

PUNJAB AND HARYANA HIGH COURT

State of Punjab

Vs

S Sukhbans Singh

(Bishan Narain, J.)

12.02.1957

JUDGEMENT

Bishan Narain, J.

- (1.) THIS appeal raises the question whether it was within the competence of the state Government to order the reversion of the petitioner to his substantive rank of Tahsildar upon charges which he has had no opportunity to hear or defend.

(2.) THE petitioner in this case is one S. Sukhbans Singh who is holding the rank of a Tahsildar in a substantive permanent capacity. He was appointed to the provincial Civil Service on the 31st May 1945 and was reverted to the post of tahsildar on the 20th May 1952. He presented a petition under Article 226 of the constitution in which he complained that his attempted reduction to the post of tehsildar was unlawful as it was effectuated without notice or hearing. The learned Single Judge before whom the petition came up [or consideration granted a direction that the State should forbear from putting into execution the order complained of without complying with the provisions of Article 311 of the constitution. The State is dissatisfied with the order of the Learned Single Judge and has preferred an appeal under clause 10 of the Letters Patent. The petitioner was promoted to the Provincial Civil Service under the provisions of the Punjab Civil Service (Executive Branch) Rules 1930. These rules empower the Governor of the Punjab to appoint members of the service from time to time as required from among accepted candidates whose names have been duly entered in one or other of the registers of accepted candidates to be maintained under these rules (Rule 5). All such appointments are in the first instance either officiating, or substantive provisional (Rule 17). Candidates appointed from Register A-I or Register A-II are to remain on probation for a period of 18 months, but the Governor is at liberty, if he thinks fit, to extend the period of probation of any candidate (Rule 22). On completion of the period of probation prescribed or extended a member of the service becomes qualified for substantive permanent appointment. These rules clearly provide for a probationary period that must be served before the person appointed to the service becomes a regular or permanent member thereof. The notification of the 5th June 1945 by which the

petitioner was appointed to the Provincial Civil Service Ss in the following terms : "the Governor of the Punjab is pleased to make the following appointments and transfers with effect from the dates mentioned:-Name Rank Appointed Posted or transferred Remarks to__ sukhbans Singh. Tahsildar Extra Assistant Ferozpur with effect from On first appointment to the phillaur. Commissioner. 31st May, 1945. Provincial Civil Service.It is contended on behalf of the petitioner (hat he was appointed to the provincial Service in a substantive permanent capacity as the expression 'extra assistant Commissioner' appearing in column 3 of the above notification is not qualified by the words 'on probation' or 'officiating' and as certain other officers who were appointed to this service previously were gazetted as having been appointed on probation. This contention cannot, in my opinion, bear a moment's scrutiny. The learned Advocate-General has stated at the bar that the practice of gazetted officers as on probation has been discontinued and that all officers who are appointed to the service are placed as probationers in the first instance and are later confirmed if their work in the probationary period is found to be satisfactory. I am satisfied with this explanation. In any case the failure of the Punjab government to designate the petitioner's" appointment as for a probationary term could have-no effect on the nature of the petitioner's tenure, for the rules provide quite clearly all appointments in the service are probationary. The Governor of the punjab had no discretion in the matter and had no power even if he had desired, to appoint the petitioner except as a probationer. It seems to me therefore that in the present case the probationary condition is implied as a matter of law. Again it is contended that as the petitioner was not removed from, the service immediately on the completion of the probationary period of 18 months and as he was allowed to continue in his appointment for several years thereafter without an express order extending the period of probation, it must be assumed that he was appointed substantively to the Provincial Civil Service on the conclusion of the period of probation. This contention is sought to be supported by the rule which provides that on completion of the period of probation a person of the service becomes qualified for appointment in a substantive permanent capacity. I regret I am unable to concur in this contention. I am aware of no rule by which the petitioner's conditions of service are regulated which would enable us to hold that the probationary period had ripened into a permanent appointment by efflux of time. Nor am I in a position to subscribe to the proposition that as soon as the petitioner became qualified for substantive appointment he must be deemed to have been automatically confirmed. The petitioner could not acquire the status of a permanent member of the service automatically: he could have acquired this status only if the competent authority had chosen to perform a positive or affirmative act.

(3.) IT was submitted in the course of arguments that the petitioner's original appointment to the service was in a substantive provisional capacity, but this allegation did not appear in the petition. Itself and the petitioner never alleged as a fact that he had been appointed substantive provisionally. The question whether he was appointed to the service in a substantive provisional capacity or in some other capacity is a doubtful and disputed question of fact which cannot be determined in these proceedings. The object to be accomplished by a writ of mandamus is not to determine controversies: it is simply to enforce a clear and specific legal right when such right

depends solely on questions of law. The question now arises whether the Petitioner who was holding the higher post in an officiating capacity was entitled to the privileges conferred by Article 311 of the Constitution. This Article is in the following terms :- "311. (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a state' or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. (2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. " The language which the framers of the Constitution have chosen to employ is of such wide generality that it comprehends in its terms the whole class of government servants, including Government servants who are holding their posts temporarily pr on probation or in an officiating capacity or in accordance with the terms of their respective contracts. If the Courts were to confine themselves to the literal and strict meaning of the constitutional terminology it would be impossible to order the removal of any Government servant without notice or hearing even after he has attained the age of superannuation, or after he has completed 25 years service, or after the expiration of the probationary period, or after the expiration of the term for which he was appointed under the terms of his contract. The framers of the Constitution could not have contemplated such a situation, and it seems to me therefore that if the words were given their usual or natural meaning the true Intention of the lawmakers would be completely defeated. The duty of the Courts is not to defeat but to effectuate the intention of the legislature. It is of the utmost importance therefore that the language of the article should be limited, restrained and restricted by constitutional construction, for a person who considers merely the letter of an instrument goes but skin deep into its meaning. ;