

Khemi Ram

Vs

The State of Punjab

Civil Appeal No. 1149 of 1973

(CJI A.N. Ray, R.S. Sarkaria, P.N. Shinghal, Jaswant Singh JJ)

29.04.1976

JUDGMENT

SHINGHAL, J. -

1. This appeal is directed against the judgment of the High Court of Punjab and Haryana, dated September 18, 1970, dismissing the appellant's writ petition. As a part of the controversy in the writ petition was the subject-matter of an earlier appeal to this Court which was decided by the judgment in State of Punjab v. Khemi Ram ((1970) 2 SCR 657 : (1969) 3 SCC 28), it will be enough to state those facts which bear on the subsequent controversy.

2. Appellant Khemi Ram was employed as an officiating Assistant Registrar in the Co-operative Department of the Punjab State. His services were placed at the disposal of Himachal Pradesh Administration, on deputation, for a period of two years. He was confirmed as an Assistant Registrar in Punjab, and his period of deputation to the Himachal Pradesh Administration was extended from time to time, upto August 4, 1958, which was the date of his retirement on superannuation. It was during the period of deputation that the Himachal Pradesh Administration granted 19 days' leave to the appellant preparatory to his retirement on August 4, 1958.

3. In the meantime, some matters came to the notice of the Punjab Government which involved the appellant in embezzlement of funds, and the Punjab Government sent a telegram on July 17, 1958, to the Himachal Pradesh Administration asking it to direct the appellant to report for duty to the Registrar, Co-operative Societies, Punjab, immediately. The Punjab Government was however informed that the appellant had proceeded on leave preparatory to retirement. It therefore protested against the sanction of the leave on the ground that it could only be granted by the lending government, and not the Himachal Pradesh Administration, and requested the Himachal Pradesh Administration to cancel the leave and to revert the appellant. That letter was sent on July 25, 1958, and was followed by an order of the Punjab Government, dated July 31, 1958, placing the appellant under suspension with effect from August 2, 1958.

4. A copy of the charges which were framed against the appellant was also forwarded to him by registered post the same day. Meanwhile the Himachal Pradesh Administration cancelled the appellant's leave with effect from August 2, 1958, and directed him to report for duty to the Registrar, Co-operative Societies, Punjab, on August 4, 1958. It was in these circumstances that the appellant filed a writ petition in the Punjab High Court. That court took the view that the order of the appellant's suspension was not valid as it actually reached him after his retirement. The State of Punjab filed an appeal to this Court, which was allowed, and it was held that as the order of suspension was passed and was communicated to the appellant before August 4, 1958, it was

effective from July 31, 1958, and was a valid order. It is that judgment which has been reported in *State of Punjab v. Khemi Ram* to which reference has been made above. By its aforesaid judgment this Court remanded the case to the High Court with the direction that it should decide three other questions which had been left undecided because of the view which it had taken earlier. The case therefore went back to the High Court, and a Division Bench of that court has ultimately held that the writ petition is without merit, and has dismissed it. This is how the present appeal has arisen.

5. The three questions which are the subject-matter of present appeal have been stated by the High Court as follows :

1. Whether the respondent was no longer governed by the Punjab Civil Service Rules as his services had been borrowed by the Himachal Pradesh Administration and whether he ceased to be under the administrative control of the Punjab Government for that reason ?
2. Whether it was permissible only for the Himachal Pradesh Administration to place the appellant under suspension and the Punjab Government had no such authority ?
3. Whether the leave which had been granted to the appellant by the Himachal Pradesh Administration could be cancelled subsequently ?

The High Court has decided all these questions against the appellant.

6. It has been argued that as the appellant's services had been borrowed by the Himachal Pradesh Administration, he was no longer governed by Rule 1.2 of the Punjab Civil Service Rules and ceased to be under the administrative control of that Government because his pay was no longer debitable to the Consolidated Fund of Punjab State. It has been urged that as the appellant went on deputation to the Himachal Pradesh Administration, his pay was debitable to the budget of that administration, and not to the Consolidated Fund of the Punjab State, so that he was not amenable to the control provided by the Punjab Rules. Rule 1.2 cannot however avail the appellant because all that it provides is that the Punjab Civil Service Rules shall apply to all government servants belonging to the categories mentioned in those rules who are under the administrative control of the Punjab Government and whose pay is debitable to the Consolidated Fund of that State. The purpose of the rule is only to specify that the rules would apply to all government servants belonging to the various categories mentioned in the rules, and it has been stated further that they are to apply to those servants who are under the administrative control of the Punjab Government and whose pay is debitable to the Consolidated Fund of that State. This has been done to make it quite clear that the rules will not apply to those employees whose pay is not debitable to the Consolidated Fund of the State of Punjab, for the obvious reason that they would not be employees of the Punjab Government. It may also be mentioned that as the appellant's services were replaced at the disposal of the Punjab Government with effect from August 4, 1958, his pay was debitable to the Consolidated Fund of Punjab State, at any rate, from that date. It is therefore futile to contend that Rule 1.2 could be so interpreted as to exclude the application of the Punjab Rules to the appellant merely because his services were lent over to the Himachal Pradesh Administration by way of deputation for some time.

7. As regards the second point, the High Court has extracted Rule 20 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, on which reliance was placed by the Counsel for the petitioner and has rightly held that there is nothing in the rule to show that it was not permissible

for the Punjab Government to make an order for the suspension of the appellant merely because it had placed his services at the disposal of the Himachal Pradesh Administration on deputation. Moreover, as has been stated, the appellant reverted to the State of Punjab with effect from August 4, 1958, and came under the direct administrative control of that State. The High Court therefore rightly decided that point also against the appellant.

8. As regards the third point about the Punjab Government's authority to cancel the leave which had been granted to the appellant preparatory to retirement, it will be enough to say that Counsel for the appellant has not found it possible to refer to any rule under which the State Government could be said to be precluded from cancelling the leave. All that he has argued is that as the appellant automatically retired from service with effect from August 4, 1958, on completing the age of superannuation, it was not permissible for the State Government to cancel his leave. The argument runs counter to Rules 3.26(d) of the Punjab Rules which provides that a government servant under suspension on a charge of misconduct shall not be permitted to retire on reaching the age of superannuation but should be retained in service until the inquiry into the charge is concluded and a final order is passed thereon. That rule has already been interpreted by this Court in *S. Pratap Singh v. State of Punjab* ((1964) 4 SCR 733 : AIR 1964 SC 72 : (1966) 1 LLJ 458). The appellant therefore had no absolute right to retire from service, or to claim that he was entitled to retire automatically on reaching the age of superannuation when, as has been shown, he had been suspended already and a chargesheet had been served on him.

9. There is thus no force in this appeal and it is dismissed with costs.

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