State of Punjab and Another

Vs

Iqbal Singh

Civil Appeal No. 1203 of 1968

(A.C. Gupta, Jaswant Singh JJ)

12.02.1976

JUDGMENT

JASWANT SINGH J. -

1. This appeal by certificate of fitness granted by the Punjab and Haryana High Court is directed against the judgement dated April 4, 1967 of a division Bench of that Court passed in letters Patent Appeal No. 104 of 1967 whereby the judgement and judgement and order dated December 19, 1966 of Narula, J. (as he then was) in Civil Writ Petition No. 298 of 1966 was affirmed.

2. It appears that the respondent joined the Punjab Education Department (class II) Service by direct recruitment as a senior lecturer in 1933. He was promoted to Punjab Education Service (class I) on October 1, 1949. He was given the selection grade with effect from February 15, 1956, and in due course rose to the position of Director of public instruction-cum-secretary to the Government of Punjab, education Department. He proceeded on leave preparatory to retirement on March 18, 1958, on attaining the age of superannuation. In June, 1961, he received a copy of letter No. 5137-ED-I-60/9269 dated May 2, 1961, addressed by the secretary to government, Punjab, Education Department, to the Director of Public Instruction, Punjab, Chandigarh, conveying the sanction of the governor of Punjab to the grant to him i.e. the respondent of superannuation pension and death-cum retirement gratuity of Rs. 417.02 np. per mensem and Rs. 17,030.25 np. in lump sum respectively under Rule 5.27 and 6.13 of the Punjab Civil Service Rules Vol. II read with para 9(1)(a) of the New pension Rules 1951. It was stated in the aforesaid letter that personal file of respondent had been examine with reference to Rule, 6.4 of the Punjab Civil Service Rules Vol II and government were satisfied that his service record was not satisfactory and cut of 10% had accordingly made in the amount of pension and death-cum-retirement gratuity admissible to him on January 28, 1962. The respondent submitted representations to the Chief minister and Governor of Punjab against the aforesaid decision of the government to apply 10% cut in his pension and death-cum-retirement gratuity but the same proved abortive. After the establishment of the board set up to examine and remove the grievances in the matters of promotion and fixation of pension etc. of the gazette officer of the government, the respondent addressed a representation to the said Board on September 14, 1964, against the aforesaid decision of the government to apply the cut of 10% in his pension and gratuity. On November 1, 1965, the respondent received a copy of letter No. EDI-4(64)-65/22436 dated October 21, 1965, addressed by the education Commissioner and the secretary to government, Punjab Education Department, to the Director of public instruction of Punjab intimating that in suppression of the aforesaid letter dated May 2 1961, of the Punjab government, it had been decided to grant to the respondent a superannuation pension and death-cum-retirement gratuity of Rs. 449.18 np per mensem and Rs. 18,927.50 in lump sum respectively under Rules 5.27 and 6.13 of the Punjab Civil Service Rules. Vol. II read with para 9(1)(a) of the

new pension Rules. 1951. In para 3 of the letter. It was reiterated that a cut of 5% had been made in the pension admissible to the respondent as his service record which had been examined with reference to Rule 6.4 of the Punjab civil service Rule, Vol. II had not been satisfactory. Aggrieved by this communication. The respondent filed in the Punjab and Haryana High Court at Chandigarh a petition under Articles 226 and 227 of the Constitution being Civil Writ petition No. 298 of 1966, challenging the aforesaid decision of the Punjab Government which was as already stated allowed by Narula, J. (as he then was) by his judgement and order dated December 19, 1966. Following the Full bench judgement of his court dated October 25, 1966. In civil writ petition No. 504 of 1964 entitled K. R. Erry, Retired Superintending Engineer, 45 Cecil Hotel. Simla v. State of Punjab (AIR 1967 Punj & Har 279 : ILR (1967) 1 Punj 278 (FB). Dissatisfied with this judgement and order, the appellants preferred a letters patents appeal, being L.P.A. No. 104 of 1967 which did not meet with success. Thereupon the appellants preferred under Article 133 of the Constitution which was granted to them. This how the matter is before us.

3. Although in the grounds of appeal. It has urged by the appellants that the full Bench decision of the High Court of Punjab and Haryana in K. R. Erry's case is not in accordance with law as superannuation pension is a bounty and is given only as an grace, that ground is no longer available to the appellants in view of the decision of this court in Deokinandan Prasad v. State of Bihar ((1971) 2 SCC 330) where it was held that pension is not bounty payable on the sweet will and pleasure of the government and the right of a government servant to receive it is property under Article 31(1) of the Constitution and the state cannot without the same by a mere executive order. It was further held in that case that the claim to pension was also property under Article 19(1) (f) of the constitution and was not saved by clause (v) thereof. The learned Counsel appearing for the appellants has, however made a feeble attempt to urge that no opportunity to show cause was required to be given to the respondent before passing the order imposing the cut in his superannuation pension and death-cum-retirement gratuity under clause (a) and (b) of rules 6.4 of the Punjab civil service Rules (Pension Rules) as the order was an administrative order and the case did not fall with the purview of Article 311(2) of the constitution. It has been further contended learned counsel for the appellants that it was the judgement of this Court in M. Narasimhachar v. state of Mysore ((1960) 1 SCR 981 : AIR 1960 SC 247 : (1960) 1 LLJ 798) and not the judgement in state of Punjab v. K. R. Erry & Sobhag Rai Mehta ((1973) 2 SCR 405 : (1973) 1 SCC 120 : 1973 SCC (L & S) 63) which governed the present case. We regret we are unable to accede to these Contentions.

4. Though the impugned order imposing cut in pension and gratuity is not one of reduction in rank falling within the purview of Article 311(2) yet there can be no doubt that it adversely affected the respondent and such an order could have been passed without giving him a reasonable opportunity of making his defence. Reference in this connection may be made with advantage to the decision of this court in K. R. Erry & Sobhag Rai Mehta's case where after an exhaustive review of the case law bearing on the point it was observed at page 413 as follows : [SCC PP. 126-127 : SCC (L&S) pp 69.70, Paras 20-21].

Where a body or authority is judicial or where it has to determine a matter involving rights judicially because of express or implied provision, the principle of natural justice audi alteram partem applies. See : Province of Bombay v. Kusaldas S. Advani (1950) SCR 621, 725 : AIR 1950 SC 222) and Board of High School & Intermediate Education, U.P., Allahabad v. Ghanshyam Das Gupta (1962 Supp 3 SCR 36 : AIR 1962 SC 1110). With the proliferation of administrative decisions in the Welfare State it is now further recognised by courts both in England and in this country, (especially after the decision of House of Lords in Ridge v. Baldwin (1964 AC 40)) that

where a body of authority is characteristically administrative the principle of natural justice is also liable to be invoked if the decision of that body or authority affects individuala rights or interests, and having regard to the particular situation it would be unfair for the body or authority not to have allowed a reasonable opportunity to be heard. See : State of Orissa v. Dr. (Miss) Binapani Dei ((1967) 2 SCR 625 : AIR 1967 SC 1269 : (1967) 2 LLJ 266) and In re H. K. (An Infant) ((1967) 2 QBD 617). In the former case it was observed as follows :

An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is however under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed. It need not be shown to be superadded. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

These observations were made with reference to an authority which could be described as characteristically administrative. At page 630 it was observed :

It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated, must be made consistently with the rule of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence

This case and the English case In re H. K. (An Infant) were specifically referred to with approval in a decision of the constitutional bench of this Court in A .K. Kraipak v. Union of India ((1970) 1 SCR 457 : (1969) 2 SCC 262).

5. The decision of this court in M. Narasimhachar's case (supra) on which strong reliance has been placed on behalf of the appellants is of no assistance to them as the point as to whether an opportunity to show cause was to be afforded to a government servant before applying a cut in his pension in view of the principle of natural justice embodied in the well-know maxim audi alteram partem was never urged or gone into in that case. Furthermore as pointed out by Palekar, J. while speaking for the Court in K. R. Erry & Sohag Rai Mehta's case (supra) the question whether pension is a bounty or property did not arise in the former case. The present case is in our Opinion, fully covered by the judgement of this court in K. R. Erry & Sobhag Rai Mehta's case.

6. For the foregoing reasons we are of the view that the impugned judgments do not suffer from any

illegal and were rightly rendered. In the result the appeal fails and is here by dismissed with costs.

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