

PUNJAB AND HARYANA HIGH COURT'

State of Punjab

Vs

Sh. Ram Singh

RSA No. 2225 of 1979

(Rajendra Nath Mittal, J.)

28.05.1984

JUDGMENT

R.N. Mittal, J.

1. This judgment will dispose of Regular Second Appeal No. 2225 of 1979, Civil Revision No. 1446 of 1984 and Civil Miscellaneous No. 66-DII/1984. First I shall deal with appeal the facts of which are as follows:

2. The plaintiff was appointed as a Village Guide in the erst while State of Nabha in the grade of ₹ 30-2-60 against a permanent post on 21.5.1942. The grade was revised on 1.1.1948 to ₹ 50-3-80. After the formation of Patiala and East Punjab States Union, the plaintiff was integrated as a Village Guide vide order dated 14.6.1951 in the grade of ₹ 40-2-60. Later he was made a clerk in the Local Self--Government Department vide order dated 7.7.1952 with effect from 1.4.1952. Shri Hardial Singh it is averred, was junior to him as a Village Guide and was adjusted on the post of Assistant Panchayat Officer in the grade of ₹ 90-6-120/9-160 with affect from 1.4.1952 ignoring the claim of the plaintiff for that post. It is further averred that the order dated 7.7.1952, absorbing the plaintiff as a clerk was not communicated to him and was illegal, void and inc effective. He made a representation to the Department which was rejected on 21.1.1971 on the ground that it was belated. Later the Deputy Minister for Development considered the matter and found the claim of the petitioner genuine. Consequently, he directed that his case for promotion as Panchayat Officer be considered favourably. It is alleged that in spite of that, the petitioner has not been promoted as a Panchayat Officer. Consequently, he filed a suit, challenging the order dated 21.1.1971.

3. The suit was contested by the defendant who controverted the allegation of the plaintiff. It inter alia pleaded that the plaintiff was declared as a surplus Village Guide and was, therefore, absorbed as a Clerk in the grade of ₹ 40-2-60 with effect from 1.4.1952 vide order dated 7.7.1952. It was also pleaded that Hardial Singh was senior to the plaintiff and had better qualifications. He was later promoted as a Senior Clerk in the grade of ₹ 60-4-100 and

subsequently was adjusted as Assistant Panchayat Officer with effect from 1.4.1952. The Development Minister had ordered on 14.5.1971 that the plaintiff's case for promotion as Assistant Panchayat Officer be considered favourably, if Hardial Singh was junior to him, but as Hardial Singh was senior to him therefore, the plaintiff was not entitled to be promoted as Assistant Panchayat Officer. It is also pleaded that the order dated 7.7.1952 was communicated to him through service book.

4. The learned trial Court dismissed the suit of the plaintiff, finding no merit therein. He went up in appeal before the learned Additional District Judge who accepted the same and decreed the suit. The State of Punjab has come up in second appeal to this Court.

5. The learned counsel for the appellant has contended that the plaintiff respondent, in fact, challenged the order of integration dated 7.7.1952 Ex.D6/D7 in the garb of challenging the order of rejection of his representation dated 21.1.1971. He, it is further contended, knew the order dated 7.7.1952 from the very beginning, but he did not challenge it for about a period of 20 years and consequently, he could not be allowed to challenge the same after such a long time. He also urged that it was barred by limitation. On the other hand, the learned counsel for the respondent has urged that the order dated 7.7.1952 was passed without giving a hearing to him and therefore, the order was void. Such an order, according to him, can be challenged at any time. It is further urged by him that the Deputy Minister of Development redressed the respondent's grievance vide order dated 14.5.1971, but for the reasons best known, the appellant is not implementing the same.

6. I have given a thoughtful consideration to the arguments of the learned counsel. In order to decide the question, a few other facts may be noticed. It is not disputed that the respondent was recruited as a Village Guide in Nabha State on 21.5.1946 in the grade of ₹ 30-2-60, which was later revised to ₹ 50-3-80. In August, 1948 the State of Nabha was integrated with the order States of the region and the new State was known as Patiala and East Punjab States Union. It is also not disputed that he was integrated in the Pepsu State as a Village Guide in the grade of ₹ 40-60. He, however, was not allowed to continue as a Village Guide and was appointed as a clerk with effect from 1.4.1952 vide order dated 7.7.1952 in the same grade, i.e. ₹ 40-2-60.

7. The learned counsel for the State has drawn my attention to the notification dated 10-6-1952 by the Secretary to the Local self Government wherein it is stated that his Highness, the Raj parmukh absorbed 30 employees of the Panchayat Department mentioned in the notification, in the newly created posts of junior clerks. The name of the plaintiff-respondent figures at No.25 and that of Hardial Singh at No.23. Then it is stated that his Highness was further pleased to declare the posts of 7 Village Guides, detailed in the notification, as surplus with effect from 1.4.1952 and that the remaining Village Guides who were working in the Department as officiating were declared as temporary.

8. The learned counsel from the aforesaid documents wants me to infer that the respondent had become surplus and he was integrated as a junior grade clerk at his own request. I do not agree with the submission of the learned counsel. S.B. Sharma (D.W.1) was an Assistant in the office of the Director, Panchayati Raj and Community Development, Punjab. He categorically stated that the post against which the respondent was working was not abolished. No document has

been produced to show that option was invited from the respondent to the effect whether he wanted to continue as a Village Guide or become a clerk and he opted for becoming a clerk. In the absence of such a writing it cannot be held that he gave an option to become a clerk in the grade of ₹ 40-2-60 while earlier he was in the grade of ₹ 50-3-80. It is true that in the notification (Exhibit D.6) it is stated that some of the posts of the Village Guides were declared as surplus but the petitioner's name does not appear against such a post. Therefore, the notification is of no help to Mr. Brar.

9. Faced with this situation he sought to urge that Hardial Singh was senior to the respondent as he was shown at No. 23 in Exhibit D.5 and the respondent was shown at No.25. This submission has also no substance. S.B. Sharma (D.W.1.) deposed that Exhibit D.5 is the list of those persons who were absorbed as junior clerks in the Panchayat Department. It is noteworthy that the respondent served interrogatories on the Government enquiring as to whether Exhibit D.5 was a seniority list. In reply to the interrogatories it is stated that Exhibit D.5 was not a seniority list. Therefore, it cannot be inferred from the list that Hardial Singh was senior to the respondent as his name appeared at No. 23 and that of the respondent at No.25.

10. It has already been mentioned above that the petitioner was integrated as a Village Guide on 14.6.1951 and later he was taken as a junior grade clerk in a lower grade vide order dated 7.7.1952. While doing so, his consent was not taken nor he was given any opportunity to represent against the said order. As his salary was reduced by that order, therefore, it adversely affected him. It is well settled that if an adverse order is passed against an official, the same is void unless he has been given adequate opportunity to represent against that order. It has been held in *State of Orissa v. Dr. (Miss) Binapani Dei and others*¹, that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice and in case it is not done, the order is bad. The plaintiff-respondent made representations in the late sixties against the injustice done to him. One of his representations was rejected vide order dated 21.1.1971. Another representation came up before the Deputy Minister Development who passed a favorable order to him. It was stated in the order that Shri Ram Singh joined service as Village Guide in the year 1946, which post was subsequently designated as Assistant Pan Chayat Officer in the year 1952. Instead of posting him as Assistant Panchayat Officer he was posted as Clerk and since then he was working as such. From the perusal of the file, it was not clear under what circumstances he was posted as a Clerk instead of Assistant Panchayat Officer. Some persons who had been working as Village Guide at that time had since been promoted as Panchayat Officers and some as Block Development Officers. That shows that justice had been denied to him. It is further stated in the order that in view of his long service and the fact that junior persons to him had been promoted as Panchayat Officers Block Development Officers, and in order to do justice to him, his case for promotion as Panchayat Officer be considered favourably. The Minister for Community Development and Panchayats agreed with the order of the Deputy Minister on 14.5.1971. It is, however, an irony of fate that in spite of the order of the Minister, his case was not considered for promotion. It is evident from the said order that a great injustice had been done to him, and the Government did not care to undo the same, despite the order of the Minister. In view of the order of the Minister, appropriate relief should have been granted to the plaintiff-respondent. In the aforesaid circumstances, I am of the view that the appellate Court rightly came to the conclusion that the plaintiff is entitled to be considered for promotion when the Village Guide who were junior to him were promoted.

11. Mr. Brar also contended that the suit is barred by limitation as it had been instituted after a lapse of about 20 years after the order dated 7.7.1952. I am not impressed with this submission of the learned counsel as well. As already held above, the order dated 7.7.1952 was a void order. Such an order can be challenged at any time. In the above view, I am fortified by the observations of the Supreme Court in *State of Madhya Pradesh v. Syed Qamarali*², wherein it was held that if the order is void it is no order in the eye of law and can be challenged at any time. Similar view was taken by O. Chinnappa Reddy, J. in *Mohinder Singh ex-Patwari v. Punjab State*³, In that case too, the order by which the appellant was removed from service was void. The trial Court dismissed his suit as barred by limitation and that order was affirmed by the appellate Court. He came to this Court in appeal. It was held by the learned Judge that where an order of removal was unconstitutional, the case would not be governed by Article 120 of the limitation Act and that there was no limitation for such a suit. I expressed same view in *(Food Corporation of India v. Garib Singh)*⁴, decided on 5th December, 1983, Therefore, I am of the view that the suit cannot be dismissed on the ground of limitation.

12. Mr. Brar lastly argued that Hardyal Singh, respondent was promoted as Assistant Panchayat Officer from the post of junior grade clerk. He contends that if the plaintiff-respondent is not considered to have been appointed as a junior grade clerk, then he cannot be considered for promotion from that date when Hardyal Singh was promoted. I find force in this submission of the learned counsel. The case of the plaintiff-respondent is that he should have been allowed to continue as Village Guide and thereafter he should have been promoted in that hierarchy. It is in evidence, as already discussed above, that the posts of village Guides were not abolished. In the circumstances, the plaintiff-respondent is entitled to be considered for promotion when Village Guide, junior to him was promoted.

13. Now I Advert to the facts of Civil Revision No.1446 of 1983.

14. The decree-holder started execution of the decree passed in his favour by the appellate Court. He filed a claim for ₹ 4,74,905.25 claiming his promotion to the rank of Deputy Director Panchayats. A copy of the claim was given to the State, in order to file reply. However, in spite of giving various opportunities, no reply was filed on behalf of the State. Consequently, the Executing Court accepted the claim of the petitioner. The property of the State had already been attached and, therefore, it ordered that it be put to sale. The State has come up in revision against the said order to this Court.

15. The question that arises for determination is whether the order of the executing Court should be set aside. I have already modified the decree of the appellate Court. In the circumstances, the Executing Court shall have to determine the matter again. Therefore the order of the Executing Court is liable to be set aside.

16. For the aforesaid reasons, I do not find any merit in the appeal and dismiss the same. The plaintiff-respondent shall be entitled to promotion as indicated above. I, however, accept the Civil Revision, set aside the order of the Executing Court dated 11th April, 1983 and remand the case for fresh decision. No order as to costs.

17. In view of the acceptance of the Civil Revision. C.M. No.66-CII of 1984 has become infructuous and the same is dismissed as such.

Appeal dismissed.

Cases Referred.

1A.I.R. 1967 S.C. 1269
21967 SLR 228
31977 SLWR 447
4RSA No. 1267 of 1980