

**(1973) 08 SHI CK 0013**

**In the High Court Of Himachal Pradesh**

**Case No : Letters Patent Appeal No. 2 of 1971**

Sukh Lal Tandon

APPELLANT

Vs

The District and Sessions Judge and Others

RESPONDENT

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**Date of Decision : 28-08-1973**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16  
Government of India Act, 1935 — Section 241  
Punjab Courts Act, 1918 — Section 292, 35, 35(1), 35(3), 35(4)  
Punjab High Court Rules and Orders — Rule 2

**Citation : (1973) 2 ILR HP 788**

**Hon'ble Judges : R.S. Pathak, C.J.;D.B. Lal, J**

**Bench : Division Bench**

**Advocate : M.G. Chitkara, for the Appellant; B. Sita Ram, General for District and Sessions Judge and P.N. Nag, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

R.S. Pathak, C.J.—This Letters Patent Appeal is directed against the judgment and order of Rangarajan J. dismissing a writ petition filed by the Appellant.

2. In March, 1970 the post of Superintendent in the Court of the District and Sessions Judge, Kangra at Dharamasla fell vacant on the retirement of the then incumbent, Chandi Dott, and the District and Sessions Judge proposed to the High Court the appointment of the fourth Respondent, Hans Raj, to that vacancy. The High Court approved the appointment. Accordingly, the District and Sessions Judge appointed Hans Raj to the post of Superintendent in his court.

3. The Appellant, Sukh Lal Tandon, filed a writ petition challenging the appointment. At the relevant time he was working as Reader in the Court of the District and Sessions Judge, Mandi. The Appellant claimed that on coming to know of the vacancy he applied to the District and Sessions Judge, Kangra for appointment thereto, that while the District and Sessions Judge recommended to the High Court the name of Hans Raj and forwarded the service books and

character rolls of that Respondent and also of Panna Lal and Prithi Singh Dadhwal, officials working under his control, together with their respective applications, in the case of the Appellant his application alone was sent to the High Court. The Appellant's service cook and character rolls lay in the office of the District and Sessions Judge, Mandi and were not summoned for consideration either by the District and Sessions Judge, Kangra or by the High Court. The Appellant maintains that he is senior to Hans Raj and also better qualified. The Appellant says that he is entitled to be considered for appointment to the post, and the omission of the District and Sessions Judge, Kangra and of the High Court to consider him when the appointment was made violated the Appellant's fundamental rights under Articles 14 and 16 of the Constitution. The Appellant contends that the post of Superintendent does not fall within the cadre of the Sessions Division but is part of a State cadre, and the power to make an appointment to that post lies not with the District and Sessions Judge but with the High Court.

4. The learned single Judge considered Rule II(a) and Rule IV of Part A of Chapter 18 of Volume I of the Rules and Orders of the Punjab High Court, and held that the appointment of a Superintendent in the Court of a District and Sessions Judge could be made by the District and Sessions Judge himself and from those officials only who were serving in his district. Accordingly, he upheld the appointment of Hans Raj and dismissed the writ petition. And therefore this appeal.

5. During the pendency of the appeal the Appellant applied for permission to bring on the record a number of documents by way of additional evidence. It was alleged that the documents had come to his knowledge after the decision of the writ petition and that they were necessary for a true and complete adjudication of the case. After hearing learned Counsel for the parties, we have made an order granting permission. The documents include copies of original documents contained in the official record maintained in the office of the District and Sessions Judge, Gurdaspur, and they have been proved by Gian Singh, English Clerk in that Court. They are Annexure 1(a) to 7 to the application for additional evidence and are marked Ex. P 1, to Ex. P 8 respectively. The Respondents have not produced any evidence in rebuttal.

And now to the merits.

6. By a notification No. J-C-I-R-O/1950, dated June 28, 1950 made under the Himachal Pradesh (Courts) Order, 1948, the Judicial Commissioner directed that the rules and orders formed by the Punjab High Court would apply to all the Civil and Criminal Courts of Himachal Pradesh. In 1966 the Delhi High Court was constituted by an Act of that name, and the rules and orders of the Punjab High Court were adopted in respect of it. When u/s 17 of that Act the jurisdiction of the Delhi High Court was extended to the Union Territory of Himachal Pradesh and the Court of the Judicial Commissioner for Himachal Pradesh was abolished, the rules and orders of the Punjab High Court became operative in the Union

territory. Thereafter, when Himachal Pradesh became a State in 1970 the State of Himachal Pradesh Act, 1970, provided for the continued operation of those rules and orders. The position so far is not disputed. Both parties are agreed that the Rules and Orders of the Punjab High Court must be considered for deciding the questions which arise in this case. In addition, the Appellant says, reference must be made to certain Gazette notifications and the additional documents brought on the record.

7. It appears that the rules and orders of the Punjab High Court were framed when the Punjab Courts Act, 1918, was in operation. Section 35(1) of that Act provided that the ministerial officers of the District Courts and Courts of Small Causes would be appointed by the Judges of those Courts. Section 35(3) declared that very such appointment would be subject to such rules as the Local Government prescribed in this behalf. Section 35(4) provides that the orders passed by a District Judge u/s 35 would be subject to the control of the Chief Court. Part A of Chapter 18 of Volume I of the rules and orders were then framed. Rule II(a) enumerates the ministerial officers in the subordinate courts in a district who form a joint cadre. The Clerks of Court to the District and Sessions Judges are not included in that cadre. On the contrary, it is mentioned that the posts would be on a provincial cadre. Rule IV provides that the first appointment shall be made by the District Judge in the case of ministerial officers in his own court.

8. The first question is whether in March 1970 the District Judge had the power to appoint the Clerk of Court in his Court. It is admitted that by a subsequent order the Clerk of Court was redesignated as Superintendent.

9. When the Government of India Act, 1935, was enacted the law in force in British India was continued in force by virtue of Section 292 of that Act until altered or repealed or amended by a competent legislature or other competent authority. Section 241 of the Government of India Act provided that in the case of civil services of and other posts under the Crown in India appointments were to be made in the case of services of Province, and posts in connection with the affairs of a Province, by the Governor "or such person as he may direct". In exercise of that power, by notification No. 1660-J-37/24278, dated June 23, 1937 (Punjab Gazette dated June 25, 1937) the Governor of Punjab delegated his authority to make appointments in the judicial department of the Province" and to prescribe conditions of service for persons serving in that department. The Judges of the High Court were delegated the power to make rules prescribing the conditions of service of the ministerial establishments of the the courts subordinate to the High Court and of the Process Servers in those Courts. The District and Sessions Judges and Judges of Small Cause Courts were delegated the power to make appointments to the posts of ministerial establishments and Process Servers in the courts subordinate to the High Court. Subsequently by notification No.7645-J-37/43338, dated December 20, 1937 the earlier notification was amended so that the District and Sessions Judges and the

Judges of Small Cause Courts were vested with the power to make appointments to the posts of ministerial establishments in the Courts subordinate to the High Court and Process Servers in their own courts, while Senior Subordinate Judges were delegated the power to make appointments of Process Servers, execution and menial establishments of their own and Subordinate Judges Courts in their Districts. So far, therefore, a District and Sessions Judge enjoyed the power to appoint the Clerk of Court in his Court. But thereafter by notification No. 4654-J-39/23984, dated, July 18, 1939 (Government Gazette date, July 21, 1939). the Governor of Punjab specifically, delegated, to the Judges of the High Court the powers to make such appointment, and the earlier notification was, amended so as to exclude that power from the District and Sessions Judges.

10. It will therefore appear that the power conferred by Section 35 of the Punjab Courts Act on the District "Judge" to make appointments stood superseded. The "power to make appointments had now to be found In the delegations made by the Governor of Punjab u/s 241 of the Government of India Act, 1935. And pursuant to those delegations a Clerk of Court could now be appointed only by the High Court and not by the "District and Sessions. Judge.

11. It seems from the documents Ex. P 1 to Ex. P 7 that the High Court exercised continuously from 1939 to 1966. The statement of Gian Singh, English Clerk in the Court of the District and Sessions Judge, Gurdaspur indicates that the High Court continues to exercise that power without change.

12. The rules contained in Part A of Chapter 18 of Volume I of the rules and orders of the High Court must be read subject to the delegation of power made by the Governor. And when so read it is clear that the provision in Rule IV of those rules providing that the first appointment in the case of ministerial officers in his own court shall be made by the District Judge cannot be construed to vest in the District Judge the power to appoint his Clerk of Court. The power lies in the High Court land nowhere else.

13. The next question is whether the post of Superintendent forms part of the cadre of the subordinate courts in a district or forms part of a State cadre. There is a recital at the foot of Rule II of Part A of Chapter 18 of Volume I of the Rules and Orders that "posts of Clerks of Court to District and Sessions Judges shall be classed as selection posts and shall be on a provincial cadre". It is apparent that those posts have been distinguished from the posts comprised in the joint cadre mentioned earlier in Rule II. The record shows that they were treated by the Punjab High Court as borne on a provincial cadre. Ex. P 3 sets out the Rules relating to the appointment and control of Clerks of Court to District and Sessions Judges. The rules state that the posts shall be classed as selection posts and shall be on a provincial cadre, and that the appointment thereto shall be made by the Judges of the High Court. The rules provide for the preparation of a list of candidates to be maintained in the High Court, and appointment to the posts is envisaged from that list. The list is to be prepared from candidates selected from the clerical staff employed in Subordinate Courts. The Clerks of

Court are liable to transfer from one Sessions Division to another. It appears from the letters dated September 15, 1959, March 31, 1962 and December 24, 1966, Ex. P 5 to Ex. P 7, sent by the Registrar, Punjab High Court to the District and Sessions Judges in Punjab that each District and Sessions Judge was required to recommend two names from amongst the clerical staff of the courts under his control for the purpose of preparing the list maintained in the High Court of candidates accepted for appointment as Clerks of Courts to District and Sessions Judges. It is clear that the list was to be prepared from names recommended by all the District and Sessions Judges, and it was from that list that a Clerk of Court could be appointed to any Court of District and Sessions Judge in Punjab. A Candidate on the list drawn from one Sessions Division could be appointed as a Clerk of Court in another Sessions Division.

14. Therefore, inasmuch as the Rules and Orders of the Punjab High Court were applicable in the Union territory of Himachal Pradesh, two conclusions follow:

(1) The District and Sessions Judge, Kangra had no power to appoint Hans Raj to the post of Superintendent in his Court, and

(2) The Appellant, although at the time holding the post of Reader in the Court of the District and Sessions Judge, Mandi was entitled to be considered for appointment as Superintendent in the Court of the District and Sessions Judge, Kangra.

15. On behalf of Hans Raj it is pointed out that the District and Sessions Judge had power to make the appointment by virtue of the proviso to Rule 2 of the rules relating to the appointment and control of Clerks of Court to District and Sessions Judges. The proviso empower the District and Sessions Judge to make an officiating appointment to the post of Clerk of Court in a leave vacancy for a period not exceeding three months, subject to confirmation by the Judges of the High Court. In the present case, the appointment of Hans Raj was not made for a period of three months in a leave vacancy. It was made by way of a temporary arrangement on the retirement of the previous incumbent until a regular appointment could be made. And it was not restricted to a period of three months.

16. Upon the aforesaid considerations I am of opinion that the appointment of the Respondent, Hans Raj, must be quashed.

17. The appeal is allowed. The judgment and order of Rangarajan J. is set aside, the writ petition is allowed and the appointment in March, 1970 of the Respondent Hans Raj as Superintendent in the Court of the District and Sessions Judge, Kangra at Dharamsala is quashed. As the appeal has been allowed on the basis of documents relied on by the Appellant for the first time at the appellate stage, the parties shall bear their costs throughout in the writ petition and in the appeal.

D.B. Lal, J.

18. I agree.