

entry doubting the integrity of an employee during the last ten years, can well form the basis for his pre-mature retirement. In *Shri Satpal Singh's case* (supra), I. S. Tiwana, J. has taken the view that in such matters the overall record of a Government servant has to be taken into account and the mere fact that such an officer has been allowed to cross Efficiency Bar after the report of 'integrity doubtful', is of no consequence. It is also held that the old report can be acted upon. But the learned Single Judge in that case had not taken into consideration the Supreme Court's decision in *Baldev Raj's case* (supra), whereas S. S. Kang, J. in *Parshotam Singh's case* (supra) has followed the dictum in *Baldev Raj's case* and on the basis of that the learned Judge has held that the obsolete reports even reflecting upon the integrity of a Government servant cannot be taken into account for determining his suitability for being retained in service on his attaining the age of 50/55 years as provided in the statutory rules governing his service.

13. There is no dispute to the proposition of law that overall record of the case is to be seen before passing an order of compulsory retirement. But the recent conduct of a Public servant is more relevant than the old adverse entries.

14. We are of the view that the law as laid down by I. S. Tiwana, J. in *Shri Sat Pal Singh's case* (supra) does not lay down good law and overrule the ratio thereof.

15. In view of the foregoing discussion, we allow the writ petitions (Nos. 3854 of 1986 and 430 of 1987) and quash the impugned orders therein. There will be no order as to costs.

S.C.K.

Before : S. S. Sodhi, J.

MANJIT KAUR ETC.—Appellants.

versus

DEOL BUS SERVICE LTD. ETC.—Respondents.

Civil Misc. No. 4905-CII of 1988

in FAO No. 494 of 1980.

September 29, 1988.

Duty of counsel towards client—Liability for negligence—Code of Civil Procedure (V of 1908)—Order 9—Appeal filed through

Manjit Kaur etc. v. Deol Bus Service Ltd. etc. (S. S. Sodhi, J.)

counsel dismissed in default—Dismissal not conveyed to appellant—Appellant acquired knowledge of dismissal of appeal three years later—Appeal restored on appellants' application.

Held, counsel directed to return fee received from the appellants as appellants constrained to engage other counsel on account of their lapse and also to compensate the appellants for amount awarded against her as costs for re-hearing of the appeal. Warning to be careful—*held*, to suffice in view of the clear and unconditional apology offered by the counsel concerned and also taking into account the serious ailment that the Senior Counsel was said to be suffering from. (Para 7)

Held, further that the observations of the Supreme Court in Rafiq's case cannot be construed as a licence to counsel to allow the interests of the party engaging him to be prejudicially affected by his inaction, deliberate omission or misdemeanour. Indeed, there is a duty of care that a counsel owes to his party which clearly extends to ensuring that the interests of such party are not in any manner hurt by his doing what should not have been done or omitting to do what is required and necessary in the discharge of his duty as counsel. If a counsel, by his acts, or omissions, causes the interests of the party engaging him in any legal proceedings to be prejudicially affected, he does so at his peril. (Para 9)

Application Under Section 151 C.P.C. praying that the said affidavit of Gurcharan Singh, Advocate, Punjab and Haryana High Court may kindly be allowed to be placed on the record of the said case.

Civil Misc. No. 4906-C.II of 1988.

Application under Section 151 of the Code of Civil Procedure praying that the attached affidavit may kindly be permitted to be placed on record in the interest of justice.

Sarwan Singh, Advocate, for V. P. Sarda, Advocate, for the Applicant-claimant.

L. M. Suri, Sr. Advocate, for the Respondent No. 1.

ORDER

S. S. Sodhi, J.

(1) Counsel's duty towards the party engaging him in the point in issue here.

(2) On May 21, 1980, an appeal was filed by the widow and children of Major Singh deceased who had been killed in a

motor accident claiming enhanced compensation. This appeal was dismissed in default on October 31, 1984. It was about three years thereafter, on October 6, 1987 that an application was filed seeking re-hearing of appeal on merits, accompanied by an application under Section 5 of the Limitation Act, asking for condonation of the delay in the filing of this application.

(3) The un rebutted averments of the petitioner Manjit Kaur showed that after engaging counsel for the appeal and its admission to hearing, she went home but her counsel never, thereafter, communicated with her or informed her of the subsequent developments in the case and it is only when she came to Chandigarh on October 5, 1987 and enquired from her counsel that she came to know that her appeal had been dismissed in default in October, 1984.

(4) In their affidavits, neither of the two counsel (whose names are being deliberately withheld) through whom the appeal had been filed, stated that they had never communicated anything about the appeal to Manjit Kaur. Rather, it was said that they were not aware of the case having been dismissed in default, whereas, according to the opposite party, the case remained on the daily lists for two weeks before it was dismissed in default.

(5) Such being the situation, notice was ordered to issue both the counsel for the appellant—Manjit Kaur to show cause, why :—

- (1) adverse comments be not made with regard to their conduct as counsel in this matter ?
- (2) the matter be not reported, by this Court to the Bar Council of Punjab and Haryana, and;
- (3) Substantial costs be not imposed upon them for their acts and omissions in this matter ?

(6) On unconditional apology is what was put forth in reply by both the counsel. The Senior counsel squarely accepted full responsibility for the dismissal of the case in default though he also mentioned his ill-health due to kidney ailment as a contributory factor for his fault. He, however, assured that this would never happen again. Similarly, the Junior counsel too expressed regret in his affidavit and assured that such lapse would not recur in future.

Manjit Kaur etc. v. Deol Bus Service Ltd. etc. (S. S. Sodhi, J.)

(7) In view of the clear and un-conditional apology offered by the counsel concerned and taking into account also the serious ailment that the senior counsel is now said to be suffering from, a warning to be careful in future would suffice, but with the further direction to them to return the fee received from the petitioner Manjit Kaur, who on account of their lapse was constrained to engage another counsel and also to compensate her for the amount, namely ; rupees 1,000 awarded against her as costs for the re-hearing of the appeal. Both counsel very fairly and unhesitatingly agreed to return the fee and also to pay this sum of Rs. 1,000 to Manjit Kaur.

(8) Before parting with this matter, a comment must be recorded on the judgment of the Supreme Court in *Rafiq and another v. Munshilal and another* (1), where the matter involved was with regard to an appeal filed by the appellant which was disposed of in the absence of his counsel, as also the rejection of the application for recall of the order of dismissal. In dealing with his matter, the Court observed :—

“The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area any may have no knowledge of the Court’s procedure. After engaging a lawyer the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required, but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watch-dog of the advocate that the latter appears in the matter when it is listed. It is no part of his job”.

The Court went on further to observe :—

“.....The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate

(1) AIR 1981 S.C. 1400.

omission, or misdemeanour of his agent. The answer obviously is in the negative."

It was accordingly held that they could not be a party to an innocent party suffering injustice merely because his chosen advocate defaulted.

(9) The point to be made is that this judgment can by no means, be constructed as a licence to counsel to allow the interests of the party engaging him to be prejudicially effected by his inaction, deliberate omission or misdemeanour. Indeed, there is a duty of care that a counsel owes to his party which clearly extends to ensuring that the interests of his party are not in any manner hurt by his doing what should not have been done or omitting to do, what is required and necessary in the discharge of his duty as counsel. Breach of such duty cannot, but lay counsel open to a charge of negligence which is actionable too, as held by the Supreme Court in *M. Veerappa v. Evelyn Sequeira and others*. (2) where after noticing the preamble to the Legal Practitioners Fee Act, 1926 and the provisions of Sections 2 to 5 thereof, as also the definition of "Legal practitioner" under the Legal Practitioners Act, 1879, the Court observed :—

"A reading of these sections would go to show that any legal practitioner who acts or agrees to act for any person may settle with the said person the terms of his engagement and the fee to be paid for his professional services; that the legal prtitioner will be entitled under law to institute and maintain legal proceedings against his client for the recovery of any fee due to him under the agreement or as per the costs taxed by the Court where there has been no pre-settlement of the fee; and that no legal practitioner who has acted or agreed to act shall merely by reason of his status as a legal practitioner be exempt from liability to be sued in respect of any loss or injury due to any negligence in the conduct of his professional duties.

Therefore, a legal practitioner cannot claim exemption from liability to be sued in respect of any loss or injury suffered by the client due to any negligence in the conduct of his professional duties merely by reason of his being a legal practitioner....."

(2) AIR 1988 S.C. 506.

Haryana Rice Mills and others *v.* State of Haryana and others
(M. M. Punchhi, J.)

(10) The law is thus well-settled that if counsel, by his acts or omissions causes the interest of the party engaging him, in any legal proceedings to be prejudicially affected, he does so at his peril.

S.C.K.

Before M. M. Punchhi and Ujagar Singh, JJ.

HARYANA RICE MILLS AND OTHERS,—*Petitioners.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 8811 of 1988

October 6, 1988

Constitution of India, 1950—Arts. 14 and 19(1)(g)—Haryana Rice Procurement (Levy) Third Amendment Order, 1988—Clause 3(c)—Rice millers required to give levy rice to the government to the extent of 75 per cent out of the total quantity of rice purchased or acquired—Choice of variety of rice left with dealers/millers—Such order—Whether violative of Arts. 14 and 19(1)(g).

Held, that there is no immediate compulsion to the petitioners selling the rice held in stock by them to the Department, for sub-clause (c) is the release valve making it abundantly clear that out of the total quantity of rice, conforming to the specifications, purchased or otherwise acquired by them, 75 per cent is to be given in levy whatsoever be the kind. In other words, out of the total quantity of rice purchased or acquired by them, irrespective of the varieties of the rice, they are required to give levy rice to the extent of 75 per cent to the Government and the choice in the offer is entirely left with the dealers/millers. All what the dealer is supposed to do is to acquire his stock and give 75 per cent of rice conforming to the specifications. There is an inbuilt safeguard in the provisions of the Control order for adjustment.

(Para 5).

Held, that there is no violation of any fundamental rights of the petitioners nor is the impugned order unfair or arbitrary. It requires a few adjustments here and there and the trade is expected to be discreet in that regard.

(Para 7).