
(1970) 09 P&H CK 0048
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2591 of 1968

Gurbachan Singh Balwa

APPELLANT

Vs

Lachman Singh Gill and Others

RESPONDENT

Date of Decision : 10-09-1970

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 311(2)

Citation : AIR 1971 P&H 188 : (1971) 1 LLJ 634

Hon'ble Judges : H.R. Sodhi, J

Bench : Single Bench

Advocate : Atma Ram, for the Appellant; S.K. Jain, for A.G., for the Respondent

Judgement

1. This writ petition is by Shri Gurbachan Singh Bajwa, an Advocate of Qadian, district Gurdaspur, who was appointed as one man Motor Accidents Claims Tribunal (hereinafter referred to as the Tribunal) vide Punjab Government notification No. 5419-1-HT-65/22885 dated the 2nd September 1965 and later removed the office by virtue of the gazette notification dated August 8, 1968, true1967 Ser LR 204 copy whereof is annexure "G" to the writ petition. The removal is the consequence of abolition of the Tribunal constituted u/s 110 of the Motor Vehicles Act 1939 as amended by Act 100 of 1956. The petitioner was allowed one months pay in lieu of notice of period of one month. He has challenged the validity of the latter notification on various grounds including that of mala fides of the then Chief Minister , late Shri Lachman Singh Gill, and the Transport Minister, Shri Parkash Singh Majithia, respondents 1 and 3. It is further pleaded by him that the proposal for abolition of the post was initiated not only because of the mala fides of the respondents 1 and 3 but also that of the State Transport Controller whose abortive attempts to interfere with the discharge of the judicial functions of the petitioner had annoyed him. In order to appreciate the connections raised by the petitioner it is necessary to briefly state a few facts as alleged by him.

2. The petitioner on being appointed as the Tribunal took charge of his office on

September 9, 1965, with headquarters at Chandigarh. Terms and conditions of his appointment were however, not communicated to him at the time of his appointment. He claims to have written a demi-official letter to the then Minister for Transport, Mr. Gurdial Singh Dhillon, by which he requested that his tenure of service be fixed at five years and salary at Rs. 1500/- per mensem. A reply on behalf of the State has been filed by Shri Ram Gopal, I. A. S. Deputy Secretary Home, who is not in a position to admit or deny his assertion as it is stated that there is nothing on the office record to that effect. In the absence of a specific denial, I have to accept the statement of the petitioner. The petitioner within two months of his appointment started writing letters to the Government suggesting to it that the Tribunal should be made independent of the State Transport Controller and the presiding Officer of the Tribunal should be the head of his own department. It was pointed out that keeping the Tribunal under the administrative control of the State Transport Controller would cause great inconvenience and create awkward position for the Tribunal inasmuch as the Punjab Roadways of which the State Controller was the executive head, was very often a party in claim cases and it was in these circumstances undesirable to let a party to a case before a judicial officer have administrative control over the latter.

Simultaneously, the petitioner went on pressing for settling the terms and conditions of his service and when no decision was taken by the Government and elections to the State Legislative Assembly were within sight, he tendered his resignation on November 18, 1966. It may be stated that the petitioner was in public life earlier and probably wanted to contest elections if he was not to be retained in service for five years at a monthly salary of Rs. 1500/- as desired by him. Since the resignation was not accepted, the petitioner sent a reminder to that effect on December 16, 1966, the receipt whereof is not denied by the State and a copy of the same is filed as Annexure "D" with the writ petition. The petitioner stated in the reminder that one month after the submission of resignation having expired, he would treat the same having been accepted with effect from December 18, 1966.

It appears that there was then a meeting between the Chief Minister, Shri Gurmukh Singh Musafir and the petitioner as a result whereof the latter withdrew the resignation. He informed the Secretary to Government, Punjab, by letter dated February 15, 1967 that he was withdrawing the resignation as desired by the Chief Minister. A copy of this letter was forwarded to the State Transport Controller for information. On February 13, 1967 that is two days before he withdrew his resignation and by which time meeting between the Chief Minister and the petitioner had taken place an order Annexure "F" was issued by the Governor of Punjab fixing the terms of the appointment and the tenure of the office of the Tribunal. The salary was fixed at Rs. 1500/- per mensem as was desired by the petitioner and so the period of his service was fixed at five years. The petitioner continued working as the Claims Tribunal drawing the salary when during the regime of another Ministry headed by respondent 1, come the

impugned order of August 8, 1968, abolishing one man Tribunal and terminating the services of the petitioner with immediate effect. The State Transport Controller was directed to take steps for the adjustment of the staff of the office of the Tribunal as their posts also stood abolished.

Being aggrieved by the order of this abolition of the post and the termination of his services, the petitioner has come to this Court in a writ petition. The State of Punjab, was having one man Claims Tribunal earlier too and the executive control throughout rested with the State Transport Controller. The T. A. bills of the petitioner and his predecessors had to be sanctioned by the Transport Controller and even the tour programme was to be approved by him. It is alleged that in 1966, an accident took place involving a bus of the Punjab Roadways and the same fell into a khud resulting in injuries to many others. The petitioner awarded compensation amounting to one and a half lakhs rupees to the claimants. According to the petitioner, the State Transport Controller hinted to him that he was a member of the Transport Department and should keep its interest in view while awarding compensations awarded against the Government must be not heavy. The petitioner did not countenance this interference and told the Controller that he (the petitioner) would decide each case on its own facts. This annoyed the State Transport's Controller and he at one time refused to countersign the petitioner's T. A. bills for several months so much so the petitioner had to seek the intervention of Shri S. K. Chibber, the then Secretary Transport, and it was on his speaking on telephone to the State Transport Controller that the bills were passed.

3. A grievance of the Transport Department against the petitioner is stated to be that he would take steps towards the execution of the awards without affording much time to the Department to get stay orders by preferring appeals. The practice of the petitioner was normally to allow two months time for payment of the amount of compensation from the date of the award but the transport Department sent written instructions to him that in all cases of the Punjab Roadways, three months time be allowed and that the instructions should take effect retrospectively. The petitioner alleges that in many cases against the Punjab Roadways he directed the Collector to realise the amount as arrears of land revenue which was not liked by the officials of the Transport Department and it was being stated openly that the fund maintained by the Department u/s 94(3) of the Motor Vehicles Act was going to be exhausted. The petitioner refers to another case decided by him against the State of Punjab wherein he awarded Rs. 80, 000/- as compensation against the Transport Department on September 13, 1967, in Claim Application No. 91 an appeal against which was dismissed by the High Court in limine. There was another case of J. P. S. Kapur v. Punjab State in which the petitioner allowed a compensation of Rs. 3, 96,000/- against the State Government.

The case of the petitioner is that all these honest judicial decisions of his infuriated the State Transport Controller and the officials of the Transport

Department who started saying that either the State Transport Undertaking be wound up or the services of the petitioner terminated immediately. It is not denied that the T. A. bills of the petitioner were being held up in the office of the State Transport Controller for months together though it is said that they were under close scrutiny in the ordinary office routine.

4. The petitioner has in the writ petition made a mention with regard to his relations with respondents 1 and 3. There is a specific reference to some cases in which he was approached by respondent 3 who was then Minister-in-charge of the Transport Department but he declined to accommodate him. It is stated that the petitioner was on tour in Amritsar on 21st/22nd February 1968, to decide cases one of which was Claim Application No. 68/CDP/67. Respondent 3 was also staying in the Circuit House in those days along with the Chief Minister and other Ministers. The petitioner was sent for and asked to help the respondent in the claim application as the Minister was interested in him. It so happened that the claim application was dismissed for want of prosecution but the petitioner resorted the same in spite of the fact that he had been told by the Minister to help the Respondent and refusal to restore would have certainly pleased the Minister. The Minister as stated by the petitioner got annoyed and became inimical to him.

There were again five claim applications against one Gandhara Transport Company, reference to which has been made in para 13(2) of the writ petition. Respondent 3, as alleged by the petitioner sent a message saying that Shri Jagjit Singh who was the Managing Director of the Company was his great supporter and that he should be helped. The petitioner was asked to see the Minister or contact him on telephone but he could not do so. The Minister and the petitioner later met together and he was told not to allow any compensation against the Transport Company, and in any case not beyond the liability of the Insurance Company as the aforesaid Jagjit Singh was his great supporter and favourite of the Chief Minister respondent 1. The petitioner told respondent 3 that cases had to be decided on their respective merits and he could not say what would be the result of the cases against the said Company.

The petitioner feels that it was unfortunate for him that he had ultimately to decide cases against the Company making the same liable since the Insurance Company could not be fixed with liability for the amount awarded as compensation. This also, according to the petitioner, caused annoyance to respondent 3 who was already feeling aggrieved. Next ground of mala fide is stated to be that Shri Gian Singh Rarwala and Pandit Mohan Lal, the then M. L. A. visited Qadian, the home town of the petitioner, on June 14, 1958, in connection with some function arranged by Harijans. The petitioner too was there as he was on leave on that day. Both these gentlemen later went to the house of the petitioner and had tea with him as they were old friends. The plea of the petitioner is that it was purely a personal and friendly meeting in which no politics was ever discussed but the matter was reported to respondent 1 who told

the petitioner that being a Government servant, he could not dabble with politics. The meeting of the petitioner with S. Gian Singh Rareewala and Pandit Mohan Lal, annoyed respondent 1 because of his political rivalry with him.

5. An affidavit by way of reply has been filed by the Deputy Secretary to Government, Punjab, Home Department. Paragraphs 6 , 7 and 8 of the writ petition which relates to the insistence of the petitioner to resign and the assurance of the Chief Minister to the effect that the tenure of office would be fixed at five years and pay at Rs. 1500/- per mensem from the date of his appointment are admitted. It is not denied that it was as a result of the assurance of the Chief Minister to accept the terms of the petitioner that the resignation was withdrawn. Paragraph 7, which is admitted by the State, reiterates that according to the terms settled between the petitioner and the Chief Minister , the tenure of the petitioner's office was to be for five years with effect from 8th of September 1965 when he was originally appointed.

6. The petitioner claims that when he took over from his predecessor, the number of claim applications was about 400 but the same was progressive increasing because of expansion of Punjab Roadways and Road Transport in general, the expansion leading to greater number of accidents. The idea brought out by the petitioner is that when necessary for the continuance of Tribunal existed, the abolition of the post was only a device adopted to set rid of him. The reply of the State is that the work of the Tribunal was undoubtedly expanding but it was in public interest to give the powers in this behalf to all the District Judges in this state. I have looked into the executive file and find that there was a proposal by the State Transport Controller made on 22nd June of 1968 where in the cost of the establishment of the petitioner was calculated and the recommendation made to the effect that conferment of powers on the District Judges would reduce expenditure since there is already a District Judge for each District and that the disposal of cases might also be quicker.

A special pay of Rs. 100/- per mensem was proposed for each District Judge. The proposal entailed abolition of the posts in the establishment of the Tribunal as well but they were to be absorbed else where. The proposal after being processed through the Deputy Home Secretary , the Legal Remembrancer and the Minister-in-charge was placed before the Cabinet when the same had been approved. A meeting of the Cabinet had already been fixed and in view of the supposed urgency of the matter the proposal was not sent to the Finance Department as was the normal practice. There were serious allegations in the writ petition against the Chief Minister. Minister in charge Transport and the State Transport Controller but none of them except the Chief Minister chose to file an affidavit controverting the averments against them. The facts as stated in paragraph 14 have not been specifically denied by this respondent nor the averments in paragraph 13 where the petitioner alleged that Shri Jagjit Singh of Gandhara Transport Company whom respondent 3 wanted to help was a favourite of respondent 1. The averment of the petitioner that Pandit Mohan Lal

and S. Ghan Singh Rarewala who met him at the house over a cup of tea were political adversaries of respondent 1 and were openly seeking dismissal of the Ministry headed by the said respondent is not denied.

It is true that the State Transport Controller as such was not impleaded as a party but he was an important functionary of the State against whom allegations were being made and it was a fit case where the State should have filed his affidavit if the serious allegations as made against him, particularly of interference with judicial work were to be denied. The State is a party to these proceedings and had ample opportunity to controvert the allegations as made against the State Transport Controller and it should have known that the only way to do was to get the affidavit of the said official. Many of the facts were within the knowledge of this office but instead of filing his affidavit, the State filed an affidavit of a Deputy Secretary who felt content with either keeping quiet over the important averments or just brushing them aside by saying that the allegations related to verbal talks about which there was nothing on the record. In reply to the several other allegations the Deputy Secretary has only stated that he had no knowledge which is not a denial express or implied of the existence of facts forming the subject matter of the averments.

In these circumstances, the averments of the petitioner made on oath alleging mala fides against the respondents are only before me and they were not denied. I must therefore, accept them as correct. The result is that the following facts stand established :-

(1) That the petitioner within a few days of his taking charge of the office started protesting against the administrative control exercised by the State Transport Controller over him and his establishment.

(2) That he was awarding heavy amounts of compensation against the Transport Department and the State Transport Controller not only resented these decisions but tried to influence the petitioner directly by making suggestions and also by coercive methods like withholding of T. A. Bills necessitating sometime the intervention of the Transport Secretary. Mr. S. K. Chibber.

(3) That respondent 3, who was Minister in charge Transport Department, approached the petitioner to get undue advantage for the parties, whose judicial cases were pending before the Tribunal, and having not been accommodated, he got annoyed with the petitioner.

(4) That on June 14, 1968 there was a meeting at the house of the petitioner in Qadian in which Pandit Mohan Lal and S. Gian Singh Rarewala who were the political adversaries of the Chief Minister, respondent 1, were present and this gave rise to annoyance of the Chief Minister, respondent 1. Respondent 1 believed that the petitioner was alleged with his political opponents who were trying for the fall of the Ministry headed by him.

(5) That almost within a week of the meeting of June 14, 1968, a proposal was

initiated by the State Transport Controller on June 22, 1968 where in it was suggested that the post of one-man Tribunal presided over by the petitioner be abolished though the post was in existence since the year 1959/1960.

(6) That there was a great eagerness on the part of the respondents 1 and 3 to get the post abolished at the earliest and the matter was placed before the Cabinet meeting fixed for July 26, 1968 though it was not on the agenda and the normal procedure of the proposal being first seen by the Finance Department had to be abrogated.

7. Whatever be the merit of the proposal conferring powers on the District Judges I am irresistibly driven to the conclusion that the jurisdiction of the proposal was not bona fide and that the post on one man Tribunal was abolished because of the petitioner having earned the displeasure of the State Transport Controller and annoyance of respondent 3, both of whom could not influence the petitioner in his judicial decisions and wanted to wreak their vengeance. It is true as observed by their Lordships of the Supreme Court in *S. Pratap Singh Vs. The State of Punjab*, .

"indirect motive or purpose, or bad faith or personal ill-will is not to be held established except on clear proof thereof. "

but at the same time direct evidence to establish an improper motive is equally difficult to find. In the words of their Lordships, had faith.

"can be deduced as a reasonable and inescapable inference from proved facts. "

The State Government was apparently acting in the lawful exercise of its power but I must hold that in fact the action was mala fide in the sense that the aim to achieve was an improper one amounting to abuse of authority. I do not wish to express any opinion on the merits of the decision taken by the Government as regards the appointment of District Judges as Motor Accidents Tribunals. There is no data on which I can pronounce as to whether the expectations that the cases would be disposed of expeditiously have been or likely to be fulfilled.

8. The next contention of Mr. Atma Ram, learned counsel for the petitioner, is that the action of the Government in terminating the services of the petitioner offended against Art. 311 of the Constitution. It is submitted that the petitioner was holding the post of the Tribunal under a special contract for a term of five years and having the right to hold the post for the said period, he could not be removed therefrom whether by abolition of the post or otherwise without affording an opportunity to him to defend himself as guaranteed by Art. 311 of the Constitution. Reliance is placed by the learned counsel on *Parshotam Lal Dhingra Vs. Union of India (UOI)*, . It is conceded that there is no written contract, but the contention is that such a contract is clearly discernible from the admitted facts of the case. This contention too is not devoid of force. When the petitioner was appointed as a Tribunal, by an order of September 2, 1965, no terms of office were fixed nor the salary. The petitioner immediately started

insisting that he should be appointed for a period of five years and given a salary of Rs. 1500 per mensem. As a matter of fact, the petitioner had made up his mind not to accept the appointment unless his terms as offered by him, were accepted by the State Government. It was stated by him in the letter of November 5, 1965, (Annexure "B") that accepting to work on the post would mean almost saying good-bye to his long political career and that is why it was necessary for him that he should have security of five years at a reasonable salary of Rs. 1500/- per mensem which was the maximum of the grade.

The petitioner had been a member of the State Legislative Assembly for a number of years and he wanted to contest election again if he was not given the period of five years service. He communicated to the Government that he would be relinquishing charge of the post on December 15, 1966, unless the terms and conditions of his service, as desired by him, were accepted. When all his letters brought no fruitful result, he actually tendered his resignation and it was then there was a meeting between the Chief Minister and the petitioner. The Chief Minister agreed to accept the offer of the petitioner to continue in his office for a period of five years at a salary of Rs. 1500/- per mensem and it was on this ground alone that he withdrew his resignation. These circumstances are, in my opinion, sufficient to establish that to the post of the Tribunal which was already existing, the petitioner was appointed under a special contract for a period of five years and that he had a legal right to hold that post for that period unless removed therefrom for misconduct which removal is a necessary concomitant of the relationship of master and servant.

9. It is to be noticed that there is no condition of service of the petitioner that his services could be terminated on one months notice on payment of salary in lieu thereof as is to be found in a usual type of temporary contractual service. It is only in matters of travelling allowances, leave, medical reimbursement and accommodation that the Punjab Civil Service Rules relating to temporary employees were made applicable to him. The learned counsel for the State has not been able to invite my attention to any rule which permitted the Government to terminate the services of the petitioner at any time by serving him one months notice. In case of a contractual appointment, the incumbent of the office acquires a right to hold that post for the period agreed upon and the same cannot be put to an end to unless there is a provision to that effect in the agreement itself.

The Government while notifying the terms and conditions of appointment of the petitioner as are to be seen in Annexure "F" did not reserve to itself any right to relive the petitioner of his office by serving one month's notice on him. No such right was obviously intended to be reserved in view of the assurance given to the petitioner that he would be retained in service for five years. It was this assurance coming from the Chief Minister that persuaded the petitioner to withdraw his resignation. Their Lordships observed in para 12 of the judgment in Parshotam Lal Dhingra's case AIR 1956 SC 36 (supra) that

"an appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of his tenure and his tenure cannot be put an end to during that period unless he is, by way of punishment dismissed or removed from the service. "

These observations have to be read with what is subsequently said in para 26 of the same judgment where the observations are to the following effect :-

"Shortly put, the principles is that when a servant has right to a post or to a rank either under the terms of the contract of employment, express or implied, or under the rules governing the conditions of his service, the termination of the service of such a servant or his reduction to a lower post is by itself and prima facie a punishment, for it operates as a forfeiture of his right to hold that post or that rank and to get the emoluments and other benefits attached thereto. But if the servant has no right to the post, as where he is appointed to a post, permanent or temporary either on probation or on an officiating basis and whose temporary service has not ripened into a quasi-permanent service as defined in the Temporary Service Rules, the termination of his employment does not deprive him of any right and cannot therefore, by itself be a punishment. One test for determining whether the termination of the service of a government servant is by way of punishment is to ascertain whether the servant, but for such termination had the right to hold the post. "

The same idea has been put in other way by their Lordships when it is said that if the Government has, by contract, express or implied or, under the rules, the right to terminate the employment at any time, then such termination in the manner provided by the contract or the rules is, prima facie and per se, not a punishment and does not attract the provisions of Art . 311 of the Constitution.

10. No doubt the Government has a right to abolish a post temporary or permanent, but this postulates a bona fide exercise of power. When the exercise of authority is not honest, an official cannot be deprived of the protection available to him under Art. 311 of the Constitution simply because the State Government had a right to abolish the post. In the words of their Lordships of the Supreme Court in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, , if he had a right to the post.

"the termination of his services will by itself be a punishment and he will be entitled to the protection of Art. 311 of the Constitution. "

11. In *Anup Singh v. State of Haryana* 1969 SLR 850 (Punj), Sarkaria, J. quashed an order abolishing the post of Head Draftsman working under a Zila Parishad and terminating the services of the incumbent of that post. The learned Judge on the facts of that case held that the orders abolishing the post were mala fide and intended to throw out of the service the petitioner there without affording him an opportunity to show cause which offended against the rules of natural justice. Article 311 of the Constitution was held not to apply because the Head Draftsman was not holding any civil post under the State Government. Section

34 of the Panchayat Samitis and Zila Parishads Act, 1961 which contained a provision almost identical to Art. 311(2) of the Constitution was however, held to have been attracted since the abolition of the post was mala fide. I am in respectful agreement with my brother Sarkaria, J. and must hold that in the circumstances of the present case too where the post was abolished due to mala fides of respondents 1 and 3 and the petitioner had otherwise a right to hold that post for the full tenure of five years, the action did assume a penal complexion entitling the petitioner to the protection of Article 311 of the Constitution which was denied to him.

12. Mr. Jain, appearing for the State, has drawn my attention to a Division Bench judgment of this Court reported as *Ajit Singh and Jamna Dass Akhthar v. State of Punjab* 1970 SLR 334 (Punj), where the view taken was that abolition of a post and consequent termination of services of the person holding that post did not attract Article 311. The facts of that case are clearly distinguishable and no help can be derived from this authority. It was not a case of mala fide abolition of the posts. The allegations of mala fides were of course made as an additional ground after the filing of the writ petition. These allegations had been denied and no finding was, therefore given that the action of the State Government in abolishing the posts was in anyway not honest. On the other hand, the reasons as given by the Government for abolition of the posts were found to be quite genuine nor was the appointments of the petitioners there under any special contract giving them a right to hold the posts. The petitioners in that case were appointed as Chairman and members of the Subordinate Services Selection Board altogether on the recommendation of Administrative Reforms Commission, and also because of the some bickering amongst members of the Board which made its smooth functioning impossible.

13. For the foregoing reasons, the impugned order passed by the Governor of Punjab, on 8th August, 1968, terminating the services of the petitioner is, therefore liable to be quashed. It may be made clear that I am not issuing any writ of mandamus directing the reinstatement of the petitioner to the post of one-man Motor Accidents Claims Tribunal and it is the order of removal of the petitioner which alone is being declared as illegal. The petitioner was appointed for a period of five years which has expired. He has no right to claim any extension of the term of his contractual service, nor is the contract of personal service specifically enforceable.

14. Such a course was adapted by their Lordships of the Supreme Court in *Prabhat Kumar Mukherjee v. State of Bihar*, C. A. No. 2206 (N) of 1968, D/-23-4-1969 (SC) where no writ of mandamus was issued but the declaration that the order of the State Government was illegal was granted.

15. I accordingly allow the writ petition with costs, quash the impugned orders referred to above and declare the termination of services of the petitioner as illegal. Counsel's fee is assessed at Rs. 300/-

16. Petition allowed.