

(1975) 10 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : Letters Patent Appeal No. 16 of 1972

Harsukh Rai

APPELLANT

Vs

The State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 21-10-1975

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11, 2, 20, 20(1), 20(2)
Road Transport Corporations Act, 1950 — Section 3

Citation : (1975) 4 ILR HP 769

Hon'ble Judges : R.S. Pathak, C.J.;C.R. Thakur, J

Bench : Division Bench

Advocate : Sushil Malhotra, for the Appellant; B. Sita Ram, General and D.K. Khanna, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, C.J.—This Letters Patent Appeal is directed against the judgment of a learned single Judge dismissing the Appellant's writ petition.

2. The Appellant entered employment as an Inspector in the Himachal Pradesh Government Transport Department on July 7, 1949. On the formation of the Mandi-Kulu Road Transport Corporation (hereinafter referred to as "the Corporation") u/s 3 of the Road Corporation Act, 1950, the services of the Appellant were transferred to the Corporation with effect from September 18, 1959. On June 1, 1962 the Appellant was promoted to the post of Chief Inspector in the Corporation.

3. It appears that disputes arose between the Corporation and the employees, and on December 16, 1963, the Appellant along with other employees instituted a suit for a declaration that they were employees of the Government Transport Department and were entitled to revert to it.

4. During the pendency of the suit the Appellant was directed to proceed on

transfer to Pathankot, but on the ground that he had refused to comply with the orders of his superiors he was suspended on March 17, 1967, and an inquiry was ordered against him.

5. While disciplinary proceedings were pending against the Appellant, the suit filed before the Senior Subordinate Judge, Mandi, was decreed on September 20, 1967. A decree in favour of the Plaintiffs was passed declaring them Government employees of the Government Transport Department and entitled to all the rights of such Government employees, including the right to revert to their parent department. An appeal was filed against the decree, but was withdrawn on August 5, 1968. In the result, the trial court decree became final.

6. The disciplinary proceedings were continued against the Appellant. He did not participate in them, and they were taken ex parte. The Enquiry Officer submitted his findings, and agreeing with them the commissioner of Transport, as the punishing authority, required the Appellant to show cause against the penalty of removal from service. It was one of the major penalties mentioned in Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. On April 24, 1968, the General Manager of the Corporation passed an order replacing the services of the Appellant at the disposal of the Government Transport Department with immediate effect. The record of the disciplinary proceedings was also transmitted by the Corporation to the Government Transport Department. The Appellant filed an appeal to the Lieutenant Governor of Himachal Pradesh in December, 1969 against the proceedings taken in respect of him. In March, 1970, the Lieutenant Governor quashed all the proceedings against the Appellant, whether taken by the Government Transport Department or by the Corporation. There was a direction that the Appellant be reinstated. On April 12, 1970, the Appellant wrote to the Government Transport Department asserting that he had been reverted to his parent department so that a major penalty may be imposed on him, and that the disciplinary proceedings having been quashed by the Lieutenant Governor he was entitled to be reinstated in the Corporation. On April 17, 1970, the Appellant was reinstated as Inspector in the service of the Government Transport Department. The Appellant maintained that he should have been reinstated as Chief Inspector in the Corporation. He filed an appeal before the Lieutenant Governor, but the appeal was dismissed and the order communicated to him on November 18, 1970.

7. Thereafter the Appellant filed a writ petition in this Court challenging the validity of the order dated April 24, 1968, of the Corporation replacing his services at the disposal of the Government Transport Department, the order dated April 17, 1970 of the Government Transport Department reinstating him as an Inspector in its service, and the order of the Lieutenant Governor communicated on November 18, 1970, dismissing his appeal. The Appellant prayed for an order directing the Respondents to implement the order of the Lieutenant Governor and to absorb the Appellant as Chief Inspector in the Corporation or in the Government Transport Department, and to pay him the

arrears of pay from March 17, 1967, when he was suspended, together with all consequential benefits.

8. The State of Himachal Pradesh, the Commissioner of Transport and the General Manager of the Government Transport Department have filed a common return. It is pleaded that the Appellant was reverted by the Corporation to the Government Transport Department in terms of Clause (ii) of Rule 2 of Rule 20 of the Central Civil Services (Classification, Control and Appeal) Rules, and that notwithstanding that the Lieutenant Governor had allowed the Appellant's appeal and quashed the disciplinary proceedings the Appellant could not be placed at the services of the Corporation without the consent of the latter. It was stated that the Appellant had drawn subsistence allowance as Inspector in the Government Transport Department and had therefore accepted the replacement order. It was pointed out that the case of the Appellant was considered for promotion to the post of Chief Inspector in the Government Transport Department by the Departmental Promotion Committee but he was not found fit for that post.

9. In the return filed by the Corporation, it was alleged that the Appellant had been given an officiating promotion to the post of Chief Inspector in the Corporation. It was conceded that as the Appellant was a permanent Government servant the Lieutenant Governor was competent to quash the disciplinary proceedings taken by the Corporation but, it was contended, he was not competent to direct the Corporation to reinstate him and he was entitled to make general directions with respect to the framing of rules only. It was pleaded that the order reverting the Appellant to his parent department was not a proceeding, and therefore could not be said to have been quashed by the Lieutenant Governor. The effect of the Lieutenant Governor's order, it was said was that the Appellant would be reinstated to his parent department on his substantive post.

10. In his rejoinder affidavits to the returns the Appellant affirms, inter alia, that the effect of the order of the Lieutenant Governor allowing his appeal was to quash the entire proceedings taken against him, including the order of replacement which it was urged, was made only for inflicting punishment on the Appellant. It was claimed that on the quashing of the proceedings the Appellant was entitled to be reinstated on the same post which he held when placed under suspension.

11. The writ petition was heard by our brother D. B. Lal then Acting Chief Justice, and was dismissed with costs on December 29, 1971. And now this Letters Patent Appeal.

12. The learned single Judge has arrived at the following findings. The Appellant was on deputation with the Corporation and was a Government servant within the terms of Rule 2 (h) (i) of the Central Civil Services (Classification, Control and Appeal) Rules; the Corporation being an "authority" within the meaning of

that rule was entitled to order the reversion of the Appellant to his parent department. The Chairman of the Corporation had passed an order before June, 1966 reverting the Appellant and he had been reinstated by the Government Transport Department in its service. The Appellant had no right to claim reinstatement in the service of the Corporation. The Himachal Government Transport was treating the case of the Petitioner as falling under Clause (ii) of Sub-rule (2) of Rule 20 of the Central Civil Services (Classification, Control and Appeal) Rules for the purpose of disciplinary proceedings, but that was a unilateral decision not binding on the Corporation. The Lieutenant Governor had no jurisdiction to quash the order of reversion passed by the Corporation because he was not a disciplinary authority in respect of the Corporation, nor was any appeal maintainable before him against an order of the Corporation. The appeal was preferred by the Appellant after he had reverted to his parent department and assumed the status of a Government servant. In the circumstances, the order of reversion was not affected by the Lieutenant Governor's order allowing the appeal. The Lieutenant Governor could not even quash the order of suspension, as that was an act done by the Corporation. By drawing subsistence allowance after reinstatement in the Government Transport Department the Appellant must be considered to have accepted his reversion to that department. As regards the Appellant's claim to remain in the post of Chief Inspector, the matter had to be determined on the basis of merit and he was not found fit for such promotion by the Departmental Promotion Committee. On reversion the Appellant was entitled to appointment to the substantive post merely.

13. A preliminary objection has been raised by the Respondents to the grant of relief in this Letters Patent Appeal. It is pointed out that the Appellant retired from service during the pendency of the appeal and therefore the proceeding has become in fructuous. In my opinion, the objection is without substance. It cannot be disputed that having regard to the nature of the claim made in the writ petition the mere circumstance that the Appellant retired from service during the pendency of the appeal should not dissuade the Court from adjudicating on the rights claimed by the Appellant and granting such relief as is called for. It is always open to the court to mould the relief in the context of the situation obtaining on the date when the case is disposed of. In *A.B. Abdulkadir and Others Vs. The State of Kerala and Another*, the validity of a body of rules was challenged by the Petitioners before the Supreme Court. During the pendency of the case the rules were abrogated. Repelling the contention of the State that when the rules were no longer in existence the court should not grant a mere declaration as to the validity of the rules, the Supreme Court pointed out that "we must look to the situation as it was when the petitions were presented". The rules having been in force at that time a declaration was granted that they were invalid-because the Petitioners would then be entitled to relief for the period during which the rules remained in force after the petitions were filed. The Calcutta High Court, in *Ram Chandra Chaudhuri Vs. Secretary to Govt. of West Bengal and Others*, had before it a writ petition in which an order of reversion

was challenged by the Petitioner. The court declined to reject the petition on the plea that meanwhile the Petitioner had retired from service. It was observed that if the impugned order was quashed the Petitioner would be entitled to relief in respect of arrears of pay and pension on the footing that he had never been reverted. That a direction for payment of arrears of salary can be made in a writ petition was the view taken by the Punjab and Haryana High Court in *K.K. Jaggia Superintending Engineer, Haryana P.W.D. Irrigation Department v. The State of Haryana and Anr.* 1972 S.L.R. 578 In *Dr. Swayambar Prasad Sudrania v. State of Rajasthan* AIR 1972 Raj 69 the Rajasthan High Court granted declaratory relief in substitution of the mandamus claimed by the Petitioner, I am conscious of the observations made by me, while a member of the Allahabad High . Court, in *Kripa Ram Gupta v. R.K. Talwar* 1969 S.L.R. 897 to the effect that even if the impugned order of premature retirement was invalid the writ petition had become infructuous as the period during which the Appellant claimed to remain in service had already expired. On further consideration, I am inclined to the view that those observations are not correct. The Appellant in that case should have been held entitled to declaratory relief. It seems to me on the facts of the present case that if on the merits the Appellant is entitled to succeed this Court should not be reluctant in granting appropriate relief.

14. In this Letters Patent Appeal, learned Counsel for the Appellant has raised the following points:

(1) The order of the Corporation replacing the Appellant at the disposal of the Government Transport Department was a part of the disciplinary proceeding initiated against the Appellant, and the order of the Lieutenant Governor allowing the appeal filed by the Appellant had the effect of quashing all the proceedings, including the order of replacement.

(2) It is not open to the Corporation, by way of defence to the writ petition, to challenge the validity of the order of the Lieutenant Governor allowing the appeal filed by the Appellant.

(3) The promotion of junior officers in preference to the Appellant to the post of Chief Inspector was invalid, being vitiated by malafides and as proceeding on wrong assumptions.

Point 1

15. On May 25, 1960, the Appellant applied that he should be transferred back from the Corporation to the Government Transport Department where he held a lien, and the Corporation expressed no objection. However, matters remained as they were. Meanwhile, the Appellant got into difficulties with the Corporation and the Corporation suspended the Appellant on March 17, 1967. An inquiry into the charges framed against him was made under the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The Inquiring Officer drew up his findings and submitted them to the General Manager of the Corporation. The General Manager agreed with the findings and issued a notice dated September

4, 1967, to the Appellant that as the charges stood proved against him he should show cause why the penalty of removal from service should not be imposed. The Appellant was asked to submit his reply by September 20, 1967. On that date the learned Senior Subordinate Judge, Mandi.. decreed the suit and granted a declaration that the Appellant and other Plaintiffs in the suit were Government servants employed in the Government Transport Department and were entitled to revert to their parent department. On October 16, 1967, the Corporation wrote (Annexure X-1) to the Government Transport Department reminding it of a request made by the Corporation on June 28, 1966, that the Appellant be recalled from the Corporation to that department, that the latter had expressed some doubt on the point whether the Appellant held any lien in the department and it was pointed out that the doubt had now been removed by the judgment of the civil court. It was requested that in view of the order already passed by the Chairman of the Corporation to revert the Appellant the Government Transport Department should pass orders immediately regarding the posting of the Appellant. The record relating to the suspension of the Appellant and the disciplinary proceedings taken against him was also forwarded for necessary action in the case. On April 17, 1968, the Government Transport Department wrote back (Annexure X-2) to the Corporation pointing out that the Corporation, as the borrowing authority, could impose a minor penalty only and in case it was proposed that a major penalty should be imposed on the Appellant his services should be replaced at the disposal of the Government Transport Department for further necessary action. The Corporation then sent a letter (Annexure X-2/1) in reply stating that the services of the Appellant "are being replaced at your disposal for proceeding against him as already proposed vide D. O. letter referred to above in para 2". Paragraph 2 referred to the disciplinary proceedings taken against the Appellant. This was followed by an order (Annexure X-3), apparently of April 24, 1968, replacing the services of the Appellant at the disposal of the Government Transport Department with immediate effect. The order was affirmed by the Corporation in a letter (Annexure X-4) dated April 25, 1968, wherein it was stated that "as desired services of Shri H. S. Rai have been replaced at your disposal as already intimated to you vide this office endorsement No. 4-III/PF/E/771-75 dated 24-4-1968 for proceeding against him". It is necessary to point out that we have allowed the parties to refer to the aforementioned documents, Annexure X-1 to Annexure X-4, although they have been filed for the first time in this appeal. That is for the reason that admittedly the entire official record was considered by the learned single Judge when disposing of the writ petition, but when doing so he has omitted to refer to the aforementioned documents which in our opinion are material for the decision of the case. When the learned single Judge treated the official record as necessary for disposing of the points raised before him, it is only fair that the Appellant should be permitted to reply on those documents also which, he claims, support his case. It may be mentioned here that the reliability of Annexure X-1 to Annexure X-4 as true copies of the original documents has not been questioned. After the order replacing the Appellant's services at the disposal of the

Government Transport Department, the Appellant enquired of the Corporation on April 27, 1968, whether on replacement he should consider himself as still under suspension. He was informed by the Government Transport Department that his services had been placed at the disposal of that department in terms of Clause (ii)" of Sub-rule (2) of Rule 20 of the Central Civil Services (Classification Control and Appeal) Rules, and that in the circumstances he continued to be under suspension while further action was contemplated in his case. It was in these circumstances that the Appellant filed an appeal before the Lieutenant Governor on December 12, 1969. In March 1970 the Lieutenant Governor allowed the appeal, quashed all the proceedings taken against the Appellant and directed his reinstatement in service.

16. On "the aforesaid facts two questions arise:

(a) Was the Lieutenant Governor competent to make ;an order quashing the suspension order and the disciplinary, proceedings taken by the Corporation against the Appellant?

(b) Assuming that the Lieutenant Governor was competent to make such order, did the order have the effect of quashing the order dated April 24, 1968, replacing the services of the Appellant at the disposal of the Government Transport Department ?

17. It is not disputed before us that the Appellant is a "Government servant" within the meaning of Rule 2 (A) (i) of the Central Civil Services (Classification, Control and Appeal) Rules. Rule 11 classifies the penalties which may be visited on a Government servant into minor penalties and major penalties. Removal from service is described as a major penalty. Rule 20 details the procedure in regard to Government servants lent to a State Government, a local or other authority. Sub-rule (1) empowers the borrowing authority to place a Government servant under suspension and take disciplinary proceedings. Sub-rule (2) is divided into two parts. Clause (i) provides that if the borrowing authority is of opinion that a minor penalty should be imposed on a Government servant, it may, after consultation with the lending authority, make such orders on the case as it deems necessary. Clause (ii)" declares that if the borrowing authority is of opinion that a major penalty should be imposed it must replace the services of the Government servant at the disposal of the lending authority, and transmit to the lending authority the proceedings of the inquiry, whereupon the lending authority may, if it is the disciplinary authority, pass such orders thereon as it may deem necessary, and if it is not the disciplinary authority the case must be submitted by it to the disciplinary authority for passing appropriate orders on the case.

18. Admittedly the Appellant was a Government servant whose services were transferred to the Corporation. If as a result of the inquiry the Corporation had decided to impose a minor penalty it was clearly empowered to do so. An appeal from such an order would have been maintainable to the Lieutenant Governor. It

necessarily follows that the Lieutenant Governor had jurisdiction to entertain an appeal by a Government servant in respect of proceedings taken by the Corporation against him. It may possibly have been quite a different matter if the case was one of an employee appointed by the Corporation. But we are concerned with the case of a Government servant whose services had been placed at the disposal of the Corporation. In my opinion, the Lieutenant Governor was competent to entertain the appeal filed by the Appellant and quash the proceedings taken against him by the Corporation.

19. The next question is concerned with the effect of the order of the Lieutenant Governor quashing the proceedings. The material on the record amply demonstrates that although originally the Corporation had expressed the desire that the Appellant should be recalled by his parent department, and it seems that some order was made in that behalf by the Chairman of the Corporation, yet the actual order replacing the services of the Appellant at the disposal of the Government Transport Department proceeded entirely on the basis of Clause (ii) of Sub-rule (2) of Rule 20 of the Central Civil [Services (Classification, Control and Appeal) rules, that is to say, for the purpose of imposing a major penalty on the Appellant. The letters, Annexures X-2, X2-1 and X-4 as well as the letter informing the Appellant that his services had been replaced with his parent department in view of Clause (ii) of Sub-rule (2) of Rule 20 conclusively show that both the Corporation and the Government Transport Department were acting on that view in the Appellant's replacement. Whatever may have been the position originally, when the moment arrived to take the necessary steps for replacing the services of the Appellant at the disposal of the Government Transport Department the action was motivated entirely by the desire to impose a major penalty on him. In that context, the order dated April 24, 1968, replacing the Appellant must be considered as an integral part of the disciplinary proceeding. That being so, when the Lieutenant Governor quashed all the proceedings taken against the Appellant, he must be considered to have quashed also the order dated April 24, 1968, replacing the Appellant at the disposal of his parent department. The consequence is that the Appellant must be relegated to the position which he occupied before the suspension order was passed. He must be considered as having occupied the post of Chief Inspector in the Corporation throughout. It is urged by learned Counsel for the Himachal Road Transport Corporation, which has succeeded the Respondent Corporation, that the appointment of the Appellant as Chief Inspector in the Corporation was merely an officiating appointment. In my opinion, whatever be the nature of the status held by the Appellant before he was suspended, he is entitled to that same status. I am also unable to accept the contention of the Respondents that it was not open to the Lieutenant Governor to direct the Corporation to reinstate the Appellant. That direction does no more than recognise the legal consequence of the order quashing the disciplinary proceedings and the suspension order.

20. Now, it will be noted that purporting to comply with the order of the Lieutenant Governor directing the Appellant's reinstatement the Government

Transport Department made an order on April 17, 1970, reinstating the Appellant in its service. By a subsequent order dated July 5, 1973, the Commissioner of Transport declared that the reinstatement will be deemed to have come into effect from March 30, 1970. It is not clear from the record before us whether the order dated July 5, 1973 has also been made with a view to complying with the order of the Lieutenant Governor. If it has, it must be treated on the same footing as the order dated April 17, 1970. The order dated April 17, 1970, cannot be sustained. Inasmuch as the order of replacement made on April 24, 1968, was quashed, there can be no question of the Appellant being reinstated in the Government Transport Department. As mentioned above, he stood reinstated in the Corporation, and a valid order replacing his services at the disposal of the Government Transport Department is necessary before he can be said to have returned to his parent department. As the order dated April 17, 1970, was made on the misconceived assumption that thereby effect was being given to the Lieutenant Governor's order directing the Appellant's reinstatement, the order must be treated as having no legal validity. It may be pointed out that a copy of the order dated July 5, 1973, has been allowed to be brought on the record as Annexure X-5 by virtue of an order of this Court dated August 30, 1973. A copy of that order was forwarded by the Commissioner of Transport to the Corporation, and the forwarding note mentions that the Government has taken the view that the reversion of the Appellant to the Government Transport Department is illegal and the period of his suspension is to be treated as on duty with the consequent liability of the Corporation to pay him his arrears and other dues.

21. Learned Counsel for the Himachal Road Transport Corporation relies on *Joginder Singh v. The State of Punjab* 1969 Cri.L. J. 58 *Fateh Singh Chugha v. State of Punjab* AIR 1970 Pb. 315 and *Sohan Singh Vs. The State of Punjab and Others*, in support of the submission that if a Government servant is reverted from deputation or foreign service he cannot be said to have been punished. The question before us is a different one. The facts before us show clearly that the replacement of the Appellant by the order dated April 24, 1968, was a step in the disciplinary proceedings and an integral part of that process. It was not an order by way of punishment. Reliance has also been placed on *Naresh Chandra Saha Vs. Union Territory of Tripura and Others*, for the proposition that the Appellant was not entitled to be restored to his original position on the quashing of the proceeding by the order of the Lieutenant Governor. On a plain reading of the judgment in that case, it is apparent that the facts are distinguishable.

22. In the result, I am of opinion that it is difficult to uphold some of the findings of the learned single Judge. I find myself unable to endorse the finding that the Appellant had no right to claim reinstatement in the service of the Corporation, that the decision to replace the services of the Appellant at the disposal of the Government Transport Department was a unilateral decision and that it was not binding on the Corporation, that the Lieutenant Governor had no " jurisdiction to quash the order of replacement and an appeal was not maintainable before him.

The circumstance relied on by the learned single Judge that the appeal was preferred by the Appellant after he had been reverted to his parent department and assumed the status of a Government servant does not, in my opinion, alter the situation. The order of reversion or replacement had been quashed. As regards his status, the Appellant remained a Government servant throughout. I am also unable to agree that the Lieutenant Governor could not quash the order of replacement or the order of suspension. As regards the conduct of the Appellant in drawing subsistence allowance on being reinstated in the Government Transport Department, I am enable to say that his conduct disentitles him from setting up the case which he has in respect of the legal effect of the Lieutenant Governor's order. In my judgment, the Appellant is entitled to a declaration that the effect of the Lieutenant Governor's order is to put the Appellant back in the position which he occupied in the Corporation before he was suspended on March 17, 1967. The order of April 17, 1970, reinstating him in the Government Transport Department is invalid. The Appellant is entitled to all the benefits of the consequences of this declaration, including arrears of salary and other dues.

23. It may be noticed at this stage that reference was made to Fundamental Rule 54 before us by learned Counsel for the Respondents, but to my mind that provision does not apply. The Appellant was not dismissed, removed or compulsorily" retired and thereafter reinstated.

Point 2:

24. The second point raised by the Appellant is that it is not open to the Corporation, in opposing the writ petition, to challenge the validity of the order of the Lieutenant Governor. On the view taken by me that the order of the Lieutenant Governor cannot be considered invalid, it is not necessary to enter into the point raised here.

Point 3;

25. This point raises the question whether the promotion of certain officers in preference to the Appellant is valid. On March 18, 1971. a Departmental Promotion Committee met to consider the proforma promotions of permanent employees of the Government Transport Department, then on deputation with the Corporation, to the post of Chief Inspector. The case of the Appellant was considered along with other substantive Inspectors and the Committee, proceeding on the view that the post of Chief Inspector was a selection post, found that the Appellant's record was not comparable to that of certain other junior officers and he was, therefore, passed over. It is alleged by the Appellant that he had incurred the displeasure of Shri Surat Singh, General Manager of the Corporation, and as Shri Ajit Kumar son of Shri Surat Singh, was a member of the Departmental Promotion Committee, his case was prejudiced by bias. I am not satisfied by the material on the record that there is any justification for that assertion. There is also nothing to show that any objection was taken by the

Appellant to the presence of Shri Ajit Kumar as a member of the Committee. It is said that the record of the Appellant for a subsequent period was considered and, therefore, the decision of the Committee in respect of the Appellant was vitiated. The minute of the meeting of the Committee is before us. I am unable to find anything therein which supports the contention of the Appellant.

26. It has been urged by learned Counsel for the Himachal Road Transport Corporation that the Appellant should be denied relief inasmuch as he has suppressed material facts in the writ petition. We have been taken through the record, but in my opinion the several instances placed before us cannot be said to amount to a suppression of material facts. Whether the Appellant of his own volition desired to serve the Corporation or not, whether his promotion as Chief Inspector in the Corporation was officiating merely, whether the appeal against the decree of the Senior Subordinate Judge, Mandi, was filed by the Union of India and not by the Corporation, whether he was transferred to Pathankot for good reason or bad, these and the other instances placed before us do not constitute material on the basis of which, to my mind, this case should be disposed of. They may be useful as part of the history of facts; they do not affect the decision of the case one way or the other.

27. It is also urged that the Appellant had not been treated unjustly and therefore he is not entitled to relief. As to that, it seems clear that the conduct of the Respondents amounts to a denial of the consequences of the order of the Lieutenant Governor, and a declaration in the terms already set out above is necessary in the interest of justice.

28. The appeal is allowed, the judgment and order of the learned single Judge dismissing the writ petition with costs are set aside and a declaration is granted in the terms set put above. The Respondents will give effect to that declaration and grant to the Appellant all consequential benefits flowing from it. The Appellant is entitled to his costs of this appeal as well as of the writ petition, which we assess at Rs. 300 in all.

C.R. Thakur, J:

29. I agree.