

Union of India

Vs

Gurbux Singh and Another

Civil Appeal No. 11 of 1968

(K. K. Mathew, P. N. Bhagwati, N. L. Untwalia JJ)

05.02.1975

JUDGMENT

BHAGWATI, J. -

1. The question that arises for determination in this appeal is as to which authority was entitled to terminate the service of the first respondent - the Central Government or the Government of Punjab.
2. The first respondent was, prior to his appointment as an Assistant Settlement Commissioner, holding the post of Deputy Registrar, Land Record in a temporary capacity under the State of Punjab. The first respondent had no lien on any permanent post and was a temporary servant of the Punjab Government. On the coming into force of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as the Act) it became necessary to appoint officers and staff in the State of Punjab for the purpose of carrying out various functions and duties under the Act. One of such functions and duties was grant of proprietary rights to quasi-permanent allottees of agricultural land and houses in the rural areas in the State of Punjab. The President of India, therefore, sanctioned the creation of certain posts - which included two posts of Assistant Director to be designated as Assistant Settlement Commissioner under the Act - for a period of six months from the date of promulgation of the Rules framed under the Act "for the work connected with the conversion of quasi-permanent allottees into permanent ones" and the Central Government, by its letter dated April 18, 1955 conveyed this sanction to the State Government. This letter contained a direction that the over-all expenditure in connection with these posts sanctioned by the President of India should not exceed Rs. 6.50 lacs and it would be shared between the Central Government and the State Government in the ratio of 50 - 50. It was also suggested in this letter that the names of officers appointed as Assistant Directors and Naib Tehsildars should be intimated in due course for issue of necessary notifications under the provisions of the Act. The State Government, by its letter dated July 3, 1955, pointed out to the Central Government that having regard to the large magnitude of the work involved, it would be necessary to have two whole-time officers exclusively devoted to this work and suggested that two posts should, therefore, be permitted to be created, one of a Deputy Secretary "who would have administrative control over all the managing officers and settlement officers and the staff appointed in connection with the conferment of permanent rights" and the other of an Assistant Settlement Commissioner. It appears that the Central Government in the meantime reconsidered its earlier decision that the expenditure on the posts in connection with the grant of proprietary rights to quasi-permanent allottees should be borne 50 - 50 between the Central Government and the State Government and by its letter dated July 20, 1955 intimated to the State Government that the Central Government would bear the entire expenditure on the staff appointed to these posts on condition that "the staff in question will be engaged for a period of six months only". The Central Government thereafter, by its letter dated

July 23, 1955 conveyed the sanction of the President of India to the creation of one post of Additional Settlement Commissioner and one post of Assistant Commissioner for a period of six months for the work connected with the conversion of quasi-permanent allotments into permanent ones on the scale of pay noted against each plus usual allowances admissible to the State Government employees of their status.

We are concerned in this appeal with the post of Assistant Settlement Commissioner sanctioned by the President of India as mentioned in this letter dated July 23, 1955.

3. Though the order of appointment of the first respondent of the post of Assistant Settlement Commissioner was not yet passed, the first respondent relinquished charge of his post of Deputy Registrar, Land Record and assumed charge of the post of Assistant Settlement Commissioner on the forenoon of August 1, 1955 as appears from the certificate dated August 1, 1955 (Ex. D-1). The Central Government thereafter, in exercise of the powers conferred by sub-section (1) of Section 3 of the Act, issued a notification dated September 3, 1955 appointing the first respondent to the post of Assistant Settlement Commissioner "for the purpose of performing the functions assigned to an Assistant Settlement Commissioner by or under the Act". The Central Government also issued another notification of the same date in exercise of the powers conferred by sub-section (1) of Section 3 of the Act directing inter alia that the first respondent, who has been appointed under that sub-section to the post of Assistant Settlement Commissioner, shall perform the functions assigned to an Assistant Settlement Commissioner by or under the Act only in respect of agricultural land situated in the State of Punjab in rural area as defined in clause (f) of Rule 2 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, including houses, if any, in any such area allotted along with such lands.

A copy of the notification dated September 3, 1955, appointing the first respondent to the post of Assistant Settlement Commissioner was forwarded by the Central Government to the State Government along with its letter dated September 3/7, 1955. The Central Government also addressed a letter dated September 21, 1955 to the State Government pointing out that since the first respondent was to work as a whole time Assistant Settlement Commissioner, it was presumed that he had relinquished charge of his previous office and adding that the first respondent having already been notified as an Assistant Settlement Commissioner and a copy of the relevant notification having been forwarded to the State Government along with the letter dated September 3/7, 1955, "formal appointment letter" may be issued by the State Government and "copies endorsed to this Ministry".

4. It appears that the Governor of Punjab also, by an order dated November 30, 1955, sanctioned the creation of certain posts which included one post of Assistant Settlement Commissioner for six months connected with the conferment of permanent ownership rights on quasi-permanent allottees of the land in the Rehabilitation Department with effect from forenoon of August 1, 1955.

Thereafter, on December 1, 1955 the Governor of Punjab issued an order appointing the first respondent as Assistant Settlement Commissioner against the temporary post created in the Rehabilitation Department for the work connected with the conferment of permanent ownership rights on the quasi-permanent allottees of evacuee lands for a period of six months with effect from the first of August, 1955.

The State Government, by its letter dated December 15, 1955 intimated to the Central Government that the first respondent, appointed as Assistant Settlement Commissioner, had been given the scale

of pay as sanctioned by the Central Government and confirmed that the first respondent was working as a whole-time Assistant Settlement Commissioner.

5. The first respondent accordingly held the post of Assistant Settlement Commissioner and carried out the functions and duties attached to that post. Since the post of Assistant Settlement Commissioner was created by the President of India only for a period of six months and the first respondent was appointed to that post by the Central Government on September 3, 1955, the sanction for the post obviously came to an end on February 29, 1956. The first respondent, however, continued to function as Assistant Settlement Commissioner on the basis of sanction to the continuance of the post given by the Government of Punjab. The Accountant General, Punjab, took the view that the post of Assistant Settlement Commissioner held by the first respondent having been created by the Central Government, the sanction to the continuance of the post receive from the Punjab Government was futile and could not be acted upon until receipt of sanction from the Central Government, and by his letter dated April 21, 1956, pointed out to the State Government that the pay slip in favour of the first respondent for the period from January 18, 1956 to February 29, 1956 was being issued, but so far as the pay for the subsequent period upto April 30, 1956 was concerned, the sanction to the continuance of the post of Assistant Settlement Commissioner upto April 30, 1956 which has been received in this office - from the Assistant Secretary to the Government of Punjab, Finance Department will be acted upon on receipt of "Sanction" from the Government of India as the post was created by them. and an attested copy of the same, if received, "may please be sent to enable this office to issue a pay slip to the officer upto April 30, 1956". In the meantime, however, the Government of Punjab, by an order dated April 17, 1956, purported to terminate the service of the first respondent with immediate effect and directed that the first respondent would be paid one month's salary in lieu of notice. The first respondent thereafter made several representations to the Central Government as well as to the State Government contending inter alia that he was an employee of the Central Government and the State Government was not entitled to terminate his service and the order of termination of his service passed by the State Government was, therefore, invalid. There was no response to these representations for a long time. It was only on January 10, 1959 that the Central Government issued a memorandum informing the first respondent that he was not a servant of the Government of India and that, even in case he considers himself to be such, this memorandum should be treated as a notice terminating his service, without prejudice to the contention that he was not the Government of India's servant.

The Central Government also issued another memorandum on February 18, 1959 intimating to the first respondent that on the expiry of the period of one month given in the earlier memorandum dated January 10, 1959, his services stood terminated with effect from February 10, 1959.

6. The first respondent thereupon gave notices to the Central Government as well as the State Government under Section 80 of the Code of Civil Procedure and filed a suit against the Union of India and the State of Punjab in the Court of the Senior Sub-Judge, Jullundur claiming a declaration that the order of the State Government dated April 17, 1956 as also the order of the Central Government dated January 10, 1959 terminating the services of the first respondent were illegal and invalid and the first respondent continued as an Assistant Settlement Commissioner in the service of the Central Government and praying for recovery of arrears of salary and allowances from April 21, 1956 being the date on which he was relieved of the office of Assistant Settlement Commissioner. Both the Union of India as well as the State of Punjab resisted the suit. The common defence put forward by them was that the first respondent was a servant of the Government of Punjab and being a temporary servant, the Government of Punjab was entitled to terminate his services on giving one month's notice or salary in lieu of notice and his service was, therefore, rightly terminated by the

order of the Government of Punjab dated April 17, 1956. The trial Court accepted this defence of the Union of India and the State of Punjab and dismissed the suit of the first respondent with costs.

7. The first respondent preferred an appeal to the High Court of Punjab and Haryana. The only contention put forward on behalf of the first respondent at the hearing of the appeal was that the first respondent was a servant of the Union of India and not of the State of Punjab and the order dated April 17, 1956 passed by the State of Punjab was, therefore, ineffectual to terminate the service of the first respondent and it was only on February 10, 1959 that his service was validly terminated by the Central Government by its memorandum dated January 10, 1959 and he was accordingly entitled to arrears of salary and allowances from April 21, 1956 to February 10, 1959. This contention found favour with the High Court and taking the view that the first respondent was a servant of the Union of India and not of the State of Punjab, the High Court held that his service was validly terminated only from February 10, 1959 under the memorandum of the Central Government dated January 10, 1959 and accordingly passed a decree in favour of the first respondent against the Union of India for Rs. 22,927.34 P. representing arrears of salary and allowances from August 4, 1956, being the date three years prior to the institution of the suit upto February 10, 1959. The Union of India being aggrieved by the decree passed against it preferred the present appeal in this Court on certificate obtained under Article 133(1)(a) of the Constitution as it stood at the material time.

8. As in the High Court, so also before us, the only question debated was as to whether it was the Central Government or the State Government which was entitled to terminate the service of the first respondent. The first respondent did not contend that the termination of his service was by way of penalty and though it was disguised as termination simpliciter, it was in reality and substance dismissal and hence violative of Article 311(2) of the Constitution. He conceded that if the State Government was entitled to terminate his service, the order dated April 17, 1956, passed by the Government of Punjab, would be valid. But his contention was that the Central Government alone was competent to terminate his service and he, therefore, continued as an Assistant Settlement Commissioner until February 10, 1959 when his service was terminated by the Central Government by the memorandum dated January 10, 1959. The Union of India, on the other hand, contended that the first respondent was a servant of the State of Punjab and hence the Government of Punjab was entitled to terminate his service as it did by passing the order dated April 17, 1956.

9. Now, if we look at the provisions of the Act, it is clear that it is the Central Government which is constituted the ultimate authority responsible for the administration of the provisions of the Act. There is a hierarchy of officers constituted under the Act for the purpose of discharging various functions and duties and the final revisional authority in respect of these functions and duties is vested in the Central Government. Section 3, sub-section (1) also confers power on the Central Government to appoint a Chief Settlement Commissioner, a Joint Chief Settlement Commissioner, and as many Deputy Chief Settlement Commissioner, Settlement Commissioners, Additional Settlement Commissioners, Assistant Settlement Commissioners, Settlement Officers, Assistant Settlement Officers and Managing Officers as may be necessary for the purpose of performing the functions assigned to them by or under the Act and the Central Government is also given the power by general or special order to provide for the distribution or allocation of work to be performed by them under the Act. The post of Assistant Settlement Commissioner - that being the post with which we are concerned in this appeal - is, therefore, clearly a post under the Union of India to which appointment is to be made by the Central Government. It was in exercise of this power conferred by Section 3, sub-section (1) that the Central Government appointed the first respondent to the post of Assistant Settlement Commissioner by its order dated September 3, 1955. The Government of

Punjab had no power to make appointment to the post of Assistant Settlement Commissioner, unless such power was conferred upon it by virtue of a direction given by the Central Government under Section 34, but admittedly there was no such direction in the present case. In fact, the Central Government, by its letter dated April 18, 1955 requested the State Government to intimate "the names of officers appointed as Assistant Settlement Commissioner" for issue of necessary notification under the Act. The Central Government did empower the State Government to nominate the person to be appointed of Assistance Settlement Commissioner but the appointment of the person so nominated could only be made and was in fact made by the Central Government by its order dated September 3, 1955. Once the appointment of the first respondent as Assistant Settlement Commissioner was made by the Central Government by its order dated September 3, 1955, there was no question thereafter of the State Government once again appointing him to the same post. The State Government, no doubt, by its order dated December 1, 1955 purported to appoint the first respondent as Assistant Settlement Commissioner, but that was merely a formal "appointment letter" pursuant to the suggestion contained in the letter of the Central Government dated September 21, 1955. It was an ineffectual and futile exercise which had no legal consequence since by that time the first respondent was already appointed to the post of Assistant Settlement Commissioner by the Central Government legally competent so to appoint and he was already functioning as such Assistant Settlement Commissioner. Moreover, the post of Assistant Settlement Commissioner, to which the first respondent was so appointed, was a post sanctioned by the President of India and created by the Central Government and the whole of the expenditure in connection with that post was to be borne out of the funds allocated by the Central Government, vide the letter of the Central Government dated July 23, 1955. It is true that the State Government also, by its order dated November 30, 1955, purported to accord sanction to the creation of one post of Assistant Settlement Commissioner, but that was obviously for the purpose of regularising its own accounts procedure because the amount of Rs. 6.50 lacs for meeting the expenditure in connection with the staff for this work was made available by the Central Government to the State Government and it was the State Government which was to disburse the expenditure our or that amount. The post of Assistant Settlement Commissioner having already been created by the Central Government by the sanction of the President of India as conveyed under the letter dated July 23, 1955, did not need validation from the order of the Government of Punjab dated November 30, 1955. In fact, when the question arose in regard to issue of pay slip in favour of the first respondent for the period subsequent to February 29, 1956, when the original sanction of the President of India for the post of Assistant Settlement Commissioner expired, the Accountant General, Punjab pointed out in his letter dated April 21, 1956 that the sanction to the continuance of the post given by the Punjab Government was meaningless and ineffective and it could not be acted upon until receipt of sanction to the continuance of the post from the Central Government since "the post was created by them". It would, therefore, be seen that the post of Assistant Commissioner was created by the Central Government and the expenditure in connection with it was to be met out of the funds provided by the Central Government and it was the Central Government alone which was competent to make appointment to the post and in fact, the first respondent was appointed to the post by the Central Government by its order dated September 3, 1955. If this be the correct position, as it undeniably is, there can be no doubt that the Central Government alone could terminate the service of the first respondent. It is now a well settled rule of interpretation that a power to appoint ordinarily implies a power to determine the employment. That was pointed out by this Court in *S. R. Tiwari v. District Board, Agra* ((1964) 3 SCR 55 : AIR 1964 SC 1680 : (1964) 1 Lab LJ) :

Power to appoint ordinarily carries with it the power the determine appointment, and a power to terminate may in the absence of restrictions express or implied be

exercised, subject to the conditions prescribed in that behalf, by the authority competent to appoint.

This rule is also found incorporated in Section 16 of the General Clauses Act, 1897. It is, therefore, that the Central Government, which is given the power to make appointment to the post of Assistant Settlement Commissioner under Section 3, would also have the power to determine the appointment. The Central Government would also be entitled to terminate the appointment, since the post of Assistant Settlement Commissioner is a post under the Union of India and the person appointed to it would hold it during the pleasure of the President. There is no provision under which the Government of Punjab could have the power to determine the appointment as Assistant Settlement Commissioner made by the Central Government under Section 3. The Central Government alone could terminate the appointment, both as the appointing authority as also under Article 310(1) of the Constitution. The High Court was, therefore, right in taking the view that the order of the Punjab Government dated April 17, 1956 was ineffectual and invalid and the service of the first respondent as Assistant Settlement Commissioner was validly terminated only on February 10, 1959 when the Central Government, by its memorandum dated January 10, 1959, gave notice terminating the service of the first respondent. There was no dispute before us that it the service of the first respondent came to an end on February 10, 1959, and not earlier on April 17, 1956, the first respondent would be entitled to a sum of Rs. 22,927.34 p. as decreed by the High Court.

10. The appeal, therefore, fails and is dismissed with costs in favour of the first respondent.

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