

# The Indian Law Reports

DR. R. N. ARORA,—*Petitioner.*

*versus*

STATE OF HARYANA AND OTHERS,—*Respondents.*

30th November, 1989.

*Constitution of India, 1950—Art. 226—Punjab Civil Services Rules, 1973 (Volume I, Part I)—Rl. 4.8—Petitioner stopped from crossing Efficiency Bar for continuous period of three years—Opportunity of being heard not afforded—Petitioner allowed one increment after crossing efficiency bar—Order not in conformity with Rl. 4.8—Principle of audi-alterum-partem—Mandatory.*

*Held*, that the principle of *audi alterum partem*, that is, no person should be condemned unheard, has now been extended even to the matter of stoppage at the Efficiency Bar. Resultantly, when the petitioner was due to cross the Efficiency Bar on 1st April, 1982, and was not allowed to do so for that year as also for successive two years, that is, on 1st April, 1983 and 1st April, 1984, it was the mandatory requirement of the principles of natural justice that the material on the basis whereof the crossing of Efficiency Bar was refused to the petitioner, should have been confronted to him. Obviously, the object is, that if an opportunity of being heard had been afforded to the petitioner, he would have been in a position to satisfy the authorities with regard to the quality of annual confidential reports earned by the petitioner and the adverse remarks communicated, if any. This having not been done, the impugned orders stopping the petitioner at the Efficiency Bar with effect from 1st April, 1982, 1st April, 1983 and 1st April, 1984 are liable to be set aside.

(Para 4)

*Held*, that when the petitioner was ultimately allowed to cross the efficiency Bar with effect from 1st April, 1985 he was entitled to have his pay fixed at the stage in the time scale on the basis of the length of service, meaning thereby that all the increments in the time-scale were to be released to him and the effect of stoppage at the Efficiency Bar was only to deprive him of the increments only for the period during which those increments were not released. The non-accrual of increments during the period the petitioner stood stopped at the Efficiency Bar, was not of recurring nature but like the punishment of stoppage of increments without future effect. Thereafter the pay of the petitioner was to be fixed by adding three increments and not one increment with effect from 1st April, 1985. This is the true intent and spirit of Rule 4.8 and the Note appended thereto, of Punjab Civil Services, Rules, Volume I, Part I.

(Para 5)

*Petition under Art. 226 of the Constitution of India, praying that this Hon'ble Court may kindly be pleased to :—*

(1) *issue a writ, order or direction in the nature of mandamus and/or otherwise to the respondents to—*

(a) *restore all the increments of the petitioner after he had finally been allowed to cross the EB on 1st April, 1985;*

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- (b) release the payment of Leave-encashment as may be found due to the petitioner; and
- (c) settle his other retiring dues such as Pension, DCRG and GPF.
- (2) issue a similar writ, order or direction for the payment of penal interest on delayed payment at the rate of 15 per cent per annum from the date of retirement to the date of its actual payment;
- (3) grant any other relief that this Hon'ble Court may, in the circumstances of the case, deem fit and proper;
- (4) dispense with the filing of originals/verified copies of documents, Ex. 'P/1' to P/6' of which true copies have been annexed with the writ petition;
- (5) award the costs of the writ petition in favour of the petitioner.

K. K. Jagia, Advocate, for the petitioner.

Madan Dev, Advocate, for A.G. (Hy.)

#### JUDGMENT

*M. R. Agnihotri, J.*

(1) This judgment will dispose of C.W.P. Nos. 26 and 98 of 1988 filed by Dr. R. N. Arora, a retired member of the Haryana Civil Medical Service Class I, whereby he has challenged the order of stopping him at the Efficiency Bar due on 1st April, 1982, non-release of the consequential benefits flowing from the subsequent order allowing him to cross the Efficiency Bar with effect from 1st April, 1985, and the order dated 2nd July, 1987, by which the petitioner was prematurely retired from service after attaining the age of 55 years, respectively.

(2) The petitioner's date of birth is 1st January, 1932, and, as such, he is to superannuate from service of the respondents with effect from 31st December, 1989, on attaining the age of 58 years in accordance with Rule 3.26 of the Punjab Civil Services Rules, Volume I, Part I. He was recruited to the Punjab Civil Medical Service Class II : PCMS-II, in the erstwhile State of Punjab on 2nd December, 1960, in and his services were allocated to the State of Haryana with effect from 1st November, 1966. He was promoted to the Haryana Civil Medical Service Class I, on 25th January, 1978, in

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the pay scale of Rs. 1400-60-1700/80-2100. He was due to cross the Efficiency Bar in the aforesaid scale with effect from 1st April, 1982, but by an order dated 25th February, 1983, he was not allowed to do so. For the subsequent two years, that is, on 1st April, 1983, as also on 1st April, 1984, the petitioner was not permitted to cross the Efficiency Bar and it was finally on 1st April, 1985, that he was allowed to cross the same. As a result of crossing of the Efficiency Bar, pay of the petitioner was to be fixed at a stage in the time scale according to his length of service under Rule 4.8 and the Note appended thereto, of the Punjab Civil Services Rules, Volume I, Part I, as applicable to the State of Haryana, but the same was not done. The claim of the petitioner, therefore, is for the release of all the increments as a consequence of his crossing the Efficiency Bar with effect from 1st April, 1985, and other consequential benefits flowing therefrom.

(3) In reply to the writ petition, written statement has been filed by the Under Secretary to Government, Haryana Health Department, in which the impugned action is sought to be justified on the ground that as the annual confidential record of the petitioner was not found 50 per cent good on the material dates, he was not allowed to cross the Efficiency Bar. Regarding the resultant benefit of leave encashment, etc. the plea taken is that as the petitioner has been prematurely retired from service, he is not entitled to the same.

(4) Having heard the learned counsel for the parties and after going through their pleadings and other material on the record, I am of the considered view that both the pleas of the respondents are without any merit. Firstly, it has now been settled by the Hon'ble Supreme Court of India in the case, *O. P. Gupta v. Union of India and others* (1), that whenever an adverse order is sought to be made by the employer against an employee, an opportunity of hearing has to be afforded. In nutshell, the principle of *audi alterum partem*, that is, no person should be condemned unheard, has now been extended even to the matter of stoppage at the Efficiency Bar. Resultantly, when the petitioner was due to cross the Efficiency Bar on 1st April, 1982, and was not allowed to do so for that year as also for successive two years, that is, on 1st April, 1983 and 1st April, 1984, it was the mandatory requirement of the principles of natural justice that the material on the basis whereof the crossing of Efficiency

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(1) 1987 (5) S.L.R. 288.

Bar was refused to the petitioner should have been confronted to him. Obviously, the object is, that if an opportunity of being heard had been afforded to the petitioner, he would have been in a position to satisfy the authorities with regard to the quality of annual confidential reports earned by the petitioner and the adverse remarks communicated, if any. This having not been done, the impugned orders stopping the petitioner at the Efficiency Bar with effect from 1st April, 1982, 1st April, 1983 and 1st April, 1984, are liable to be set aside.

(5) Secondly, when the petitioner was ultimately allowed to cross the Efficiency Bar with effect from 1st April, 1985, he was entitled to have his pay fixed at the stage in the time scale on the basis of his length of service, meaning thereby that all the increments in the time scale were to be released to him and the effect of stoppage at the Efficiency Bar was only to deprive him of the increments only for the period during which those increments were not released. The non-accrual of increments during the period the petitioner stood stopped at the Efficiency Bar, was not of a recurring nature but like the punishment of stoppage of increments without future effect. Thereafter the pay of the petitioner was to be fixed by adding three increments and not one increment with effect from 1st April, 1985. This is the true intent and spirit of Rule 4.8 and the Note appended thereto, of Punjab Civil Services, Rules, Volume I, Part I.

(6) So far as the question of relief of leave encashment is concerned, the plea of the respondent is wholly without any merit and in fact the same has already been rejected by this Court in C.W.P. No. 4026 of 1985, decided on 10th March, 1986. The denial of benefit of leave encashment to employees who are prematurely retired from service had been found as discriminatory and was struck down in the aforesaid case.

(7) Consequently, C.W.P. No. 26 of 1988 is allowed and the petitioner is held entitled to the relief prayed for. Accordingly, a writ of *mandamus* is issued to the respondents directing the State of Haryana to release to the petitioner all the increments as also the benefit of leave encashment in accordance with the rules.

(8) So far as C.W.P. No. 98 of 1988 is concerned, the subject-matter is the impugned order dated 2nd July, 1987, by which the petitioner has been retired from service after attaining the age of

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55 years. This case is squarely covered by the Division Bench judgment of this Court in *K. K. Vaid v. State of Haryana* (2), wherein, following the law laid down by the Supreme Court in *Brij Mohan Singh Chopra v. State of Punjab* (3), it has been held that a Government servant cannot be retired from service prematurely on the basis of uncommunicated 'average' reports. The case of the petitioner is on stronger footing as he was not allowed to cross the Efficiency Bar with effect from 1st April, 1982, 1st April, 1983 and 1st April, 1984, which orders have now been quashed by allowing C.W.P. No. 26 of 1988.

(9) Consequently, C.W.P. No. 98 of 1988 is also allowed and the impugned order dated 2nd July, 1987, by which the petitioner was prematurely retired from service is quashed. The petitioner is accordingly reinstated in service and shall be entitled to all the arrears of salary and allowances, to which he would have been entitled had he not been retired from service prematurely in pursuance of the impugned order, with interest at the rate of 12 per cent per annum till the date of actual payment. The petitioner shall also be entitled to the costs of both these writ petitioners which are quantified at Rs. 500 in each case.

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P.C.G.

Before : S. S. Sodhi, J.

PHOOL KANWAR AND OTHERS,—Petitioners.

versus

BARU RAM AND OTHERS,—Respondents.

Civil Revision No. 2562 of 1989.

23rd May, 1990.

*Code of Civil Procedure, 1908—O. 8, rl. 10 & S. 115—Defendant proceeded ex-parte—Ex-parte order becoming final—Defendant, thereafter, cannot lead evidence in support of his case—Defendant has only a limited right of pointing out falsity or weakness of plaintiff's case.*

*Held*, that a defendant who has been proceeded against *ex-parte* and is allowed to join the proceedings has a limited right of pointing

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(2) C.W.P. No. 4180 of 1986 decided on 1st November, 1989.

(3) 1987 (2) S.L.R. 54.