
(1975) 10 SC CK 0015

In the Supreme Court Of India

Case No : Civil Appeal No's. 518-530 of 1970

State of Punjab and Others

APPELLANT

Vs

Balbir Singh and Others

RESPONDENT

Date of Decision : 06-10-1975

Acts Referred:

Constitution of India, 1950 — Article 311(2), 372
Punjab Reorganisation Act, 1966 — Section 2, 3, 4, 6, 81
Punjab Service of Engineers (Class II) Public Works Department (Buildings and Roads Branch) Rules, 1965 — Rule

Citation : AIR 1977 SC 629 : (1977) LabIC 281 : (1976) 2 LLJ 4 : (1976) 3 SCC 242 : (1976) 2 SCR 115

Hon'ble Judges : P. K. Goswami, J;N. L. Untwalia, J;A Alagiriswami, J

Bench : Full Bench

Advocate : O.P. Sharma, V.C. Mohajan, Kapil Sibal and N.S. Das Balh, for the Appellant; S. K. Mehta, R.K. Nagaraja, M. Qamaruddin, P.N.Puri and K.L. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

N.L. Untwalia, J.—In these 13 appeals by special leave the appellants are (1) the State of Punjab, (2) Union of India. Respondent No. 1 in Civil Appeal No. 519/1970 and the sole respondent in each of the remaining 12 appeals are the concerned Government servants. The said 13 Government servants along with two more filed 15 writ petitions to challenge order dated the October 28, 1966 made by the Government of the erstwhile undivided State of Punjab. Their writ applications were allowed by a learned single Judge of the High Court of Punjab and Haryana at Chandigarh, 15 Letters Patent appeals were filed by the appellants. They have been dismissed by a Division Bench of the High Court. 13 appeals have been brought to this Court and not the other two. Since the Division Bench of High Court has disposed of all the 15 Letters Patent appeals by a common judgment, to avoid confusion in the statement of facts we think it better to state in a chart form the number of the Civil Appeal, the corresponding

number of the L. P. A. and the name of the Government servant concerned.

At the outset it may be stated that the respondent in Civil Appeal No. 521 Dasaundi Ram is dead and that appeal has abated on that account. Bhagwan Singh, respondent in Civil Appeal No. 519 does not seem to be in service any longer and nobody has appeared in this Court on his behalf. Out of the remaining 11 respondents we were informed at the Bar, that the 7 respondents in Civil Appeals 522 to 527 and 529 have since retired from service. Only 4 of the respondents in Civil Appeals 518, 520, 528 and 530 are still in service.

2. Respondents Balbir Singh, Surmukh Singh, Dasaundi Ram. Jagdish Singh, Surat Singh, Kartar Singh and Gurbux Singh were promoted and appointed on officiating basis as Sub-Divisional Officers in the Punjab Public Works Department (Buildings and Roads Branch) on various dates between 30-7-1960 to 10-5-1963. Respondents R.R. Bhanot, Jodh Singh and Gurcharan Singh were so appointed between dates 17-12-1957 and 10-12-1959. Respondents Shamsher Singh and Bakhtawar Singh were promoted on 22-10-1956 and 1-3-1956 respectively. Respondent Kartar Singh was working as Planning Assistant-cum-Drafts-man while the other respondents were Overseers before they were appointed as officiating Sub-Divisional Officers. By the impugned order dated October 28, 1966 the then Government of the erstwhile Punjab State reverted them to their original rank. The orders of their reversion were challenged by the said respondents on the ground that they were governed by the Punjab Service of Engineers, Buildings and Roads Branch (Recruitment and Conditions of Service) Rules, 1942 (for brevity, the 1942 Rules). They claimed that they had become automatically confirmed as members of the service under the said Rules and could not be reverted without complying with the provisions of Article 311(2) of the Constitution of India and the other statutory Rules relating to disciplinary matters. This was the only point which succeeded before the learned single Judge and he allowed all the writ applications, it appears, without fully appreciating the distinction of facts of the various cases for the acceptance of this ground.

3. Respondent Bhagwan Singh was appointed as temporary Assistant Engineer on completion of his six months training period with effect from December 3, 1960. His service was terminated by the then Punjab Government by order dated October 28, 1966 on the ground of his having been found unsuitable for appointment to P.S.E. Class II (B & R Branch). Bhagwan Singh also relied upon 1942 Rules before the learned single Judge and succeeded.

4. The Division Bench has very carefully and elaborately considered the application of the 1942 Rules to the cases of the respondents. It has disagreed with the single Judge's view. After copiously quoting from the 1942 Rules, the High Court in appeal has referred to the Punjab Service of Engineers Class I. P.W.D. Buildings and Roads Branch) Rules 1960 (for brevity, the 1960 Rules) regulating the recruitment and conditions of service of persons appointed to the P.S.E. Class I service. The 1960 Rules came into force on and from March 18,

1960. It had repealed the 1942 Rules by Rule 24 with a saving clause in the proviso appended thereto. The High Court then referred to the Punjab Service of Engineers, Class II P.W.D.(Buildings and Roads Branch) Rules, 1965 (for brevity, Class II 1965 Rules). The said Rules came into force from February 19, 1965. The stand on behalf of the State of Punjab in the High Court was : (1) that the 1942 Rules did not govern the cases of the respondents as the said Rules applied to class I service consisting of Assistant Executive Engineers and officers of higher ranks only; (2) that the respondents had to be taken in P.S.E. Class II service in accordance with Rule 6(5)(b) of Class II 1965 Rules read with paragraph 1(d) of Appendix 'G' of the said Rules, in consultation with the Punjab Public Service Commission : (3) that since the Commission did not find them suitable for being admitted to that service, they were reverted to their substantive rank in accordance with the terms and conditions of their service and not by way of punishment.

5. The High Court made a comparative study of 1942 Rules, 1960 Rules and Class II 1965 Rules and came to the conclusion that the officiating Sub-Divisional Officers, as the respondents were, not being Assistant Executive Engineers, were not governed by the, 1942 Rules. None of them had claimed that he was holding the rank of Assistant Executive Engineer in any capacity. The view of the learned single Judge that the Sub-Divisional Engineers were included in the category of Assistant Executive Engineers did not find favour with the Bench. The Bench further pointed out that the respondents should be divided into three categories : (a) those who were promoted subsequently to the repeal of the 1942 Rules (b) those who were promoted within three years preceding such repeal and (c) those who were promoted more than three years prior to such repeal. The respondents promoted on dates between 30-7-1960 and 10-5-1963 fell within the first category. Obviously they could not claim the protection on the basis of 1942 Rules. The three respondents who were appointed as officiating Sub-Divisional Officers between 17-12-1957 and 10-12-1959 fell within the second category. The High Court rightly held that they had not completed the maximum period of three years probation to acquire the substantive posts of Sub-Divisional Officers fixed under Rule 12(3) of 1942 Rules, even assuming that they could take advantage of the same. Respondents Shamsheer Singh and Bakhatawar Singh had been promoted in the year 1956 and fell within the third category. The Division Bench pointed out that in their case the difficulty in the application of the 1942 Rules was that they were promoted in the erstwhile Patiala and East Punjab States Union. It could not be shown that there were any statutory Rules governing their conditions of service and appointments as Sub-Divisional Officers. Since on the date of the impugned order dated 28-10-1966 they had put in more than 10 years of service as officiating Sub-Divisional Officers, their case was considered to be a hard one. But for the purpose of the law they could not be given the advantage of the 1942 Rules and obviously so.

6. It is plain that the case of none of the respondents was covered by the 1942 Rules. All the respondents had to be absorbed and admitted to P.S.E. Class II

service in accordance with Class II 1965 Rules and that required the approval of the Public Service Commission. Since Commission did not find them suitable, they had to be reverted to their substantive ranks. On a consideration of a large number of authorities the High Court has rightly come to the conclusion that their reversion was not hit on account of the non-compliance with the provisions of Article 311(2) of the Constitution or any Rules governing the disciplinary action.. The reversion was not by way of punishment. This aspect of the matter is now squarely covered by the decision of this Court in *Samsher Singh Vs. State of Punjab and Another*,

7. A few new points were urged on behalf of the respondents in the Letters Patent appeals. They were not allowed to be raised except the one which eventually succeeded and the Letters Patent appeals were allowed on the basis of that point.

8. The decision of the High Court as respects the application of the 1942 Rules to the cases of the respondents and the order of reversion not being hit by the alleged non-compliance with Article 311(2) of the Constitution could not be seriously challenged before us. We agree with the view expressed by the Division Bench. It is not necessary to repeat all that has been said by the High Court in that regard. We now proceed to consider the only substantial question which falls for determination in these appeals.

9. The erstwhile State of Punjab was re-organized by the Punjab Re-organization Act, 1966, Central Act XXXI of 1966, herein after called the Act. On the appointed day i.e. on 1-11-1966 the former State of Punjab ceased to exist and the successor States of Punjab, Haryana. Union Territory of Chandigarh and the Transferred Territory came into being. All the respondents except respondent Bhagwan Singh came to be allocated to the new State of Punjab. Bhagwan Singh was allocated to Haryana and then to Himachal Pradesh. The High Court took the view that the impugned orders were communicated to the respondents concerned on or after 1-11- 1966 and hence they "remained in effective and still-born by reason of their not having been communicated to the respondents before 1-11-1966." Though this point had been taken in the writ petitions, it does not seem to have been pressed before the learned single Judge. The Division Bench treating it as a pure question of law allowed it to be raised in the Letters Patent appeals and ultimately dismissed the appeals by holding in favour of the appellants that since the impugned orders were communicated to them after coming in to force of the new successor States they could not affect their status and position which they held on 1-11-1966.

10. The factual position in relation to the point at issue is like this. The erstwhile State of Punjab was under the President's Rule before its re-organization. The order in the name of the President of India authenticated by Secretary to Government of Punjab, P.W.D.B & R/P.H. Branches recited. "The President of India, in consultation with the Punjab Public Service Commission, does not consider the following officiating Sub-Divisional Officers of Punjab, P.W.D.B & R

Branch, suitable for appointment to P.S.E. Class II (B & R Branch) and accordingly they are reverted as indicated below with immediate effect." The list contains the names of 20 officers including the names of 12 respondents other than respondent Bhagwan Singh. An Issue Book was shown to us at the time of the hearing of these appeals by the State counsel indicating that the Government order aforesaid was forwarded to the Accountant General Punjab, Simla and to the Chief Engineer, Punjab P.W.D.B. & R Branch, Patiala. for information and necessary action. The Chief Engineer as it appears from the statement in the counters filed on behalf of the State communicated the order to the officers concerned as per his Memo No. 8 E/47/ Re-org/11670-710 E dated 30-10-1966. The respondents, however, seem to have received the orders on or after 1-11-1966. The question for consideration is whether the view of the High Court that the orders being administrative in nature were not laws within the meaning of the Act and hence were not saved by Section 88 is correct and whether they remained ineffective and inoperative because they were not communicated to the respondents before 1-11-1966.

11. Under the Act certain territories were carved out from the appointed day from the then existing. State of Punjab Under Sections 3 and 4 were formed the State of Haryana and the Union Territory of Chandigarh. The territories mentioned in Section 5 were added to the then Union territory of Hima-chal Pradesh. The balance was to remain in the State of Punjab u/s 6 Sections 3 to 6 occur in Part II of the Act. Part III deals with the representation in the Legislatures and allocation of sitting members etc. Part IV concerns the making of the existing High Court as the common High Court for Punjab, Haryana and Chandigarh. Part V is headed "Authorisation of Expenditure and Distribution of Revenue." Part VI deals with "Apportionment of Assets and Liabilities", Part VII makes provisions as to certain Corporations. Part VIII relates to Bhakra Nangal and Beas Projects. We are concerned with some of the Sections of Part IX headed Provisions as to services and Part X making Legal and miscellaneous provisions. Section 81 in Part IX contains provisions relating to All India Services Section 82(1) is important and reads as follows:

Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Punjab shall, on and from that day, provisionally continue to serve in connection with the affairs of the State of Punjab unless he is required by general or special order of the Central Government, to serve provisionally in connection with the affairs of any other successor State.

According to the provision aforesaid all the respondents provisionally continued to serve in connection with the affairs of the State of Punjab and eventually also all of them (except Bhagwan Singh) continued to serve with that State. We shall now read Section 83 on which great reliance was placed on behalf of the respondents:

Every person who immediately before the appointed day is holding or discharging

the duties of any post or office in connection with the affairs of the existing State of Punjab in any area which on that day falls within any of the successor States shall continue to hold the same post or office in that successor State and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of, or other appropriate authority in, that successor State:

Provided that nothing in this section shall be deemed to prevent a competent authority on or after the appointed day from passing in relation to such person any order affecting his continuance in such post or office

Section 88 occurring in part X provides :

The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Punjab shall, unless otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day.

12. Law is defined in Clause (g) of Section 2 of the Act to say:

'law" includes any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole or in any part of the existing State of Punjab

We agree with the High Court that the impugned orders in question were not law within the meaning of Section 2(g) and hence were, in terms, not saved by Section 88. We think the High Court is right when it says:

Section 88 appears to have been introduced as a matter of abundant caution. In my opinion, mere splitting up of the territories of Punjab into four successor States would not ipso facto result in the abrogation or repeal of the laws which were immediately in force before the appointed day in those territories. There is nothing in the 1966 Act, not even in Section 88, which expressly or by necessary intendment repeals the laws which were in force immediately before the appointed day in the territories of the former Punjab. Those laws derived their force de hors the 1966 Act. The first part, of Section 88 is merely clarificatory of any doubts which might arise as a result of the reorganisation of Punjab, while the latter part of this section is merely an adaptative provision, to the effect, that the territorial references in any such law to the State of Punjab shall continue to mean the territories within that State immediately before the appointed day. Thus, read as a whole Section 88 merely dispel doubts as to the continuity of the laws which wore in force before the appointed day in the former State of Punjab, until the competent legislature or authority of the successor States effects any change in those laws.

13. If this could be the position in the continuance of the law in the successor States, on what principles one can say that the administrative . order made by

the erstwhile State of Punjab automatically lapsed and came to an end on and from the appointed day on the coming into existence of the successor States. Is it possible to take the view that the Legislature when it made so many provisions in the Act in its various parts in regard to the matters already referred to, did not think it appropriate to make a provision for the continuance of the effect of the administrative orders passed by the Government of the erstwhile State of Punjab until the Governments of the Successor States modified or changed it? Or is it, as a matter of law and propriety, reasonable to think that the Legislature did not consider it necessary at all to make such an express provision, as the continuance of the effect of such orders was so obvious even without such a provision? In our judgment when there is no change of sovereignty and it is merely an adjustment of territories by the reorganization of a particular State, the administrative orders made by the Government of the erstwhile State continue to be in force and effective and binding on the successor States until and unless they are modified, changed or repudiated by the Governments of the successor States. No other view is possible to be taken. The other view will merely bring about chaos in the administration of the new States. We find no principle in support of the stand that administrative orders made by the Government of the erstwhile State automatically lapsed and were rendered ineffective on the coming into existence of the new successor States.

14. On behalf of the respondents reliance was placed upon the decisions of this Court in *Rajvi Amar Singh Vs. The State of Rajasthan*, and *Rajkumar Narsingh Pratap Singh Deo Vs. State of Orissa and Another*, Bose, J. delivering the judgment of the Court in the former case had said at page 230 of AIR:

Now it is well established that when one State is absorbed in another, whether by accession, conquest, merger or integration, all contracts of service between the prior Government and its servants automatically terminate and thereafter those who elect to serve in the new State, and are taken on by it, serve on such terms and conditions as the new State may choose to impose. This is nothing more, (though on a more exalted scale), than an application of the principle that underlines the law of Master and Servant when there is a change of masters.

The said principle is not applicable to the case on hand as it is not a case of absorption of one State in another by accession, conquest, merger or integration. It would be chaotic if this principle were to be applied to the case of reorganization of States in the same country. In the case of *Raj Kumar N.P. Singh Deo (supra)* a question arose as to whether the sanad granted by the ruler of Dhenkanal who was an absolute monarch and which State after independence of India came to be merged in the State of Orissa was a purely executive act or a law within the meaning of Article 372 of the Constitution. This Court decided that this was purely an executive act. The Orissa Government had discontinued the payment of the allowance under the sanad to the grantee. The action was upheld on the ground that the executive act of the ruler of another sovereign State could not be binding on the Orissa Government and that Government had full

authority to discontinue the payment of the allowance. Indirectly the said decision of this Court supports the view which we have expressed above. We are, therefore, of the opinion that the impugned orders passed by the Government of the erstwhile State of Punjab continued to be the orders of the Governments of the concerned successor States until and unless they were modified, changed or repudiated by them. Nothing of the kind was done by the new State of Punjab; rather, by treating that order as valid and adopting it as its own, the new State of Punjab resisted the writ applications and pursued the matter in the Letters Patent Appeals and upto this Court in these appeals.

15. On the facts and in the circumstances of these cases we do not, agree with the High Court that the communication of the orders was on or after 1-11-1966 when they were actually received by the officers concerned. Following the ratio of the decision of a Bench of 4 Judges of this Court in the case of State of Punjab Vs. Khemi Ram, we hold that the orders were communicated either on 29-10-1966 or surely on 30-10-1966. The earlier decisions of this Court have been considered by Shelat, J. in the decision aforesaid. In Bachhittar Singh Vs. The State of Punjab, no formal order of the Government had even been drawn up, much less communicated, and, there fore, it was held that it was neither an order of the Government nor was the order communicated. What is the meaning of communication of the order in a given case did not fall for decision before this Court in the case of Bachhitter Singh.

16. In the case of State of Punjab Vs. Amar Singh Harika, the order of dismissal passed on 3rd June, 1949 was actually communicated to the officer concerned on 2/3rd January, 1953. But before the said date the said officer had come to know on 28th May, 1951 about the dismissal order. This date was taken to be the date of communication. Shelat, J. has considered the earlier cases of this Court including the one in S. Pratap Singh Vs. The State of Punjab, In paragraph 16 of the judgment the law laid down is:

It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned government servant, it must be held to have been communicated to him, no matter when he actually received it.

Applying the principles of law aforesaid we find in this case that the orders went out of the control of the authority which had passed that order on 29-10-1966 when copies of the orders were forwarded to the Accountant General and the Chief Engineer. In any event, we think that the orders were despatched from the office of the Chief Engineer on 30-10-1966. It is one thing to say that in the case

of dismissal or the like the order becomes effective only after it is received by the officer concerned and a different thing to say that an order has no effect at all before it is communicated in the sense of receipt of the order by the concerned officer. In the sense we have said above the orders were communicated to all the respondents before 1-11-1966. They became effective as soon as they were sent out. And for the purposes of Section 83 of the Act the respondents must be deemed to be holding the posts to which they were reverted on 1-11-1966.

17. Reliance was placed on behalf of the respondents upon the decision of a learned single Judge of the Punjab & Haryana High Court in the case of Shiv Saran Dass Sood : v. State of Punjab 72 Pun LR 950 wherein it was held that there is no provision in : the Act whereunder the proceedings] for disciplinary action against a public servant, who is allotted to a State other than one in which the proceedings are pending, could be continued by the Inquiry Officer already appointed nor could such Inquiry Officer submit his report to the corresponding authority in the State to which the public servant is allocated. We wish to point out that the proposition of law enunciated in such a bald manner is not correct. The Inquiry Officer may not be competent to continue the enquiry and submit the report for different reasons. But it is not correct to say that

the Inquiry Officer appointed by the Commissioner, Ambala Division, prior to the re-organisation of the State, cannot be taken to be the Inquiry Officer appointed by the Commissioner, Jullundur Division, after November 1, 1968 as there is no provision in the Punjab Re-organisation Act where under the proceedings for disciplinary action against a public servant, who is allocated to a State other than the one in which the proceedings are pending, could be continued by the Inquiry Officer already appointed nor could such Inquiry Officer submit his report to the corresponding authority in the State to which the public servant is allocated.

Shorn of the complications of other facts if the Inquiry Officer was appointed by the Commissioner of a Division which was a part of the undivided State and on re-organisation becomes a part of the new State, the disciplinary proceedings started earlier can undoubtedly be continued and concluded without a fresh order of starting a disciplinary proceeding.

18. We, therefore, hold that the view taken by the High Court that the orders were still-born and in effective because they were received by the respondents on or after 1-11- 1966 is not correct.

19. After careful consideration we have arrived at the conclusion that the impugned orders of re version dated October 28, 1966 were valid. About 9 years have passed since then and some complications have arisen during this period. Admittedly, after the High Court judgment, all the respondents were officiating in the higher posts. At the time of the hearing of these appeals, we were given to understand at the Bar that none of the respondents was reverted pursuant to the impugned order. We asked the parties to ascertain the correct position and file their statements. On behalf of the Government we have been informed that they

will 'not claim any refund of the salaries paid to the respondents for the period they have worked as officiating Sub-Divisional Officers in the Department. But they claimed that the respondents were not working as such after the reversion order and before the High Court judgment and hence they are entitled to get back the difference of salary paid to the respondents for the period they have not worked as Sub-Divisional Officers and had worked only as Overseers and Draftsmen in their substantive posts. The difference of salary for the intervening period between the order of reversion and the High Court judgment was paid to them subject to the furnishing of the bank guarantee. On the other hand, it is claimed on behalf of the respondents that even during those periods they were working as S.D.Os. or had gone on leave while continuing in such posts. In the circumstances justice requires that the Government should not claim any refund of any part of the salary paid to the respondents uptill today. Partly in view of their undertaking and partly because of the requirement of justice, we direct the Government not to do so.

20. The final result of the appeals is as follows : Civil Appeal No. 521/1970 is dismissed as abated on account of the death of the respondent. The respondent of Civil Appeal No. 519. it is admitted on all hands, is no longer in service. This appeal is, therefore, dismissed as infructuous. The remaining 11 appeals are allowed, the judgments and orders of the High Court both of the single Judge and the Division Bench are set aside. But this is subject to the directions given above in regard to the salary paid to the respondents so far. There will be no order as to costs in any of the appeals.