

PUNJAB AND HARYANA HIGH COURT

Shiv Saran Dass

Vs

State of Punjab

Civil Writ No. 2193 of 1969

(Bal Raj Tuli, J.)

15.07.1970

JUDGMENT

B.R. Tuli, J.

1. The petitioner was appointed as Patwari by Nazim of District of Bassi, Patiala State, on May 11, 1937, and was promoted as Kanungo on October 15, 1937. He was further promoted as Sadar Kanungo on April 26, 1950, and on the formation of Pepsu he was integrated as Special Sadar Kanungo. The petitioner was then promoted by the Pepsu Government through Financial Commissioner-cum-Revenue Secretary as Naib Tehsildar on May 3, 1951, and was thereafter posted at Patiala under the orders of the Director of Rehabilitation, Pepsu. After the merger of the two States of Punjab and Pepsu with effect from November 1, 1956, the petitioner continued to serve the State of Punjab as Naib Tehsildar at various stations. An enquiry was started against him in 1963 as some complaints had been received against him. Some adverse remarks in his confidential report for 1963-64 were also recorded because of that enquiry. The Commissioner Ambala, Division, served a charge-sheet along with a statement of allegations and a list of prosecution witnesses on the on February 5, 1964, when he was posted as Naib Tehsildar at Hissar. To that charge-sheet the submitted his explanation on February 17, 1964, to Malik Brij Lal, Revenue Assistant, Hissar, who had been appointed as the Inquiry Officer. After recording evidence the Inquiry Officer submitted his report dated July 15, 1964 to the Deputy Commissioner, Hissar. This report was forwarded by the Deputy Commissioner, Hissar, to the Commissioner, Ambala Division, with a recommendation that the maximum punishment of removal from service might be awarded to the petitioner. The Commissioner, Ambala Division, heard the petitioner and directed the Inquiry Officer to go into the matter further and give a conclusive finding after affording the State an opportunity to cross-examine the handwriting expert. The Inquiry Officer thereafter afforded an opportunity to the District Attorney, Hissar, on September 22, 1965, to cross-examine the handwriting expert Shri Mithan Lal, who had been examined as a defence witness. The District Attorney was also allowed to lead expert evidence in rebuttal by the Inquiry Officer but none was produced in the presence of the petitioner. In 1966

the Inquiry Officer Malik Brij Lal was succeeded by Shri Jagbir Singh who obtained specimen signatures of the petitioner on five sheets of paper for being sent to the Director, Forensic Science Laboratory, Chandigarh, for the examination and opinion in regard to the signatures on questioned documents. In October, 1966, the petitioner was transferred from Narnaul to Safidon in district Jind, by the Financial Commissioner, Revenue. On the re-organisation of the State of Punjab with effect from November 1, 1966, the petitioner was allocated provisionally to the State of Punjab but he remained posted at Safidon till May 3, 1967, on which date he was relieved by Shri N.K. Sharma, who had been allocated to the State of Haryana. On his transfer to Jullundur Division the petitioner was posted at Samrala by the Commissioner, Jullundur Division. The petitioner finally stands allocated to the State of Punjab.

2. On October 30, 1968, the Commissioner, Jullundur Division, issued a notice to the petitioner requiring him to show cause why the penalty of removal should not be imposed on him. With this notice copies of the Inquiry Officers's reports dated July 15, 1964, and March 1, 1967, were attached. The petitioner submitted his explanation to the show-cause notice on December 7, 1968, and the Commissioner, Jullundur Division, by order dated January 9, 1969, removed him from service. The petitioner filed an appeal against that order to the Financial Commissioner, Revenue, Punjab, who partly accepted the same by setting aside the order of removal from service and reverted him to the post of Kanungo from the date on which he was removed from service. This order was passed on May 14, 1969, and on August 25, 1969 the present petition was filed for quashing the orders of the Commissioner, Jullundur Division, and the Financial Commissioner. The return to the petition has been filed by the Deputy Secretary to Government, Punjab Revenue Department.

3. On the facts stated above I am of the opinion that in view of the provisional allocation followed by the final allocation of the petitioner to the State of Punjab, the Commissioner, Jullundur Division, had no jurisdiction to act as a disciplinary authority *qua* the petitioner on the report of the Inquiry Officer submitted to him on March 1, 1967, along with the previous report dated July 15, 1964, on the basis of which the Commissioner, Ambala Division, had taken no disciplinary action against the petitioner. Before November 1, 1966. The Commissioner, Jullundur Division, had no disciplinary control over the petitioner nor had the Inquiry Officer been appointed by him. The Inquiry Officer appointed by the Commissioner, Ambala Division, prior to the re-organisation of the State, cannot be taken to be the Inquiry Officer appointed by the Commissioner, Jullundur Division, after November 1, 1966 as there is no provision in the Punjab Re-organisation Act whereunder the proceedings for disciplinary action against a public servant, who is allocated to a State other than the one in which the proceedings are pending, could be continued by the Inquiry Officer already appointed nor could such Inquiry Officer submit his report to the corresponding authority in the State to which the public servant is allocated. The Inquiry officer, Shri Jagbir Singh, could submit his report only to the Commissioner, Ambala Division, and not to the Commissioner, Jullundur Division. There is no provision in the Punjab Re-organisation Act for the Commissioner, Ambala Division, to forward that report to the Commissioner, Jullundur Division for action. The order of the Commissioner,

Jullundur Division, passed on January 9, 1969, was, therefore, without jurisdiction and void. The order of the Financial Commissioner on appeal from that order also falls with the order of the Commissioner, Jullundur Division. After the provisional allocation of the petitioner to the State of Punjab, it was for respondent 3 to order fresh enquiry against the petitioner, if after looking into the matter he formed an opinion that an enquiry should be held. He could have punished the petitioner only on the basis of an enquiry report made by an Inquiry Officer appointed by him. He could not act on the enquiry report conducted by the previous Inquiry Officer who had been appointed by the Commissioner, Ambala Division, before the re-organisation of the State. The impugned orders thus being without jurisdiction are void and liable to be quashed.

The petition is accordingly accepted with costs and the orders of respondents 2 and 3 dated January 9, 1969, and May 14, 1969, are hereby quashed. Counsel's fee Rs. 100.00. Respondent 3 will, however, be at liberty to order a fresh enquiry if he forms an opinion after scrutiny of the facts that an enquiry should be held.

Petition accepted.