

Krishan Murari Lal Sehgal

Vs

State of Punjab

Civil Appeal Nos. 1299 and 1298 of 1969

( P.N. Shinghal, P.K. Goswami JJ )

09.02.1977

JUDGMENT

GOSWAMI, J. –

1. These appeals are by certificate of the High Court of Punjab and Haryana. Civil Appeal No. 1299 of 1969 is concerned with the appellant's suit for declaration of his dismissal order dated October 21, 1959, as void and illegal. Civil Appeal No. 1298 of 1969 arises out of his suit for arrears of salary. Both the matters were heard together in the High Court and the judgment out of which Civil Appeal No. 1299 of 1969 arises is the principal judgment following which a short order was passed by the High Court dismissing the other suit of the appellant for arrears of salary. The High Court granted certificates in both the appeals. It will be sufficient to deal with Civil Appeal No. 1299 of 1969 in this judgment as the decision therein will govern the other appeal.

2. The facts may now be briefly stated :

2A. The appellant who was the plaintiff in the court below was appointed as a Clerk in the Patiala State some time in July 1948. On the formation of the new State of Punjab on November 1, 1956, with the merger of the erstwhile Pepsu and Punjab States the appellant was integrated in the service of the new State of Punjab as permanent Assistant in the grade of Rs. 150-10-300 and was actually getting Rs. 170 per month on October 21, 1959, the date of his dismissal in the office of the Financial Commissioner, Punjab.

3. The appellant instituted a suit in March, 1962 challenging his order of dismissal dated October 21, 1959, as void and unconstitutional praying for a declaration that he continued to be in service of the Punjab State. In June 1962 he instituted a second suit as pauper claiming a decree for about Rs. 8,689 as arrears of his salary and allowances and also a further decree for Rs. 278/12/- per mensem from June 5, 1962 to July 4, 1962 and Rs. 290 per mensem from July 5, 1962 upto the date of the decree. Both the suits were decreed by the trial Court.

4. According to the plaint, the appellant, due to serious illness of his mother, proceeded from Simla where he was working to Patiala on casual leave on July 8, 1958, with the sanction of the competent authority. He obtained extension of leave on account of illness of his mother, wife and daughter. Meanwhile the appellant himself became seriously ill and prayed for leave from 1.11.1958 to 28.2.1959 on the basis of a medical certificate granted by Dr. Inder Singh Sodhi, Retired Civil Surgeon, Pepsu, Patiala. The authorities declined to sanction the leave. The appellant also continued to be seriously ill and was unable to attend his duties. When he recovered he reported for duty at

Simla on March 2, 1959 and he was permitted to resume his duty on furnishing a certificate of fitness granted by the aforesaid Retired Civil Surgeon.

5. On January 27, 1959, the appellant was served with a charge-sheet by the Financial Commissioner (Development) Punjab asking him to show cause why he should not be dismissed from Government service for his wilful absence from duty after the expiry of the earned leave sanctioned to him upto October 31, 1958, which was described as "misbehaviour". The charge-sheet, inter alia, stated :

(1). . . . You deliberately defied the orders and again applied for extension of leave upto December 31, 1958 feigning yourself to be ill, and also threatened that in case leave was not allowed, you might be granted interview with the Revenue Minister.....

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(2) That on the one hand you have been applying for grant of extension of leave on account of your own illness and on the other, you have requested that you may be allowed to appear in B.A. Examination to be held in April, 1959. This, therefore, clearly shows that you are not actually ill but are malingering, and have knowingly defied Government orders.

(3) That your wilful absence from duty after the expiry of earned leave sanctioned to you upto October 31, 1958, is a misbehaviour.

The appellant submitted his explanation on March 11, 1959. There was an enquiry by the Deputy Secretary (Development) in May, 1959. He was served with a second show-cause notice on August 14, 1959, enclosing the report of the Enquiry Officer. The appellant submitted his representation to the said notice on October 6, 1959. On October 21, 1959, the Financial Commissioner (Revenue) passed the order of dismissal. As already stated, two suits were filed by the appellant in 1962. The Subordinate Judge, First Class, Patiala, decree both the suits on January 15, 1963. The State Government appealed to the High Court and the same was allowed on August 9, 1966 and both the suits were dismissed. That is how these appeals came before us on certificates.

6. We are concerned in these appeals with only one point which, if it is held in favour of the appellant, will conclude the matter and it will not be necessary to deal with the other questions with reference to the illegalities in the course of the departmental enquiry alleged by the appellant.

7. It is submitted on behalf of the appellant that the order of dismissal is invalid on account of violation of Article 311(1) of the Constitution. The following facts are relied upon by the appellant in order to sustain his submission.

8. It is admitted by the respondent that the appellant initially joined service in the State of Patiala in 1948 as a Clerk and he was confirmed as an Assistant in the Pepsu Civil Secretariat by an order dated October 31, 1956, of His Highness the Rajpramukh, which is the previous day of the 'appointed day' under the States Reorganisation Act, 1956. Thus he was integrated in the new State of Punjab as a confirmed Assistant. Before his integration in Punjab he was governed by the Patiala and East Punjab States Union Civil Services (Punishment and Appeal) Rules, 1953 (briefly the Pepsu Rules) which were made in exercise of the powers conferred by the proviso to Article 309 of

the Constitution. By a Notification of the Punjab Government No. 975-GII-57/2499, dated February 9, 1957, these Pepsu Rules continue to apply as from November 1, 1956, to the corresponding services, posts and personnel of the new State of Punjab till further orders. Rule 6 of the Pepsu Rules provides as follows :

6. Authority to impose punishment. - Subject to the provisions of clause (1) of Article 311 of the Constitution of India, the authorities competent to impose any of the penalties specified in Rule 4 upon the persons to whom these rules apply, shall be such as may be prescribed by Government in the rules regulating the appointment and conditions of service of such persons.

Dismissal is one of the penalties provided under Rule 4 [see Rule 4 (vii)]. As provided under Rule 6 above mentioned, the Rajpramukh under Article 309 of the Constitution by a notification in the Pepsu Gazette of June 27, 1954, made appropriate rules on June 14, 1954, determining the authorities competent to impose penalties on members of certain services and holders of certain posts in connection with the affairs of the State. Item No. 14 in the Schedule to these rules mentions "Members of Class III and IV Services in Sectt" and the punishing authority for dismissal of such employees is the State Government, It is, therefore, clear that under the Pepsu Rules which governed his conditions of service the State Government alone was competent to impose the punishment of dismissal. Under the Pepsu General Clauses Act, 1963, "State Government shall mean, in relation to anything done or to be done after the commencement of the Constitution, the Rajpramukh". [See Section 2(46)].

9. As noted earlier, factually, the appellant was confirmed and necessarily appointed by the Rajpramukh. Under the Pepsu Rules the Rajpramukh alone was the appointing authority. The appellant, therefore, cannot be removed from service by any authority subordinate to the Governor in Punjab. The coordinate authority in Punjab is the State Government. The Governor of Punjab alone, therefore, was competent to pass the order of dismissal of the appellant. The Financial Commissioner (Revenue) is an authority subordinate to the Governor. He was, therefore, not competent to pass the order of dismissal. The order of dismissal is violative of Article 311(1) of the Constitution and is, therefore, invalid and is liable to be struck down.

10. Mr. Sharma, on behalf of the respondent, submits that there is no violation of Article 311(1) of the Constitution. The appointing authority for a post held by the appellant in the State of Punjab is the Financial Commissioner (Revenue). He submits that the appointing authority of the appellant before his integration into the State of Punjab does not come into the picture. He adds that this submission of his is in consonance with the provisions of Section 116 of the States Reorganisation Act, 1956 (briefly the Act). We may, therefore, read Section 116 of the Act :

116. (1) Every person who immediately before the appointed day is holding or discharging the duties of any post or office in connection with the affairs of the Union or of an existing State in any area which on that day falls within another existing State or a new Part A State or a Part C State shall, except where by virtue or in consequence of the provisions of this Act such post or office ceases to exist on that day, continue to hold the same post or office in the other existing State or new Part A State or Part C State in which such area is included on that day, and shall be deemed as from that day to have been duly appointed to such post or office by the

Government of, or other appropriate authority in such State, or in the Central Government or other appropriate authority in such Part C State, as the case may be.

(2) Nothing in this section shall be deemed to prevent a competent authority, after the appointed day, from passing in relation to any such person any order affecting his continuance in such post or office.

Mr. Sharma submits, relying upon the provisions of Section 116(1), that since the appointing authority for an Assistant in the State of Punjab is the Financial Commissioner (Revenue) it follows that he is the appropriate authority under Section 116(1) to impose the penalty of dismissal. This submission follows from that what the High Court accepted in the impugned judgment in the following words :

Our attention has not been drawn on behalf of the learned counsel for the respondent to any rule according to which the Governor of Punjab, as is contended, is the proper authority for the appointment of Assistants. Indeed, it is not disputed that if the plaintiff had been appointed as Assistant in the State of Punjab, then the Financial Commissioner (Revenue) would have been the appropriate authority competent to enquire into the petitioner's conduct and impose the penalty of dismissal; in other words, in that case, the appointing authority could not have been higher in rank than the Financial Commissioner (Revenue). It is certainly not the plaintiff-respondent's case that the appropriate authority for appointing Assistants in the State of Punjab is the Governor.

11. We are unable to appreciate the above line of reasoning of the High Court. Section 116(1) is very clear. To concretise the appellant's case in terms of Section 116(1), it is sufficient to state that the appellant who, immediately before the appointed day, was holding the post of an Assistant in the former State of Pepsu, shall continue to hold the same post in the new State of Punjab and shall be deemed as from that day to have been duly appointed to such post by the Government of Punjab. We are not concerned in the instant case about the appointment being deemed to be made by "other appropriate authority" in the State of Punjab since the appellant had been appointed by the Rajpramukh of Pepsu which is equivalent to the State Government of Pepsu and the coordinate authority in the new State of Punjab is the Governor of Punjab. The argument that in the new State of Punjab the Financial Commissioner (Revenue) is the appropriate authority for appointing Assistants is absolutely irrelevant in the context of Section 116(1) which enables the status quo ante to continue except where the post ceases to exist under the provisions of the Act. It is also important to bear in mind the provisions of Section 115(7) of the Act where under the proviso thereto "the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section (1) or sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government".

12. One of the conditions of service of the appellant was that having been appointed by the State Government of Pepsu he could be only dismissed by the State Government of Pepsu if he had continued there. Under Section 116 when he is integrated in the new State of Punjab he carries with him that condition of service with regard to his termination of employment and it cannot be varied to his disadvantage under Section 115(7) of the Act except with the previous approval of the Central Government (See *Takhatray Shivdatri Mankad v. State of Gujarat* ([1970] 1 SCR 244 : (1969) 2 SCC 120) and *Bholanath J. Thakur v. The State of Saurashtra* (AIR 1954 SC 680 : (1955) 1 LLJ 355).) No such approval of the Central Government in the instant case is produced before us. It is,

therefore, clear that an authority subordinate to the Governor of Punjab was not competent to pass the order of dismissal of the appellant.

13. Mr. Sharma submits that the Punjab Financial Commissioner's Officer (State Service Class III) Rules, 1957, are applicable in the instant case. Therefore, under Rule 4 thereof the Financial Commissioner is the appointing authority for Assistants, the category to which the appellant belongs. He adds that even though these Rules may be disadvantageous to the appellant he cannot complain on account of the approval of these Rules by the Central Government under Section 115(7) of the Act. Mr. Sharma submits that these Rules received the approval of the Central Government as will appear from the general circular dated May 11, 1957, to all the State Governments. He further submits that in *N. Raghavendra Rao v. Deputy Commissioner, South Kanara, Mangalore* ([1964] 7 SCR 549 : AIR 1965 SC 136 : (1965) 1 SCJ 327) and in a recent decision in *Mohammad Shujat Ali v. Union of India* (1975 1 SCR 449 : (1975) 3 SCC 76 : 1974 SCC (L & S) 454), this Court referred to that circular of May 11, 1957, and held that that circular amounted to general approval under the proviso to Section 115(7) of the Act. We are, however, unable to see how this memorandum of May 11, 1957, can be called in aid as 'previous approval' under Section 115(7) of the Act when the Punjab Financial Commissioner's Office (State Service Class III) Rules, 1957 were already promulgated on February 23, 1957. Approval under Section 115(7) is previous approval and not subsequent ratification. The above decisions, therefore, do not come to the aid of the respondent.

14. Mr. Sharma also drew our attention to a decision of this Court in *Rajvi Amar Singh v. The State of Rajasthan* (1958 SCR 1015 : AIR 1958 SC 228 : 1958 SCJ 420) which is clearly distinguishable on facts. This Court was not called upon in that case to consider the provisions of the States Reorganisation Act.

15. Our attention has been drawn by the appellant to an unreported judgment of this Court in *Mysore State and Road Transport Corporation v. Mirja Khasim Ali Beg* (Now reported at (1977) 2 SCC 457) pronounced on December 1, 1976. This Court had to deal with a similar question although appertaining to the "competent authority" under Section 116(2) of the Act in the background of Article 311(1) of the Constitution. The following passage from that decision will make the point clear :

In the instant cases, the first respondents were undeniably appointed by the Superintendent of the Traffic Department of the erstwhile State of Hyderabad who was the head of the Road Transport Department of that State. On the coming into force of the States Reorganisation Act, 1956, on November 1, 1956, they were to be deemed by virtue of sub-section (1) of Section 116 of the States Reorganisation Act to have been appointed with effect from that date to the posts held by them on that date by the appropriate authority in the new State of Mysore which could not in the context mean an authority other than the one equivalent to or co-ordinate in rank with the aforesaid authority in the erstwhile State of Hyderabad. The authority equivalent to or coordinate in rank with the aforesaid authority on the relevant date being the General Manager of the Mysore Government Road Transport Department according to the appellants' own admission as contained in answer to the aforesaid interrogatories served on them by the first respondents, he alone could be considered to be the 'competent authority' in terms of sub-section (2) of Section 116 of the States Reorganisation Act, 1956. The fact that there was no post of Superintendent of the Traffic in the Mysore Government Road Transport Department in the State of

Mysore is of no consequence. Such being the position, the first respondents could not have been dismissed from service by an authority lower or subordinate in rank to the General Manager of the Transport Department as it would tantamount to deprivation of the guarantee enshrined in Article 311 of the Constitution read with Section 115(7) of the States Reorganisation Act, 1956. . . .

16. In the result both the judgments of the High Court are set aside and the judgments and decrees of the Subordinate Judge, First Class, Patiala, stand restored. The appeals are allowed with costs. We are thankful to Mr. Hingorani for his assistance as amicus curiae in these appeals.

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