
(1972) 04 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 600 of 1972

Dildar Singh

APPELLANT

Vs

The State of Punjab and another

RESPONDENT

Date of Decision : 28-04-1972

Acts Referred:

Punjab Municipal Act, 1911 — Section 38(1)

Citation : (1972) 04 P&H CK 0004

Hon'ble Judges : Balraj Tuli, J

Bench : Single Bench

Advocate : A.L. Bahri, for the Appellant; M.L. Sarin for Advocate-General, Punjab and Mr. S.K. Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

B.R. Tuli, J.—The petitioner joined service as a clerk in the Municipal Committee, Phillaur, on October 1, 1963. By a resolution of the Municipal Committee dated March 6, 1969, he was appointed officiating Secretary of the Municipal Committee on the suspension of Shri Kewal Krishan who was the previous Secretary. Another resolution dated April 10, 1969, was passed by the Municipal Committee in a special meeting removing Shri Kewal Krishan from the post of Secretary of Committee and appointing the petitioner as Secretary till the regular appointment of a permanent Secretary was made through the Public Service Commission. This resolution was forwarded to the State Govt. for its approval u/s 38(1) of the Punjab Municipal Act, 1911 (hereinafter called "the Act") The Government approved the appointment of the petitioner as the Secretary of the Committee up to August 31, 1969, and directed it to approach the Public Service Commission for recruitment of a permanent Secretary the Municipal Committee requested the Public Service Commission by letter dated August 11, 1969, for the recruitment of a regular Secretary but nothing was done and so the President of the Municipal Committee wrote a letter to the Regional Deputy Director, Local Government Department, Jullundur, on August 26, 1969, to extend the approval

to the appointment of the petitioner as the Secretary of the Committee for another period of three months or till the new appointment was made. That letter was returned to the Committee with the direction that the Committee should pass a resolution for the extension of the services of the petitioner as Secretary giving pay-scale. On October 31, 1969, the Municipal Committee passed a resolution appointing the petitioner as Secretary till the appointment of a permanent Secretary in the scale of Rs. 250--10--350--15--500 and sent a letter dated November 4, 1969, to the Regional Deputy Director, Local Government Department, Jullundur, for approval. It appears that the said letter was forwarded to the State Government but was not taken notice of. On April 29, 1971, the President of the Municipal Committee wrote a letter to the Director, Local Government, Punjab giving the facts of the case and requesting that "sanction u/s 38 of the Punjab Municipal Act, 1911, may very kindly be accorded with effect from 1st September, 1969 in the grade of Rs. 250--10--350--15--500 as the previous sanction expired on 31st August 1969, till the permanent appointment through the Public Service Commission is made." To this letter a reply was sent by the Director, Local Government Department, on June 3, 1971, directing the Municipal Committee to relieve the petitioner of the duties of Secretary immediately, under intimation to the department. After receipt of this letter by the Municipal Committee, the petitioner submitted a representation dated June 29, 1971, to the Director, Local Govt., Punjab, as a result of which the Municipal Committee was informed not to take any action on the letter of the State Government dated June 3, 1971. The representation of the petitioner was rejected by letter dated February 3, 1972. The petitioner has filed this petition for the cancellation of the orders of the State Government issued through the Director, Local Government, Punjab, dated June 3, 1971, and February 3, 1972. Written statement has been filed by Respondent 1, to which replication was filed by the petitioner. That replication was allowed to be placed on the record by my order dated April 24, 1972, before the hearing of the writ petition started. A copy of the replication had been handed over to the Advocate General and respondent No. 1 filed a reply to that replication before the start of the arguments. I allowed the filing of that reply also because the learned counsel for the petitioner had no objection.

2. From the facts stated above, it is evident that the State Government had accorded its approval to the appointment of the petitioner as Secretary of the Municipal Committee up to August 31, 1969. No further approval was granted and, therefore his continuance in office was not in accordance with the provisions of section 38(1) of the Act. Sub-sections (1) and (3) of section 38 are relevant for the decision of this case and read as under:

38. Appointment of Secretary.

(1) Every Committee shall, from time to time, at a special meeting, appoint, subject to the approval of the State Govt. one of its members or any other person, to be its secretary, and may, at a like meeting, suspend, remove, dismiss

or otherwise punish any person so appointed.

(2) * *

(3) When a member of the Committee is appointed Secretary he shall receive no remuneration in respect of his services. When any other person is appointed Secretary, the Committee may, with the previous sanction of the State Govt., assign to him such remuneration as it may think fit.

3. It is thus clear that without the approval of the State Government, the petitioner could not be allowed to continue as Secretary after August 31, 1969. No such approval was accorded by the State Government and on June 3, 1971, clear disapproval of the continuance of the petitioner in service as Secretary of the Municipal Committee was conveyed and the Municipal Committee was directed to relieve him of his duties as Secretary. The operation of that order was stayed pending the consideration of the petitioner's representation which was rejected on February 3, 1972, with the result that from the date of the rejection of petitioner's representation, the disapproval of the Government to his continuance as Secretary of the Committee revived and came into operation. It was for the Municipal Committee thereafter to relieve the petitioner of his duties as Secretary. The Municipal Committee has passed no resolution in that behalf with the result that the petitioner is continuing in office. The direction of the State Government to relieve the petitioner of his duties as Secretary is to the Municipal Committee and the petitioner has no right to file the petition challenging that direction or disapproval of the State Government to his continuance in office. It is for the Municipal Committee to accept the direction of the Government or not but it is not for the petitioner to challenge the legality of that direction. If the Municipal Committee had any difficulty in making an alternative arrangement, it could represent to the Government for extension of time till the appointment of a permanent Secretary is made. But the petitioner has no right to maintain that the State Government had no right to disapprove his continuance in office as Secretary.

4. It has been explained in the return filed by the respondent No. 2 that in March and April 1969, when the petitioner was appointed officiating Secretary, the payscale of the post was Rs. 100--5--150-10-200, which was raised to Rs. 250--10--350--15--500 on account of the acceptance of the recommendations of the Commission appointed for the revision of the pay-scales of the municipal employees. It has been stated by respondent 1 that with the revision of payscale, the qualifications required to be possessed by a Secretary of Class II Municipal Committee were also changed. The qualifications prescribed for a direct recruit were "Graduate with at least 3 years" experience in a responsible post in a Municipal Committee or Government" and qualifications for promotion from within the Municipal Committee were "from amongst Superintendents in Classes 1-A, II and III Municipalities with five years" experience as Superintendent." The ad-hoc appointment of the petitioner as officiating Secretary of the Municipal Committee was made from amongst the Municipal employees. According to the

qualifications prescribed he was not eligible for appointment as he did not hold the post of Superintendent at any time before his appointment. He was a Graduate and might or might not have been eligible for appointment as a direct recruit. His pay scale was raised from Rs. 100--200 to Rs. 250--500 without obtaining the approval of the State Government which is required u/s 38(3) of the Act. It is surprising that during the period of about three years, the Public Service Commission has not been able to recruit a permanent Secretary for the Municipal Committee. But this fact does not invalidate the order of the State Govt. dated June 3, 1971 disapproving the further continuance of the petitioner in office as Secretary of the Municipal Committee. The impugned order *procurio vigore* does not have the effect of removing the petitioner from the post of Secretary; it is for the Municipal Committee to act on that direction and pass a resolution relieving him from that post u/s 38(1) of the Act.

5. For the reasons given above, I hold that the petitioner has no *locus standi* to file the present petition challenging the orders of the State Government dated June 3, 1971 and further that there is no merit in this petition which is accordingly dismissed, but the parties are left to bear their own costs.