

## APPELLATE CIVIL

Before Kapur, J.

MASTER DES RAJ.—Plaintiff-Appellant

versus

THE PUNJAB STATE,—Defendant-Respondent

Regular Second Appeal No. 514 of 1953.

*Government Servant—Promotion withheld—Such withholding of promotion against rules—Whether breach of rules furnishes cause of action to the aggrieved servant.*

1953

Nov. 11th

Held, that the Government servants will not be subject to capricious or arbitrary action by the Government and it will be regulated by rules but that does not import a special kind of employment with an added contractual term, that the rules are to be observed and the breach of the rules did not give a cause of action to aggrieved servant; as control by the courts over Government in the most detailed work of managing its services would cause not merely inconvenience but confusion.

*R. Venkata Rao v. The Secretary of State for India in Council (1), and Naubat Rai v. Union of India (2), followed.*

*Second Appeal from the decree of Shri Ishwar Dass, District Judge, Hissar, dated the 25th day of May 1953, affirming that of Shri B. K. Aggarwal, Subordinate Judge, 4th Class, Hissar, dated the 9th January 1953, dismissing the plaintiff's suit with costs.*

I. D. DUA, for Appellant.

S. M. SIKRI, Advocate-General, for Respondent.

## JUDGMENT

KAPUR, J. This is a plaintiff's appeal against an appellate decree of District Judge Ishwar Dass, dated the 25th May, 1953, confirming the decree of the trial Court dismissing the plaintiff's suit with costs.

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The facts of the case are that the plaintiff is a Drawing Master in the grade of Rs 50—3—80/4—100. In February 1951, certain teachers were

(1) I.L.R. 1937 Mad. 532

(2) A.I.R. 1953 Punjab 137

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given promotion into the next grade of Rs. 105—7—140 and the plaintiff was not given this promotion which he claims to be contrary to the rules made by the Punjab Government, and he brought a suit on the 24th December 1951, for declaration that he was entitled to be placed in the grade of pay of Rs 105—7—140 in order of his seniority. Both Courts below have decided the case against the plaintiff and he has come up in appeal to this Court.

Mr. Dua has relied on rule 7-A which was added by a notification of the Punjab Government, dated the 25th October 1948, which is No. 7094 (G)-48/57526. This rule provides :—

“7-A. Without prejudice to the provisions of rule 7 no order imposing the penalty specified in clause (i), (ii), or (iv) of rule 4 (other than an order based on facts which have led to his conviction in a Criminal Court or an order superseding him for promotion to a higher post on the ground of his unfitness for that post) on any Government servant to whom these rules are applicable shall be passed unless he has been given an adequate opportunity of making any representation that he may desire to make and such representation, if any, has been taken into consideration before the order is passed :—

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The penalties are provided in rule 14-10 of Chapter XIV of Civil Services Rules (Punjab), Volume I, of 1941. The reference is to sub-clauses (i), (ii) and (iv) of this rule, and it is submitted that there has been a violation of this rule inasmuch as the plaintiff was not given an opportunity to show cause before action was taken against him. The learned Advocate-General has relied on rule 6 (2) of the Punjab Subordinate Educational Service Rules, which provides :—

“6. (2) Promotions to the higher grades of the Service shall be by (a) seniority and

record and/or (b) by selection from amongst such members who not only improve their educational qualifications beyond the level of their seniors, but whose work is definitely considered to be of a consistently outstanding character: Provided that not more than one-third of the total number of vacancies available for promotion shall be given by selection."

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But in my opinion in this case it is not necessary to go into either one or other of the contentions which have been raised. Their Lordships of the Privy Council in *R. Venkata Rao v. The Secretary of State for India in Council* (1) have held that the terms of section 96-B of the Government of India Act, 1915, contain a statutory and solemn assurance that the service, though at pleasure, will not be subject to capricious or arbitrary action and will be regulated by rule but that does not import a special kind of employment with an added contractual term that the rules are to be observed, and they also held that a breach of the rules did not give a cause of action to the aggrieved servant. Lord Roche delivering the judgment of their Lordships at page 542 said :—

".....control by the Courts over Government in the most detailed work of managing its services would cause not merely inconvenience but confusion."

and at page 543 his Lordship said :—

"But while thus holding on the clear facts of this case, as they now appear from the evidence, as they similarly held in *Rangachari's case* (2), their Lordships are unable as a matter of law to hold that redress is obtainable from the Courts by action."

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(1) I.L.R. 1937 Mad. 532

(2) I.L.R. 1937 Mad. 517

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It may be, as was observed in that case, that there has been a serious and complete failure to adhere to important and indeed fundamental rules, but that by itself is not a ground for the Courts to interfere with the orders of the Education Department. Without expressing any opinion on whether there has been any breach or not, I would dismiss this appeal following the judgment of their Lordships of the Privy Council, *R. Venkata Rao v. The Secretary of State for India in Council* (1), which was followed in *Naubat Rai v. Union of India* (2), but in the circumstances of this case I leave the parties to bear their own costs throughout.

APPELLATE CIVIL

Before Kapur, J.

DURGA PARSHAD,—*Defendant-Appellant*  
*versus*

JHEETAR MALL,—*Plaintiff-Respondent*

Regular Second Appeal No. 847 of 1951

1953  
Nov. 19th

*Specific Relief Act (I of 1877)—Section 55—Party wall-owners of—Position of—Construction on party wall by one owner to the exclusion of the other—Excluded owner—Remedy of—Whether entitled to claim removal of the obstruction.*

Held, that the adjoining owners of a party wall are tenants-in-common and the wall cannot be treated as a wall divisible longitudinally into two strips, one belonging to one neighbour and the other to the other. If one of the two tenants-in-common excludes the other from the use of it by placing an obstruction on it, the excluded owner is entitled to a mandatory injunction for the removal of the obstruction.

*Ganpat Rai v. Sain Dass* (3), *Watson v. Gray* (4) *Kanakayya v. Narainmhulu* (5), and *Shivputtarappa v. Shivrudrappa Kalappa* (6), followed; *Daood Khan v. Chandu Lal* (7), not followed.

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- (1) I.L.R. 1937 Mad. 532  
(2) A.I.R. 1953 Pb. 137  
(3) I.L.R. 12 Lah. 542  
(4) L.R. 14 Ch. D. 192  
(5) I.L.R. 19 Mad. 38  
(6) A.I.R. 1926 Bom. 387  
(7) A.I.R. 1923 Bom. 370