

then the Court will be well within its jurisdiction to exercise its power under section 148 of the Code in favour of the defaulting party if a strong case is made out for the exercise of such jurisdiction."

(5) Sometimes it may not be possible to furnish the explanation for the default on the date fixed. To illustrate; if a party is coming to the court with the costs and in the way meets with an accident and instead of landing in the court it lands in the hospital, there may not be sufficient time to furnish these facts before the court and by the time the facts are brought to the notice of the court, it may be late and the court may have struck off the defence for non-payment of costs. Therefore, by and large the application may be moved after the event and the court will have to decide on the given facts of the case whether a case for extension of time or for recalling the order has been made out or not. Accordingly, I am of the view that the court below has failed to exercise its jurisdiction in not considering the application for extension of time on merits.

(6) For the reasons recorded above, Civil Revisions No. 3489 to 3494 of 1986 are allowed and the orders of the trial Court dated 30th September, 1986 are set aside with a direction to it to decide the applications afresh on merits on the basis of the affidavits, without full trial as is in a suit, in short time, preferably within three months from today. The other revisions i.e. Civil Revision Nos. 2331 to 2336 of 1986 also stand disposed of. No costs.

(7) The parties through their counsel are directed to appear before the trial Court on 2nd April, 1987.

R.N.R.

*Before D. S. Tewatia and M. R. Agnihotri, JJ.*

GURMEET SINGH GILL AND OTHERS,—*Petitioners*

*versus*

THE CHIEF AGRICULTURAL OFFICER, ROPAR AND  
OTHERS,—*Respondents.*

*Civil Writ Petition No. 6259 of 1986.*

March 3, 1987.

*Constitution of India, 1950—Article 226—Entitlement to City  
Compensatory Allowance—Executive instructions granting allowance*

**Gurmeet Singh Gill and others v. The Chief Agricultural Officer,  
Ropar and others (D. S. Tewatia, J.)**

*to employees posted within five miles of city—Fresh instructions issued by the Government withdrawing allowance to such employees—Such allowance—Whether a concession—Right of hearing to persons affected by the withdrawal of allowance—Whether required to be given by the Government.*

Held, that the payment of City Compensatory Allowance by the State Government to its employees was by way of concession. It was open to the Government to withdraw the said concession. Nobody can urge that the Government before deciding to withdraw the concession should have heard any such government employee. The position is not different when a given right is created by the statutory provision or executive instructions. The statute or the executive instructions could be amended or withdrawn in a manner as to do away with the right created by the earlier provisions of the statute or instructions. It cannot be contended that before modifying the statute or modifying the executive instructions the beneficiaries under the existing statute and the executive instructions should be afforded an opportunity of being heard.

(Para 8)

**PETITION Under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to :—**

- (i) send for the records of the case and after a perusal of the same;
- (ii) issue an appropriate writ, direction or order especially in the nature of Mandamus directing the respondents to continue to perform their statutory duty in extending the benefit of the policy decision of the State Government for the grant of compensatory allowance to the petitioners and also in view of the fact that the compensatory allowance has been allowed to other employees similarly situated with the petitioners in view of the judgment of this Hon'ble Court delivered in Civil Writ Petition No. 1758 of 1979 decided on 31st March, 1986;
- (iii) the respondents be further directed to give arrears of the compensatory allowance to the petitioners for which the petitioners are legally entitled ;
- (iv) this court may also issue any other suitable writ, direction or order which it may deem fit in the circumstances of the case;
- (v) the costs of this petition may also be awarded to the petitioners.

R. K. Chopra, Advocate, for the Petitioners.

H. S. Riar, D.A.G., (Punjab), for the State.

---

**JUDGMENT**

*D. S. Tewatia, J.*

(1) The petitioners, who are employees of the Punjab Government, have claimed that their place of posting and residence were located in such villages or places, as fall within 5 miles (8 kilometres) from the periphery of Chandigarh and thus are entitled to the payment of city compensatory allowance from the date on which they came to be so posted/resided in such villages.

(2) The petitioners have alleged in the petition that in the year 1975 the Punjab Government had decided that such of the government employees as were posted in Chandigarh/Mohali or within 5 miles (8 kilometres) of the periphery thereof or were residing in Chandigarh/Mohali or in places within 5 miles (8 kilometres) of its periphery would be entitled for the grant of city compensatory allowance.

(3) On 11th December, 1978, the Government clarified that the given distance of 5 miles/8 kilometres shall be measured as per roads or tracks and not by crow flight; that the city compensatory allowance in question was stopped by respondents 2 and 3 without giving any notice or opportunity to the petitioners. The petitioners have sought a direction to the respondents for continuing to pay the compensatory allowance.

(4) Since all the petitions (C.W.P. Nos. 5015, 5444, 5445, 5470, 5810, 5811, 5812, 6259, 6307, 6544, 6545, 6881 and 6916 of 1986 raise common questions of law and fact, we, therefore, propose to decide them by one order in Civil Writ Petition No. 6259 of 1986:

(5) In the written statement filed on behalf of the respondent-State it has been asserted that the decision to grant city compensatory allowance alluded to in the writ petition had been revised,—*vide* the Punjab Government circular letter No. 15/3/79-8FR/358, dated 14th January, 1980 and it was decided that only such employees would be entitled to the payment of city compensatory allowances, who were posted at Chandigarh and Mohali and not to those, who were posted in places at a distance of 5 miles (8 kilometres) from the peripheries of said two cities; that in view of the

Gurmeet Singh Gill and others v. The Chief Agricultural Officer,  
Ropar and others (D. S. Tewatia, J.)

aforesaid decision of the government, the petitioners were not entitled to payment of any city compensatory allowance from the aforesaid date, i.e., 14th January, 1980; that the petitioners were not entitled to be given any opportunity of hearing before discontinuing the payment of city compensatory allowance in terms of the aforesaid government decision.

(6) Counsel for the petitioners has canvassed that the payment of compensatory allowance in terms of 1975- decision of the government had become a vested right of the petitioners and they could not be divested of that right without being afforded an opportunity of hearing. In support of his submission, he cited a Single Bench decision of this Court rendered in *Harchand Singh and others v. The State of Punjab etc.* (1) and a Division Bench decision of this Court rendered in *Shamsher Singh and others v. The State of Punjab etc.* (2) approving the said Single Bench decision.

(7) Mr. H. S. Rair, Deputy Advocate-General, Punjab, on the other hand contended that the two Division Benches of this Court have taken a contrary view. In this regard he referred to the decision of the Division Bench rendered in *Jit Singh and others v. The State of Punjab etc.* (3) and a Division Bench decision rendered in *The State of Punjab etc. v. Harnek Singh and others* (4).

(8) We find no merit in the contention advanced on behalf of the petitioners. For one thing, the payment of city compensatory allowance to the petitioners by the State Government was by way of concession. It was open to the government to withdraw the said concession. Nobody could urge that the government before deciding to withdraw the concession should have heard any such government employee. The position is not different when a given right is created by the statutory provision or executive instructions. The given statute or the executive instructions could be amended or withdrawn in a manner as to do away with the right created by earlier provisions of the statute or instructions. No body could

(1) C.W.P. 1758 of 1979 decided on 31st March, 1986.

(2) C.W.P. 3988 of 1986 decided on 18th September, 1986.

(3) C.W.P. 8359 of 1976 decided on 19th May, 1977.

(4) L.P.A. 106 of 1977 decided on 17th June, 1980.

contend that before modifying the statute or modifying the executive instructions the beneficiaries under the existing statute and the executive instructions should be afforded an opportunity.

(9) The Division Bench in *Jit Singh's case* (supra) had virtually taken the same view in regard to the right of hearing. The facts in that case were that the government had modified the existing instructions regarding the payment of house rent allowance by clarifying that the distance of 5 miles (8 kilometres) from the given towns would be measured by track/roads and not by crow flight. As a result of this decision, the government stopped paying house rent allowance to such employees whose place of residence/posting although was within 5 miles (8 kilometres) by crow flight but was beyond 5 miles (8 kilometres) when measured by track/roads. The affected employees challenged the discontinuance of house rent allowance in this Court. On behalf of the petitioners, a contention was raised that the decision to discontinue the payment of house rent allowance without affording an opportunity of hearing was illegal and against the principles of natural justice. Goyal, J., who delivered the opinion for the Bench repelled the contention with the following observations:—

“The grant of the house rent allowance was only a concession given by the State to its employees upon certain conditions and that concession having never been incorporated in any statutory rule could be withdrawn or the conditions for its payment modified at any time unilaterally by the State. The concerned authorities in stopping the payment of the house rent allowance to the petitioners only gave effect to the later circular (Annexure P—3) and this, in our view, did not involve the reversal of any prior decision conferring any benefit on the petitioners which could give rise to a right to the petitioners of being heard prior to the stopping of the payment of the house rent allowance.”

This decision was approvingly quoted by a later Division Bench in *Harnek Singh's case* (supra). In this regard the following observations of the later Division Bench deserve noticing:—

“Lastly it calls for notice that in *Jit Singh's case* it has been held that the house rent being admittedly not statutory

Gurmeet Singh Gill and others v. The Chief Agricultural Officer,  
Ropar and others (D. S. Tewatia, J.)

---

and in the nature of a concession cannot only be varied or revised but even withdrawn by the Government.....”

(10) Coming now to the decision relied upon on behalf of the petitioners, it may be observed that the ratio of Single Bench's decision in *Harchand Singh's case* (supra) is not attracted to the facts of the present case. That was a case in which the instructions conferring right to receive city compensatory allowance was not modified or withdrawn. In that case a bald plea was taken on behalf of the State that the petitioners were not eligible to get the city compensatory allowance and, therefore, the same was rightly discontinued with effect from April, 1979.

(11) When the instructions or the law conferring benefit remained in operation the benefit flowing from the same to an individual could be discontinued if the given individual no longer fulfils the requisite conditions laid down in the given instructions for making him eligible to receive the benefit. Such facts being peculiar to the individual, it would be in the fitness of things that the given individual is given an opportunity to explain and show that the requisite conditions making him eligible to receive the benefit remained unchanged.

Such is not the case here.

A Division Bench's order passed *in limine* in *Shamsher Singh's case* (supra) was also relied upon by the petitioners. It is in the following terms:—

“This petition is covered by the ratio of this Court's decision rendered in C.W.P. No. 1758 of 1979, decided on 31st March, 1986.

Hence, this petition is allowed in the same terms inasmuch as in the present case also the compensatory allowance had been stopped without affording any opportunity of hearing to the petitioners.

The respondents shall be at liberty to take a fresh decision in the matter after hearing the petitioners.”

(12) It would be seen that the Division Bench while deciding *Shamsher Singh's case* (supra) merely followed the decision of the learned Single Judge, which as already observed was correctly decided in relation to its own facts. In *Shamsher Singh's case*, the State had not filed any written statement, and, therefore, the Bench did not examine the matter in depth in order to see as to whether in fact the ratio of the Single Bench's decision in *Harchand Singh's case*, (supra) covered the facts of the case before the Division Bench. In the circumstances it would be taken that the Division Bench proceeded on the assumption that the ratio of the decision in *Harnek Singh's* (supra) was attracted to the case in hand. The ratio of the aforesaid Single Bench judgment we have already considered. In view of this, we would take, that the Division Bench decision had approved the ratio of that case as we too in this case are doing. We are of the view that the Division Bench judgment to which one of us was a party, did not lay down a proposition of law that the employees receiving the city compensatory allowance would be entitled to a hearing before the same is discontinued as a result of change of instructions or the law conferring the said benefit.

(13) Mr. R. K. Chopra, the learned counsel for the petitioners, drew our attention to a Supreme Court decision rendered in *Santokh Singh and others v. State of Punjab and others* (5), and urged that it would be violative of Article 14 of the Constitution if persons similarly situated are entitled to a benefit to which the petitioners in the present case would be held ineligible. The facts of the case before their Lordships were that the State Government pursuant to the decision of a Single Bench of the High Court rendered in *Tilak Raj v. The State of Punjab* (6), gave running pay scales of Masters to several untrained Masters from the date of their appointment. Later on the decision in *Tilak Raj's case* (supra) was not approved by a Division Bench in *Shervinder Kaur v. State of Punjab* (7). The State Government after the decision of the Division Bench refused to give the running pay scales of Masters to the remaining untrained Masters. It is in the light of that that their Lordships ordered the State Government to pay the running grade to the remaining teachers also, because *Tilak Raj's case* (supra) had become final

(5) Civil Appeals 31 & 32 of 1984 decided on 17th December, 1985.

(6) C.W.P. 656 of 1977 decided on 18th March, 1977.

(7) C.W.P. 3674 of 1977 decided on 12th September, 1979.

Surinder Singh v. State of Punjab (Ujagar Singh, J.)

---

and it would be unthinkable that the State Government would be paying running grade to some Masters and denying the same to other Masters, who were identically situated.

(14) There is no denying the justness of the proposition enunciated by their Lordships.

(15) Such a situation is not going to arise in the present case in view of the decisions cited on behalf of the petitioners, because the effect of the said decisions is only this that in regard to the petitioners who had filed those petitions, the State Government would hear them and then discontinue the payment of city compensatory allowance. Unlike the *Tilak Raj's case* (supra), those decisions have not acquired the cast iron mould.

(16) We will direct the State Government to comply with the formality of hearing in regard to the petitioners of those cases and take an immediate decision, particularly in regard to such employees to whom the payment of city compensatory allowance was liable to be discontinued as a result of the later instructions dated 14th January, 1980 (Annexure R-3).

(17) For the reasons aforementioned, we find no merit in these petitions and dismiss the same *in limine*.

---

R.N.R.

Before Ujagar Singh, J.

SURINDER SINGH,—Petitioner.

versus

STATE OF PUNJAB,—Respondent.

Criminal Revision No. 631 of 1986

March 4, 1987.

*Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 7, 9, 16(1) (a)(i), 20(1)—Prevention of Food Adulteration Rules, 1958—Rule 3—Power to appoint Food Inspectors and authority to sanction prosecution under the Act delegated by the Central*