

**(1966) 08 P&H CK 0001**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ No. 921 of 1964**

Karnail Singh

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

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**Date of Decision :** 08-08-1966

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1967) 1 ILR (P&H) 758

**Hon'ble Judges :** Mehar Singh, J;Mahajan, J

**Bench :** Division Bench

**Advocate :** B.S. Chawla with Mr. S.K. Pipat, for the Appellant; M.R. Sharma and Mr. D.N. Aggarwal, for the Municipal Committee and Mr. G.R. Majithia, for Respondent No. 2., for the Respondent

**Final Decision :** Dismissed

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## Judgement

D.K. Mahajan, J.—This petition under Article 226 of the Constitution of India, in the first instance, came up for hearing before Shamsheer Bahadur J. The learned Judge, by his order dated the 23rd March, 1966, directed that the petition be decided by a Division Bench in view of the importance of the question involved and the likelihood of an appeal under Clause 10 of the Latters Patent. That is how the petition has been placed before us.

The history leading up to this petition is rather interesting. It will be appropriate, therefore, to set out briefly the facts and the circumstances giving rise to the present petition. In the beginning of August, 1956, the petitioner was the Secretary of the Municipal Committee, Moga (hereinafter referred to as the Committee). In August, 1961, a resolution was tabled before the Committee. The substance of that resolution is as follows:

\* \* \* \*

In view of the financial stringency caused by the abolition of octroi duty on foodgrains etc. and the fact that after the enforcement of Executive Officers" Act

and the appointment of Executive Officer, the Secretary has not much to do and his work can be carried out by the Executive Officer very well, without impairing the efficiency of either post, it is resolved that the post of the Secretary is hereby abolished with immediate effect.

\* \* \*

The resolution further resolved that the petitioner be served with notice of the termination of the services u/s 45 of the Punjab Municipal Act, 1911, and he be paid one month's salary in lieu of one month's notice, On this, the petitioner as Secretary made the following report:

\* \* \*

With reference to your proposal dated 21st August, 1961 for the special meeting, it is submitted that I should be granted leave with full pay for the period equal to that earned by me so far and leave on half pay to which I am entitled. At the expiry of such leave granted to me, I should be deemed to have resigned my post. Alternatively, in case my dues for the leave applied for are paid to me in advance, my resignation may be given immediate effect.

Then follows the resolution of the Committee dated the 23rd August, 1961 (Annexure "A"). This resolution is in the following terms:

The proposal was considered in the light of the letter of resignation submitted by Shri Karnail Singh. His resignation is accepted with immediate effect. As Shri Karnail Singh has put in hard and honest labour in his long service to the Committee, the Committee hereby put on record its profound appreciation of the meritorious service of Shri Karnail Singh. As a mark of commendation and goodwill, his request for the grant of pay for the total period of earned leave due and half pay due is hereby acceded to. He is paid all these dues including the Provident Fund etc. as decided above in lumpsum immediately out of the Municipal Fund on completion of his charge. Keeping financial stringency in view as envisaged in the original proposal, the post of Secretary is hereby abolished and the Executive Officer will henceforth perform the duties of the Secretary also, as provided u/s 5 of the Executive Officers' Act. Shri Karnail Singh be relieved immediately by the Executive Officer under the supervision of Sarvshri Kashmira Singh Gill, S.P. and Shri Amrit Lal, M.C.

\* \* \*

On the 25th of August, 1961, the Sub-Divisional Officer, Moga addressed a communication to the Executive Officer of the Committee requiring the Committee to stay the implementation of the above-mentioned resolution till further orders. It was also pointed out in this communication that an inquiry was pending against the Secretary with the Punjab Government, and therefore, it had to be decided whether the resignation could be accepted under the circumstances. In an urgent special meeting of the Committee held on 2nd September, 1961, the aforesaid communication of the Sub-Divisional Officer was

considered and the following resolution, (annexure "E"), was passed:

\* \* \*

The Committee has given its thoughtful consideration to the letters received from the S.D.O., Moga. There is no information whatsoever about any such alleged enquiry in the Municipal Office. Therefore, the Committee is of the view that there are no grounds to reconsider its previous decision embodied in Resolution No. 175 dated 23rd August, 1961.

Shri Karnail Singh has agreed with the Committee in session to be relieved by the afternoon of 4th instant and as such the Executive Officer will perform the duties and exercise the powers of Secretary after that date. Shri Karnail Singh is paid salary for total leave period on full pay and half pay and provident Fund also, as desired earliest, vide Resolution No. 175 of 23rd August, 1961.

Furthermore, at the request of Shri Karnil Singh, the Committee agrees that in case of revival of post, he will be given the chance of service with the Committee.

\* \* \* \*

On the 4th September, 1961, Shri R.I.N. Ahooja, Secretary to Government, Punjab, in the exercise of powers conferred upon him u/s 41 of the Punjab Municipal Act, directed the Municipal Committee Moga to stop, with cumulative effect, two increments of Karnail Singh, its Secretary, as he, in the opinion of the State Government, is negligent in the discharge of his duties. On the 4th September, 1961, Karnail Singh relinquished charge of the post of the Secretary and handed over to the Executive Officer of the Committee. In September, 1961, the Governor of Punjab, in exercise of the powers vested in him u/s 236 (1) of the Punjab Municipal Act, annulled the first resolution of the Municipal Committee dated the 23rd August, 1961. In pursuance of the Governor's order, the Executive Officer wrote to the Secretary on the 25th October, 1961 asking him whether, in view of the Government orders, he was prepared to withdraw his resignation which had been accepted by the Committee as well as to deposit back in the Municipal Fund the amount of leave salary and Provident Fund paid to him in implementation of the Committee's second resolution dated the 2nd September, 1961. In reply to this letter, the petitioner wrote back as follows:

\* \* \* \*

In view of the Government order conveyed by you, the status que has been restored and the consequences of the Government order have to be obeyed. On my part, I am willing to comply with Government orders and as such I should be informed as to from whom I am to take over charge.

\* \* \* \*

The Executive Officer again wrote to the petitioner to confirm whether he will deposit the amount paid to him as Provident Fund and Leave salary on 4th September, 1961, before the question of his joining back on his post was

decided. The reply to this by the petitioner is dated 4th November, 1961 and is to be found in Annexure "J". It is in these terms:

\* \* \* \*

I most respectfully beg to point out that according to the order dated 28th September, 1961 of the Governor of the Punjab I continue to be the Secretary of the Municipal Committee, Moga, and it is obligatory on the Committee to allow me to function as such without imposing any prior condition. I, however, again assure you that I am willing and prepared to carry out the directions of the Committee regarding the refund of the amount (referred to in the memo under reference) due from me under the rules.

I am further to add for your kind information that there is absolutely no need for getting any confirmation etc, from me because no employee can dare refuse to comply with any lawful directions the competent authority under whom one is working.

\* \* \* \*

The Executive Officer wrote to the President, Municipal Committee, Moga on the 16th November, 1961 requiring the Committee to call an urgent special meeting in order to implement the order of the Government annulling the resolution of the Municipal Committee passed on 23rd August, 1961. In this letter, it was pertinently pointed out that the post of the Secretary is statutorily essential u/s 38 of the Punjab Municipal Act and that it could not be abolished unless the Act itself was amended. In the wake of this correspondence, the petitioner wrote to the Executive Officer (Annexure "L") intimating that all undertakings given by him including his report on the proposal side of resolution No. 175 dated the 23rd August, 1961 stand automatically cancelled and withdrawn in view of the annulment of the said resolution by the Punjab Government. It appears that on 22nd December, 1961, the Committee reconsidered the entire matter and did not favour the comeback of the petitioner. They also decided not to comply with the Government's order of 23rd August, 1961 by eight votes to six. The petitioner was never permitted by the Committee to join the post of the Secretary. In May, 1962, the Government seems to have reconsidered the matter and come to the conclusion that the Committee may be allowed to accept the resignation of the petitioner. It was also made clear to the Committee that they could not abolish the post of the Secretary (vide Annexure "O"). On the 22nd December, 1962, the following resolution was passed in an urgent special meeting of the Committee:

Government Memo No. 1894-CI (2 CI)-62-20453 dated 18th May, 1962 noted. The resignation of Shri Karnail Singh already stands accepted. The matter of the revival of the post of the Secretary and the application of Shri Karnail Singh be got legally examined by the President. Sarvshri Kashmir Singh Chawla, Kashmira Singh Gill, S. Nachhatar Singh, Dr. Mohan Singh and Dr. Madan Lal Dhir and Ch. Nand Lal are of the view that the Government letter be complied with.

On the 18th of April, 1963, the petitioner, in a letter, addressed to the Secretary, Local Self Government, Chandigarh, prayed that he may be permitted to join this post as the Secretary of the Committee (Annexure "S"). This representation was followed by another dated the 10th of July, 1963 (Annexure "U"). On the 7th February, 1964, the following notification was issued by the Government:

In exercise of the powers conferred by section 19 of the Punjab General Clauses Act, 1898, the Governor of Punjab is pleased to rescind his order dated the 28th September, 1961, whereby he annulled the Resolution No. 175 passed by the Municipal Committee, Moga in its meeting held on the 23rd August, 1961 regarding the acceptance of resignation of Shri Karnail Singh, Secretary of, the said Committee.

\* \* \* \*

R-1 is the resolution of the Committee passed in its urgent special meeting held on 27th March, 1964, whereby in pursuance of Punjab Government's order dated 8th February, 1964, the Committee appointed Om Parkash Mehta, Octroi Superintendent as its Secretary. The petitioner made a representation to the Minister on the 14th April, 1961. He repeated his prayer to be permitted to join as Secretary of the Committee. By a notification of the 6th of May, 1934, Government superseded the Committee (See Annexure "X").

2. The aforesaid facts have led to the present petition by Karnail Singh under Article 226 of the Constitution of India. In this petition, it is prayed that an appropriate writ, direction or order be issued to the respondents to deem the petitioner to be the Secretary of the Municipal Committee, Moga. The respondents to the petition are the State of Punjab and the Sub-Divisional Officer, Moga, who is the Administrator of Committee. Both the State Government and the Administrator of the Municipal Committee have filed the returns. So far as the facts go, there is no dispute. The entire controversy is on purely legal questions.

3. Mr. B.S. Chawla, learned counsel for the petitioner, contended that the resolution No. 175 dated 23rd August, 19 31 had been annulled by the Government and, therefore, the resignation of the petitioner was meaningless because he had resigned in pursuance of the aforesaid resolution. It is maintained by the learned counsel that the Government had no power to cancel the order rescinding the resolution of 23rd August, 1961; and for this contention, he relies upon a Division Bench decision of this Court in *Hardyal Rai v. The State of Punjab* C.W. No. 1084 of 1962 Civil Writ No. 1084 of 1962, decided on 25th August, 1984. The learned counsel also places his reliance on the decisions in *Kamla Prasad Khetan Vs. The Union of India (UOI)*, ; *The State of Bihar Vs. D.N. Ganguly and Others*, and *Gopal Jairam v. State of Madhya Pradesh* AIR 1951 Nag. 181, it is also urged that the Committee had no power to abolish the post of the Secretary-the post being a statutory post. It is not disputed that the incumbent of the post of the Secretary could resign. But it is maintained that, in

the present case, the resignation was not voluntary but was by reason of resolution No. 175 already referred to. As the resolution was rescinded by the Government, the resignation also automatically came to an end. In any case, the petitioner withdrew his resignation and even if it be held that the Government could withdraw the order of annulment, there was no resolution by the Committee accepting the resignation of the petitioner. Therefore it is urged that the petitioner should be deemed to be in service as Secretary of the Committee.

4. Before dealing with the contentions of the learned counsel, it will be appropriate to bring in broadly two facts, namely, (1) that the Octroi Superintendent had been appointed Secretary to the Committee on 27th March, 1964, before the present petition was filed on 19th May, 1964. The new Secretary was not made a party to this petition. However, later on, on the application of respondent No. 2, he has now been impleaded as a party vide orders dated 25th July, 1936; (2) that right up to date, the petitioner has not deposited back the amounts withdrawn by him in accordance with resolution No. 175 dated 23rd August, 1931, in pursuance of which he resigned from the post of the Secretary to the Committee. This resignation was tendered by him at a time when two of his increments had been stopped by the Government for negligence in the discharge of his duties.

5. No attempt was made by the learned counsel for the State or for the Administrator to controvert the argument of the learned counsel for the petitioner that the post of the Secretary could not be abolished; it being a statutory post. It may be mentioned that in the various communications, that passed between the Government and the Sub-Divisional Officer, the Government's stand was that the post of the Secretary could not be abolished. To that extent, the learned counsel for the petitioner is right. Section 38 of the Punjab Municipal Act, 1911 provides that

every Committee shall, from time to time, at a special meeting appoint, subject to the approval of the State Government, one of its members or any other person to be its Secretary.

It is, therefore, clear that no exception could be taken to the contention of the learned counsel for the petitioner that the post of the Secretary could not be abolished and, to that extent, the resolution No. 175 of the Committee is ultra vires the Municipal Act. If the petitioner had been removed from his office by reason of the post of the Secretary having ceased to exist, there would be no difficulty in granting his prayer. But, in the present case, the petitioner resigned from his post.. The resignation could be attributed to resolution No. 175 or to the Government's action in stopping his two increments. But the fact remains that the petitioner did resign and in pursuance of that resignation, took all the benefit that the resolution No. 175 conferred on him. He has kept that benefit with him even up to this date.

6. This brings me to the consideration of the question whether the Government

could rescind resolution No. 175 of the Committee. Chapter 12 of the Punjab Municipal Act deals with the control of the Municipal Committees and section 236 is one of the provisions in that Chapter. This section is headed-"Power of State Government and its officers over Committees". The substantive provision, so far relevant for our purpose, reads thus-

(1) The State Government and Deputy Commissioners, acting under the orders of the State Government, shall be bound to require that the proceedings of Committees shall be in conformity with law and with the rules in force under any enactment for the time being applicable to Punjab generally or the areas over which the committee have authority.

(2) The State Government may exercise all powers necessary for the performance of this duty, and may among other things, by order in writing, annul or modify any proceeding which it may consider not to be in conformity with law or with such rules as aforesaid, or for the reasons which would in its opinion, justify an order by the Deputy Commissioner u/s 232.

(3) \* \* \* \*

\* \* \* \*

This provision clearly justifies the Government's action in rescinding the resolution No. 175 dated 23rd August, 1961. The post of the Secretary was a statutory post. It could not be abolished and as by this resolution, it was abolished, the Government could annul the resolution. Whatever followed in the wake of this resolution was merely consequential so far as the Committee was concerned. So far as the petitioner was concerned, the position was two-fold-

(1) He could comply with the resolution as he did in his own way by sending in his resignation; or

(2) He could refuse to comply with the resolution. If he had refused to comply with the resolution, there would have been no difficulty in the present proceedings so far as the petitioner is concerned. The difficulty arises by reason of the fact that he not only complied with the resolution and tendered his resignation but the move to tender resignation emanated from him and he seems to have been prompted to this course either by reason of the Government's decision to withhold his two increments or that the post was being abolished or for reasons of immediate monetary gain. The monetary benefit gained has not so far been parted with, though, of course, he has been repeatedly saying in his various communications that he is willing to do so, or in other words, he is willing to return the benefit which he took under the resolution in the shape of salary, provident fund etc.

7. The next question, that arises for determination, is whether the Government could withdraw the order of annulment passed by it earlier as it did in the present case. So far as this matter is concerned, it is concluded by a direct decision of this Court in *Hardyal Rai's* case, wherein it was held that an order

passed u/s 236 of the Punjab Municipal Act unless it is a statutory order or a legislative order, cannot be withdrawn by having recourse to section 21 of the Punjab General clauses Act. The present order is not of the kind which falls within the ambit of section 21 of the Punjab General Clauses Act, as interpreted in Hardyal Rai's case<sup>1</sup>. The other decisions relied upon by the learned counsel for the petitioner, excepting Gopal Jairam's case, do not support him.

8. The next argument, that has been urged on behalf of the respondent, is that the order superseding the order of annulment of resolution No. 175 cannot be called in question under Article 226 of the Constitution of India inasmuch as it is an administrative order. It is also maintained that the order superseding the order of annulment is valid. In support of these contentions, reliance is placed upon the decision in Brij Lal Palta v. The State of Punjab C.W. No. 1245 of 1964, Civil Writ No. 1245 of 1964 decided by Shamsher Bahadur J. on 28th August, 1964. In this case an order was passed u/s 238 superseding the municipal committee. Later on, that order was withdrawn. The question, that arose for determination before the learned Single Judge, was whether the order of supersession could be withdrawn. The learned Judge held that it could be withdrawn as both the order of supersession and the order creating that supersession were administrative orders. But, with utmost respect to the learned Judge, we are unable to hold that this case lays down a correct rule of law. In the first place, this decision runs counter to the Division Bench decision of this Court in The Municipal Committee, Kharar v. The State of Punjab 1966 Curr. L.J. 290, which took a view contrary to that taken by Shamsher Bahadur J. The learned Judge relied on the decision of the Supreme Court in Radeshyam Khare and Another Vs. The State of Madhya Pradesh and Others, , in support of his conclusion that the order passed u/s 238 of the Punjab Municipal Act is an administrative order. In our view, the decision of the Supreme Court relied upon does not support that conclusion. As a matter of fact, the decision clearly supports the view taken by the Division Bench in the Municipal Committee, Kharar's case. Their Lordships of the Supreme Court were considering two provisions of C.P. and Berar Municipalities Act (2 of 1922) namely, sections 53-A and 57. It was with reference to an order u/s 53-A of that Act that their Lordships observed that the order was an administrative order. The following paragraph from their Lordships' decision would be helpful in understanding the considerations which prevailed with them ultimately to hold that an order u/s 53-A was an administrative order:

\* \* In the first place it has to be remembered that the sections under consideration only confer certain powers on the, State Government but that the latter is not bound to take any action under either of them. In the next place it should be noted that the two sections differ materially in their scope and effect. u/s 53A the State Government may only appoint a servant of the Government as the Executive Officer of the committee and may determine, from time to time, which powers and duties and functions of the Committee, its President, Vice-President or Secretary shall be exercised and performed by such officer and

indicate whether, they should be exercised and performed in, addition to, or to the exclusion of their exercise and performance by the said Committee, President, Vice-President or Secretary. The wording of S. 53-A makes it quite clear that the action that may be taken thereunder is to be effective for a temporary duration not exceeding 18 months and the purpose of taking such action is to ensure the proper performance and discharge of only certain powers, duties and functions under the Act. The section does not, in terms; affect, either legally or factually, the existence of the Committee, its President, Vice-President or the Secretary. Section 57, however, authorises the State Government, in the circumstances mentioned in the opening part of that section, to dissolve the Committee itself and order a fresh election to take place so that the Committee as a legal entity ceases to exist and all the sitting members of the Committee become *fructus officio*. If after such fresh election the same situation prevails, then that section further authorises the State Government to declare the Committee to be incompetent or in default or to have exceeded or abused its power as the case may be and to supersede it for such period (not limited by the section) as may be specified in the order. The effect of an order made under S. 57 is therefore, extremely drastic and puts an end to the very existence of the Committee itself and, in view of the grave nature of the consequences that will ensue, the legislature presumably thought that some protection should be given to the Committee before such a drastic action was taken and accordingly it provided, by sub-section (5) of that section, that no order should be passed until reasonable opportunity had been given to the Committee to furnish an explanation a provision which clearly indicates that action under S. 57 can only be taken after hearing and considering all the explanations furnished by or on behalf of the Committee. The legislature did not think fit to provide a similar safeguard in S. 53A presumably because the order under the last mentioned section was of a temporary duration, was not very drastic and did not threaten the very existence of the Committee. A cursory reading of the two sections will also indicate that the conditions precedent to the exercise of the powers under both sections overlap to some extent, namely, that action can be taken under both if the Committee is not competent to perform the duties imposed on it.....

To the extent that the requirements of the two sections overlap the State Government has the option of taking steps under one section or the other according to its own assessment of the exigencies of the situation. The position, therefore, is that if a Committee is not competent to perform the duties imposed on it the State Government has to make up its mind as to whether it should take any action at all and, if it thinks that action should be taken, then it has further to decide for itself as to which of the two sections it would act under. If the State Government considers that the incompetency does not run to a grave extent and the exigencies of the situation may be adequately met by appointing an Executive Officer for a short period not exceeding 18 months with certain powers to be exercised by him, either in addition to or in exclusion of their exercise by the Committee, the President, Vice-President or the Secretary, the

State Government may properly take action under S. 53-A. On the other hand if the State Government considers, having regard to all the circumstances of the case, that the incompetency is much too grave to permit the Committee, its President, Vice-President or the Secretary to function at all, it may take action under S. 57 and dissolve the Committee and direct fresh election to take place. In other words, incompetency on the part of the Committee gives to the State Government an option to apply one of two remedies under the Act, if, that is to say, it considers it necessary to take action at all.

\* \* \*

The provisions of section 238 of the Punjab Municipal Act, are not *pari materia* with section 53-A of the C.P. and Berar Municipalities Act, but are, more or less, analogous to the provisions of section 57 of that Act. Therefore, the observations made by their Lordships with regard to section 57 can only be appropriately applied so far as section 238 of the Punjab Municipal Act is concerned and not the observations which have been made with regard to section 53-A.

9. If our conclusion is correct that the order u/s 238 is not an administrative order, it will follow that it could not be withdrawn u/s 21 of the Punjab General Clauses Act in view of the Division Bench decision of this Court in *Hardyal Rai's* case.

10. There is also another reason why the decision in *Brij Lal Palta's* case cannot be held to be good law so far as the power of the Government to supersede an order passed u/s 238 of the Municipal Act is concerned. Section 238 gives power to the Government to supersede a Committee and sub-section (3) of this section provides that, "the State Government may, if it shall think fit, at any time, constitute another Committee in the place of any Committee superseded under this section. The scheme of this section clearly indicates that the order of supersession of a Municipal Committee once passed is final. Sub-section (3) enables the Government, in the case of a superseded Committee, to constitute a new Committee. If the superseded Committee could be revived, there was no reason for the enactment of this subsection. Under this provision, after the supersession of a Committee, another Committee can be constituted. That clearly implies that the superseded Committee cannot be reconstituted. Thus once a Committee is dissolved, the only manner in which it could be brought back to life would be in accordance with the provisions of Chapters II and III of the Punjab Municipal Act. Therefore, the view of the learned Judge, that an order u/s 238 can be withdrawn by the State Government, cannot be accepted as correct. In whatever way the matter is examined, it appears to us that the decision in *Brij Lal Palta's* case does not lay down good law and we have no hesitation in overruling the same.

11. Only one argument remains to be noticed, namely, that a resignation once tendered cannot be withdrawn. This contention, no doubt, finds support from the decision of the Allahabad High Court in *Jwala Prasad v. State of Uttar Pradesh*<sup>8</sup>.

But there is no reasoning given by the learned Chief Justice for the view taken by him. However, it is not necessary, for our purposes, to finally pronounce on this matter and we would, therefore, leave this question open.

12. The position thus boils down to this; The Committee passed a resolution, in pursuance of which the petitioner resigned and in terms of his resignation, he derived certain benefits. This Government, later on, annulled that resolution. Thereafter the order of annulment has been superseded. This order of supersession has been held by us to be invalid. Therefore, the petitioner, whose resignation had been accepted, would be justified in saving that he resigned under a misapprehension and is, therefore, still the Secretary of the Committee. This result would have followed if the petitioner had returned all the benefits, he had derived in consequence of that resignation. The petitioner has not returned those benefits up to date. Therefore, we will not be justified in exercising our discretion under Article 226 of the Constitution of India in his favour; particularly, when the Municipal Committee has appointed a new incumbent to the post of the Secretary. The petitioner has not served the Municipal Committee after his resignation. It appears to us that the interests of justice will best be served by declining to grant relief to the petitioner under the provisions of Article 226 of the Constitution. The petition is accordingly dismissed. In the circumstances of this case, we make no order as to costs.

Mehar Singh, C.J.

I agree.