

[2013] 10 S.C.R. 431

G.L. BATRA

v.

STATE OF HARYANA AND OTHERS
(Civil Appeal No. 9015 of 2013)

OCTOBER 07, 2013

[K.S. RADHAKRISHNAN AND A.K. SIKRI, JJ.]

Constitution of India, 1950 - Articles 316 and 14 - Appointment as Chairman of State Public Service Commission - Of the Government servant who was drawing wages at a higher level than the wages fixed under Regulations governing service conditions of the Public Service Commission - Remuneration of the Chairman refixed in view of his last pay drawn in government service by relaxing the relevant rule - Subsequently the benefit withdrawn by State Government - Propriety of - Held: The benefit granted to the Constitutional appointee by relaxing the regulation, could not have been withdrawn by State Government - Especially when master and servant relationship not established between the Constitutional appointee and the State Government - Withdrawal of the benefit was discriminatory and violative of Article 14 - Haryana Public Service Commission (Conditions of Service) Regulations, 1972 - Regulation 6.

Judicial Propriety - Judgment by Co-ordinate Bench - By over-ruling the judgment of another co-ordinate Bench - Held: Not proper - Appropriate course in such case is to refer the matter to larger Bench.

Appellant, while posted as Additional Secretary, Lok Sabha was drawing a salary of Rs.7500/- per month. He was appointed as Chairman of Haryana Public Service Commission in exercise of powers u/Art. 316(1A) of the Constitution. The conditions of service of the Commission are governed by Haryana Public Service

- A Commission (Conditions of Service) Regulations, 1972. The existing pay of the Chairman of Haryana Public Service Commission was Rs.7000/- per month. The Government re-fixed the remuneration of the appellant as Chairman, as Rs.7500/- p.m. by relaxing the provisions contained in Regulation 6, as a personal measure to him.
- B Thereafter, the Government withdrew the benefit and re-fixed his remuneration as Rs.4135/- p.m.. Writ petition, challenging the action of the Government, was dismissed by Division Bench of High Court. Hence the present
- C appeal.

Allowing the appeal, the Court

- D HELD: 1. The Government, after having recognized the status of the appellant as a constitutional appointee, and relaxing Regulation 6 of 1972 Regulations so far as the appellant was concerned, vide its order dated 18.03.1996, has no power to withdraw the same, especially when no master and servant relationship has been established between a constitutional appointee and
- E the State Government. Though the appellant's conditions of service were governed by the 1972 Regulations, but when the Government themselves had relaxed the same, especially Regulation 6, as a personal measure to him, then they could not withdraw that benefit to his disadvantage which is clearly discriminatory and violative
- F of Article 14 of the Constitution of India. The appellant, therefore, would be entitled to all consequential benefits. State of Haryana is also directed to pay an award of Rs.50,000/- to the appellant by way of cost. [Paras 10 and 17] [438-H; 439-A-B; 442-C]
- G

- H 2.1. The High Court has committed a serious error in ignoring the judgment of the High Court in Ram Phal Singh's case i.e. the case relating to the Member of the Haryana Public Service Commission, who was appointed as a Member along with the appellant by the Haryana

Government. Single Judge in that case held that first proviso under Regulation 6(2) of the 1972 Regulations which restricts the remuneration payable to a Member of the Public Service Commission (who was drawing wages under the Government at a level higher than the remuneration fixed under Regulation 6(1) of 1972 Regulations), the last pay drawn by him under the Government at the time of his appointment as a member of the Public Service Commission, is violative of the proviso under Clause (b) of Article 318 of the Constitution of India. The order of single Judge was upheld by a Division Bench of the High Court. [Paras 11 and 12] [439-C-F]

2.2. The Division Bench of the High Court, in the instant case, over-ruled the judgment in Ram Phal Singh's case which was also affirmed by another Division Bench. A co-ordinate Bench of the High Court could not have over-ruled a judgment of a Single Judge which was already affirmed by another co-ordinate Bench. The Division Bench has committed a serious error of the highest order. [Para 13] [440-B-C]

2.3. The Division Bench should have referred the matter to a larger Bench, if it was in disagreement with the judgment of the Single Judge which had already been affirmed by a co-ordinate bench and on the doctrine of merger, the judgment of the Single Judge had merged with that of the Division Bench. Thus, in essence, the Division Bench has over-ruled the judgment of a co-ordinate Bench which is clearly inadmissible. Over and above, the judgment in Ram Phal Singh's case was followed by another co-ordinate Division Bench of the High Court, Special Leave Petition against which was dismissed by this Court. All these aspects are sidetracked and overlooked. [Para 13] [440-C-F]

Dr. Vijay Laxmi Sadho vs. Jagdish (2001) 2 SCC 247: 2001 (1) SCR 95; *State of Bihar vs. Kalika Kuer @ Kalika*

- A *Singh and Ors.* AIR 2003 SC 2443: 2003 (3) SCR 919 *Union of India and Ors. vs. Godfrey Philips India Ltd.* AIR 1986 SC 806: 1985 (3) Suppl. SCR 123 *Sundarjas Kanyalal Bhathija and Ors. vs. The Collector, Thane, Maharashtra and Ors.* AIR 1990 SC 261: 1989 (3) SCR 405 *Tribhovandas Purshottamdas Thakkar vs. Ratilal Motilal Patel* AIR 1968 SC 372: 1968 SCR 455 - relied on.

Case Law Reference:

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|---|-------------------------|-----------|---------|
| | 2001 (1) SCR 95 | relied on | Para 14 |
| C | 2003 (3) SCR 919 | relied on | Para 15 |
| | 1985 (3) Suppl. SCR 123 | relied on | Para 15 |
| | 1989 (3) SCR 405 | relied on | Para 15 |
| D | 1968 SCR 455 | relied on | Para 15 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9015 of 2013.

- E From the Judgment and Order dated 04.11.2009 of the High Court of Punjab & Haryana at Chandigarh in CWP No. 13029 of 1997 (O&M).

K.K. Venugopal, Sanjay Bhatt, Jayant Mehta, Dushyant Kumar, Rishi Malhotra for the Appellant.

- F Manjit Singh, AAG, Vikas Sharma, Tarjit Singh, Vinay Kuhar, Kamal Mohan Gupta for the Respondents.

The Judgment of the Court was delivered by

- G **K.S. RADHAKRISHNAN, J.** 1. Leave granted.

2. We are in this case concerned with the question whether the State Government is competent to vary the remuneration fixed to a constitutional appointee to his disadvantage, after his appointment.

H

3. The appellant herein was working, in the post of senior most Additional Secretary, in the Lok Sabha during the years 1991-1994 drawing a salary of Rs.7500/- per month as basic pay for the post in the pay scale of Rs.7500-7600 which was revised in the pay scale of Rs.22400-525-24500 and DA @ 32% w.e.f. 01.01.1996. According to the appellant, he had the prospect of promotion to the Secretary General, Lok Sabha, a post equivalent to Cabinet Secretary which is in the pay scale of Rs.30,000/- fixed and DA @ 32%. The age of retirement of Secretary General, Lok Sabha, when the appellant joined Haryana Public Service Commission, was 60 years, which was later increased to 62 years.

4. The appellant, while he was working as the senior most Additional Secretary in the Lok Sabha, was appointed as Chairman of the Haryana Public Service Commission (for short 'the Haryana PSC') by the Haryana State Government on 06.07.1994 in exercise of the powers conferred by Article 316 of the Constitution of India along with Ravinder Sharma and Ram Phal Singh as Members of the Haryana PSC. On joining duty, conditions of services of the appellant were governed by the Haryana Public Service Commission (Conditions of Service) Regulations, 1972 (for short '1972 Regulations'). At that time, the existing basic pay of the Chairman of the Haryana PSC as per rules was Rs.7000/- per month. The appellant then preferred a representation on 04.10.1994 requesting the Government to re-fix his pay as Rs.7500/- on 06.07.1994 and Rs.7600/- w.e.f. 01.09.1994 by relaxing the Rules.

5. The Government of Haryana examining the said request passed an order on 18.03.1996, fixing the remuneration of the Chairman, Haryana PSC as Rs.7500/- per month w.e.f. 06.07.1994 as a personal measure, in relaxation of the provisions contained in Regulation 6 of the 1972 Regulations. Noticing that the above-mentioned order was silent as to from which date the allowances, as mentioned in Regulation 6 were to be given to the appellant, the Commission wrote a letter on

- A 20.06.1996 to the State Government to clarify as to whether the allowances were to be given w.e.f. 01.01.1986 as was given to the other State Government employees or w.e.f. 01.01.1989 when Regulation 6 was amended to include 'allowances' in addition to the basic pay. The State Government referring to
- B the said letter replied on 23.06.1996 stating that DA was to be paid w.e.f. 01.01.1989 only and not w.e.f. 01.01.1986 as admissible to other State Government employees.

- C 6. The appellant then wrote a Demi Official letter dated 24.9.1996 to the Chief Secretary, Haryana PSC stating that he was entitled to the Dearness Allowance, which he was drawing while he was Additional Secretary and if the DA was paid only w.e.f. 08.02.1989, then the same would be in pursuance to Regulation 6, which already stood relaxed in his case. It was also pointed that that when Regulation 6 was relaxed, all
- D conditions laid down under the said Regulation also stood automatically relaxed. The Government, however, reiterated the earlier stand through their letter dated 23.10.1996. Over and above, the Government passed yet another order on 29.11.1996 withdrawing its earlier order dated 18.03.1996
- E whereby the appellant's remuneration was fixed by relaxing Regulation 6 and a direction was also issued to recover the excess payment already made to the appellant. The appellant then filed a representation on 03.02.1997 to the Government of Haryana stating his grievances but the State Government
- F passed an order on 15.04.1997 re-fixing the remuneration of the appellant in pursuance to the Regulation 6 of the 1972 Regulations as Rs.4135/- per month. The appellant subsequently made various representations but his grievances were not redressed. The appellant then preferred CWP
- G No.13029 of 1997 before the High Court of Punjab and Haryana seeking a declaration that the first and second proviso to Regulation 6(2) of the Regulation are unconstitutional and ultra vires to Articles 14 and 16 of the Constitution of India and to quash the order dated 29.11.1996 and 15.04.1997. While the
- H writ petition was pending, the appellant retired from service as

Chairman of the Haryana PSC on 19.09.1999.

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7. The writ petition filed by the appellant was later heard by the Division Bench of the Punjab and Haryana High Court and the same was dismissed on 04.11.2009. Aggrieved by the same this appeal has been preferred by special leave.

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8. We have heard Shri K.K. Venugopal, learned senior counsel appearing for the appellant and Mr. Manjit Singh, learned Additional Advocate General appearing for the State of Haryana.

C

9. The appellant was appointed as Chairman of the Haryana PSC by the Governor of the State of Haryana in exercise of powers conferred under Article 316 (1A) of the Constitution of India. The conditions of service of the Chairman and the Members are governed by the 1972 Regulations. Regulation 6, with which we are concerned in this case, reads as follows:

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"6. (1) The Chairman shall receive a remuneration of seven thousand and five hundred rupees a month and each of the other Members a remuneration of six thousand and five hundred rupees a month. They shall be entitled to such other allowances as may be admissible in future from time to time, to Government employees drawing the same pay (in addition to four hundred rupees a month as car allowances provide a care is maintained).

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(2) The Chairman or the Member if, at the time of his appointment as such, is a retired Government employee he will be entitled to the remuneration mentioned in sub-regulation (1) in addition to the pension sanctioned to him.

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Provided that the amount of remuneration plus the gross amount of pension or the pension equivalent to other forms of retirement benefits does not exceed the pay last drawn by him before his retirement or the remuneration mentioned in sub-regulation (1) whichever is higher.

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A Provided further that the total remuneration plus the gross amount of pension and the pension equivalent to other forms of retirement benefits, excluding the allowances, shall in no case exceed eight thousand rupees per month.

B (3) The Chairman or the Members who at the time of the appointment as such, in the service of the Central or State Government and does not exercise option under sub-regulation (1) of regulation 9 shall be paid the remuneration drawn by him immediately before his appointment as Chairman or Member, as the case may be, or the remuneration mentioned in sub-regulations (1) whichever is higher, till the date of his retirement from Government service in the normal course and thereafter his remuneration shall be regulated as provided in sub-regulation (2).

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E (4) A member who in the absence of the Chairman on leave or otherwise, is asked to perform the additional duties of the Chairman, shall be entitled to an additional remuneration at the rate of two hundred rupees a month:

Provided that such additional duties are performed for a period of not less than fourteen days."

F 10. We find that after the appellant was appointed as Chairman of the Haryana PSC, the Government passed an order on 18.03.1996 relaxing the provision contained in Regulation 6 and re-fixed the remuneration of the appellant as Chairman of the Haryana PSC as Rs.7500/- p.m. w.e.f. 06.07.1994 as a "personal measure to him." We find it difficult to appreciate the stand of the State Government as to how they could withdraw that benefit vide notification dated 29.11.1996 and then re-fix the same vide order dated 15.04.1997 as Rs.4135/- p.m. The Government after having recognized the status of the appellant as a constitutional appointee, and relaxed Regulation 6 so far as the appellant is concerned vide its order

dated 18.03.1996, has no power to withdraw the same, especially when no master and servant relationship has been established between a constitutional appointee and the State Government. True, the appellant's conditions of service were governed by the 1972 Regulations, but when the Government themselves had relaxed the same, especially Regulation 6, as a personal measure to him, then we fail to see how they could withdraw that benefit to his disadvantage which, in our view, is clearly discriminatory and violative of Article 14 of the Constitution of India.

11. We are also of the view, as rightly contended by learned senior counsel for the appellant, that the High Court has committed a serious error in ignoring the judgment of the learned Single Judge in Writ Petition No.15159 of 1996 titled *Ram Phal Singh v. State of Haryana & others* decided on 8th September, 2004, a case relating to the Member of the Haryana Public Service Commission, who was appointed as a Member along with the appellant by the Haryana Government vide notification dated 16.07.1994. Learned Single Judge in that case held that first proviso under Regulation 6(2) of the 1972 Regulations which restricts the remuneration payable to a Member of the Public Service Commission (who was drawing wages under the Government at a level higher than the remuneration fixed under Regulation 6(1) of 1972 Regulations), the last pay drawn by him under the government at the time of his appointment as a member of the Public Service Commission, is violative of the proviso under Clause (b) of Article 318 of the Constitution of India.

12. A Division Bench of the Punjab and Haryana High Court placing reliance on *Ram Phal Singh's* case (supra), rendered the judgment in *M.B. Pandove v. State of Punjab and others* on 26.2.2005. Against the said judgment, Special Leave Petition (C) No.12336 of 2005 was preferred before this Court which was dismissed on 13.07.2005. Further, we notice that LPA No.115 of 2005 filed against the judgment in *Ram Phal*

A *Singh v. State of Haryana & others* CWP 15159 of 1995 was also dismissed by a Division Bench of the Punjab and Haryana High Court on 19.03.2007

B 13. We find that the above-mentioned facts were brought to the knowledge of the Division Bench of the Punjab and Haryana High Court when they rendered the impugned judgment but the Division Bench, however, over-ruled the judgment in *Ram Phal Singh's* case (supra), which was also affirmed by another Division Bench in LPA No.115 of 2005 vide its judgment dated 19.03.2007. We fail to see how a coordinate bench of the High Court could over-rule a judgment of a learned Single Judge which was already affirmed by another coordinate bench. The Division Bench has committed a serious error of the highest order. The Division Bench should have referred the matter to a larger Bench, if it was in disagreement with the judgment of the learned Single Judge which had already been affirmed by a co-ordinate bench and on the doctrine of merger, the judgment of the Single Judge had merged with that of the Division Bench. Thus, in essence, the Division Bench has overruled the judgment of a co-ordinate bench which is clearly inadmissible. Over and above, it may also be noted that the judgment in *Ram Phal Singh's* case (supra) was followed by another coordinate Division Bench of the High Court in *M.P. Pandove* (supra). Special Leave Petition (C) No.12336 of 2005 filed against that judgment was also dismissed by this Court. In the impugned judgment, all these aspects are conveniently sidetracked and overlooked.

G 14. Law on this point has been dealt with by this Court in several Judgments. In *Dr. Vijay Laxmi Sadho v. Jagdish* (2001) 2 SCC 247, this Court held as follows:

H "As the learned Single Judge was not in agreement with the view expressed in *Devilal* case it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was

not followed. It is well-settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs."

15. In *State of Bihar v. Kalika Kuer @ Kalika Singh and others* AIR 2003 SC 2443 this Court held that when an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the Court or more aspects should have been gone into by the Court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the latter bench of coordinate jurisdiction. The Court held that easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways - either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits. In this respect reference may also be made to the Judgment of this Court in *Union of India and others v. Godfrey Philips India Ltd.* AIR 1986 SC 806, *Sundarjas Kanyalal Bhathija and others v. The Collector, Thane, Maharashtra and others* AIR 1990 SC 261 and *Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel* AIR 1968 SC 372 etc.

16. Applying the above-mentioned principle, we are clearly of the view that the High Court has committed a grave error in over-ruling the judgment of the learned Single Judge in *Ram*

A *Phal Singh's* case (supra), which stood merged into the judgment of a Division Bench as it was affirmed by a coordinate bench in LPA No.115 of 2005 on 19.03.2007 and failed to remedy the illegality meted out to the appellant.

B 17. We, therefore, allow this appeal and set aside the impugned judgment of the High Court and quash the orders passed by the State of Haryana dated 29.11.1996 and 15.04.1997. The appellant, therefore, would be entitled to all consequential benefits which would be paid to him within a period of three months from the date of this order. State of
C Haryana is also directed to pay an award of Rs.50,000/- to the appellant by way of cost.

K.K.T.

Appeal allowed.