State Of Punjab vs K.R. Erry & Anr on 21 September, 1972

Equivalent citations: AIR 1973 SUPREME COURT 834, 1973 (1) SCC 120, 1973 LAB. I. C. 440, 1972 SERVLR 836, (1972) 1 S C C 120, 1973 (1) LABLJ 33, 1972 2 SCWR 638, 1973 2 SCR 405, (1973) 1 LAB LN 74, 1973 SERV L J 5

Bench: J.M. Shelat, D.G. Palekar, K.K. Mathew, S.N. Dwivedi, Y.V. Chandrachud

CASE NO.:
Appeal (civil) 1893 of 1967

PETITIONER:
STATE OF PUNJAB

RESPONDENT:
K.R. ERRY & ANR.

DATE OF JUDGMENT: 21/09/1972

BENCH:
J.M. SHELAT & D.G. PALEKAR & K.K. MATHEW & S.N. DWIVEDI & Y.V. CHANDRACHUD

JUDGMENT:

JUDGMENT 1973 AIR (SC) 834 = 1973 (2) SCR 405 The Judgment was delivered by PALEKAR, J.

PALEKAR, J.-These appeals raise, a common question of law as to whether the State Government is entitled to reduce the amount of pension and gratuity legally payable to its officers on their superannuation without giving a reasonable opportunity to the officers to show cause against the proposed reduction.

In the first case the officer concerned is Shri K. R. Erry. He joined the Punjab P.W.D. Irrigation Branch as an Assistant Engineer in 1926. In due course he was posted as a Central Designs Officer and remained attached to the Central Designs Office first in the capacity of Deputy Directo r from 6-11-1951 to 30-4-1952 and then as an Executive Engineer (Designs) from 1-5-1952 to 1-11-1955. He was promoted from P.S.E. Class II to P.S.E. Class I with effect from 22-9-1954 and was confirmed as an Executive Engineer with effect from 12-8-1956. Early in 1958, he was promoted to the rank of an officiating Superintending Engineer and was posted as Director of Central Designs. In November, 1958 he retired from service on reaching the age of superannuation. Shortly, thereafter he was reappointed by the Government as a Professor and Head of the Department of Civil Engineering in the Punjab Engineering College, Chandigarh, which post he held for about 16 months. The question of his pension was taken up by the Government in the normal routine and on 29-7-1963, Government informed him that though he was entitled to a superannuation pension of Rs. 423.05 n.p. per month and death-cum-retirement gratuity of Rs. 16, 320/- the Government was pleased to

impose a cut of 20% in the pension and Rs. 2, 000/- in the gratuity amount under Rule 6.4 of the Punjab, Civil Services Pension Rules, since, in the opinion of the Government, the service record of Shri Erry was not satisfactory. It is an admitted fact that before this cut was applied Shri Erry had not been furnished the grounds nor had he been given an opportunity to show cause against the-proposed cut.The second case also runs on parallel lines. The officer concerned is Shri Sobhag Rai Mehta. He joined the Punjab Irrigation Department as a temporary Engineer in 1939 and was confirmed as Assistant Engineer in P.S.E. Class II in 1946. He was promoted to P.S.E. Class I and as an officiating Executive Engineer in 1949. After a few months he was reverted as S.DO. as he was declared unsuitable for the promotion by the Punjab Public Service Commission. Two years thereafter i.e. in 1951 he was again promoted as Officiating Executive Engineer and confirmed as an Executive Engineer with effect from 1-9-1956. Thereafter he was promoted as an Officiating Superintending Engineer with effect from 12-3-1959 and earned a year's increment. On 12- 12-1960 he attained the age of superannuation. As his pension papers were not finalized soon thereafter he was allowed to draw anticipatory pension in the sum of Rs. 190/- per month and Rs. 6, 158/- as death-cum-retirement gratuity pending final disposal of his case. On 4-7-1964 Government decided that whereas the pension admissible to him under the rules was Rs. 211.35 n.p. per month along with death-cum- retirement gratuity of Rs. 8, 211/- it was necessary to impose a cut of 15% in his pension under rule 64 of the Punjab Civil Service Rules, as in the opinion of the Government the service record of Shri Mehta was not satisfactory. His pension was thus reduced from Rs. 211.35 n.p. to Rs. 179.60 per month. It is admitted that while applying the cut to the pension , no opportunity was given to Shri Mehta to show cause against the proposed cut.

In the third case the officer concerned was Shri Khaushal Singh. He was appointed as an Agriculture Assistant in the Punjab Government in 1926. Thereafter, he worked in the Department of Agriculture in various capacities and finally in 1955 he was promoted to the post of District Agriculture Officer which was P.A.S. Class 11 post. He was confirmed in the post of the District Agriculture Officer with effect from 13-1-1958. Shri Khaushal Singh also acted for sometime as the Deputy Director of Agriculture before retirement on 10th November, 1960 on reaching the age of superannuation. After his retirement the Accountant General, Punjab calculated and declared that he was entitled under the rules to be paid pension of Rs. 175.50 np. per month and death-cum-retirement gratuity amounting to Rs. 5, 589/-. But on 7-10-1963 he was informed that his pension had been reduced from Rs. 175.50 to Rs. 160/- per month and the amount of death-cum-gratuity of Rs. 5, 589/- had been forfeited by the Punjab Government. In this case also it is admitted that Shri Khaushal Singh had not been given any notice to show cause 'why his pension should not be reduced or death-cum-retirement gratuity forfeited.In all these three cases the aggrieved officer filed writ petitions in the High Court of Punjab at Chandigarh. The principal contention was that pensionary benefits, with the right to superannuation pen sion, which, it is admitted, included death-cum-retirement gratuity under the rules, were property to which the officers by reason of their service were entitled as a matter of right. They could not be deprived of any part of that property without notice to show cause why the cut should not be imposed.

The contention on behalf of the State was that pensionary benefits were in the nature of a bounty and under rule 6.4 clauses (a) &(b) of the Punjab Civil Services Rules (Pension Ru les) it was open to the Government to impose a cut, if in the opinion of the Government, the service record of the

officers was not thoroughly satisfactory. It was also contended that the order imposing the cut was an administrative order and the Government was not, therefore, bound to give notice to the officers about the proposed cut. The writ petitions of Shri Erry and Shri Mehta were heard together by a full bench of the High Court and were disposed of by a common judgment on October 2 5, 1966. The High Court held by majority that the right to superannuation pension was a right vested in the Government servant and before that right is prejudicially affected he is entitled to a notice to show cause against the proposed cut. In view of that finding the orders imposing the cut were quashed.

The Writ Petition filed by Shri Khaushal Singh came on for hearing before a single Judge of the High Court on December 22, 1966. The learned Judge held that the case was covered by the decision of the full bench in the, above two cases and the only order he could pass was to quash the order by which the State Government had imposed the cut in his pension. The State of Punjab went in appeal to the Division Bench of that court but, as was to be expected, that appeal was dismissed in limini on 8-3-1967.The present three appeals are filed by the State Government challenging the view taken by the full bench.

Much of the argument which would have been otherwise addressed to us has been cut short by a decision of this Court in Deokinandan Prasad v. The State of Bihar and Others(1971 (2) SCC 330.). It was a petition under Article 32 of the Constitution by which the petitioner maintained that denial of pension was an infringement of his fundamental rights under Article 31(1) and Article 19(1) (f) of the Constitution. This Court held that the right of a Government servant to receive pension is property under Article 31(1) and by a mere executive order the State did not have the power to withhold the same. It was also held that the claim to pension was property under Article 19(1)(f) and was not saved by sub-Article 5 of Article 19. In coming to this decision a number of cases of the Punjab High Court were referred to and the view taken by that court in Shri Erry's case, which is now in appeal before us' was affirmed. Mr. Mahajan who appeared before us on behalf of the State conceded that in view of the decision in Deokinandan's case it was no longer open to him to contend that pension was a bounty.

Mr. Mahajan, however, contended that the order of the State Government in applying the cut was an administrative order under rule 6.4 of the Pension Rules and, therefore, the, State Government was not liable to issue a notice to show cause against the proposed cut. It was pointed out that the State Government had in, its possession the Confidential records of the officers, and on a consideration of the same it was open to it to reduce the pension in its discretion. It was alleged in the written statements filed in the, petitions that their official careers were not without blemish, that there were ups and downs in their service and all these matters were considered by the State Government before applying the cut. It was conceded that these officers earned promotions and increments in due course of their service but it was submitted that did not prevent the State Government from applying the cut to the pension if, on a consideration of the official career as a whole, the officers were not entitled to unqualified approbation.Rule 6.4 of the Punjab Pension Rules is as follows:

> "6. 4(a) The full pension admissible under the rule is not to be given as a matter of course, or unless the service rendered has been really approved.

(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper."

There are five notes appended to this rule. But we are not concerned with the same in dealing with the general principle.

Some indication was given in the written statements field on behalf of the State suggesting that the careers of the three officers were not thoroughly satisfactory. In the case of Shri Erry it was alleged that he had prepared the design of the Ghaggar Syphon and when the same was constructed in accordance with the design, a defect was discovered to remedy which the Government had to spend an extra amount of rupees seven lakhs. The State Government was of the opinion that the defect was in the design and not the construction. So far as this allegation is concerned Shri Erry has given an, answer. According to him the design for the Syphon was prepared by him under the able supervision and guidance of his superiors viz. Shri Handa who was the Chief Engineer, Bhakra Canals and Shri R. K. Gupta, Chief Engineer, who held charge of the post of Director, Central Designs. Both these officers had signed the design in token of its correct ness and approval. Shri Erry himself was not concerned with the later construction in accordance with the design. The construction was entrusted to Shri A. G. Kalha, Superintending Engineer, Bhakra Main Line and his allegation was that it was a constructional defect which caused loss to the Government and not the design. The matter was actually investigated by a 'Committee of Enquiry' which consisted of three Chief Engineers presided over by Shri S. D. Khunger, I.S.E. General Manager, Bhakra Dam, and in the view of that Committee the defect was not in the design but in the construction. That finding was questioned by Shri Kalha and thereupon the Government set up a high-powered Commission presided over by Mr. Justice Dulat. Mr. Justice Dulat held, contrary to the finding of the Committee of Enquiry, that the damage to the Ghaggar Syphon was due to faulty design and not due to faulty construction. The complaint of Shri Erry is that in the enquiry before t he high-powered Commission of Mr. Justice Dulat he was not. even called to explain how his design was right and the construction was wrong. Moreover, he contended it was wrong on the face of it to hold him responsible for the design when, in fact the design was not the sole creation of Shri Erry but also of the two high officers Shri Handa and Shri Gupta who had specifically examined and approved the design. It is the grievance of Shri Erry that while these two officers had retire d and had been given their full pension it was wrong to blame Shri Erry for the defect, if any. Indeed, the High Court could not possibly have undertaken an investigation into the blameworthiness of Shri Erry in the Writ Petition. But it is obvious that the finding of Mr. Justice Dulat that there was a fault in the design and not in the construction was a finding arrived at without giving an opportunity to the petitioner to explain. In other words. if the defect in the design of t he Syphon was the sole reason for making a cut in the pension, Shri Erry would be justified in his contention that Such a finding would have been appropriate only if his explanation had been obtained by Mr. Justice Dulat in the Course of the enquiry or by the State Government before the cut was imposed.So far as Shri Mehta is concerned the State Government also gave an indication in para 5 of its written statement that Shri Mehta was involved ill Some official irregularities and these had attracted the comments of the Public Accounts Committee. We do not know what were the findings and whether those findings were arrived at after notice to Shri Mehta.

So far the third officer namely Khaushal Singh is concerned Government stated in para 4 of its written statement that the State Government had Suffered a loss of Rs. 11, 399.50 p. on account of irrecoverable fertilizer loss issued by Shri Khaushal Singh to bogus persons and also a further loss of Rs. 12, 770, /- on account of irregularities committed by the petitioner in the purchase of seed in the year 1959. It does not appear that the State Government had instituted any enquiry into these losses with a view to bring home the guilt to Shri Khaushal Singh.

The above allegations in respect of all the three officers concerned are undoubtedly serious. But they have remained mere allegations. The officers could have been properly charged for their delinquency. This was not done either when they were in service or after they retired. Were these matters taken into account, as the State Government claims to have done before the imposition of the cut, it would have beer) fair to have given an opportunity to the officers to put forward their defence before depriving them of a large share in their pensionable benefits which.

as we have already seen, are not mere bounty but property to which they were entitled.

It was also alleged by the State Government in the written statement s that apart from the major defaults referred to above. the records of all the three officers showed that their careers were nor altogether satisfactory and here and there were draw that he was not allowed to cross the efficiency bar for a year in 1953 and in the case of Shri Mehta he had been superseded by his juniors on a number of occasions. At the same time it cannot be ignored that in spite of some small set backs here and there in their long official career these officers earned promotions and were selected on merit to fill high offices. Shri Erry started as an Assistant Engineer in Class It service and in due course was promoted as Executive Engineer in Class I service. At the end of his career lie was appointed as a Superintending Engineer, the post being a selection post. Similar is the case with Shri Mehta. The latter has pointed out that as early as 6-4-1951 Government had framed rules for the preparation of a ranking list in respect of the selection posts and under the rules no person could get a selection post unless he was fit and his record of service was satisfactory. He contended that the very fact that he got the selection post of Superintending Engineer on 11-3- 1959 showed that he was fit and his record of service was satisfactory.Shri Khaushal Singh started his career as an Agriculture Assistant in 1927 in class III Service and in 1955 was promoted to a class 11 post and appointed the District Agriculture Officer. He was confirmed in that post and also officiated for sometime as the Deputy Director of Agriculture. When the career of an officer is assessed as a whole the fact that an officer, though with some impediments in his long career, has obtained Successive promotions to higher and yet higher posts may well raise the question whether the State Government, at the time of granting him pension which is normally determined by the years of service and the last pay he receives at the end of his career, would be entitled to forfeit rights acquired by length of service on the ground that faults, which, at the time, were either overlooked or condoned had now become so rave as to justify punishing him by inflicting a severe cut in the pension. It is not necessary for us to deal with this point here except to suggest that this aspect of the case could well have been urged by the officers before the Government if notice had been issued to them to show cause against the proposed cut and the State Government would have had necessarily to apply its mind to that question.

In short it must be conceded that though the State Government may have had some material before it for imposing a penalty by way of a cut in the pension it had failed to give a reasonable opportunity to the officers to put forward their defence or facts in extenuation before the cut was imposed. The case of Ridge v. Baldwin([1964] A.C. 40.) comes to mind in this connection. Baldwin who was the Chief Constable of the borough police force was prosecuted on grave charges. Donovan J, the trial Judge made, while acquitting him, some observations about his moral incompetence to afford leadership to the police force. Ac ting on this severe criticism by a Judge of the High Court the Watch Committee. entitled under Section 191. of the Municipal Corporations Act 1882 to dismiss him on a charge of unfitness, dismissed him from service. This dismissal practically a t the end of his official career had the consequence of depriving him of his pension. The House of Lords held that the order had to be set aside because Baldwin was not afforded an opportunity to defend himself, though the statute itself did not require any such opportunity being given.The question for our consideration now is whether the orders imposing a cut in the pension should be set aside for the reason that the officers were not given reasonable opportunity to show cause. The law on the point is not in doubt. Where a body or authority is judicial or where it has to determine a matter involving rights judicially because of express or implied provision, the principle of natural justice audi ailt eram partem applies. See Province of Bombay v. Kusaldas S. Advani &others(1950 SCR 621 (725)) and Board of High School &Intermediate Education, U.P. Allahabad v. Ghanshyam Das Gupta and others (1962 (S3) SCR 3.). With the proliferation of administrative decisions in the welfare State it is now further recognised by courts both in En-land and in this country, (especially after the decision of House of Lords in Ridge v. Baldwi that where a body or authority is characteristically administrative the principle of natural justice is also liable to be invoked if the decision of that body or authority affects individual rights of interests. and having regard to the particular situation it would be unfair for the body or authority not to have allowed a reasonable opportunity to be heard. See: State of Orissa v. Dr. Binapani Dei &Ors.(1967 (2) SCR 625.) and In re H. K. [An Infant([1967] 2 Q.B.D. 617.)]. In the former case it was observed it page 628 as follows "An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fair play. The deciding authority. it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is however under a duty to give the person against whom 'in enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of Our Constitutional set up that ever), citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made the order is nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

These observations were made with reference to an authority which could be described as characteristically administrative. page 630 it was observed:

> "It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting Or explaining the evidence."

This case And the English case in re H. K. (An Infant) were specifically referred to with approval in a decision of the constitution bench of this Court in A. K. Kraipak &Ors.. etc. v. Union of India &Ors(1970 (1) SCR

457.).

It is, therefore, clear that the State in the case of these three officers could not have applied a cut in the pension of the officers without giving them a reasonable opportunity to make their defense. The rule which declares that even an administrative authority has to act fairly after giving an opportunity to the person rights and interests are affected by its decision is no more than an extension of the well-known rule which courts in England had recognised in the 19th century. In Cooper v. Wandsworth Board of Works([1863] 14 C, 13, N.S, . 180.) the Board, which had, under the Act of 1855, the authority to demolish any building constructed if the owner thereof had failed to give proper notice, was held bound to give the owner an opportunity of being heard before the demolition, It was contended in that case by the Board that their discretion to order demolition was not a judicial discretion. But the court decided unanimously in favour of the owner. Erle C. J. held that the power was subject to a qualification repeatedly recognised that no mean is to be deprived of his property without his having an opportunity of being heard. and that this had been applied "to many exercises of power which in common understanding would not be at all a more judicial proceeding than would be the act of the district board in ordering a house to be pulled down."Wills. J. observed:" that the rule was of universal application, and founded upon the plainest principles of justice."

In the case before us the officers are being deprived of part of their property by applying a cut to the pension. Therefore, it was quite essential in all fairness and elementary justice that they should have been given reasonable opportunity to show cause against the proposed action.Reference was made on behalf of the State to M. Narasimha v. The State of Mysore([1960] 1 S.C.R.) and particularly the following observations at page 889.

> "Next the appellant contends that as his pension has been reduced to two- thirds, he was entitled to notice in view of the provisions of Art. 311(2) of the Constitution, before the Government decided to inflict that punishment on him and that this was not done in the notice dated December 30, 1954. It is enough to say that this contention is also baseless. Article 311 (2) does not deal with the question of pension at all; it deals with three situations, namely (i) dismissal, (ii) removal, and (iii)

> reduction in rank. The appellant says that the reduction in pension is equivalent to reduction in rank. All that we need say is that reduction in rank applies to a case of a public servant who is expected to serve after the reduction. I t has 'nothing to do with reduction of pension, which is specifically provided for in Art. 302 of the Regulations. That article says that if the service has not been thoroughly satisfactory the authority sanctioning the pension should make such reduction in the amount as it thinks proper. There is a Note under this article, which says that ', he full pension admissible under the Regulations is not to be given as a matter of course but rather to be treated as a matter of distinction . It was under this article that the Government acted when it reduced the pension to two-thirds. Reduction in person being a matter of discretion with the Government, it carrier therefore be said that it committed any breach of the Result in reducing the pension of the appellant."

Particular reference was made to the last two or three sentences in the above observations for the contention that payment of pension was a matter of discretion with the Government. It is enough to say that the question did not arise in the case as to whether pension is bounty or property. In that case the appellant M. Narasimhachar had been charged in respect of seven irregularities committed by him when he held the post. An enquiry was held and six of the irregularities were found proved. A final notice was served on him to show cause why he should not be compulsorily retired and 50 % of his pension should not be adjusted towards the amount clue from him on account of the shortage caused by the irregularities. He did not show cause. In the meantime he reached the age of superannuation and the Government passed an order directing that he be retired from service from the date on which had reached superannuation and given a reduced pinion of two-thirds to which he would be ordinarily entitled in view of the irregularities committed by him. One of his contentions was that Article 311(2) applied to his case and, therefore, lie was entitled to a notice before his pension was reduced to two-thirds. To that the answer was that Article 311(2) did not apply to him and. under Article 302 of the Regulations his pension was liable to be reduced Lit Government's discretion. He had known what the charges there against him and what punishment was proposed to be inflicted upon him. Therefore, lie was not in a position to come that his pension was reduced without notice to him.In the result we hold that the three writ petitions were correctly decided by the High Court and the appeals must fail. They are dismissed with costs.