

Before : Hon'ble Mr. R. Agnihotri & N. K. Sodhi, JJ.

SARV MITTAR SHARMA,—Petitioner.

versus

THE PUNJAB AND HARYANA HIGH COURT, CHANDIGARH,
—Respondents.

Civil Writ Petition No. 3665 of 1990.

February 17, 1992.

Punjab Civil Services (Revised pay) Rules, 1988—Employee permitted to opt for revised pay—The Chief Justice granted relaxation—Revised pay scale fixed and salary drawn by the employee—Reconsideration of the order of Chief Justice—Such course not permissible—Opportunity affording not granted—Validity of the Order.

Held, that by how it has become an integral part of service Jurisprudence which has to be meticulously followed by the administrative Heads and authorities discharging administrative functions. Tested on the touch stone of this principle, the impugned order in the present case cannot be upheld. In any case, when in implementation of the earlier order dated 24th April, 1989, passed by the then Chief Justice, pay of the petitioner had been revised and he continued to draw his salary on the basis thereof, the decision could not be reconsidered and recalled without affording to the petitioner even an opportunity of being heard. Quite surprisingly, this was not done in the present case.

(Para 7)

Civil Writ Petition Under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court case from the respondent and after examining the same :—

- (i) *issue an appropriate writ especially a writ in the nature of certiorari, order or direction quashing Annexure P-1 withdrawing the permission granted to the petitioner by Hon'ble Chief Justice to opt for the revised scale of pay of Special Secretary with effect from 1st October, 1988;*
- (ii) *issue an appropriate writ especially a writ in the nature of mandamus, order or direction directing the respondent to permit the petitioner to opt for the revised scale of pay of Special Secretary with effect from 1st October, 1988;*
- (iii) *issue an appropriate writ, order or direction especially a writ in the nature of mandamus directing the respondent to fix the pay of the petitioner by taking into account the full amount of dearness allowance of Rs. 1,450 which the petitioner was drawing on 1st October, 1988;*
- (iv) *dispense with the issue of advance notice to the respondent;*

- (v) dispense with the filing of certified copy of annexure P-1; and
(vi) award costs of this petition to the petitioner.

It is further prayed that pending the decision of this writ petition, this Hon'ble Court may be pleased to stay the operation of Annexure P.1 and recovery from the pay of the petitioner.

Sarv Mitter Sharma, Petitioner in Person.

Anand Sawaroop, Sr. Advocate and Rajiv Vij, Advocate, with him, for the Respondents.

JUDGMENT

M. R. Agnihotri, J.

(1) This case has been placed before us on a reference made by a learned Single Judge as its hearing by a Division Bench was considered more appropriate.

(2) Petitioner Sarv Mittar Sharma is serving on the establishment of this Court and is at present in the rank of Special Secretary. He has invoked the writ jurisdiction of this Court for the quashing of the impugned decision of the then Acting Chief Justice communicated to the petitioner,—*vide* Annexure P.1, on 22nd January, 1990, whereby the Acting Chief Justice has recalled the earlier order dated 24th April, 1989, passed by the then Chief Justice of this Court, thereby permitting the petitioner to opt for the revised scale of pay with effect from 1st October, 1988, under the Punjab Civil Services (Revised Pay) Rules, 1988.

(3) On 1st January, 1986 the petitioner was working as Secretary in this Court and was promoted as special Secretary to the Chief Justice on 24th October, 1986 in the pay scale of Rs. 2000—100—2300, with special pay of Rs. 250. As a result of his promotion, his pay was fixed at Rs. 2100 and on the accrual of his next increment with effect from 1st October, 1987, it was increased to Rs. 2200 and similarly with effect from 1st October, 1988 to Rs. 2300. In pursuance of the recommendations of the Third Punjab Pay Commission, appointed by the Punjab Government,—*vide* notification dated 3rd July, 1986 the Punjab Government on the 9th September, 1988 issued the Punjab Civil Services (Revised Pay) Rules, 1988. These Rules, though notified on 9th September, 1988, came into force with effect from 1st day of January, 1986. These Rules were adopted by this Court on 20th January, 1989 and as a result thereof the scale of pay of Special Secretary was revised

from Rs. 2000—2300 to Rs. 3700—5000. Since this Court adopted the revised pay rules on 20th January, 1989, that is, after the expiry of the date of last increment accrued to the petitioners, which was 1st October, 1988, the petitioner, in order to protect his pay along with the dearness allowance and *ad hoc* dearness allowance admissible under the rules, submitted an application to the Chief Justice on 20th March, 1989. The request made to the Chief Justice was for the exercise of his powers under Rule 12 of the Revised Pay Rules of 1988, for grant of permission to the petitioner to opt for the revised pay scale of the Special Secretary with effect from 1st October, 1988, and thus to save himself to the undue hardship going to be caused to him by the operation of the Rules. Rule 12 of the Revised Pay Rules is reproduced as under :—

“12. *Power to relax :*

Where the Government is satisfied that the operation of these rules causes undue hardship to any individual government employee or class of government employees, it may by order, in writing, relax or dispense with any of the provisions of these rules to such extent and subject to such conditions as it may consider necessary.”

After satisfying himself that the operation of Rule 5 of the Revised Pay Rules was causing hardship to the petitioner, the Chief Justice granted the necessary relaxation and permitted the petitioner to opt for the revised scale of pay as Special Secretary with effect from 1st October, 1988. In implementation of the aforesaid order, the pay of the petitioner was fixed in the revised pay scale at Rs. 4375. Even though this relaxation, according to the petitioner, did not fully protect his pay and emoluments already drawn by him before revision of pay scale, yet his emoluments to the extent of Rs. 351.40 P.M. were protected. Thereafter, the petitioner continued to draw his revised pay scale and emoluments in pursuance to the relaxation granted by the Chief Justice in April, 1989, when suddenly on 22nd January, 1990, the petitioner was informed that the Acting Chief Justice had recalled the earlier order whereby he was permitted to opt for the revised pay scale with effect from 1st October, 1988, and was asked to exercise fresh option within a period of ten days. Simultaneously, a copy of the aforesaid communication dated 22nd January, 1990, was also forwarded to the Superintendent, Bills Branch, for taking necessary action with regard to effecting recovery of the amount excess drawn, if

any, by the petitioner. Though on the receipt of the impugned communication, the petitioner opted for the revised pay scale with effect from 1st October, 1987, yet he has challenged this decision on the judicial side by filing the present writ petition. Challenge is mainly on the ground, that the permission once granted by the then Chief Justice by exercising his powers under Rules 12 of the Revised Pay Rules, permitting the petitioner to opt for the revised pay scale with effect from 1st October, 1988, could not be recalled by the successor-in-office, that is, the then Acting Chief Justice, especially when the relaxation of the relevant rule was only to remove undue hardship of the petitioner and in any case not without affording an opportunity of being heard.

(4) In reply to the writ petition, written statement was filed by the then Registrar of this Court, in which the factual position has almost been admitted. Still the impugned action is sought to be justified on the ground that under the Revised Pay Rules the petitioner could opt for the grant of revised pay scale from a date upto 1st October, 1987, and not with effect from 1st October, 1988. It was, therefore, for that reason that the matter was reconsidered by the Acting Chief Justice and the earlier order of the Chief Justice was recalled. Regarding the passing of the impugned order without even affording an opportunity of hearing to the petitioner, there is no specific denial to the averment made in para 15, sub-para (iv) of the petition. On the other hand, the tenor of the written statement and the impugned order dated 22nd January, 1990, clearly show that the impugned order was passed without affording an opportunity of hearing to the petitioner.

(5) After hearing the petitioner, who appeared in person, and Mr. Anand Swaroop, learned Senior Advocate, appearing on behalf of the Punjab and Haryana High Court, through its Registrar, we are of the considered view that the impugned decision of the then Acting Chief Justice, as communicated to the petitioner on 22nd January, 1990. Annexure P.1, recalling the earlier order of the then Chief Justice dated 24th April, 1989, was wholly contrary to the settled principles of law as well as of natural justice, and we have no hesitation in quashing the same by issuing a writ of *certiorari*.

(6) Under Rule 5 of the Punjab Civil Services (Revised Pay) Rules, 1988, employees of this Court were required to opt for the revised pay scales with effect from certain dates. Since the petitioner found that the operation of the rule was causing undue hardship to him, by subjecting him to a recurring financial loss re-

trospetively as this Court had adopted the Revised Rules by notification dated 20th January, 1989. he sought relaxation of the aforesaid rule by seeking permission to opt with effect from 1st October, 1988. The Chief Justice, who was the competent authority under Rule 12 of the aforesaid Rules, after satisfying himself about the hardship being caused to the petitioner, exercised his jurisdiction under the aforesaid rule and granted the necessary relaxation permitting the petitioner to exercise his option with effect from 1st October, 1988. Just as the State Government was competent to grant the necessary relaxation in exercise of its powers under the aforesaid rule with regard to the employees serving with the State Government, similarly the Chief Justice of the High Court was competent to exercise such power in respect of the employees of this Court under the same rule. The relaxation having been granted by the Chief Justice and communicated to the petitioner,—*vide* order dated 24th April, 1989, remained in its full effective operation till the same was recalled and the decision communicated to the petitioner on 22nd January, 1990.

(7) It was more than half a century ago that the Privy Council in its celebrated judgment reported as *R. T. Rangachari v. Secretary of State* (1), held as under :—

“In a case in which after Government Officials, duly competent and duly authorised in that behalf have arrived honestly at one decision, their successors in office, after the decision has been acted upon and is in effective operation, cannot purport to enter upon a reconsideration of the matter and to arrive at another and totally different decision.”

This principle has since been reiterated by Hon'ble Supreme Court and followed by various High Courts in the country a number of times, and in fact, “by now it has become an integral part of Service Jurisprudence which has to be meticulously followed by the administrative Heads and authorities discharging administrative functions. Tested on the touchstone of this principle, the impugned order in the present case cannot be upheld. In any case, when in implementation of the earlier order dated 24th April, 1989, passed by the then Chief Justice, pay of the petitioner had been revised and he continued to draw his salary on the basis thereof, the decision could not be reconsidered and recalled without affording

(1) A.I.R. 1937 P.C. 27.

to the petitioner even an opportunity of being heard. Quite surprisingly, this was not done in the present case”.

(8) Consequently, we allow this petition, quash the impugned decision of the then Acting Chief Justice as communicated to the petitioner,—*vide* memorandum dated 22nd January, 1990, Annexure P.1, and restore the original order of the Chief Justice dated 24th April, 1989. Resultantly, the pay of the petitioner as originally fixed in pursuance of the order dated 24th April, 1989, shall continue to be in force, with necessary pay fixation as a result of grant of increments etc., and he shall be restored the entire monetary benefits to which he would have been entitled had the impugned order dated 22nd January, 1990, not been passed. As a necessary consequence, the arrears of salary, allowances, increments, etc. accruing to the petitioner on the basis of his revised pay fixation, shall be disbursed to him forthwith, including the amount recovered, if any, from the salary of the petitioner, with 12 per cent per annum interest thereon, within a period of three months. As the petitioner has not engaged any counsel and has appeared in person, there shall be no order as to costs.

(9) Regarding the other claim made by the petitioner for the grant of dearness allowance on personal pay or special pay, etc. the petitioner is at liberty to represent to the Chief Justice through the Registrar of the Court who will have the same examined in accordance with the rules and obtain orders of the Chief Justice on the administrative side, expeditiously, preferably within three months of the filing of the representation, if any.

R.N.R.

Before Hon'ble N. K. Sodhi, & M. R. Agnihotri, JJ.

INDERJIT SINGH & COMPANY,—*Petitioner.*

versus

STATE OF PUNJAB & OTHERS,—*Respondents.*

Civil Writ Petition No. 4562 of 1991

February 26, 1992

Punjab General Sales Tax Act, 1948—Ss. 5(2) (a) (ii), 11, 21 and 22—Constitution of India, 1950—Art. 226 and 227—Alternative remedy—New plea—Finding of fact—Claim for deductions under S. 5(2) (a) (ii) disallowed—Sales made to Registered Dealers—Purchasing dealers denying on affidavit that such sales made—Sales