

The State of Punjab

Vs

Prakash Singh Cheema

Civil Appeal No. 134 of 1968

(R. S. Sarkaria, A. C. Gupta JJ)

11.04.1975

JUDGMENT

GUPTA, J. -

1. The respondent was a temporary Tax Sub-Inspector in Excise and Taxation Department of the erstwhile Patiala and East Punjab States Union. On the formation of the State of Punjab he continued in service in the new State. A charge was framed against the respondent by the Vigilance Department, Government of Punjab in which the respondent was accused of dereliction of duty and gross negligence. The memorandum accompanying the chargesheet informed the respondent that action under Rule 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, was proposed to be taken against him and he was asked to state in writing within three weeks from the receipt of the memorandum whether he admitted the truth of all or any of the charges and what explanation or defence if any he had to offer and whether he desired to be heard in person. The respondent filed his written statement replying to the charges. Thereafter by a communication dated May 28, 1963 addressed to the respondent the Excise and Taxation Commissioner, Punjab, terminated his services by giving him one month's notice. On receipt of this order the respondent made a representation to the then Chief Minister of the State. The Chief Minister called for a report and directed that in the meantime the respondent should continue in service. On June 16, 1964 the Chief Minister after considering the report ordered that in view of the respondent's previous good record, he did not deserve the "punishment of termination of service only on account of a few bad reports" and that the respondent should "continue in service and his case should be reviewed after he has earned another report from the present E. T. C. (Excise and Taxation Commissioner) for the year 1964-65". However, on October 27, 1964 the Excise and Taxation Commissioner without waiting for the report as directed by the Chief Minister made an order terminating the services of the respondent. The order was in these terms :

In terms of the conditions of your service you are hereby given one month's notice whereafter your services shall stand terminated.

2. The respondent instituted a suit in the Court of the Senior Subordinate Judge, Patiala on June 8, 1965 for a declaration that the order dated October 27, 1964 was illegal and void having been made without giving him an opportunity as required by Article 311(2) of the Constitution and that he should be deemed as continuing in service and therefore entitled to all rights, benefits and privileges available to members of that service. The trial Court considering the circumstances of the case was of opinion "that the services of plaintiff were terminated by way of punishment and the impugned order was based on misconduct and inefficiency on the part of the plaintiff". The trial Court further held that on the facts, stated above, the provisions of Article 311(2) of the Constitution were

attracted and the impugned order was void, having been passed in violation of that Article. On this view, the trial Court decreed the suit quashing the order of termination and also granted the other declarations prayed for. On appeal by the State of Punjab the Additional District Judge, Patiala, on a consideration of the material on record observe : "I have no doubt left in my mind that the plaintiff was visited with evil consequences due to an alleged misconduct". The Additional District Judge accordingly dismissed the appeal. On May 24, 1967 a learned Judge of the Punjab and Haryana High Court dismissed in limine the second appeal preferred by the State of Punjab. On July 28, 1967 an application for leave to prefer Letters Patent appeal was also dismissed. The present appeal by the State of Punjab is by special leave from the order refusing the petition for leave to file Letters Patent appeal.

3. An order terminating the services of a temporary servant or a probationer, if it is by way of punishment, will attract Article 311 of the Constitution; the form of the order is not conclusive, it is the substance of the matter that has to be looked into. Whether or not an order of termination is by way of punishment would depend on the facts and circumstances of each case. This well established position has been reiterated by this Court recently in the case of *Samsher Singh v. State of Punjab* ((1974) 2 SCC 831 : 1974 SCC (L & S) 550.) on a review of the earlier decisions on the point. The trial Court and the first appellate Court both took the view that the order of termination in the instant case was by way of punishment. The High Court dismissed the second appeal in limine apparently in view of this concurrent finding. The application for leave to file a Letters Patent appeal must therefore be held to have been rightly dismissed, there being no ground on which leave could have been granted. This appeal has no merit and is dismissed with costs.

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