

(1969) 03 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 463 of 1966

State of Punjab and Others

APPELLANT

Vs

Mohan Singh and Others

RESPONDENT

Date of Decision : 13-03-1969

Acts Referred:

Punjab General Clauses Act, 1898 — Section 11(2), 13

Citation : (1970) 2 ILR (P&H) 666

Hon'ble Judges : Mehar Singh, C.J.; Bal Raj Tuli, J

Bench : Division Bench

Advocate : M.S. Pannu, for Advocate General, for the Appellant; H.S. Gujral, for the Respondent

Final Decision : Dismissed

Judgement

Bal Raj Tuli, J.—This judgment will dispose of Letters Patent Appeals No. 385 of 1966, Banarsi Dass Joshi and Ors. v. Mohan Singh and Letters Patent Appeals No. 463 of 1966 State of Punjab and Ors. v. Mohan Singh and Ors., as they are directed against the same order, dated October 3, 1966, of the learned Single Judge accepting the writ petition of Mohan Singh.

2. Mohan Singh, Respondent in these appeals passed his B.A. examination from the Punjab University, Lahore, in 1935 and joined service as Kanungo at Rawalpindi in 1937. After receiving settlement training and training as revenue patwari on mahal side, he was appointed as Election Kanungo from May, 1941 to November, 1941 and thereafter again he worked as patwari till October 6, 1942. He worked as Field Kanungo from October 6, 1942, to October 12, 1943, and was then promoted as Naib Sadar Kanungo in the office of the Deputy Commissioner, Rawalpindi, where he worked as such up to September, 1945. He was confirmed as Kanungo on December 19, 1946. In July, 1951, he was promoted as Naib-Tahsildar (Rehabilitation) and worked in that capacity till December, 1952. He had then a choice to continue as Naib-Tahsildar, but he voluntarily accepted the office of District Kanungo entailing a loss of about Rs.

100 per mensem, during the period December 20, 1952 to February 20, 1956, in order to qualify himself for Tahsildarshio. He was posted as Betterment Naib-TahsiMar on July 18, 1956, and continued in that post till the end of the year. On January 1, 1957, he was posted as Head Vernacular Clerk >(Betterment) and was then later appointed as Head Vernacular Clerk to the Deputy Commissioner, Jullundur. This post came to be designated as Assistant Superintendent (Revenue and Record). Mohan Singh remained there up to April 10, 1961, when he was transferred as Assistant Superintendent (Revenue and Record), Ferozepur, which post he joined on April 19, 1961. He was promoted as Tehsildar (Border Demarcation), Ferozepur, which post he held up to May 17, 1963. He was appointed as Tahsildar (Sales) in the Rehabilitation Department at Rupar, with effect from June 5, 1963.

3. Chaman Lal, Respondent was confirmed as Assistant Superintendent (R. & R.), with effect from April 17, 1960. by the order of the Commissioner, Jullundur Division, dated September 18, 1961. Mohan Singh, Respondent felt aggrieved by the confirmation of Chaman Lal, before his own and, therefore, submitted a written representation, dated October 1, 1962, against Chaman Lal's confirmation, to the Commissioner, Jullundur Division. His main grievance was that Chaman Lal was junior to him and should not have been confirmed earlier. On receipt of the representation of Mohan Singh, the Commissioner, Jullundur Division, issued a notice to Chaman Lal to show cause as to why he should not be deconfirmed. Mohan Singh interviewed the Commissioner on April 2, 1963, and by letter, dated April 11, 1963, asked for a personal hearing at the time of the disposal of his representation. He sent a reminder on May 31, 1963, asking for an early decision of the matter. By memorandum, dated July 23, 1963, he was informed that he should interview the Financial Commissioner in this connection on July 27, 1963. In the meantime he was promoted as Tehsildar (Border Demarcation) and thereafter was appointed as Tehsildar (Sales) in the Rehabilitation Department at Rupar on June 5, 1963.

4. In or about October, 1963, the Financial Commissioner (Revenue) forwarded to the Punjab Public Service Commission a case for the selection of 16 officials as "B" class Tehsildars, 4 Zilledars, 7 Consolidation Officers and 4 members of the ministerial staff were recommended to be selected out of the persons whose particulars were forwarded to the Commission. Amongst the ministerial staff, the name of Chaman Lal was placed at the top and that of Mohan Singh at No. 3 in the list of four persons, who were recommended for selection from that category. The Public Service Commission was not informed of the fact that the question of inter se seniority between Chaman Lal and Mohan Singh was under consideration. Nor was the Commission intimated about the case of Chaman Lal's deconfirmation which was pending on the representation made by Mohan Singh. About Mohan Singh, it was stated that he had worked as Naib-Tehsildar for about five years and as Tahsildar for six months and that he had good personality and health and due to his varied experience on the revenue side and his good record, he was expected to make a good Tehsildar. Admittedly, about 70

permanent vacancies on the cadre of Tahsildars were likely to occur up to the end of 1985, and the Government had allocated those vacancies to be filled up by 28 direct recruits ("A" class candidates), 28 Naib-Tehsildars, 4 Zilledars, 4 Head Vernacular Clerks or Superintendents, etc., 3 Consolidation Officers and 3 Panchayat Officers. According to paragraph 16 of the State's return to the writ petition, 3 out of 4 vacancies allocated to Head Vernacular Clerks were reserved for 3 erstwhile Pepsu Tehsildar candidates, namely, Hardev Singh, Dev Raj Sharma and Rattan Dev. Thus, only one person had to be appointed as "B" Class Tehsildar out of the common category to which Mohan Singh and Chaman Lal belonged.

5. During the pendency of the reference to the Public Service Commission. Mohan Singh was also confirmed as Assistant Superintendent, with effect from April 3, 1962, by order, dated April 9, 1964. No entry relating to his confirmation was, however, made in his Service Book and none had been made even till the hearing of the writ petition when the Service Book was shown to the learned Judge. On the other hand, entry relating to the confirmation of Chaman Lal had been duly made in his Service Book. In the order of confirmation of Mohan Singh, it had been specifically stated that the order of his confirmation would be reversed in case his representation against the confirmation of Chaman Lal succeeded. The note was presumably made as a safeguard for Mohan Singh, so that the date, with effect from which he was to be confirmed, could be reconsidered if confirmation of Chaman Lal was set aside. By memorandum, dated November 5, 1964. Chaman Lal and Mohan Singh were directed to appear before the Public Service Commission on November 23, 1964. In the meantime Rattan Dev, for whom one of the posts of Tehsildars in the category of Mohan Singh and Chaman Lal had been reserved, retired with effect from October 7, 1963. In spite of this fact, the Commission was not informed that at least two persons had to be taken from the category of Head Vernacular Clerks and Superintendents, etc., according to the relevant rules. As a result of the interview held by the Public Service Commission. Chaman Lal being the senior-most in that category was selected. Mohan Singh had an interview with the Revenue Minister on March 8, 1965. but was told that in view of the recommendation made by the Public Service Commission in favour of Chaman Lal, nothing could be done for him. On March 15, 1965. the Revenue Secretary to the Financial Commissioner, Punjab, issued an office order communicating appointment of Chaman Lal and Respondents 8 to 16 to the writ petition as "B" Class Tahsildar candidates. Aggrieved by that order, Mohan Singh filed the writ petition in this Court on April 20, 1965, complaining that the appointment of "B" Class Tahsildar candidates had not been made in conformity with the rules and standing orders and was, therefore, illegal. It was prayed that the Appellants in L.P.A. No. 463 of 1966, may be directed to make the appointments in conformity with law.

6. The State of Punjab filed its return on October 22, 1965, in which it was admitted that the Petitioner made a representation against the earlier confirmation of Chaman Lal, but it is stated that it could not be disposed of "as

the record of service of Sarvshri Mohan Singh and Chaman Lal was not available being under separate action with Government/Punjab Public Service Commission in connection with their selection as "B" Class Tehsildar candidates." It has also been admitted that Mohan Singh was confirmed as Assistant Superintendent,--vide Commissioner's order, dated April 9, 1964, and every tenth vacancy in provisional substantive or permanent substantive capacity out of the first twenty posts has to be filled up from amongst Head Vernacular Clerks or Sadar Kanungos or Superintendents of the offices of the Deputy Commissioners. It was also averred that a particular candidate having been placed at No. 1 or No. 3 by the Financial Commissioner in his recommendation to the Public Services Commission was of no consequence as the list was not prepared in order of merit.

7. After considering the various rules and noticing various judgments cited before him, the learned Single Judge came to the conclusion that the Tehsildari Rules were statutory and the standing orders contained merely executive directions. If the Standing Orders came into conflict with the Tehsildari Rules they had to give way in favour of the statutory rules. The executive authorities have no doubt power to issue executive instructions, but they have no jurisdiction to give a go-by to the statutory rules either under the cover of the executive instructions or under the purported exercise of executive powers. The learned Judge held "that the preference given by the State authorities to the relevant paragraphs of Standing Order No. 12 framed by the Financial Commissioner in so far as it is inconsistent with Rule 6 of the Tehsildari Rules, is illegal and that in case of conflict between the two, the State authorities were bound to follow rigorously the requirements of the aforesaid rules." This proposition of law has been affirmed by a Division Bench of this Court (R. S. Narula and S. S. Sandhawalia JJ.) in *Raghubir Singh v. State of Punjab and Ors.* C.W. 1778 of 1968 decided on 30th July, 1968 and we see no reason for differing from the same.

8. The next argument advanced before the learned Single Judge on behalf of Mohan Singh was that, according to Rule 3 of the Tehsildari Rules, the appointments could be made only by "Financial Commissioners" and not by Financial Commissioner (Revenue) alone. This submission prevailed with the learned Single Judge and he held that "in this view of the matter, the entire impugned order of appointment of Respondent Nos. 8 to 16 has to be declared illegal as it was passed by the Financial Commissioner (Revenue) alone contrary to the mandatory requirements of the Tehsildari Rules which have admittedly not been amended in that respect." It was submitted on behalf of the Respondents to the writ petition that the Financial Commissioner (Revenue) alone could make the appointment as the relaxation had been made in the letter of the Deputy Secretary (Revenue), dated June 21, 1963, addressed to the Reorganization Department, copy whereof was endorsed to the Establishment Branch. The relevant part of the communication is in the following term:

Government have decided that Financial Commissioner, in the Revenue Department, instead of "Financial Commissioners", shall be the final authority in

so far as matters relating to the selection/appointment, etc., of "B" class Tehsildar candidates is concerned. It is requested that while revising the Standing Order No. 12, the above decision may please be kept in view.

9. This decision had been conveyed to the Reorganization Branch for the purpose of amending Standing Order No. 12, but the amendment was not made as the departmental file which was produced before the learned Single Judge at the hearing of the writ petition, showed. But, even if the amendment was made, it could not override the Tehsildari Rules and if any relaxation of Rule 3 of those rules had to be made, it could be made only by following the same procedure as prescribed for the framing of the rules. That procedure required pre-publication u/s 156 of the Land Revenue Act which was never done in this case and the subsequent sanction of the State Government under Sub-section (3) of Section 155 of that Act which also was never given. The provisions of Section 11(2) of the Punjab General Clauses Act, 1898, also do not help the Appellants. The words in the singular are deemed to include the plural and vice versa only if there is nothing repugnant in the subject or context. The use of the phrase "Financial Commissioners" instead of "Financial Commissioner" in Rule 3 of the Tehsildari Rules is significant and the context shows that the decision had to be taken by all the Financial Commissioners and not only by one of them. In the said Rule 3, it is not possible to read singular for the plural. I am supported in this view by a judgment of a Division Bench of this Court (D. K. Mahajan and P. C. Jain, JJ.) in *Prithvi Raj Mehra v. State of Punjab* 1968 S.L.R. 887, wherein the following observations occur:

From the plain reading of Rule 8 it is clear that a committee is to consist of (1) Chairman of the Public Service Commission or in his absence any other member of the Commission representing it, (2) the Secretary of the P.W.D. (Irrigation Branch) and (3) all the Chief Engineers, Punjab, P.W.D., Irrigation Branch. The purpose of including all the Chief Engineers in this rule appears to be that all the Chief Engineers under whom the officer whose work was under review had worked, should be present in order to give their opinion about the suitability of such an officer. The absence of any of the Chief Engineers could cause prejudice to the cases of the officers whose cases were being reviewed by the Screening Committee. Section 13 of the General Clauses Act has no application as in Rule 8 it is explicitly mentioned that all the Chief Engineers shall be included in the Screening Committee. It is not disputed by the learned Counsel for the State that the Screening Committee which considered and reviewed the case of the Petitioner and other officers included only the Chief Engineer, Establishment, and not all the Chief Engineers. For the aforesaid reasons I hold that the Screening Committee constituted under Rule 8 for the purposes of reviewing the cases of the Petitioner and other officiating Executive Engineers was not a validly constituted Committee as its composition was incomplete.

10. The impugned order which was passed only by the Financial Commissioner (Revenue) was, thus, rightly set aside by the learned Single Judge.

11. No other point has been urged before us.

12. For the reasons given above L.P.A. 463 State of Punjab and Ors. v. Mohan Singh and Ors. is dismissed with costs.

13. L.P.A. 385 of 1966 Banarsi Dass Joshi and Ors. v. Mohan Singh, is also dismissed, but without any order as to costs. This appeal is liable to be dismissed on another ground also, that is, the necessary and proper parties have not been impleaded in the appeal. The writ petition was filed by Mohan Singh against the three Financial Commissioners, the State of Punjab, the Punjab Public Service Commission, the Commissioner, Jullundur Division and 9 persons whose appointments had been made as "B" Class Tehsildar candidates, which had been challenged. In this appeal, the Appellants are Banarsi Dass, Narinder Singh and Sujan Singh Bedi and the only person impleaded as a Respondent is Mohan Singh. The other Respondents to the writ petition have not been made parties to the appeal. The learned Single Judge, while dealing with the case of the present Appellants, observed that he was not inclined to go into the disputed question as to whether the tenth, - thirtieth and fiftieth vacancy had to go to Canal Zilledars and if Canal Zilledars were to be excluded, those vacancies could not have gone to the category of Mohan Singh. In view of this observation of the learned Judge, it was absolutely necessary for the Appellants to implead all the other Respondents to the writ petition as Respondents to the appeal, That not having been done, the appeal, as framed, is not competent.

Mekar Singh, C.J.--I agree.