

mistake was corrected,—*vide* order dated 17th December, 1979. The compensation was enhanced to a higher rate of Rs. 317.50 per marla but this claim was limited to the amount of court-fee paid in the memorandum of appeal. The Civil Miscellaneous filed in this R.F.A. is also allowed and the appellants-petitioners are allowed to pay deficient court fee, within three months so as to enable them to claim compensation at the said rate, solatium and interest on the enhanced compensation.

(8) R.F.A. Nos. 2401, 2402, 2405, 2411 and R.F.A. No. 2413 of 1980 were decided by a common judgment in R.F.A. No. 1842 of 1980 on November 27, 1981 and again the enhanced compensation was limited to the extent of claim made and the court-fee paid thereon. On the same reasoning civil miscellaneous filed in these R.F.As are allowed and the petitioners are given three months time from today to enable the appellant-petitioner to pay deficient court-fee so as to claim enhanced compensation at the said rate, solatium and interest on the enhanced compensation.

(9) All these civil miscellaneous applications are disposed of accordingly.

S.C.K.

Before : V. Ramaswami, C.J. & G. R. Majithia, J.
SUSHIL KUMAR JAIN AND OTHERS.—*Petitioners.*

versus

STATE OF HARYANA AND OTHERS.—*Respondents.*

Civil Writ Petition No. 8804 of 1987

4th October, 1989

Constitution of India, 1950—Arts. 14 & 16—Conversion of temporary post into a permanent one from a retrospective date—Power of the State Government to do so—Guarantee of equality violated—Order of State Government void.

Held, that it is not understood on what basis the State Government had thought of converting the second post into a permanent from a retrospective date more particularly when it had the effect of divesting certain Government Officers of their vested rights. The State could not at its own sweet will fix any artificial date for converting a temporary post into a permanent one. The action would

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be clearly violative of Articles 14 and 16 of the Constitution. The whip of Articles 14 and 16 is wide and pervasive. These two Articles embody the principle of rationality and are intended to strike against arbitrary and discriminatory action taken by the State. The rule is well settled that arbitrariness has to be eliminated in every State action. The State cannot give an artificial date for making one temporary post as permanent with retrospective effect without assigning reason. It infringed the guarantee of equality under articles 14 and 16 and being violative of these two articles, it has to be declared void.

(Para 3)

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that:—

- (i) *that the records of the case may kindly be called for ;*
- (ii) *that after a perusal of record and hearing upon the counsel for the parties, this Hon'ble Court may be please to grant the following reliefs ;*
 - (a) *Quash the order dated 30th January, 1984 (Annexure P-4) the notification Annexures P-7 and P-8 dated 16th October, 1987 and the order Annexure P-9; by issuance of an appropriate writ or order ;*
- (iii) *that any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may kindly be issued ;*
- (iv) *that any other relief to which the petitioners may be found entitled by this Hon'ble Court in the facts and circumstances of the case may kindly be granted ;*
- (v) *that the requirement of filing the Certified copies of annexures may kindly be dispensed with in view of the urgency of the matter ;*
- (vi) *that the requirement of serving advance notices of this petition on the respondents herein may kindly be dispensed with in view of the urgency of the matter ;*
- (vii) *that the costs of this petition may kindly be awarded in favour of the petitioners and against the respondents herein ;*
- (viii) *it is further prayed that during the pendency of the petition in this Hon'ble Court, the operation of the impugned orders dated 30th January, 1984 (Annexure P-4) the*

notifications dated 16th October, 1987 (Annexures P-7 and P-8) and order Annexure P-9 may kindly be stayed. The recovery in pursuance of Annexure P-9 may be ordered to be stayed. The interim prayer needs consideration since the stay will have a bearing on the granting of selection grade and further promotion to the high status of the High Court Judge.

C. M. No. 68 of 1989.

Application Under Section 151 of the Code of Civil Procedure praying that appropriate orders for recasting the seniority as stated below may kindly be passed:—

S/Shri—

1. S. K. Jain, Petitioner No. 1.
2. R. K. Nehru, Petitioner No. 2.
3. Surinder Sarup, Petitioner No. 3.
4. Hari Ram, respondent No. 4.

It is further prayed that any other appropriate order which this Hon'ble Court may deem fit and proper may kindly be passed.

H. L. Sibal, Senior Advocate (S/Shri R. C. Setia & V. K. Jhanji, Advocates with him), for the Petitioners.

B. S. Malik, Addl. A.G. Haryana for Respondent No. 1 & 2, Ashok Bhan, Sr. Advocate (Shri Rakesh Garg, Advocate with him, for respondent No. 3.

J. S. Khehar, Advocate, for respondent No. 4.

JUDGMENT

G. R. Majithia, J.

(1) The facts giving rise to this writ petition are, that the petitioners were directly recruited from the Bar to the Haryana Superior Judicial Service. They jointed as Additional District and Sessions Judges on December 22, 1977. On successful completion of probationary period, they were confirmed in the Haryana Superior Judicial Service with effect from December 22, 1979. Respondent No. 4 Shri Hari Ram was in the Haryana Civil Service (Judicial). He was appointed by promotion to the Haryana Superior Judicial Service on December 26, 1977 in an officiating capacity and

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was confirmed on December 31, 1979. In the seniority/gradation list, corrected upto July 1, 1987 the petitioners were shown senior to respondent No. 4. In the State of Haryana, there were two temporary posts of Joint Legal Remembrancers. One post was made permanent with immediate effect from July 4, 1979,—*vide* Memo. letter No. 1/14/79-JJ(3) dated July 4, 1979. The second temporary post of Joint Legal Remembrancer was made permanent with effect from August 5, 1983.

(2) On January 30, 1984, the Financial Commissioner and Secretary to Government, Haryana Administration of Justice Department, informed the Legal Remembrancer and Secretary to Government, Haryana Law and Legislative Department that the temporary post of Joint Legal Remembrancer which was created,—*vide* Government Memo. No. 4298-3JJ-73/18358, dated 4th May, 1973, and was made permanent with effect from August 5, 1983 will be deemed to have been made permanent with effect from May 14, 1978. Consequent upon this, the *inter se* seniority of the petitioners and respondent No. 4 was refixed and respondent No. 4 was shown senior to the petitioners,—*vide* notification No. 447/Gaz. I/VI.F. 10 dated the 16th October, 1987. The legality of this notification has been challenged in this writ petition. The High Court, in reply to the writ petition, stated that the High Court recommended Officers for appointment as Additional District and Sessions Judges in accordance with the select list prepared by the Hon'ble Judges of the H.C.S. (Judicial) Officers considered fit to be posted as Additional District and Sessions Judges. At the time of promotion of respondent No. 4 as Officiating Additional District and Sessions Judge, there were ten vacancies against which appointments were to be made from the Officers of H.C.S. (Judicial). The Governor of Haryana approved the appointments of these ten officers recommended by the High Court for appointment as Officiating Additional District and Sessions Judges on December 19, 1977. The High Court issued the posting orders on December 23, 1977 and respondent No. 4 took over as Additional District and Sessions Judge at Karnal on December 26, 1977. The petitioners were issued the posting orders pursuant to the decision of the Full Court on December 19, 1977 and they assumed charge at their respective places of posting on December 22, 1977. The criterion for fixing the seniority was with reference to the dates of confirmation. Rule 2(2) and 12 of the Punjab Superior Judicial Service Rules, 1963 were amended and the combined effect of the old and the existing rule was that the seniority of the members of the Service appointed before March 7,

1984 was to be determined with reference to the dates of their confirmation and those appointed after this date by the length of continuous officiation on a post in the Service. The *inter se* seniority of the petitioners and respondent No. 4 was reflected in the gradation list corrected upto July 1, 1987 with reference to the dates of confirmation assigned to them. One permanent post of Additional District and Sessions Judge to the cadre of Haryana Superior Judicial Service was added with retrospective effect from May 14, 1978 by conversion of a temporary post of Joint Legal Remembrancer, Haryana into permanent post necessitating assigning of fresh dates of confirmation and fixation of seniority of all the Officers of Haryana Superior Judicial Service. The matter was considered afresh and as a result respondent No. 4 became eligible for confirmation from July 4, 1979 and thus he was shown senior to the writ petitioners Respondent No. 4, in his written statement, pleaded that the petitioners were appointed on probation on December 22, 1977 and they were to be confirmed on the expiry of the period of probation. He was officiating against a post in the Haryana Superior Judicial Service with effect from December 26, 1977 and the post was made permanent with effect from May 14, 1978 and he was regularly promoted from July 4, 1979 since he had not to undergo any probation and he was confirmed with effect from July 4, 1979 when a permanent post in the Haryana Superior Judicial Service became available. In substance, the defence of respondent No. 4 is based upon the decision of the State Government by which the temporary post of Joint Legal Remembrancer was made permanent with retrospective effect. During the pendency of the writ petition, the State of Haryana,—*vide* Memo No. 1/14/83-JJ (ii) dated 10th November, 1988, rescinded its earlier order,—*vide* which one post of Joint Legal Remembrancer, Haryana, created,—*vide* Government Memo. No. 1/14/83-JJ (3) dated 30th January, 1984 was made permanent with retrospective effect from May 14, 1978, and accorded sanction to the conversion of the said post into permanent one with effect from June 1, 1983, instead of May 14, 1978. The resultant effect was that the second temporary post of Joint Legal Remembrancer which was made permanent through Memo No. 1/14/83-JJ (3) dated August 5, 1983, was made permanent from the date of issuance of that letter and retrospectivity was revoked. The petitioners' claim was conceded by the State Government. Shri Hari Ram, respondent No. 4 obviously felt aggrieved against the order contained in Memo No. 1/14/83-JJ(11) dated 10th November, 1988, and challenged the same through Civil Writ Petition No. 515 of 1989. This order will dispose of both these writ petitions.

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(3) The precise question which arises for consideration is whether the State Government was justified in converting one temporary post of Joint Legal Remembrancer into permanent one from a retrospective date. It is not understood on what basis the State Government had thought of converting the second post of Joint Legal Remembrancer into permanent from a retrospective date more particularly when it had the effect of divesting certain Government Officers of their vested rights. The State could not at its own sweet will fix any artificial date for converting a temporary post into a permanent one. The action would be clearly violative of Articles 14 and 16 of the Constitution. The whip of Articles 14 and 16 is wide and pervasive. These two Articles embody the principle of rationality and are intended to strike against arbitrary and discriminatory action taken by the State. The rule is well settled that arbitrariness has to be eliminated in every State action. The State cannot give an artificial date for making one temporary post of Joint Legal Remembrancer as permanent with retrospective effect without assigning reason. It infringed the guarantee of equality under articles 14 and 16 and being violative of these two articles, it has to be declared void. It will be useful to refer to the case of *Ramana v. I. A. Authority of India* (1), where it was held thus:

“This rule also flows directly from the doctrine of equality embodied in Art. 14. It is now well settled as a result of the decision of this Court in *E. P. Royappa v. State of Tamil Nadu* (1974) 2 SCR 348 : (A.I.R. 1974 S.C. 555) and *Maneka Gandhi v. Union of India* (1978) 1 SCC 248 : (A.I.R. 1978 S.C. 597) that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory; it must not be guided by any extraneous or irrelevant consideration, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State

(1) A.I.R. 1979 S.C. 1628.

cannot, therefore, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory."

(4) The learned counsel for the petitioner in C.W.P. No. 515 of 1989 further submitted that there were two posts of Joint Legal Remembrancer. The first temporary post had come into being on May 17, 1971, and the second temporary post came into existence on May 14, 1973. The effective date of converting the aforesaid posts into permanent ones is not regulated by any statutory provisions. The same is governed by the instructions contained in Government Memo No. 6817-2 CS-I-76/28957, dated 29th October, 1976. According to the instructions, if a temporary post remains in existence for five years, it is liable to be made permanent. Consequently, the aforesaid two posts were liable to be made permanent with effect from May 17, 1976 and May 14, 1978, respectively. The second post was correctly made permanent with effect from May 14, 1976, while the first post, which was liable to be made permanent with effect from May 14, 1976 was made permanent with effect from August 5, 1983.

It will be useful to reproduce the relevant portion of the instructions:—

"Temporary posts which have been in existence in permanent Departments for five years or more and the work of which is of a continuing nature should be made permanent by the Administrative Departments after obtaining formal concurrence of the Finance Department."

There is no dispute that under these instructions, a temporary post which has been in existence in the permanent department for more than five years can be made permanent by the Administrative Department. The provision is directory, but not mandatory. A temporary post can be made permanent if it remains in existence for five years under certain contingencies, but it cannot be done where the decision affects other Government employees as in the present case. The writ-petitioner cannot derive any benefit from these instructions, more so in the instant case the action of the State Government cannot be justified on any count. The first temporary post of joint Legal Remembrancer came into being with effect from May 17, 1971 and it was made permanent with effect from July 4, 1979 and it passes comprehension that the second post which came into

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existence on May 14, 1973 was made permanent with retrospective effect from May 14, 1978, although initially it was made permanent with effect from August 5, 1983. What was the logic for converting the second post into permanent one with a retrospective date could not be explained by the State Government and in fact we find that it is not legally sustainable. The action was wholly arbitrary as stated *supra*.

(5) The Government,—*vide* Memo No. 1/14/83-JJ (11), dated 10th November, 1988 has rectified its own mistake which was committed by it when it had made the second post of Joint Legal Remembrancer permanent from retrospective date. The administrative orders can be revoked with retrospective effect. The State Government can alter its decision in administrative matters at any time. It was held in *R. R. Verma v. Union of India*, A.I.R. 1980 S.C. 1461, as under:—

“We do not think that the principle that the power to review must be conferred by statute either specifically or by necessary implication is applicable to decisions purely of an administrative nature. To extend the principle to pure administrative decisions would indeed lead to untoward and startling results. Surely, any Government must be free to alter its policy or its decision in administrative matters.”

Thus, in form, we quash the order contained in Memo No. 1/14/83-JJ (3), dated 30th January, 1984, and as a result thereof, the notification No. 446-Gaz. I/VI. F. 10, dated 16th October, 1987 fixing the seniority of the petitioners and the respondent *inter se*. The resultant effect will be that the seniority as shown in the gradation list corrected upto July 1, 1987, will be restored and the petitioners will be shown senior to Respondent No. 4 in the seniority list.

(6) Resultantly, C.W.P. No. 8804 of 1987 is allowed as indicated above. C.W.P. No. 515 of 1989 is dismissed. We, however, leave the parties to bear their own costs. Civil Misc. No. 68 of 1989 also stands disposed of.

S.C.K.