
(2012) 05 P&H CK 0136
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 7553 of 1989

Rajwinder Singh and others	Vs	APPELLANT
State of Punjab and another		RESPONDENT

Date of Decision : 08-05-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 243B, 243H

Citation : (2012) 3 RCR(Civil) 183

Hon'ble Judges : Hemant Gupta, J;A.N. Jindal, J

Bench : Division Bench

Advocate : Namit Sharma, Dr. Balram Gupta, with Mr. Manik Bhakshi and Mr. R.K. Garg, for the Appellant; H.P. Verma, Addl. AG, Punjab, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—This order shall dispose of aforementioned three writ petitions, wherein the petitioners have challenged the legality of Section 16(4) of the Punjab Gram Panchayat Act, 1952 (for short "the Act"), by declaring the same as ultra vires to Articles 14 and 16 of the Constitution of India. The petitioners are working as Panchayat Secretaries in the different Panchayats, even prior to the constitution of Punjab Panchayat Secretaries (Recruitment & Conditions of Service) Rules, 1979 (for short "the Rules"), framed in exercise of powers conferred u/s 16 of the Act. The stand of the petitioners is that constitution of separate service under the control and management of the Panchayat Samiti is ultra vires to Articles 14 and 16 of the Constitution of India and that the petitioners are government servants holding the civil posts under the State.

2. Before the contention of the petitioners are examined, reproduction of certain provisions is necessary. The same are as under:

16. Constitution of Panchayat Secretaries Service: (1) Notwithstanding anything contained in the Act, the Government may, by notification, constitute, in

prescribed manner, the Punjab Panchayat Secretaries Services (herein referred to as the Services).

(2) The Government may make rules for regulating the recruitment, salaries, allowances and other conditions of service of members of the service.

(3) The salary, allowances, gratuity, annuity, pension and other payments required to be made to members of the Service in accordance with the conditions of their service shall be charged upon the Samiti Fund and the Panchayat Samiti may, for making these payments, levy contributions from the Gram Funds of the concerned Gram Panchayat in such proportion as may be fixed by it keeping in view the quantum of work, financial resources and other relevant factors in the case of such Gram Panchayat.

(4) Creation of posts of Panchayat Secretaries in the Service and appointment of persons thereto shall be made by the Government or by an authority empowered by it in this behalf, and every such Panchayat Secretary shall be deemed to be an employee of the Panchayat Samiti in whose jurisdiction he may be serving for the time being.

(5) and (6) xxx xxx xxx

3. In exercise of the powers conferred under subsection 2 of Section 16 of the Act, the State Government has notified Punjab Panchayat Secretaries (Recruitment and Conditions of Service) Rules, 1979. Such Rules provide qualification for appointment on the post, method of recruitment, cadre of service, seniority and liability of members of service to transfer. The relevant Rules are as under :

9. METHOD OF RECRUITMENT - (1) Recruitment to the Service at the time of its initial constitution shall be made by the appointing authority by absorption of persons already in service as Secretary of a Gram Panchayat or group of Gram Panchayats, provided they are found fit by an authority appointed by the Government in this behalf for becoming a member of the Service after taking into consideration their qualifications and service record.

(2) After filling in the vacancies under sub-rule (1), the remaining vacancies and the vacancies which may occur thereafter shall be filled in by direct recruitment :

Provided that twenty-five per cent of the posts shall be reserved for the persons belonging to the Scheduled Castes and five per cent for the persons belonging to the Backward Classes or such percentage of posts as the Government may, from time to time, decide in this behalf shall be reserved for these categories.

(3) The recruitment under sub- rule (2) shall be made by the appointing authority on the recommendation of the Selection Committee constituted under sub- rule (4).

(4) The Government may, from time to time, by notification, constitute a Selection Committee consisting of not less than three and not more than five

officers of the Department :

Provided that at least one of the members of the Selection Committees shall belong to the Scheduled Castes.

10. CADRE OF THE SERVICE - The number of posts created for the Service by the Government or by an authority empowered by it under sub-section (4) of the section 16 shall be deemed to be the cadre of the Service which shall be subject to variation by the authorities referred to in the aforesaid subsection.

4. After the Rules were notified, Part IX in the Constitution was substituted w.e.f. 24.4.1993 by 73rd Constitutional Amendment. As per the said amendment, "Gram Sabha" is defined as a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level; "intermediate level" means a level between the village and district levels specified by the Governor of the State by public notification to be the intermediate level for the purpose of this Part, whereas "Panchayat" means an institution of self government constituted under Article 243B, for the rural areas. Article 243B of the Constitution of India contemplates that there shall be a constitution in every State, Panchayats at the village, intermediate and district level in accordance with the provisions of this Part. Article 243B reads as under :-

243B. Constitution of Panchayats - (1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

(2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

5. Article 243H of the Constitution of India empowers the Panchayat to levy and collect such taxes, duties in accordance with the procedure and subject to such limits as the Legislature of the State may prescribe.

6. In terms of the mandate of Part IX of the Constitution of India, the Punjab Panchayati Raj Act, 1994 was enacted. Section 26 of the aforesaid Act, again empowers the State Government to constitute the Punjab Panchayat Secretaries Services. The service constituted u/s 16 of the Act, is deemed to have been constituted under the said Act. The relevant provisions contained in Sections 26 and 27 of the Act read as under :-

26. Constitution of Panchayat Secretaries Service - (1) Notwithstanding anything contained in this Act, the State Government may, by notification, constitute, in the prescribed manner, the Punjab Panchayat Secretaries (herein referred to as the Service).

Provided that the service constituted u/s 16 of the Punjab Gram Panchayat Act, 1952 shall be deemed to have been constituted under this Act.

Provided further that the rules for regulating the recruitment, salaries allowances

and other conditions of service of members of the Service made under the Punjab Gram Panchayat Act, 1952 shall also be deemed to be made under this Act till such rules are modified, altered or newly framed by the State Government under this Act.

(2) The Secretary shall be incharge of the office of the Gram Panchayat and shall perform all the duties and exercise all the powers imposed or conferred upon him by or under this Act or any rules or bye laws made thereunder.

(3) Subject to rules as may be prescribed by the State Government regarding discipline and control, the Secretary shall act in all matters under the control of the Sarpanch through whom he shall be responsible to the Gram Panchayat.

27. Other employees of the Gram Panchayats - Subject to such rules as may be prescribed in this behalf and with the previous approval of Panchayat Samiti, a Gram Panchayat may employ such other employees as are considered necessary for carrying out the duties imposed on it by this Act.

7. The petitioner has challenged the constitution of Panchayat Secretaries Services for the reasons that it violates Articles 14 and 16 of the Constitution of India and that such Panchayat Secretaries work for the Panchayat, an institution at the grass root level in the rural area, therefore, the petitioners are holding civil posts and entitled to the protection of the Part XIV of the Constitution of India.

8. Learned counsel for the petitioners) has relied upon a judgment of Hon''ble Supreme Court in State of Gujarat and Others Vs. Raman Lal Keshav Lal and Others, to support the argument that the Panchayat service governed and regulated by 1979 Rules is a civil service of the State. In the aforesaid case, the Hon''ble Supreme Court was considering the provisions of Section 203 of the Gujarat Panchayats Act, 1962. Learned counsel for the petitioner(s) has also relied upon a judgment of Division Bench of this Court in Anupama Bhardwaj v. Central Administrative Tribunal, Chandigarh Bench, Chandigarh & others, 2008(3) S.C.T. 617 : 2008(4) RSJ 369, wherein it has been held that source from which salary is drawn by an employee, cannot be the sole factor to determine whether the Lecturers appointed by the State Government are not holding a civil post. Reliance has also been made to M.M.R. Khan and others etc. Vs. Union of India and others, etc., , wherein employees of the statutory canteens were found to be holding civil post; The Superintendent of The Superintendent of Post Offices and Others Vs. P.K. Rajamma, wherein the extra departmental agents connected with the Postal Department were held to be holding a civil post as well as Y.K. Mehta and Others Vs. Union of India (UOI) and Another, , wherein the Staff Artistes of Doordarshan were held to be Government servants.

9. On the other hand, Mr. H.P. Verma, learned Addl. Advocate General, Punjab, has relied upon the judgments of Hon''ble Supreme Court instate of State of West Bengal and Another Vs. West Bengal Regn. Copy Writers Assn. and Another, wherein the judgment referred to by the learned counsel for the petitioner in Raman Lal Keshav Lal's case (supra) has been taken into consideration and

distinguished. Mr. Verma also refer to another judgment in Union Public Service Commission Vs. Dr. Jamuna Kurup and Others, , wherein it has been held that a Municipal Corporation is not the Government and its employees are not the Government servants governed by Articles 309 and 311 of the Constitution of India. Therefore, the petitioners, who are the Panchayat Secretaries recruited and appointed to discharge functions of the Gram Panchayats and Panchayats Samiti cannot be treated to be the Government servants holding a civil post. Reliance has also made to Dr. (Mrs.) Gurjeewan Garewal Vs. Dr. (Mrs.) Sumitra Dash and Others, , wherein the faculty members of the Post Graduate Institute of Medical Sciences were held not to be government servants. It is also pointed out that the State Government has promulgated Punjab Panchayat Samitis and Zila Parishads Employees Pension and Provident Fund Rules, 2000, whereby the Panchayat Secretaries such as the petitioners have become entitled to pension and Provident Fund.

10. Before we consider the respective arguments of the parties, an attempt was made to find out as to what particular advantage will accrue to the petitioners, if they are declared to be Government servants holding civil posts. Mr. Gupta has pointed out that Part XIV of the Constitution of India providing protection of the civil post from dismissal, removal & reduction in rank will be applicable and that the petitioners will be entitled to promotions, which under the Rules are not in provided for.

11. Article 12 falling within Part III of the Constitution of India defines "State" for the purposes of said part to include the Government and Parliament of India and the Government and the Legislature of each of the States and all other local or other authorities within the territory of India or under the Control of the Government of India. Relying upon Article 12 of the Constitution of India, it has been held in numerous judgments that the rights conferred on the citizens under Part III can be enforced against such instrumentalities.

12. The Panchayats or the Municipalities are the local authorities, a separate and distinct juristic entity, to carry out the purposes of Constitution, amenable to the writ jurisdiction being "State" within meaning of Article 12. But for the purposes of Part XIV, the employees engaged for discharging the functions of the Municipalities and the Panchayats cannot be said to be holding civil post.

13. The Acts of the Legislature are contemplated to regulate the recruitment and conditions of service of persons appointed to public service and posts in connection with the affairs of the Union or of any State as provided in Article 309. Such Article reads as under :

309. Recruitment and conditions of service of persons serving the Union or a State -Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State :

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this Article, and any rules so made shall have effect subject to the provisions of any such Act.

14. We have heard learned counsel for the parties at length and found that in terms of Article 309, as reproduced above, the State Legislature is competent to enact law to regulate the recruitment and conditions of services for the civil posts. The State Legislature has enacted Punjab Gram Panchayat Act, 1983 later succeeded by Punjab Panchayati Raj Act, 1994 within its legislative competence. The State Legislature has not provided the status of civil post or a Government servant to the Panchayat Secretaries. Such enactment is an exercise of the powers conferred under Article 309 of the Constitution of India as well as in terms of Entry 5 of List II of Seventh Schedule.

15. The exercise of a statute for recruitment and conditions of service appointed to public service and post will also include the power to regulate the recruitment and conditions of service and also not to include a particular service in terms of Part XIV of Constitution of India. Section 16 of the Act constitutes the Punjab Panchayat Secretary Services. Sub-section 2 empowers the Government to make Rules for regulating the recruitment, salaries, allowances and other conditions of service of members of the Service. The creation of posts of Panchayat Secretaries, the appointment of persons thereto, is required to be made by the Government. However, the salary, allowances and gratuity, annuity, pension and other payments are required to be made to members of the Service in accordance with the conditions of their service is charge upon the Samiti Fund. The Panchayat Samities have been empowered to levy contribution from the Gram funds of the concerned Gram Panchayats in such proportion as may be fixed by it keeping in view the quantum of work, financial resources and other relevant factors in the case of each Gram Panchayat. Sub-section (4) contemplates that such Panchayat Secretary shall be deemed to be an employee of the Panchayat Samiti in whose jurisdiction he may be serving for the time being. Section 16(4) has authorized the Government for creation of posts and also to make Rules to regular the recruitment, salaries and allowances.

16. The fact that the Government has been authorized by the Act of the State Legislature, will not grant the status of a Government servant to the Panchayat Secretaries. The fact that the Government has been authorized to create posts or to make recruitment makes the Panchayat Secretaries, is a method of recruitment. The Panchayat Samities get salary from the Samiti funds. It is the status of the employer, which is relevant to determine the corresponding status of the employees. The employees of statutory Boards and Corporations or for

that matter an instrumentality of the State may be entitled to the protection of the fundamental rights being State within the meaning of Article 12 of the Constitution of India, but that does not make the employees of such statutory Boards and corporations and other instrumentalities of the State, holder of a civil post entitled to protection of Part XIV of the Constitution of India.

17. The judgments referred to by the learned counsel for the petitioners) such as Anupama Bhardwaj, M.M.R. Khan, P.K. Rajamma and Y.K. Mehta cases (supra) have a one thing common that in all these cases, the employer was either the State Government or the Central Government though they were working on contractual basis or under the guise of contract for the benefit of the principal employer. The status of the employer in all these cases was that of the State, to which Part XIV was applicable. But it is the nature of the employment, which was the subject matter of interpretation. Therefore, the said judgments are of no help to the arguments raised by the learned counsel for the petitioners).

17A. However, the judgment in Raman Lal Keshav Lal's case (supra), as referred by the learned counsel for the petitioner(s), was set aside and the appeal as well as writ petitions were set down for hearing again by the Constitutional Bench. The employees working under the Panchayat institutions claimed benefit of recommendations of the two Pay Commissions i.e. Sarela and the Desai Commissions. The Gujarat High Court has allowed the benefit of such pay scales. The Constitutional Bench in its later judgment reported as State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, has dismissed the State's appeal. Section 203 of the Gujarat Panchayats Act, 1962 constituted single centralized Panchayat Service distinct from the State Service. It was the service parallel to the State service. The question examined was whether the members of the Panchayat Service are Government servants or not. The Court held that it is neither politic nor possible to lay down any definitive test to determine when a person may be said to hold a civil post under the Government. Several factors may indicate the relationship and none may be conclusive. It was held to the following effect :

27.....The presence of all or some of the factors, such as, the right to select for appointment, the right to appoint, the right to terminate the employment, the right to take other disciplinary action, the right to prescribe the conditions of service, the nature of the duties performed by the employees, the right to control the employee's manner and method of the work, the right to issue directions and the right to determine and the source from which wages or salary are paid and a host of such circumstances, may have to be considered to determine the existence of the relationship of master and servant. In each case, it is a question of fact whether a person is a servant of the State or not.

Considering the nature of Panchayat Service, the Court observed as under :

29. Considerable stress was laid by the counsel for the State of Gujarat on the statement in Section 203 that such service (panchayat service) shall be distinct

from the State service. We do not think this is to be interpreted as a disclaimer by the legislature that the panchayat service is a service under the State. All that it can possibly mean is that the panchayat service is not a service which can be identified with other State services for the reason that while the panchayat service too discharges the duties connected with the affairs of the State, it does so not directly under the State but under the various Panchayat Institutions to whom are delegated or transferred certain functions of the State Government. Panchayat service is distinct from a State service because the Panchayat Institutions whom it serves together constitute an almost parallel but subsidiary government. It is only in that sense panchayat service is distinct from a State service and not in the same (sic sense) that members of the service are not servants of the State.

18. The issue examined by the Hon"ble Supreme Court was whether the employees of Panchayati Raj institutions are entitled to same pay and benefits as are admissible to Government servants. It was a question of parity of emoluments and not an abstract status of a Government servant, as in the present case without any specific object in mind.

19. In the aforesaid case, the Court has considered the judgment of State of Assam and Others Vs. Shri Kanak Chandra Dutta, , wherein it has been held that it is a question of fact in each case, where the following tests are required to be taken into consideration i.e. (i) whether there is relationship of master and servant between the State and a person said to be holding a post under it; and (ii) Whether the relationship denotes the factum of the employee being a holder of a civil post. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. It was held that relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post. As a matter of fact, in Kanak Chandra Dutta's case (supra), the question examined is whether Mauzadars in the Assam Valley holds a civil post. Kanak Chandra Dutta was suspended by the Deputy Commissioner and subsequently dismissed from service. In the said judgment again, the employer was the State of Assam and the nature of the contract with the State determined the applicability of Part XIV to Kanak Chandra Dutta.

20. In Dr. Jamuna Kurup's case (supra), the Municipal Corporation of Delhi sent a requisition to Union Public Service Commissioner for recruitment of Ayurvedic Vaid. The advertisement has a clause for relaxation of age limit for employees of the Government of India and Union Territories as also of the Municipal Corporation of Delhi. The High Court allowed the writ petition granting benefit of age relaxation corresponding to the number of years, such petitioners have worked as contractual Medical Officers (Ayurveda) under the Corporation. The

argument of Union Public Service Commission before the Hon''ble Supreme Court was that consideration of relaxation of age is meant for regular and permanent employees of Municipal Corporation and not to short term contractual employees. In the aforesaid case, the Hon''ble Supreme Court held that a Municipal Corporation is not Government and its employees are not Government servants governed by Articles 309 to 311 of the Constitution. It was held to the following effect :

16.....But a municipal corporation is not "Government" and municipal employees are not government servants governed by Articles 309 to 311. Though permanent employees of municipal corporation or other statutory bodies may be governed by statutory rules, they do not enjoy the status of government servants.....

21. In Dr. Gurjeewan Garewal's case (supra), the Hon''ble Supreme Court had the occasion to examine the expression "civil post" appearing in Article 311 of the Constitution of India. The dispute was as to whether the employees under the Post Graduate Institute of Medical Education and Research are the holders of civil post. It was held to the following effect :

14. Reverting back to the case in hand, Section 4 of the Post Graduate Institute of Medical Education and Research, Chandigarh Act, 1966 (PGIMER Act) says that PGIMER is a "body corporate which is having a perpetual succession and a common seal with power". This clearly provides that PGIMER is a separate entity in itself. Admittedly, the employees of any authority which is a legal entity separate from the State, cannot claim to be holders of civil posts under the State in order to attract the protection of Article 311. There is also no master and servant relationship between the State and an employee of PGIMER, which is a separate legal entity in itself. It is a settled position that a person cannot be said to have the status of holding a "civil post" under the State merely because his salary is paid from the State fund or that the State exercises a certain amount of control over the post. The PGIMER Act might have provided for some control over the institution, but this doesn't mean that the same is a State for the purpose of Article 311. Therefore, the employees of PGIMER cannot avail the protection of Article 311 since the same can be claimed only by the members of a civil service of the Union or of all-India service or of a civil service of a State or by persons who hold a civil post under the Union or a State. PGIMER cannot be treated as a "State" for the purpose of Article 311 and the employees therein are not holding any "civil post". In result, the 1st respondent is not holding a "civil post" and she cannot claim the guard of Article 311.

21. In the aforesaid case, the Hon''ble Court has referred its earlier decision rendered in Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd., to hold that Hindustan Steel Company is not a State for the purposes of Article 311 of the Constitution of India.

23. We may refer to a Constitutional Bench judgment reported as Steel Authority

of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , wherein it was held that the Government acting through the instrumentality or agency or Corporation should equally be subject to same limitations, as the State. However, it observed as under:

37. We wish to clear the air that the principle, while discharging public functions and duties the government companies/corporations/societies which are instrumentalities or agencies of the Government must be subjected to the same limitations in the field of public law - constitutional or administrative law - as the Government itself, does not lead to the inference that they become agents of the Centre/State Government for all purposes so as to bind such Government for all their acts, liabilities and obligations under various Central and/or State Acts or under private law.

24. While considering the question regarding the status of employees engaged by the public sector undertakings through contractor, it observed as under:

39. There cannot be any dispute that all the Central Government companies with which we are dealing here are not and cannot be equated to the Central Government though they may be "State" within the meaning of Article 12 of the Constitution.....

25. Similar provision of the Constitution of the Municipal service and the fact that no such member shall be deemed to have been appointed to any civil service or post under the State exist in Section 38 of the Punjab Municipal Act, 1911. The legality of the provisions of Section 38 inserted in 1975 has been upheld by a Full Bench of five Judges" on 05.04.1977 in CWP No. 8497 of 1976. Though the record has not been found in respect of CWP No. 8497 of 1976, the Registry has reported that the case might have been burnt but such judgment finds mention in the later Full Bench judgment reported as 1983 (1) ILR (Punjab and Haryana) 535, Ram Parkash Sharma v. State of Punjab.

26. In the present case, Section 5 of 1953 Act empowers the State Government to establish the Gram Sabha, whereas as per sub-section (2) of Section 6, every Gram Panchayat constituted shall be notified by its name in the official gazette and it shall, by the name so notified, be a body corporate having perpetual succession and a common seal, and subject to any restriction by or under this Act or under any other law, shall have power to acquire, hold administer and transfer property moveable or immovable, and to enter into contracts and shall by the said name sue and be sued.

27. Therefore, the judgment in Kanak Chandra Dutta's case (supra) is not applicable to the facts of the present case. Even otherwise, more than one test laid down in the aforesaid judgment is not satisfied, as (i) the power is delegated to the Government to select and appoint the holder of the post and not that the State Government is exercising its power to make appointments as a principal; (ii) the Panchayat Secretaries have to work under the control of the Panchayat Sami-ties; and (iii) the wages and remuneration are payable by the funds of

Panchayat Samities. Therefore, the tests laid down in the aforesaid judgment are not satisfied by the petitioners.

28. The petitioners claims protection of Part XIV of the Constitution of India as a Government servant. The nature of appointment has been determined by the State Legislature. The Act has been framed within its legislative competence and in terms of Article 309, the state legislature can regulate the recruitment and conditions of service. The impugned enactment is in terms of article 309 of the constitution and cannot be said to violative of Article 14 or 16 as the petitioner have no vested right to be civil servant. The power to regulate the recruitment to civil post also includes power not to treat a service as a civil service. Therefore, the claim of the petitioners that they should be treated as a Government servant is a mere wish and not a right. It may be noticed that the petitioners have the protection in terms of Rules notified as their services cannot be terminated except in accordance with the Punjab Civil Services (Punishment and Appeals) Rules, 1970. Therefore, as far as the service conditions are concerned, the petitioners are statutorily protected.

29. It is not necessary that a Government servant has a definite promotion channel in all circumstances. The availability of the promotional avenues depends upon service to service. Therefore, mere fact that the petitioners may not have any promotional avenues, as Panchayat Secretaries, is not a ground to treat them as a Government servant. In view of the above, we do not find any merit in the present writ petitions. The same are accordingly dismissed.