

(1996) 01 SC CK 0226

In the Supreme Court Of India

Case No : Civil Appeals Nos. 1767-69 Of 1989

State of U.P. and Others

APPELLANT

Vs

Bihari L.L. Mishra and Others

RESPONDENT

Date of Decision : 17-01-1996

Acts Referred:

Citation : (1997) 11 SCC 437 : (1998) SCC(L&S) 207

Hon'ble Judges : S. C. Agrawal, J;G. T. Nanavati, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. The short question that falls for consideration in these appeals is whether the Sub-Divisional Officer was competent to pass the order for removal of the respondents, who were employed as Lekhpals.

2. The three respondents in these appeals were appointed as Lekhpals in the year 1953. By orders dated 29/8/1973 and 9/4/1974 they were removed from service. The said removal was by way of punishment after conducting an inquiry into the charges levelled against them. They filed claims before the U.P. Public Services tribunal (hereinafter referred to as "the tribunal") wherein they challenged the orders of removal on the ground that they had been appointed by the Collector and the order of removal having been passed by an authority subordinate to the appointing authority was null and void being violative of Article 311(1) of the Constitution. The said claims of the respondents were dismissed by the tribunal on the view that the appointing authority in the matter of appointment of the Lekhpals is the Sub Divisional Officer. Feeling aggrieved by the orders passed by the tribunal the respondents filed writ petitions before the Allahabad High court which have been allowed by the impugned judgment of the High court dated 20/4/1988.

3. The case of the respondents before the High court was that they had been appointed by the Collector and that at the time of appointment no orders of

appointment were given to them and that before the tribunal they had asked the State government to produce the original record regarding their appointment but the said had not been produced. According to the High court it was the duty of the State government to produce the relevant record, especially when the case of the respondents was that no appointment letter was issued to them and that the appointments were made by the Collector by issuance of three lists. The High court has held that the Lekhpal Service Rules, 1958 which were issued vide notification dated 9/5/1958 could have no bearing on the appointment of the respondents which was made prior to these rules and that it was for the State government to show that prior to the said Rules the appointing authority of the respondents was the Sub-Divisional Officer. The High court rejected the contention urged on behalf of the appellants that the appointment of the respondents was made under the U.P. Land Revenue Act, 1901 (3 of 1901) and that the Assistant Collector was the appointing authority at that time. The High court has observed that the learned Standing Counsel had fairly contended that there was nothing under the Land Revenue Act which stipulates the appointment of the Lekhpals by the Assistant Collector. The High court has accepted the contention urged by the respondents that they had been appointed by the Collector and that the order of removal passed by the Sub-Divisional Officer, an authority subordinate to the appointing authority, was violative of Article 311(1) of the Constitution.

4. On a perusal of the provisions contained in the U.P. Land Revenue Act, 1901 we find that in Section 23, as it stood prior to its amendment in 1956, it was provided as under:

"23. Appointment of Patwaris.-The Provincial government shall appoint a Patwari to each circle."

Section 24 contained provisions relating to appointment on the posts of Patwaris but the same was omitted by the Adaptation Order of 1937. Clause (b) of Section 234 empowered the Provincial government to make rules regulating the appointment and transfer of Kanungos and Patwaris, their salaries, qualifications, duties, removal, punishment, suspension and dismissal. In exercise of the said power the government of U.P. had framed rules governing recruitment and conditions of service of Patwaris (subsequently designated as Lekhpals) which were contained in Ch. I of the Land Records Manual of Uttar Pradesh. Rule 2 dealt with appointment and qualifications and in clause (1) of Rule 2 it was provided:

"WHENEVER the halka of a Lekhpal falls vacant, the Assistant Collector Incharge of Sub-Division shall appoint thereto the seniormost candidate on the list maintained under paragraph I(1...."

Again in clause (b) of Rule 5, it was provided:

"IF it appears at any time during or at the end of the period of probation that the Lekhpal has not made sufficient use of his opportunities or has otherwise failed

to acquit himself satisfactorily, he shall be removed from service provided that the Assistant Collector Incharge of the Sub-Division may extend the period of probation to two years. The order of extension shall specify the exact date to which it is granted."

Similarly, in Rule 6(b) relating to temporary vacancies the following provision was made:

"IN the case of vacancies not exceeding one month, or in vacancies exceeding one month, if a qualified candidate is not available, the Assistant Collector Incharge of the Sub-Division may appoint an unqualified candidate provided that he is satisfied that the candidate is otherwise suitable for the job."

Rule 15 relating to punishment and procedure for its imposition provided as under:

"15. (a) The Assistant Collector Incharge of the Sub-Division may inquire into cases of neglect of duty or other official misconduct on the part of a Lekhpal. Where such neglect of duties or misconduct is proved to his satisfaction he may, inflict any of the punishments mentioned below:

(I) censure;

(II) withholding of increment or promotion;

(III) reduction to a lower stage in the time-scale;

(IV) recovery from pay of the whole or part of any pecuniary loss caused;

(V) suspension;

(VI) removal from the civil service of the State, which does not disqualify from future employment;

(VII) dismissal from the civil service of the State, which ordinarily disqualifies from future employment;

(B) The Assistant Collector Incharge of the Sub-Division shall have the power to suspend a Lekhpal pending inquiry into charges made against him.

(C) A Lekhpal may be removed by the Assistant Collector Incharge of the Sub-Division also for incompetence or for pecuniary embarrassment rendering him unfit for the discharge of his duties.

(D) Before passing an order of punishment, the Assistant Collector Incharge of the Sub-Division shall send for the Lekhpal and draw up the charge or charges in writing, setting out clearly the grounds on which it is proposed to take action. He shall be required within a reasonable time to put in a written statement of his defence. If the facts alleged are denied by the Lekhpal the Assistant Collector Incharge of the Sub-Division may examine such evidence as he considers necessary. The Lekhpal charged shall be entitled to cross-examine the witnesses

produced against him and to have such witnesses called in his defence as he may wish, provided that the officer conducting the inquiry may, for reasons to be recorded in writing, refuse to call witnesses. The proceedings shall contain sufficient record of the evidence and a statement of the findings and the grounds thereof. After the Assistant Collector Incharge of the Sub-Division has received the Lekhpal's explanation and examined evidence, if any, he may pass such orders of punishment as he may deem fit, other than removal or dismissal from service or reduction to a lower stage in the time-scale. In case, however, it is proposed to inflict any of these punishments, the Lekhpal charged shall be supplied with a copy of the provisional findings and be called upon to show cause, within a reasonable time, not ordinarily exceeding one week, against the imposition of the particular penalty, which it is proposed should be inflicted, and any representations submitted by the Lekhpal in this behalf shall be duly taken into consideration before final orders are passed:

Provided that the procedure outlined in sub-paragraph (d) shall not apply:

(I) where a Lekhpal is to be punished on the ground of conduct which has led to his conviction on a criminal charge;

(II) where the Assistant Collector Incharge of the Sub-Division is satisfied that for some reason to be recorded by him, it is not practicable to give to the Lekhpal an opportunity of showing cause;

(III) where the government of Uttar Pradesh is satisfied that in the interest of the security of the State it is not expedient to give to the Lekhpal such an opportunity.

NOTE.-IN cases where the Assistant Collector Incharge of the Sub Division is not the appointing authority, the powers of dismissal and removal shall not be exercised by an authority subordinate to that by which the Lekhpal was appointed, as required by Article 311 of the Constitution of India.

5. The aforesaid provisions in Ch. I of the Land Records Manual show that the Assistant Collector Incharge of the Sub-Division was the appointing authority in respect of Lekhpals and he was also the authority who could take disciplinary action against them and impose the various punishments, including removal or dismissal from service. The position in this regard was further clarified in the order of the Board of Revenue dated 30/3/1953 wherein it was stated:

"5. Method of recruitment of Lekhpals.-You have already been told that the last date for receiving applications was 20/3/1953 and the last date for making selection is 5/4/1953. You should by now have received all applications from prospective candidates. The conditions of service for the Lekhpals have been announced. The Assistant Collector Incharge of a Sub-Division will be the appointing authority subject to such control as you may like to exercise. The duties of the Patwaris as given in the Land Records Manual will be applicable to the Lekhpals."

6. In *Banarsi Das v. State of U.P.* , in the context of appointment to the post of Lekhpal in the year 1953, it has been observed that appointments were made by the various Sub-Divisional Officers.

7. The same position continued in the Lekhpal Service Rules, 1958 because in Rule 7 of the said Rules it is provided that whenever posts of Lekhpals fall vacant, the Assistant Collector Incharge of Sub-Division shall appoint the seniormost candidate of each of the two lists maintained under Rule 6.

8. It is thus evident that long before 1953 (sic 1958, appointments on the post of Patwaris (Lekhpals) were being made by Assistant Collector Incharge of Sub-Division (Sub-Divisional Officers) and the said position was continued even under the Lekhpal Service Rules, 1958. The High court was, therefore, in error in proceeding on the basis that the appointing authority for Lekhpals was the Collector and not the Assistant Collector Incharge of Sub-Division (Sub-Divisional Officer) as claimed by the appellants.

9. Once it is held that the appointing authority for the post of Lekhpals was the Assistant Collector Incharge of Sub-Division (Sub-Divisional Officer) then there is no infirmity in the orders for removal of the respondents that were passed by the Sub-Divisional Officer and it cannot be said that the said orders were passed by an authority subordinate to the appointing authority. The impugned judgment of the High court cannot, therefore, be upheld and has to be set aside.

10. The appeals are accordingly allowed, the impugned judgment of the High court dated 20/4/1988 is set aside and the writ petitions filed by the respondents are dismissed. But having regard to the facts and circumstances of the case, the parties are left to bear their own costs.