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petitioner was examined, looked into by the respondents and the lapse has been rectified. Such rectifiable act would have been honestly accepted if the respondents had exercised their power envisaged under Rule 4.10 of the aforestated rules.

(14) In view of the admitted facts and the lapse on the part of the respondents having been established, the rigour of arbitrariness would have to be diluted with the principle of fairness, equality of treatment. Thus, it requires that the State must act with some rationale and with the principles which are non discriminatory.

(15) The petition is allowed and the respondents are directed to grant the relief of increments to the petitioner so as to make the salary of the petitioner equal to the salary of the person immediately junior to the petitioner with effect from the date of joining by the petitioner. The arrears, if any, in this regard shall be paid to the petitioner without interest. No order as to costs.

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**R.N.R.**

*Before S.S. Nijjar & Nirmal Yadav, JJ.*

**CHHAJU RAM HANS,—Petitioner**

*versus*

**HIGH COURT OF PUNJAB AND HARYANA,—Respondent**

*C.W.P. No. 16117 of 2004*

1st September, 2005

*Constitution of India, 1950—Art. 226—Punjab Civil Services Rules, Vol. I, Part I, Rls. 4.14(1 & 2), 4.4 (a) (i) and 2.48—Punjab Government Circular letter dated 21st June, 2000—Promotion of petitioner to the post of an officiating Reader from the post of Sr. Assistant—One junior Reader promoted from the post of Superintendent Gr. II drawing higher salary than the petitioner—Challenge thereto—Rl.3.13 of Rules provides that unless the lien of an employee is suspended under Rl.3.14 or transferred under Rl.3.16, a Government Employee holding substantively a permanent post retains the lien on that post—Under Rl.4.14 (i) & (ii) read with Rl.4.4 (a)(i), petitioner was entitled to draw the presumptive pay*

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*of the post of Reader from the date he was officiating as such and is entitled to the refixation of his pay over and above the pay which was being drawn by his junior—Junior could not be granted higher pay than the petitioner—Petition allowed while holding petitioner entitled to refixation of his pay at different stages from the dates the same was granted to his junior.*

*Held*, that the claim of the petitioner could not have been rejected on the basis of the executive instructions dated 21st June, 2000. The petitioner had claimed fixation of his pay under rule 4 of the Punjab Civil Services. Under Rule 3.13 of the Punjab Civil Services Rules, it is provided that unless the lien of an employee is suspended under Rule 3.14 or transferred under Rule 3.16, a Government employee holding substantively a permanent post retains the lien on that post. Since 20th October, 1994, the petitioner had been holding the post of Reader in an officiating capacity. Since Prem Singh was Junior to the petitioner, he could not be granted a higher pay than the petitioner. Under Rule 4.14 (i) and (ii) read with rule 4.4 (a) (i) the petitioner would be entitled to refixation of pay as Reader. A perusal of the rules would show that the petitioner was entitled to draw the presumptive pay of the post of Reader from the date he was officiating as such. The aforesaid pay is to be fixed on the presumption that the petitioner held the post substantively. Under these rules, the petitioner would clearly be entitled to the refixation of his pay over and above the pay which was being drawn by his junior. The petitioner would also be entitled to all the consequential benefits.

(Paras 8 & 9)

Akshay Bhan, Advocate, for the petitioner

Anupam Gupta, Advocate, for the respondent

#### JUDGMENT

S. S. NIJJAR, J.

(1) The petitioner joined this High Court as a Clerk on 25th September, 1967. At the time of filing of the writ petition, he has been working as an Officiating Reader w.e.f. 28th October, 1994. His grievance is that although he is senior to one Prem Singh, he is being paid lesser salary than Prem Singh. He has, therefore, made numerous

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representations to the High Court for redressal of the aforesaid grievance. Ultimately, the representations have been dismissed by order dated 18th March, 2004 (Annexure P-1). He has challenged the aforesaid order by filing the present writ petition under Articles 226/227 of the Constitution of India.

(2) It is not disputed that the pay of the petitioner and Prem Singh has to be fixed in accordance with the Punjab Civil Services Rules, Vol. I Part-I. It is also not disputed that Prem Singh is junior to the petitioner and is drawing a higher salary than the petitioner. The petitioner claims that he is entitled to the fixation of his pay under Rule 4.14 (1 & 2) read with Rule 2.48 and 4.4 (a) (i) of the Punjab Civil Services Rules Vol. I, Part-I.

(3) The respondents have rejected the claim of the petitioner by passing a non-speaking order dated 18th March, 2004 (Annexure P-1). However, the respondents have tried to justify the aforesaid order in the written statement. It has been stated that the petitioner was appointed as Reader from the post of Assistant. His junior Prem Singh was appointed as Reader from the post of Superintendent Grade-II which is the next higher promotional post from the cadre of Assistant. The claim of the petitioner was examined by the District and Sessions Judge (Vigilance), Punjab. He has come to the conclusion that the claim of the petitioner is not covered under the instructions of the Punjab Government contained in Circular Letter No. 6/138/98-IFP-II/6763, dated 21st June, 2000. This report of the District and Sessions Judge (Vigilance) was accepted by the Administration Judge on 13th February, 2004. Therefore, no legal right of the petitioner has been infringed.

(4) We have heard the learned counsel for the parties at length and perused the paper-book.

(5) Mr. Akshay Bhan, learned counsel appearing for the petitioner has submitted that the claim of the petitioner has been erroneously declined on the basis of Instructions dated 21st June, 2000. The petitioner did not claim any benefit under the aforesaid instructions. The prayer of the petitioner was specifically for re-fixation of pay under the rules as contained in Punjab Civil Services Rules Vol. I, Part-I. The petitioner being senior to Prem Singh cannot be paid a lesser salary than his junior. In support of the submission, the learned counsel relied on a judgment of this Court to

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**Chanan Singh versus Punjab State Electricity Board, Patiala, (1).** Learned counsel has also relied on a judgment of the Supreme Court in the case of **High Court of Punjab and Haryana versus Bahadar Singh (Civil Appeal No. 9943/1995 decided on 25th April, 2001)**. Learned counsel has also relied on the judgment **Surinder Kumar Nauhria versus The Registrar, Cooperative Societies, Punjab, Chandigarh (2)**.

(6) On the other hand, Mr. Anupam Gupta, learned counsel appearing for the High Court has submitted that the claim of the petitioner was examined under the Instructions dated 21st June, 2000. Since the petitioner was directly promoted as Reader from the post of Assistant, he did not have the benefit of having the pay fixed in the cadre of Superintendent Grade-II. The petitioner was directly promoted as Reader from the cadre of Senior Assistant carrying pay scale of the Rs. 1800—3200 (unrevised). On the other hand, Prem Singh was promoted as Reader from the cadre of Superintendent Grade-II carrying the higher pay scale of Rs. 2000—3500 (unrevised). Therefore, the fixation of pay of the petitioner on his promotion as Reader from Assistant involves one step. In the case of Prem Singh, pay fixation involves two steps i.e. he was first promoted on the post of Superintendent Grade II from the post of Assistant and thereafter, he was promoted as Reader from the post of Superintendent Grade. Since the petitioner was never posted in the cadre of Superintendent Grade-II, he cannot be given the benefit of pay fixation as given to Prem Singh, his junior, Learned counsel has further submitted that the petitioner cannot take any advantage of the PCS Rules, in view of the instructions dated 21st June, 1990.

(7) We have considered the submission made by the learned counsel for the parties. The report submitted by the District and Sessions Judge (Vigilance) was as under :—

“According to Sh. Chhaju Ram Hans, representationist, he was confirmed as an Assistant with effect from 1st November, 1986 as per Office order issued,—*vide* this Court’s endorsement No. 12427/E.I/V.Z.2 (b) dated 22nd May, 1989 (Flag “A”) but a junior person to him viz. Sh. Prem Singh, Reader is getting higher salary in the promotional grade of Reader. Sh. Chhaju Ram Hans has made prayer in his two representations that this pay may be stepped

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(1) 1992 (2) R.S.J. 451

(2) 1993 (2) R.S.J. 800

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up and refixed in terms of Rule 4.14 (1) and (2) read with Rule 4.4(a) (i) and Rule 2.48 of the Punjab Civil Services Rules, Vol. I, Part-I, first in the substantive rank of Assistant after granting the pay benefit/increment/proforma promotion from the dates those were given to his junior Sh. Prem Singh, Reader and thereafter, in view of the enhancement in the pay in the substantive rank, the pay in the officiating rank of Reader may be refixed. He also maintained that the ratio of judgments of this Court rendered in the case of “Chanan Singh versus P.S.E.B., Patiala, 1992(2) RSJ 451 (flag “B”) and in the case of “Surinder Kumar Nauhria versus The Registrar, Cooperative Societies, Punjab, Chandigarh 1993 (2) RSJ 800” (flag “C”) is applicable in the matter of refixation of his pay. Sh. Chhaju Ram Hans submits that the Punjab Government Instructions contained in the letter dated 21st June, 1990 (flag “D”) are not applicable in his case or he has claimed any benefit thereunder .

The ratio of the law laid down in the judgments relied upon by Sh. Chhaju Ram Hans, representationist that a senior person is entitled to all those benefits which a junior in the cadre is getting and the pay of a senior cannot be less than that of the junior cannot be disputed but has to be seen, viewed and interpreted in the light of the relevant rules and instructions in the matter. Sh. Chhaju Ram Hans has not come up with any acceptable plea and ground as to why his case is not governed by the instructions as contained in the Government of Punjab dated 21st June, 1990 that regulates the removal of anomaly by stepping up of the pay of a senior employee drawing such pay less than that of a junior counter-part on account of either grant of proficiency step-up to the junior or by the virtue of application of Rule 18 of the Rules on promotion in the case of junior. As per part-II, of the Instructions dated 21st June, 1990 issued by the Government of Punjab, the senior and junior employee should belong to the same cadre post with the same pay scale in the feeder post as well as promoted post. Further instruction as embodied in Circular letter No. 6/138/98-IFP-II/6793, dated 21st June, 2000 (flag “E”) that deal with the subject “Removal of Anomaly by

stepping up the pay of a senior employee drawing pay less than a junior employee says that the Governor of Punjab is pleased to decide that :—

In such cases the pay of senior employees shall be stepped up to the level of pay of the Juniors, if by the operation of normal pay fixation rules and option exercised,—*vide* order dated 15th October, 1998 has approved the opinion of the learned Joint Registrar (Rules) regarding giving of proforma promotion to him as Superintendent Grade-II and similar request made by Sh. M.S. Gill, Reader to stepping up of his pay was declined,—*vide* orders of Hon'ble the Chief Justice dated 9th November, 1994 (Flag 'G').”

(8) We are of the opinion that the aforesaid report is clearly contrary to the law laid down by this Court in the case of **Chanan Singh** (*supra*) and **Surinder Kumar Nauhria** (*supra*). The claim of the petitioner could not have been rejected on the basis of the executive Instructions dated 21st June, 2000. The petitioner had claimed fixation of his pay under Rule 4 of the Punjab Civil Services. Under Rule 3.13 of the Punjab Civil Services Rules, it is provided that unless the lien of an employee is suspended under Rule 3.14 or transferred under Rule 3.16, a government employee holding substantively a permanent post retains the lien on that post. Since 20th October, 1994, the petitioner had been holding the post of Reader in an officiating capacity. Since Prem Singh was junior to the petitioner, he could not be granted a higher pay than the petitioner. Under Rule 4.14 (i) and (ii) read with Rule 4.4 (a) (i), the petitioner would be entitled to re-fixation of pay as Reader with effect from 2nd August, 1995, 18th January, 1996 and 5th May, 1997. The relevant rules are as under :—

**“Rule 4.14**

- (1) Subject to the provisions of Rules 4.13 and 4.16, a Government employee who is appointed to officiate in a post shall draw the presumptive pay of that post.
- (2) On an enhancement in the substantive pay, as a result of increment or other wise, the pay of such Government employee shall be re-fixed under sub-rule (i) from the date of such enhancement as if he was appointed to officiate in that post on that date were such re-fixation to his advantage.

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**“Rule 2.48 Presumptive pay of a post :**

When used with reference to any particular Government employee, means the pay to which he would be entitled. If he held the post substantively and were performing its duties, but it does not include special pay unless the Government employee performs or discharges the work or responsibility, on consideration of which the special pay was sanctioned.”

**Rule 4.4 (a) (i) :**

When appointment of the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purposes of Rule 4.13) than those attaching to such permanent post he will draw as initial pay the stage of the time scale next above his substantive pay in respect of the old post.”

(9) A perusal of the aforesaid Rules would show that the petitioner was entitled to draw the presumptive pay of the post of Reader from the date he was officiating as such. The aforesaid pay is to be fixed on the presumption that the petitioner held the post substantively. Under these Rules, the petitioner would clearly be entitled to the re-fixation of his pay over and above the pay which was being drawn by his junior Prem Singh. The petitioner would also be entitled to all the consequential benefits. In the case of **Bahadur Singh** (*supra*), the Supreme Court examined a similar situation and held that senior employee cannot be paid less than his junior colleague. In view of the above, we are of the considered opinion that the order passed by the High Court on 18th March, 2004 (Annexure P-1) is not sustainable.

(10) In view of the above, the writ petition is allowed. The order dated 18th March, 2004 (Annexure P-1) is quashed. The petitioner is held entitled to the re-fixation of his pay at different stages from the dates the same was granted to his junior Prem Singh. The petitioner shall be entitled to all the consequential benefits such as arrears of salary etc. Let the consequential benefits be paid to the petitioner within a period of two months of the receipt of a certified copy of this order. No costs.

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**R.N.R.**