provisions of sub-section (2) of Section 31 do not leave any scope for ambiguity and a plain reading of the section leads to the above inevitable conclusion.

(5) It is the settled principle of law that where the plain reading of the section unambiguously creates a bar on the rights in given

circumstances, the Court would hardly have any jurisdiction to lift such a bar by adopting an interpretation by implication. A full Bench of this Court in the case of *Sher Singh versus Union of India*, (2) while considering the plea of acceptance of amount without prejudice and its effect held that the amount of compensation can be received by a claimant but under protest to maintain a petition under Section 18 of the Act. Their Lordships further held that acceptance of compensation much subsequent to the filing of the petition under Section 18 of the Act was a sufficient and substantive protest by a necessary implication.

(6) The view of the Full Bench, thus, is clear that filing of a valid application under Section 18 of the Act was by itself a protest and the right of the claimant to receive higher compensation will not be abrogated or taken away by acceptance of compensation subsequent to the filing of such application. In the present case admittedly the payment was received more than two years prior to the filing of the petition under Section 18 of the Act admittedly without protest.

(7) A Division Bench of Bombay High Court in the case of *Smt. Laxamibai Narayan Patil and another versus State of Maharashtra and another* (3), also took a view that the Collector had no power to condone the delay in filing the petition under Section 18(1) of the Act as provisions of Section 5 of Limitation Act are not attracted to the provisions of Section 18(2) proviso of the Act. It was further indicated in this case that the Collector has ample jurisdiction to reject a petition filed beyond prescribed period on the ground of barred by limitation. Reference in this regard can also be made to another judgment of Single Bench of this Court in the case of *Sadhu Singh (Deceased) represented by Pritam Singh and others versus The Guru Nanak University and another* (4), where the court held as under :—

“A combined reading of Section 18 and Section 31(2), second proviso, makes it clear that the application under Section 18 of the Act must satisfy two essential conditions. Firstly, it must be filed within time and, secondly, the amount of compensation should have been either not accepted or accepted under protest. If either of these two conditions is not fulfilled, the petition cannot be entertained. In the present case, as discussed above, though the petition was within time, yet the amount of compensation was accepted by the petitioner without protest. Consequently the petition

(2) 1982 PLJ 494

(3) AIR 1997 Bombay 212

(4) 1978 PLR 461

was not maintainable and the same was rightly dismissed by the Land Acquisition Collector. Hence, there is no merit in the revision petition and the same is dismissed with costs.”

(8) The Hon'ble Supreme Court of India in the case of *Ashwani Kumar Dhingra Versus State of Punjab* (5), entertained the claim of the appellants because they had accepted the compensation under protest. The Hon'ble Apex Court clearly enunciated the law that to maintain a petition under Section 18, condition precedent was non-acceptance of compensation or acceptance of awarded compensation under protest. Their Lordships held as under :—

“It is clear from the provisions of S. 18 of the Land Acquisition Act that the person interested, in order to enable him to seek the remedy of reference can do so only if he does not accept the award. In order to show that the person concerned had not accepted the award the claimants accept the compensation only under protest because once the compensation awarded in pursuance of the award is accepted without protest the person concerned may lose his right to a reference for various matters mentioned in S. 18 of the Land Acquisition Act.”

(9) Keeping in view the admitted facts of the present case and the law enunciated above, I have no hesitation in accepting the contention raised on behalf of the State. The claimant petitioner having accepted the compensation without protest or prejudice to his right to claim enhancement is debarred from claiming enhancement under Section 18 of the Act.

Question of limitation :—

(10) Analytical examination and synthesis leading to the final argument of the learned counsel for the petitioner in this regard and taken to its logical end would show its apparent ramification which would be offending the basic canons governing the interpretation of statute. The provisions of Section 18 reads as under :—

“18. Reference to Court.—(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the

compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

- (2) The application shall state the grounds on which objection to the award is taken :

Provided that every such application shall be made,—

- (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award:
- (b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

(11) The language of proviso (a) of sub-section (2) of Section 18 provides a period of limitation during which an applicant can file a petition from the date of Collector's award, for enhancement of the compensation awarded. Such application should be filed within six weeks from the date of the Collector's award. The Legislature in its wisdom has not vested any power with the Collector to condone the delay or entertain an application beyond six weeks from the said date even if an applicant could show a sufficient cause for filing the application beyond the prescribed period. The petition under Section 18 of the Act has to be filed before the Collector with a prayer that reference be made to the Court for determining the questions which may arise but controlled by the provisions of Section 18(1) of the Act. If the submission of the counsel for the petitioner is accepted, it would render the provisions of sub-section (2) of Section 18 as redundant, ineffective or un-necessary.

(12) It is the settled principle of law that the statute must be given its ordinarily accepted true meaning and every provision be allowed to operate freely in the field in which it is so intended by the Legislature. The Legislature in its wisdom, on the one hand, provided period of limitation within which the application be presented under Section 18 of the Act, and on the other hand, no power was vested in the Collector to condone the delay. This essentially indicates the legislative intent of enforcing the prescribed period of limitation with all its rigours. The obvious reason for this appears to be that the land owners should get compensation for acquisition of their lands expeditiously. They should further be able to take steps for claiming

enhanced compensation also at the earliest. The language of the section unambiguously indicates that the law makers desired the claimants to be equally vigilant of their rights and to lodge their claims for enhancement of compensation within the prescribed period of limitation. Prescription of limitation is a double edged weapon and operates in favour of the applicant if he invoked within time for its expeditious disposal. If not then it takes away the right which would otherwise be available to the claimants.

(13) As already noticed in the present case the date of award of the Collector is 19th May, 1995. Compensation was received without prejudice by the claimants on 30th January, 1996 while the application under Section 18 of the Act was filed on 26th August, 1999 much beyond the prescribed period of six weeks. There cannot be a dispute to the fact that application filed before the Collector was barred by time and the law gives no power to the Collector to condone the delay. As such the inevitable consequence was to dismiss the application as barred by time and in coming to this conclusion the Collector committed no error of jurisdiction. Once the application is beyond time, the condition precedent to filing a valid application under Section 18(1) of the act is not satisfied.

(14) At this stage it may be appropriate to refer to the case law on the subject. In the case of *State of Punjab Versus Qaisar Henan Begum* (6), their Lordships of the Supreme Court were concerned with the expression "six months from the date of the Collector's award" occurring in proviso (b) of sub-section (2) of Section 18 of the Act. In that case it was admitted by the parties that award was never communicated to the claimants in terms of Section 12(2) of the Act. Resultantly, their Lordships held that the period of six months would be computed from the date of knowledge and held that, "the knowledge must relate to essential contents of the award. These contents may be known either actually or constructively. If the award is communicated to a party under Section 12(2) of the Act, the party must be obviously fixed with knowledge of the contents of award whether reads it or not. Similarly, when a party is present in Court either personally or through his representative when the award is made by the Collector, it must be presumed that he knows the contents of the award."

(15) While deciding the question of limitation to the above extent their Lordships left the question whether the Civil Court has jurisdiction to go into the question of limitation if the reference is made by the Collector under section 18(1) on an application which was barred by

time. This question their Lordships left open despite the fact that their Lordships noticed conflict between the judgment of Bombay High Court on the one hand and Allahabad High Court on the other.

(16) The provisions of section 18(2) proviso (a) vests in no uncertain terms jurisdiction in the Collector to decline a reference to the Court under Section 18(1) of the Act if such an application was beyond the period of prescribed limitation. The very entertainment of an application under Section 18(1) by the Collector pre-supposes a valid application which essentially means that the application should be within time. The Collector has not been vested with the power to condone delay in filing the reference by necessary implication where he has hardly jurisdiction to entertain a time barred petition. The meaning to be given to Section 18(1) read with Section 18(2) has to be which would further the cause underlining these provisions rather than completely rendering the provisions ineffective or obsolete.

(17) In the event a reference is made by the Collector under Section 18(1) on an application which is beyond the prescribed period of limitation under Section 18(2) of the Act, still the reference Court would always have the jurisdiction to dismiss the claim petition on the ground of limitation. This is so obvious because plea of limitation can be taken up by the non-applicant at any stage. Another reason for supporting the view is that every application presented to the Collector under Section 18(1) has to be a valid and proper application in accordance with law. An application which is patently barred by time cannot be termed as valid application. The concept of jurisdiction vested in the Collector is not restricted to the activity of a post-office, but is based on actual application of mind by the Collector on two essential ingredients firstly that the application is within the prescribed period of limitation and, secondly, it raises the question of consideration for the reference Court as are stipulated in the provisions of Section 18(1) of the Act. While the reference court would determine all questions and also have the jurisdiction to decide the question of limitation, there the Collector has limited jurisdiction of considering the plea of limitation and referring the questions to the reference Court within the ambit and scope of section 18(1) of the Act. In that sense, the jurisdiction of the Collector is narrower than the jurisdiction vested in the Court.

(18) This question need not be discussed in any further

elaboration in view of the law enunciated by the Hon'ble Supreme Court of India in the case of *Mohammed Hasnuddin Versus The State of Maharashtra* (7), wherein it was held as under :—

“The power of the Collector to make a reference under S. 18 is thus circumscribed by the conditions laid down therein, and one condition is the condition regarding limitation to be found in the proviso.

The conditions laid down in S. 18 are matters of substance and their observance is a condition precedent to the Collector's power of reference, as rightly observed by Chandavarkar J. in *Re Land Acquisition Act* (supra). We are inclined to the view that the fulfilment of the conditions, particularly the one regarding limitation, are the conditions subject to which the power of the collector to make the reference exists. It must accordingly be held that the making of an application for reference within the time prescribed by proviso to S. 18 sub-sec. (2) is a *sine qua non* for a valid reference by the collector.

From the considerations, it follows that the court functioning under the Act being a tribunal of special jurisdiction, it is its duty to see that the reference made to it by the Collector under S. 18 complies with the conditions laid down therein so as to give the court jurisdiction to hear the reference. In view of these principles, we would be extremely reluctant to accept the statement of law laid down by the Allahabad High Court in Abdul Karim's case (AIR 1963 All 556) (FB) (supra).”

“If an application is made which is not within time, the Collector will not have the power to make a reference. In order to determine the limits of his own power, it is clear that the Collector will have to decide whether the application presented by the claimant is or is not within time and satisfies the conditions laid down in S. 18. Even if a reference is wrongly made by the Collector the court will still have to determine the validity of the reference because the very jurisdiction of the court to hear a reference depends on a proper reference being made under S. 18 and if the reference is not proper, there is no jurisdiction in the court to hear the reference. It follows that it is the duty of the court to see that the statutory conditions laid down in S. 18 have

been complied with, and it is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. It is only a valid reference which gives jurisdiction to the court and, therefore, the court has to ask itself the question whether it has jurisdiction to entertain the reference.

In deciding the question of jurisdiction in a case of reference under Section 18 by the Collector to the court, the court is certainly not acting as a court of appeal: it is only discharging the elementary duty of satisfying itself that a reference which it is called upon to decide is a valid and proper reference according to the provisions of the Act under which it is made. That is a basic and preliminary duty which no tribunal can possibly avoid. The court has, therefore, jurisdiction to decide whether the reference was made beyond the period prescribed by the proviso to sub-sec. (2) of S. 18 the Act, and if it finds that it was so made, decline to answer reference."

(19) A full Bench of this Court in the case of *State of Haryana versus Man Singh and others* (8), by following the judgment of the Supreme Court in the case of Mohammed Hasnuddin (supra) reiterated the above principle in the following language :—

"Equally it calls for pointed notice that in the aforesaid case their Lordships have expressly approved the Full Bench judgment in Swatantra Land & Finance Pvt. Ltd.'s case and in categorical terms held that the contrary decisions thereto do not lay down good law and have been in terms overruled. It has not been disputed before us that in the present case, the references were claimed beyond the prescribed period of time and further that the respondent-landowners were estopped from presenting the same for the reasons of having accepted the compensation without protest."

(20) In view of the above well enunciated principles of law, the Single Bench judgment of this Court in the case of Jit Singh (supra) would not support the case of the petitioner. The learned Single Judge of this Court in the case of Jit Singh (supra) had relied upon the case of *Dharam Pal versus The Collector Land Acquisition Urban Development*

and other (9), Dharam Pal's case again was a judgment delivered by the same learned Single Judge. However, from the reading of the said two judgments it appears that the judgment of the Full Bench as well as the judgment of the Hon'ble Apex Court was not brought to his Lordships kind notice. Therefore, the law settled in Jit Singh's case (*supra*) cannot hold the field. In fact the observation of the learned Single Judge in Jit Singh's case and Dharam Pal's case (*supra*) would have to be treated as per incuriam in case of the judgments afore-referred. A Division Bench of this Court in *Criminal Misc. No. 7268 of 1997 in Criminal Appeal No. 312-DB of 1997*, after considering the various judgments of the Supreme Court held as under :—

“We are of the view that various judgments afore-stated were not brought to the notice of the Hon'ble Bench dealing with the matter. Consequently, we feel that keeping in view the settled principles of *stare decisis* it appears to us that the observations made by the Hon'ble Bench are per incuriam. In this regard it will be appropriate to make a reference to the judgment of the Supreme Court in the case of *Assistant Collector of Estate Duty, Madras Vs. Smt. V. Devaki Ammal, Madras, J.T. 1994(7) S.C. 543 and Bhagwan Dass Arora Vs. First Additional District Judge, Rampur and others, A.I.R. 1983 Supreme Court 954*. In this regard reference can also be made to the cases of *Fitrat Raza Khan Vs. State of Uttar Pradesh and others, 1982(2) S.C.C. 449 ; Bachan Singh Vs. The State of Punjab etc. etc., 1982(3) S.C.C. 24, and A. R. Antulay versus R.S. Nayak and another, 1988(2) S.C.C. 602*.

The observations of the Hon'ble Bench appear to us to introduce into the section something what has not been intended or provided by the legislation in the provisions of Section 389 of the Code. At this stage it may also be relevant to make a reference to the judgment of the Supreme Court in the case of *Karnal Improvement Trust, Karnal versus Smt. Parkash Banti, JT 1995 (5) S.C. 151*.”

(21) Ergo and with greatest respect, I am unable to follow the view expressed by the learned Single Judge of this Court in the cases of Jit Singh (*supra*) and Dharam Pal (*supra*). The question of law have been squarely and finally answered by the Hon'ble Apex Court in the case of Ashwani Kumar Dhingra (*supra*) and by the Full Bench of this Court in the case of Man Singh (*supra*).

(22) Inevitable result of the above discussion is that both the

contentions raised on behalf of the State ought to be accepted while the ones raised on behalf of the petitioner are liable to be rejected. Resultantly, the Revision Petition is dismissed. However, in the facts and circumstances of the case, the parties are left to bear their own costs.

R.N.R.

Before A.B.S. Gill & V.S. Aggarwal, JJ

SADHU SINGH & ANOTHER...*Petitioner*

versus

STATE OF HARYANA & OTHERS...*Respondents*

C.W.P. No. 15941 of 2000

16th January, 2001

Constitution of India, 1950—Art. 226—Promotion of the reserved category candidates upto level 4 (Superintendent) on the basis of accelerated seniority ignoring the seniority of senior general category candidates at level 3—General category candidates regaining their original seniority over such earlier promoted reserved category in the lower category by virtue of the principle of catch up—Reserved category candidates erroneously promoted as Under Secretaries on the basis of accelerated reserved category candidates at level 3 placing general category candidates over them—No reservation policy in Haryana beyond the level of Class III—General category candidates becoming senior to the reserved category candidates by virtue of the rule of catch up at the level of Deputy Superintendent—Petitioners liable to be reverted to the post of Deputy Superintendent—However, their promotion as Superintendent protected as the same was made before 1st March, 1996—Writ dismissed, order reverting the petitioners to the post of Superintendent upheld.

Held, that the State has given the necessary reservation upto the level of Deputy Superintendent. In terms of the decision in the case of *Ajit Singh-II v. State of Punjab*, 1999(7)SCC 209, those promoted upto 1st March, 1996 are protected and there is no reservation. There may be no reservation but there is no further promotion that they can claim seniority over general candidates by any stretch of imagination. If by wrong assumption of the principle of reservation, certain reserved category candidates had been promoted after 1st March, 1996, they had to slide down and come back to the post regarding which they seek