

criminal case from one Panchayat to another Panchayat having jurisdiction to try the same. Under section 41 of the Act, he has no jurisdiction to transfer a case pending before a Gram Panchayat under Section 21 of the Act. Section 21, *inter alia*, provides for removal of encroachment and nuisance from a public street, place or drain by the Gram Panchayat. The order under Section 21 of the Act is not passed by the Gram Panchayat in exercise of its criminal jurisdiction. Schedules I-A and I-B appended to the Act illustrate the offences cognizable by a Gram Panchayat. Removal of an encroachment or nuisance from a public street does not fall either in Schedule I-A or Schedule I-B to the Act. Consequently, the order of respondent No. 1 is not envisaged by section 41 of the Act and is thus without jurisdiction.

(4) The petition is allowed and the impugned order, dated January 29, 1988 (Annexure P-11) is quashed with no order as to costs.

P.C.G.

Before M. R. Agnihotri, J.

GOPAL KRISHAN KHANNA, READER, PUNJAB & HARYANA
HIGH COURT, CHANDIGARH,—*Petitioner.*

versus

THE HON'BLE PUNJAB & HARYANA HIGH COURT,
CHANDIGARH,—*Respondent.*

Civil Writ Petition No. 9211 of 1987.

9th July, 1990.

Constitution of India, 1950—Art. 226—Protection of pay and increments—Employee on deputation to another High Court—Reduction in pay—Employee is entitled to refixation of pay taking into account annual increments earned during the period of deputation.

Held, that the only condition imposed in the order of promotion was that the petitioner would not claim benefit of seniority over his seniors on return from deputation. This only meant that the

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benefit of seniority and seniority alone, was to be denied to the petitioner and not the benefit of regular pay scale or annual increments earned by the petitioner in that scale, either while working with the Sikkim High Court or on return to this Court. In the absence of any express or implied condition in the order of appointment, no order to the disadvantage of the petitioner could be passed, reducing his pay in the garb of re-fixation. The mere fact that some officers senior to the petitioner might have been drawing less pay is no ground for depriving the junior officer of the higher pay if he is otherwise entitled to the same in law. Consequently, the Registrar of this Court is directed to re-fix the pay of the petitioner in his present pay-scale by restoring it to the stage from where it has been reduced by the impugned action. The petitioner shall be entitled to all the increments and other consequential benefits arising out of re-fixation of his revised salary. (Paras 5 & 7)

Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to summon the record of the case and after perusal of the same:—

- (a) *Issue a writ of Certiorari quashing the impugned order of the Hon'ble Chief Justice rejecting the representation of the petitioner.*
- (b) *issue a writ of Mandamus directing the respondents to fix the salary of the petitioner on joining the parent Department, i.e., Punjab and Haryana High Court, at the last salary drawn by him.*
- (c) *issue any other writ, order or direction that this Hon'ble Court deems fit under the facts and circumstances of the case.*
- (d) *issue a writ of Mandamus directing the Respondents to give the petitioner the benefit of seniority, pay and increments while on deputation.*
- (e) *issuance of advance notices of motion be dispensed with.*
- (f) *filing of certified copies of Annexures P-1 to P-6 be dispensed with.*
- (g) *Cost of the petition be awarded to the petitioner.*

Vinod Sharma, Advocate, for the Petitioner.

Ashok Bhan, Sr. Advocate (as on the date of argument), with
A. K. Mittal, Advocate, for the Respondents.

JUDGMENT

M. R. Agnihotri, J.

(1) In this petition under Article 226 and 227 of the Constitution, the grievance of the petitioner, who is a Reader on the establishment of this Court, is domestic in nature. Foregoing his claim regarding seniority over his colleagues, he has confined his prayer in the petition only to the extent of re-fixation of his pay by adding the benefit of increments of his salary as a Reader in this Court, during the period he was working as Assistant Registrar-cum-Reader on deputation with Sikkim High Court from 28th October, 1978, to 13th May, 1983.

(2) The petitioner joined service as a Clerk on 30th November, 1966, and was promoted as Assistant on 14th May, 1974, on the establishment of this Court. In 1977, he qualified in the competitive examination held for appointment as Reader. In 1978, on a requisition received from the High Court of Sikkim, options from the eligible employees were invited for appointment as Assistant Registrar-cum-Reader, on deputation in the Sikkim High Court. The petitioner applied for the same and was selected. However, before he was actually deputed a temporary post of Reader was created by the Chief Justice of this Court with effect from 28th October, 1978, with the condition that the same be kept in abeyance and shall stand abolished on the reversion of the incumbent of the post from deputation. On that very day, by a separate order, the Chief Justice promoted the petitioner as Officiating Reader and appointed him against the newly created post with the following condition :—

“His promotion is subject to the specific condition that he will not claim seniority over his senior on his reversion to this Court and will be reverted to the post of officiating Assistant which he is holding at present.”

Thereafter, he proceeded on deputation and remained there as such till 13th May, 1983.

(3) While the petitioner was still on deputation with the Sikkim High Court, the Chief Justice of this Court, on 23rd February, 1982, passed the following order fixing the pay of the petitioner as Reader at Rs. 1,000 plus Rs. 100 as special pay per month in the revised pay scale of Rs. 825—1,580 with effect from 29th October, 1978 :—

“In exercise of the powers conferred by rule 34(1) of the High Court, Establishment (Appointment and Conditions of

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Service) Rules, 1973, as amended, read with the rule 6 (1) of the Punjab Civil Services (Revised Scales of Pay) Rules, 1979, and rule 5 (1) of the *ibid* rules, as amended by Punjab Civil Services (Revised Scales of Pay) (First Amendment) Rules, 1981, Hon'ble the Chief Justice has been pleased to fix the pay of Sh. G. K. Khanna, Officiating Reader, on deputation to the High Court of Sikkim, at Rs. 1,000 plus Rs. 100 as special pay per month in the revised time scale of Rs. 825-25-850 30 1,000/40-1,200/50-1,400-50 1,580 plus Rs. 100 P.M. as special pay with effect from 29th October, 1978 (FN) with next date of increment after completion of requisite period of one year i.e. with effect from 1st October, 1979.

By Order of Hon'ble the Chief Justice.

(Sd.) . . .

Assistant Registrar (Estt.)
for Registrar."

This order is still in force till today and has not been withdrawn so far. Despite this, on 20th September, 1983, pay of the petitioner was reduced and re-fixed at Rs. 825 P.M., that is, the initial pay of the Reader with effect from July, 1982. Against this re-fixation of pay, the petitioner made a representation on 12th January, 1984. This representation was rejected on 25th April, 1984, which gave rise to the present writ petition.

(4) In the written statement, it has been "admitted that the petitioner had joined as Reader on 13th May, 1983, on reversion from deputation and he had already been given *pro forma* promotion as Reader with effect from 10th August, 1982, the date when his junior was promoted and he started to officiate continuously as Reader on the establishment of this Court from that date. He cannot derive any benefit of the period of deputation from 28th October, 1978 to 9th August, 1982 for his fixation of pay as Reader in this Court". But the impugned action is sought to be justified on the ground that the appointment order dated 28th October/1st November, 1978, clearly stipulated that the petitioner would not claim seniority over his seniors on his reversion (meaning thereby on return from deputation to this Court). It has further been stated that the petitioner has

duly taken the benefit of annual increments while he remained on deputation. But so far as the High Court (Punjab and Haryana) is concerned, he was given the benefit of increments only in the cadre of Assistant the post against which his lien was retained in the High Court.

(5) After hearing the learned counsel for the parties, I find that the impugned action of the respondent High Court on the administrative side cannot be sustained either in law or in equity. The crux of the matter is that no doubt the petitioner was working as Assistant in this Court when he opted for being sent on deputation as Assistant Registrar-cum-Reader to the Sikkim High Court, but the fact stands that he was in fact appointed as a Reader before he actually proceeded on deputation. The only condition imposed in the order of promotion was that he would not claim benefit of seniority over his seniors on return from deputation. This only meant that the benefit of seniority and seniority alone, was to be denied to the petitioner and not the benefit of regular pay scale or annual increments earned by the petitioner in that scale either while working with the Sikkim High Court or on return to this Court. The petitioner, as already noticed above, has clearly abandoned his claim regarding seniority and has only prayed that his pay should have been protected and not reduced, which was even revised and re-fixed by this Court to his advantage even on 23rd February, 1982, while he was still on deputation with the Sikkim High Court. This claim of the petitioner, on the face of it, deserves to be conceded, as in the absence of any express or implied condition in the order of appointment, no order to the disadvantage of the petitioner could be passed reducing his pay in the garb of re-fixation. The mere fact that some officers senior to the petitioner might have been drawing less pay is no ground for depriving the junior officer of the higher pay if he is otherwise entitled to the same in law. Moreover, cases are not unknown in the field of service law where an officer is permitted to draw more salary than his seniors. A few examples are of grant of increments to the junior officer for good work which his senior may not be getting, junior officer qualifying certain examination on the basis whereof he may be earning special pay or special increments which his seniors may not be getting, grant of special increments at the time of initial selection or promotion on the basis of academic qualifications and experience, etc. and a junior officer has crossed Efficiency Bar whereas his senior has not crossed it yet, so on and so forth. Even this stand of the respondents has been squarely met by the petitioner by citing instances of other Readers like Mr. Pritpal

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Singh, Mr. S. M. Malhan, and Mr. R. K. Dua, who despite being junior to the petitioner, are drawing more salary than him. Therefore the impugned action is wholly unwarranted in law and deserves to be set aside.

(6) Though the petitioner has also raised the plea of violation of the principles of natural justice, i.e. he was not heard before the impugned action reducing his pay was taken, yet the same has not been considered necessary to be examined by me, as the very action of the respondents is not sustainable in law. Even otherwise, as the relief sought by the petitioner has been confined only to the protection of his pay and increments, etc. which he had already earned, no further relief can be granted to him.

(7) Consequently, I allow this petition quash the impugned order, dated 20th September, 1983, by which the pay of the petitioner has been reduced, and direct the Registrar of this Court to re-fix the pay of the petitioner in his present pay scale by restoring it to the stage from where it has been reduced by the impugned action. The petitioner shall be entitled to all the increments and other consequential benefits arising out of re-fixation of his revised salary, to which he would have been entitled had the impugned order not been passed. The needful shall be done within a period of three months. However, there shall be no order as to costs.

R.N.R.

Before G. R. Majithia, J.

MEHTAB SINGH KHANNA AND OTHERS,—*Petitioners.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 6720 of 1988.

7th August, 1990.

Constitution of India, 1950—Arts. 226, 227, 310 & 311—Telephone Allotment Rules, 1980—Rl. 2.3(e)—Retired employees of High Court—Does not fall under the definition of rl. 2.3(e)—Such employees are not eligible for registration under NON-OYT-SS