

Baldev Raj, Ex-Constable

Vs

State of Punjab and Others

Civil Appeal No. 1649 of 1984

(D. A. Desai, Ranganath Misra JJ)

13.03.1984

JUDGMENT

DESAI, J. -

1. Special leave granted.
2. It is rather unfortunate that the respondents despite the Judgment of this Court in Sengara Singh v. State of Punjab ((1983) 4 SCC 225) by their inaction force low paid police constables to come to this Court and occasionally devious methods are employed to circumvent the decision.
3. In Sengara Singh case ((1983) 4 SCC 225), this Court held that the State Government cannot discriminate in the matter of condoning the lapse between two government servants wholly similarly situated. This Court held as under :

As a sequel to police agitation, the State Government dismissed about 1100 members of the Police Force on the allegation that they participated in the agitation. The State Government also filed criminal prosecutions against a large number of the agitators. Subsequently, the State Government reinstated 1000 dismissed members of the Police Force in their original posts and withdrew the criminal cases against them. If the filing of the criminal cases was the distinguishing feature, which would distinguish the case of the present appellants from others, that feature has become irrelevant because the criminal cases against those who were subsequently reinstated have been withdrawn. It is not suggested that the present appellants were leaders or indulged into more violent activities. We repeatedly questioned the learned counsel to specify the distinguishing features of the present appellants from those in whose case the Committee recommended the reinstatement and the State Government accepted the recommendations. There is not an iota of evidence which would distinguish the case of the present appellants from those who were the beneficiaries of the indulgence of the Committee and the largesse of the State. The net result has been that the present appellants have been arbitrarily weeded out for discriminatory and more severe treatment than those who were similarly situated. This discrimination is writ large on the record and the Court cannot overlook the same.

This Court directed reinstatement of the appellants in the case. It appeared that some of the members of the Police Force who could not afford the luxury of rushing to this Court, subsequently at intervals approached the Court for similar relief, and the same was invariably granted. It was also pointed out to the learned counsel for the respondent State that the State should extend the benefit of

the judgment of this Court to all who are similarly situated. However, the response is unsatisfactory. This case will illustrate the same.

4. Appellant joined service as constable in the Police Force of Punjab on July 7, 1951. It was alleged that he participated in the agitation by the members of the Police Force in the year 1979. He was prosecuted for an offence under Section 29 of the Police Act read with Section 9 of the Punjab Security and E.C.M. Act. Consequent upon the launching of the prosecution, appellant was suspended from service. But it is admitted that the prosecution was subsequently withdrawn. Thereafter, the appellant was reinstated on February 11, 1980 and on the same day he was compulsorily retired from service, after giving him pay for a period of three months in lieu of notice. The appellant contended that order of compulsory retirement was a device to circumvent the decision of this Court and therefore, a mere show was made of reinstating him in service and compulsorily retiring him from service on the same day. The appellant accordingly questioned the validity of the order of compulsory retirement in Civil Writ Petition No. 1137 of 1983 in the High Court of Punjab and Haryana at Chandigarh. A Division Bench of the High Court dismissed the petition in limine. Hence this appeal by special leave.

5. A notice to show cause was issued calling upon the respondents to explain why special leave should not be granted. Mr S. K. Bagga, learned counsel appeared for the respondents. When the matter came up before this Court on January 30, 1984 after perusing the counteraffidavit filed by one Shri S. S. Bains, IPS, Senior Superintendent of Police, Sangrur, the respondents were called upon to produce the file relevant to the order of compulsory retirement of the appellant. We specifically asked the respondents to inform the Court as to who proposed the compulsory retirement of the appellant and who finally accepted the proposal and which public interest was sought to be served by compulsorily retiring the appellant on the same day on which he was reinstated in service. We also called upon the respondents to disclose the annual confidential reports in respect of the appellant which may have been taken into consideration in reaching the conclusion that it was necessary in public interest to retire the appellant from service.

6. In response to this query, Shri S. S. Bains has filed his further affidavit in which he has stated that one Shri Baljit Singh Bhullar, IPS, the then Superintendent of Police, Sangrur passed the orders of compulsory retirement of the appellant on his own and that the relevant consideration as set out in the Punjab Civil Services (Premature Retirement) Rules, 1975 were taken into consideration at the time of passing the impugned order. This rule provides that "the appropriate authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right by giving an employee prior notice in writing to retire that employee on the date on which he completes twenty-five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice".

7. Mr S. K. Bagga, learned counsel for the respondents urged that the appellant was compulsorily retired in public interest. Public interest in an unruly horse and once it is alleged that the order was a device to circumvent the decision of this Court, it was obligatory upon the respondents to explain why it became necessary to retire the appellant in public interest. It is true that dead wood has to be weeded out but that itself should not become a cloak to wreak vengeance. The officer who passed the order of compulsory retirement has not filed his counter-affidavit explaining the circumstances in which he considered it in public interest to compulsorily retire the appellant. Mr S. S. Bains, who has filed the counter-affidavit claims to have no knowledge of the circumstances which necessitated compulsory retirement of the appellant. It is in this background and keeping in view the fact that while the appellant was reinstated on February 11, 1980 in the forenoon, on the same day in the

afternoon he was compulsorily retired from service. In effect the decision to reinstate was taken simultaneously with the decision to retire him. It is in the backdrop of these facts which left us agitated that we called upon the respondents to disclose the file in which administrative decision was taken. It may be mentioned that no privilege is claimed. The file is not shown on the specious plea that no such file is maintained. It is conceded in para 5 of the counter-affidavit that no annual confidential reports are maintained in the case of constables. This left us completely guessing as to what must have weighed with the competent authority to pass the impugned order of retirement which is a bald order merely reciting the words of the relevant rule. The order of compulsory retirement affects the livelihood of the person in whose respect the order is made and it cannot be left to the guesswork to decide what prompted the making of such an order. We are disinclined to accept the submission that no file was maintained. In the absence of any record and the annual confidential reports, it must be confessed that there was no material before the competent authority to pass the impugned order. When in view of the judgment of this Court, it became obligatory to reinstate the appellant in service, the power to order compulsory retirement was exercised not in public interest but to make a pretence of reinstatement and to get rid of the appellant. The High Court, in our opinion, was clearly in error in dismissing such a petition in limine. Accordingly, this appeal succeeds and is allowed and the order of compulsorily retiring the appellant from service dated February 11, 1980 is quashed and set aside. If the appellant has not reached the age of superannuation, he must be reinstated in service. If he had reached the age of superannuation, he should be paid the salary, wages and other terminal benefits for the period February 11, 1980 till the date of his superannuation. The respondents shall pay the costs of the appellant quantified at Rs 1000.

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