
(24) Now the cases be placed before the learned Single Judge for decision on other issues arising in these revision petitions.

S.C.K.

Before Hon'ble Jawahar Lal Gupta & M. L. Koul. JJ.

PUSHP LATA.—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS.—*Respondents.*

C.W.P. No. 6059 of 1996.

16th May, 1996.

Constitution of India, 1950—Art. 226/227—Punjab Civil Services Rules, Vol. I Part I—Rl. 4.8—Stoppage of employee at efficiency bar in time scale pay on ground of being unfit to cross bar—Whether such action amounts to imposition of penalty—Held that action is not penal per se—Does not amount to withholding of increments of pay by way of penalty.

Held, that the petitioner had earned only one good report during 13 years of her service career till the year 1984. Out of the remaining 12 reports, seven were 'average' and 5 were even 'below average' In this situation, it is clear that she had failed to secure "at least 50 per cent good reports" as stipulated in the instructions issued by the Government. Consequently, she could not even be classified as 'Fair'. She was 'poor'. As a result, she was not and actually could not have been permitted to cross the Efficiency Bar.

(Para 6)

Further held, that the action was in strict conformity with the provisions of Rule 4.8 of the Punjab Civil Services, Volume I Part I and the instructions issued by the Government. In fact, the petitioner has herself relied upon these instructions. Admittedly, she does not fulfil the criterion prescribed in these instructions. Consequently, she can have no legitimate grievance.

(Para 7)

Further held, that the stoppage of an employee at the efficiency bar in the time scale of pay on the ground of his/her unfitness to cross the bar does not amount to withholding of increments of pay by way of a penalty.

(Para 10)

J. S. Maanipur, Advocate, for the Petitioner.

JUDGMENT

Jawahar Lal Gupta, J.

(1) Does the stoppage of an employee at the Efficiency Bar in the time scale of pay on the ground of his unfitness to cross the Bar amount to the imposition of a penalty ? This is the short question that arises in this writ petition. A few facts may be noticed.

(2) On February 1, 1972 the petitioner was appointed as an Auxiliary Nurse and Mid wife in the pay scale of Rs. 130—5—160/5—220. The State Government revised the pay scales with effect from April 1, 1979. The post of Auxiliary Nurse and Mid wife was placed in the scale of Rs. 400—10—490—540—15—600—FB—20—660. This scale was revised with effect from January 1, 1986 and raised to Rs. 950—1,500. The post was also redesignated as Multi purpose Health Worker.

(3) In the pay scale of Rs. 130—5—160/5—300, the petitioner was due to cross the Efficiency Bar at the stage of Rs. 160. She was not allowed to do so. Her case was reviewed periodically and she was stopped at the Efficiency Bar. *Vide* order dated November 6, 1986, her claim was again declined. It was observed that till 1983-84, the petitioner had earned 13 reports. Out of these, one was good. Seven were 'average' and on five occasions, the petitioner was assessed as 'below average'. Consequently, she was stopped at the Efficiency Bar with effect from February 1, 1984. A copy of the order dated November 6, 1986 by which this decision was conveyed to her has been produced as Annexure P.3 with the writ petition. Aggrieved by this order, the petitioner sent a legal notice through her counsel on February 15, 1996. Reply to this notice was sent,—*vide* letter dated March 19, 1996. It was observed that due to the average reports earned by the petitioner, she could not be allowed to cross the Efficiency Bar. Aggrieved by the orders dated November 6, 1986 and the reply to the notice sent,—*vide* letter dated March 19, 1996, the petitioner has approached this Court through the present writ petition.

(4) The solitary contention raised by the counsel for the petitioner is that stoppage of increments is one of the penalties specified in the rules. The action of the respondent in not allowing the petitioner to cross the Efficiency Bar is penal. Since the procedure prescribed under the Punishment and Appeal rules had not been followed, the action is vitiated. Is it so ?

(5) An employee is normally granted an increment in the scale of pay on the completion of one year of service. However, when a bar is prescribed in a scale of pay, the position is different. The employee is allowed an increment at that stage only when he has established his ability to perform the duties of the post. At that stage, if the authority finds that the employee has not been able to discharge his duties satisfactorily, it has the power to deny the grant of an increment. Besides the provision in the Civil Services Rules (Rule 4.8 of the Punjab Civil Services Rules, Volume I Part I), the Government has issued executive instructions. A copy of the instructions issued by the Government,—*vide* letter dated January 29, 1974 has been produced as Annexure P-4 with the writ petition. In these instructions, it has been *inter alia* provided that the employees shall be divided into three broad categories. Those who have earned consistently good reports, should be classified as 'good' and permitted to cross the Efficiency Bar. Those who secure atleast 50 per cent good reports should be classified as 'fair' and not permitted to cross the bar "unless the Head of Department is satisfied, on a careful study of the record that they merit promotion and give promise of satisfactorily filling the heavier charges in the grade." The rest are classified as 'poor' and "should not be permitted to cross the bar". Various other guidelines have also been provided in these instructions.

(6) So far as the petitioner is concerned, it has not been denied that she had earned only one good report during 13 years of her service career till the year 1984. Out of the remaining 12 reports, seven were 'average' and 5 were even 'below average'. In this situation, it is clear that she had failed to secure "at least 50 per cent good reports" as stipulated in the instructions issued by the Government. Consequently, she could not even be classified as 'Fair'. She was 'poor'. As a result, she was not and actually could not have been permitted to cross the Efficiency Bar.

(7) It is also the undisputed position that her claim was duly considered. It was only after consideration of the matter that the Government had passed the order dated November 6, 1986 by which she was stopped at the Efficiency Bar for a period of one year with effect from February 1, 1984. It is also clear that even thereafter, she was not permitted to cross the Efficiency Bar with effect from February 1, 1985 as she had failed to secure at least 50 per cent good reports. The action was in strict conformity with the provisions of Rule 4.8 of the Punjab Civil Services, Volume I Part I and the instructions issued by the Government. In fact, the petitioner has

herself relied upon these instructions. Admittedly, she does not fulfil the criterion prescribed in these instructions. Consequently, she can have no legitimate grievance.

(8) It is also clear that the petitioner was not stopped at the Efficiency Bar on account of any misconduct. She was not an accused of any lapse. No allegation was made against her. It is only on a review of her performance and record of service that the authority decided that she was not fit for being permitted to cross the Efficiency Bar. In this situation, the action does not appear to be penal *per se*.

(9) It is true that "withholding of increments or promotion, including stoppage at an efficiency bar, if any" was prescribed as one of the penalties under the Punjab Civil Services (Punishment and Appeal) Rules, 1952. However, the State of Haryana had made an amendment in this provision by the First Amendment Rules, 1978. An explanation was added to provide that "stoppage at an efficiency bar of an employee under the provisions of Rule 4.8 of Civil Service Rules, Volume I, Part I or analogous provision of any other rules applicable to the employee on ground of unfitness to cross the bar" does not amount to punishment under these rules. Furthermore, the 1952 rules were repealed by the Haryana Civil Services (Punishment and Appeal) Rules, 1987. Under Rule 4(v), withholding of increments of pay was prescribed as a penalty. However, in the explanation, it was specifically provided that "stoppage of a Government employee at the Efficiency Bar in the time scale of pay on the ground of his unfitness to cross the bar shall not amount to a penalty within the meaning of this rule....." It is, thus, clear that in the statutory rules, it has been specifically provided that stoppage at the Efficiency Bar does not constitute a penalty. Consequently, the contention raised by the learned counsel for the petitioner that the action was penal cannot be sustained.

(10) Accordingly, we answer the question posed at the outset in the negative and hold that the stoppage of an employee at the efficiency bar in the time scale of pay on the ground of his/her unfitness to cross the bar does not amount to withholding of increments of pay by way of a penalty.

(11) There is another aspect of the matter as well. The petitioner was stopped at the Efficiency Bar on different occasions since the year 1979. On November 6, 1986, she was conveyed the order that she has been "stopped at the Efficiency Bar for a period of one

year with effect from 1st February, 1984." The petitioner did nothing to challenge this order till February 15, 1996 when she served a notice on the respondents through her counsel. In the circumstances of this case, we are satisfied that there is even culpable delay on her part. However, irrespective of that and also keeping in view the fact that the petitioner is suffering a recurring loss, we have gone into the merits of the case.

(12) In view of the above, we find no merit in this writ petition. It is, consequently, dismissed in limine.

J.S.T.

Before Hon'ble Sat Pal, J.

B. D. SHARMA.—Petitioner.

versus

NARINDER KUMAR ARYA.—Respondent.

C. R. No. 3285 of 1995.

18th March, 1996.

The East Punjab Urban Rent Restriction Act, 1949—S. 13-A—Leave to contest declined and eviction ordered—Tenant filing affidavit stating that upper portion of the demised premises was lying vacant and there was sufficient accommodation with the landlord—Averment not controverted by landlord—However, tenant filing application supported by affidavit stating that landlord had not sought ejection of a tenant-school—Therefore, admittedly upper portion of the house was occupied—Landlord found not to own any other accommodation in the urban area of Chandigarh—No triable issue arises—Leave to contest was rightly declined, however four months time granted for vacating the demised premises subject to furnishing an undertaking to hand over the vacant possession to the landlord.

Held, that the tenant himself had stated that the landlord has not sought ejection of the upper floor of the demised house. From this, it is evident that upper floor of the house is not in the possession of the landlord. Again in para 1 of this affidavit, the tenant had stated that all the 7 rooms constructed on the demised house had been let out for running a school under the name and style DAV Public School. In view of the aforesaid facts, I am of the opinion that the landlord is not having any other suitable accommodation in the urban area of Chandigarh.

(Para 13)