

(2001) 05 P&H CK 0201

High Court Of Punjab And Haryana At Chandigarh

Case No: C.M. No. 24 of 2000 and R.A. No. 2 of 2000 in C.W.P. No. 11567 of 1992

Surjit Singh and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: May 25, 2001

Acts Referred:

- Industrial Disputes Act, 1947 - Section 9A

Hon'ble Judges: V.M. Jain, J; Jawahar Lal Gupta, J

Bench: Division Bench

Advocate: A.K. Chopra, for the Appellant; G.S. Bajwa, for the Respondent

Judgement

Jawahar Lal Gupta, J.

The Petitioners in these two writ petitions are ex-servicemen. After their retirement from the Army they were employed as Armed Guards with the Oriental Bank of Commerce. In pursuance to certain circulars issued by the Government of India, the Bank had issued directions for the re-fixation of their pay. As a result, certain recoveries had also to be made from them. They had consequently approached this Court with the prayer that the circular issued by the Bank by which it was ordered that the pay be re-fixed and the instructions issued vide letter dated April 16, 1992, copies of which were produced as Annexures P-13 and P-12 (in C.W.P. No. 9899 of 1993), be quashed. It was inter-alia alleged that the orders for re-fixation of pay and recovery etc. had been passed without the issue of any notice or the grant of any opportunity to the Petitioners. Thus, the circular and the consequential action in ordering recovery was violative of the principles of natural justice.

2. Similar directions had also been issued by the Punjab National Bank.

3. A bunch of 17 petitions was fixed before the Bench along with C.W.P. No. 109 of 1998 (Shanker Lal and Ors. v. Union of India and others). These 17 petitions were disposed of by this Bench vide order dated August 19, 1999. It was held that no opportunity having been granted to the employees, the impugned action was

"violative of the principles of natural justice." Thus, all the petitions were allowed.

4. The Punjab National Bank etc. filed petitions for Special Leave to Appeal (Civil) No. 3186-3201 of 2000 before their Lordships of the Supreme Court. These were dismissed by a Bench of the Supreme Court consisting of Hon"ble Mr. Justice V.N. Khare and Hon"ble Mr. Justice Doraiswamy Raju vide their order dated March 3,2000. A photocopy of the order has been produced by the counsel for the writ-Petitioners. It reads as under:

Coram:

V.N. KHARE

DORAISWAMY RAJU

For Petitioner(s)

Mr. Harish N. Salve, Sr. Adv. with

Mr. O.C. Mathur, Adv.

Mrs. Meera Mathur, adv. for

M/s J.B. Dadachanki & Company, Adv.

For Respondent(s)

Upon hearing counsel the Court made the following ORDER

Mr. Harish N. Salve, learned Sr. counsel for the Petitioner cannot go behind the circular issued by the Central Govt. and, therefore, the opportunity would be futile, since the salary of the employee has been reduced. The fair play demands the opportunity and therefore we do not interfere with the order passed by the High Court. Special Leave Petitions are dismissed.

In the light of this, I.A. No. 1 is also dismissed.

Sd/-

(S. Krishnan)

Court Master

3.3.2000.

5. In the meantime, these two writ petitions were also listed before us. Vide orders dated August 23, 1999 the petitions were disposed of in terms of the orders passed by us in C.W.P. No. 109 of 1998.

6. The Bank has now filed the two review petitions in these cases. Notice of the review petitions was given to the counsel for the writ-Petitioners. Reply has been filed.

7. Counsel for the parties have been heard.

8. Mr. Ashwani Chopra, Learned Counsel for the Bank, has contended that the pay of the Petitioners had been initially fixed in pursuance to a settlement with the Union. Thereafter, the matter was referred to the Government of India and in accordance with the decision given by the authority, the orders for re-fixation of pay and recovery were passed. This action has already been upheld by a learned Single Judge of the Gujarat High Court in Special Civil Application No. 7250 of 1993 vide order dated March 9, 1994. On this basis, Learned Counsel submits that the decision deserves to be reviewed. He has also pointed out that he was unable to appear before the Bench on the date on which these cases were decided as his name had not been mentioned in the cause list.

9. Mr. Bajwa appearing for the writ Petitioners, has contended that the decision of this Court in Shankar Lal's case (C.W.P. No. 109 of 1998) having been affirmed by their Lordships of the Supreme Court, there is no merit in the review applications. Thus, these should be dismissed.

10. After hearing counsel for the parties, we find that Mr. Chopra's name had not appeared in the cause list on August 23, 1999. The counsel had, thus, missed the cases. As a result, he was unable to appear. Resultantly, we have heard counsel on the merits of the case.

11. The short issue is - Did the Respondents act in violation of the principles of natural justice in the present case?

12. Admittedly, the writ-Petitioners are ex-servicemen. They were employed by the Bank after retirement from service. Initially, their pay was fixed in accordance with the circulars which were in force at that time. Subsequently, in pursuance to certain other circulars issued by the Government of India, the pay was re-fixed. As a result, there was reduction of the emoluments payable to the Petitioners. Even certain recovery had to be made. The Petitioners allege that the impugned orders were passed without the grant of any opportunity and are violative of the principles of natural justice. If such an opportunity had been granted, the Petitioners could have shown that the pay as initially fixed was in conformity with the circulars and that it could not be reduced in view of the provision in the bipartite settlement. Learned Counsel for the Petitioners has also pointed out that in view of the provisions of Section 9-A of the Industrial Disputes Act, 1947, the conditions of service governing the employees could not have been altered to their disadvantage.

13. Mr. Chopra contended that in the circumstances of the case no opportunity was required to be given. Is it so?

14. The principles of natural justice are nothing but rules of fair play. These are meant to ensure fairness of procedure. These principles cannot be subjected to any "legal strait-jackets". The requirements vary with the circumstances of each case. The basic rule is that a party should not "suffer in person or in purse without an opportunity". What is the position in the present case?

15. The pay of the Petitioners has been re-fixed. Their emoluments have been adversely affected. Certain recoveries have to be made. In the circumstances of the case, we are satisfied that the Petitioners should have been given an opportunity to explain their position before any order adverse to their interest was passed. Nothing of the sort having been done, we are unable to sustain the action.

16. Mr. Chopra submitted that a learned Single Judge of the Gujarat High Court has dismissed a similar petition and relegated the parties to their remedy under the industrial law. It is, undoubtedly, so. However, as pointed out by the learned, counsel for the writ Petitioners, we had in a case identical to the present one, taken the view that the action of the Bank was violative of the principles of natural justice. The order of the Bench has the imprimatur of their Lordships of the Supreme Court inasmuch as in the case - Punjab National Bank and Ors. v. Shankar Lal and Ors. as already noticed, their Lordships were pleased to dismiss the Special Leave Petitions with the observation that "the fair play demands the opportunity and therefore we do not interfere with the order passed by the High Court.

17. Resultantly, both the writ petitions are allowed and the review petitions are dismissed. No costs.

Sd/- V.M. Jain, J.