

Amar Singh v. Chief Secretary to Government, Punjab, Chandigarh
and others (S. S. Kang, J.)

respectively. I further direct respondent No. 3 to register the lease-deed presented before him by the petitioners if there is no other legal impediment in the way of the petitioners. There will, however, be no order as to costs.

S. C. K.

Before Sukhdev Singh Kang, J.

AMAR SINGH, *Petitioner*

versus

CHIEF SECRETARY TO GOVERNMENT, PUNJAB, CHANDIGARH
AND OTHERS,—*Respondents.*

Civil Writ Petition No. 4026 of 1985

March 10, 1986.

Constitution of India, 1950—Article 14—Punjab Civil Services (Premature Retirement) Rules, 1975—Rule 3(i)(b)—Punjab Civil Services, Rules, Volume I, Part I—Note below Rule 8.116 (iii)—Government employee retired compulsorily under Retirement Rules—Government instructions granting benefit of cash equivalent to leave salary due to employees at the time of retirement—Instructions denying such benefit to employees retired compulsorily—Said instructions—Whether discriminatory and liable to be struck down as violative of Article 14.

Held, that it is well recognized that premature retirement of a Government servant under Punjab Civil Services (Premature Retirement) Rules 1975 is not by way of punishment. It does not cast a stigma on the retiring Government servant and the orders are not passed by way of punishment and have no penal consequences. The Government employee remains entitled to all the pensionary and retirement benefits which are available to the person who retires under attaining the age of superannuation. There can be no rational distinction between the Government employees prematurely/compulsorily retired under rule 3(i)(a) of the Rules or those who retired on attaining the age of superannuation. It is further clear from a reading of Note 2 below Rule 8.116(iii) of the Punjab Civil Services, Rules Volume I, Part I, that the Government employees, who are prematurely/compulsorily retired are not denied pensionary/retirement benefits. The object behind conferring pensionary/retirement benefits on the retired Government employees

is to make provision for their respectable and comfortable living. The withholding of the benefits, under the instructions from prematurely/compulsorily retired employees under rule 3(i)(a) of the Rules does not in any manner advance this laudible object. As such it has to be held that the instructions denying the benefit of cash equivalent to leave salary in respect of prematurely retired employees is discriminatory and as such is liable to be struck down as violative of Article 14 of the Constitution of India, 1950.

(Paras 5 and 6)

Petition under Articles 226 and 227 of the Constitution of India praying that :—

- (a) *the filing of certified copies of the Annexures be exempted;*
- (b) *this writ petition be allowed directing the respondents to make the cash payment of 180 days of unutilised earned leave with 18 per cent compound interest till the payment is made;*
- (c) *the instructions contained in Annexures P. 2 and P. 3 be declared ultra vires.*
- (d) *any other writ, order or direction warranted under the circumstances of the case necessary for the granting of relief to the petitioner be issued;*
- (e) *costs of this petition may also be awarded to the petitioner.*

Petitioner in Person.

H. S. Bhullar, Advocate, for A.G. Punjab.

JUDGMENT

Sukhdev Singh Kang, J.

(1) By this writ petition under Articles 226/227 of the Constitution of India, Amar Singh, petitioner seeks the issuance of a writ in the nature of *mandamus* directing the respondents to pay the petitioner cash equivalent to six months' unutilized earned leave at his credit at the time of his retirement. To begin with the factual matrix:—

(2) Having served the State of Punjab in the Department of Printing and Stationery for over 32 years, Amar Singh petitioner

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was compulsorily retired under rule 3(i)(a) of the Punjab Civil Services (Premature Retirement) Rules, 1975 (hereinafter called "the 1975 Rules") in public interest,—*vide* orders, dated 31st August, 1979. He was paid pay and allowances for three months in lieu of notice as provided in rule 3(i)(b) of the 1975 Rules, *ibid*. At that time, he was working as officiating Head Assistant.

(3) In 1978, the Punjab Government decided that the Punjab Government employees, retiring on superannuation on or after 31st January, 1978, will be paid cash equivalent to leave salary in respect of the period of earned leave at their credit at the time of their retirement. This concession was, among others, subject to the condition that the payment of cash equivalent to leave salary shall be limited to a maximum of 180 days of earned leave. It was further stipulated that these orders shall not apply to cases of premature/voluntary retirement or persons who are compulsorily retired as a measure of punishment. These orders were circulated by the Commissioner for Finance and Secretary to Government, Punjab,—*vide* letter, dated January, 25, 1978, copy of which is appended as Annexure P.2 to the writ petition. These instructions were modified by orders, dated April 14, 1978, whereby the instructions were made applicable to even those Government employees, who had attained the age of retirement on September 30, 1977. The petitioner had been compulsorily retired on August 31, 1979, when instructions (Annexure P.2) were in vogue. The petitioner contends that these instructions in so far as they deny the benefit of cash equivalent to six months' salary in lieu of the earned leave at the credit of a Government servant compulsorily retired under rule 3(i)(a) of the Rules, were discriminatory. This retirement is not as a measure of punishment. All retiring Government servants fall in one category. They form a class. The persons who were compulsorily retired under rule 3(i)(a) of the Rules do not form a separate or distinct class. It is well-settled that a premature retirement does not attach any stigma and is not by way of punishment and it has no penal consequences. The persons who are prematurely retired are entitled to all the benefits, which are available to persons who retire on attaining the age of superannuation. No discrimination can be made against them in the matter of extension of the concessions conferred by Annexure P.2 only on the ground that persons falling in the first category were retired compulsorily. There is no rational basis for such a classification and it has no *nexus* with the object to be achieved. The object of the

instructions was to confer benefit on retiring personnel. This object is in no way achieved by depriving the petitioner or other prematurely retired Government servants of the benefits conferred thereby.

(4) The writ petition was contested by the respondents. Written Statement has been filed by them in which it has been pleaded, *inter alia*, that the petitioner had served the department from June 26, 1947, to August 31, 1979, when he had been compulsorily retired. On that day, he had 188 days' unutilized earned leave to his credit. There was no provision in the service Rules applicable to the petitioner for grant of the benefit of encashment of unutilized earned leave to the credit of Government employees prematurely retired under the Rules or the Civil Service Rules. The Government had decided to pay cash payment in lieu of unutilized earned leave to a maximum of 180 days to Punjab Government employees retiring on superannuation. It was made clear that these instructions shall not apply to the cases of premature/voluntary retirement. The case of the petitioner was not covered by these instructions because he was prematurely retired on August 31, 1979, under the 1975 Rules. It was averred that there was no provision for granting cash payment for unutilized leave to retiring Government employees in the Punjab Civil Service Rules or the 1975 Rules. The Punjab Government had decided to grant leave/leave salary to the employees retired under the Rules,—*vide* circular, dated January 15, 1980. Since the petitioner was retired prematurely on August 31, 1979, he was not entitled to the cash payment of unutilized earned leave/leave salary. Hence, his application, dated May 5, 1980, for this purpose was rejected. The representation made by the petitioner to the Governor of Punjab-in-Council had been rejected by the State Government, because his case was not covered under the instructions, dated January 15, 1980. This decision was not conveyed because of the pendency of this writ petition.

(5) It is well recognized that premature retirement of a Government servant under the 1975 Rules is not by way of punishment. It does not cast a stigma on the retiring Government servant. The orders are not passed by way of punishment and have no penal consequences. The Government employee remains entitled to all the pensionary and retirement benefits which are eligible to the persons, who retire under attaining the age of superannuation. There can be no rational distinction between the Government employees prematurely/compulsorily retired under rule 3(i)(a) of the Rules or those

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who retire on attaining the age of superannuation, in the matter of conferment of pensionary or other retirement benefits. The prematurely/compulsorily retired Government servants also get pensions and are paid other retirement benefits. This fact becomes evident from the circular, dated January 15, 1985 (Annexure R. V. appended to the written statement of the respondents). It indicates that the Punjab Government,—*vide* orders, dated September 13/16 1963, had issued directions that a Government employee, who was required to retire or who himself chose to retire, may be allowed the leave due and admissible to him, provided it does not exceed beyond the age on which he attains the age of 58 years. These instructions were issued, among others, to clarify the previous instructions issued by the Government,—*vide* letter, dated November 30 1971, according to which Government employees could be allowed leave according to their own choice as under :—

- “(i) Either leave preparatory to retirement up to 130 days or full pay, if it is due, or
- (ii) Earned leave up to 120 days with permission to combine it with any other kind of leave, if due.”

These instructions/clarifications had been incorporated as Note 2 below rule 8.116(iii) of Punjab Civil Service Rules, Volume I, Part I. These orders establish beyond doubt that the Government employees who are prematurely/compulsorily retired are not denied pensionary/retirement benefits. In the return, no reasons have been given as to why the Government employees who are prematurely/compulsorily retired, are denied the benefits of concession conferred by Annexure P. 2. It is now well settled that every action of the Government has to be just and fair. Even in extending concessions and benefits, the State cannot act arbitrarily and whimsically. Even in the matter of concessions, the citizens have the right to be treated equally. There is no justification for classifying the Government employees who are prematurely/compulsorily retired under rule 3(i)(a) of the Rules and those Government employees who retire on reaching the age of superannuation. Both were Government employees and both have retired from service. The object behind conferring pensionary/retirement benefits on the retired Government employees is to make provision for their respectable and comfortable living. The withholding of the benefits, conferred by Annexure P. 2

from Government employees, who are prematurely/compulsorily retired under rule 3(i)(a) of the Rules, does not in any manner advance this laudible object. The action is highly discriminatory and is liable to be struck down.

(6) For the foregoing reasons, I hold that paragraph 2 of instructions, dated January 25, 1978, is discriminatory, arbitrary and violative of Article 14 of the Constitution of India. I allow this writ petition and quash the paragraph 2 of Annexure P. 2. I further direct that the petitioner be given benefits permissible under P. 2.

(7) The respondents shall pay the petitioner costs of this petition, which are assessed at Rs. 500.

S. C. K.

Before D. S. Tewatia and M. M. Punchhi, JJ.

AMAN BEHAL,—*Petitioner.*

versus

ARUNA KANSAL,—*Respondent.*

Civil Revision No. 2217 of 1984

March 12, 1986.

Code of Civil Procedure (V of 1908)—Order 1, Rule 10—Agreement to sell executed by a Karta of a coparcenary—Entire sale price paid and vendees put in possession of property—Karta subsequently refusing to execute sale deed—Vendees filing suit for specific performance of the agreement—Other coparcener—Whether a necessary party to the suit—Such coparcener—Whether entitled to be impleaded as a defendant under Order 1 Rule 10.

Held. that the judicial consensus in regard to the powers that sub-rule (2) of rule 10 of Order 1 of the Code of Civil Procedure, 1908, envisages with the Court is that the plaintiff being *dominus litis* the Court would not add a party to the suit against the wishes of that party unless the person wanting to be joined or the Court proposes to join *suo moto* is a person, who ought to have been there as a party to the suit i.e., the proposed party is a necessary party to the suit or his presence is necessary to enable the Court effectively and completely to adjudicate upon and settle all the