
(1963) 05 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 251 of 1962

The State of Punjab

APPELLANT

Vs

Shri Khemi Ram

RESPONDENT

Date of Decision : 28-05-1963

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1963) 05 P&H CK 0065

Hon'ble Judges : Grover, J;Dulat, J

Bench : Division Bench

Advocate : M.S. Punnu, for the Appellant; B.S. Chawla, for the Respondent

Final Decision : Dismissed

Judgement

Dulat & Grover, JJ.—This is an appeal under Clause 10 of the Letters Patent against a judgment of a learned Single Judge of this Court allowing a petition under Article 226 of the Constitution and quashing the orders of dismissal made by the Punjab State against the Respondent.

2. The Respondent was in the service of the Punjab Co-operative Department till his services were borrowed by the Government of Himachal Pradesh on 1st February 1954. The duration of the period of his deputation was extended with the concurrence of the Government of India to 4th August 1958 on which date he was to retire. It appears that on 5th May 1958 the Respondent applied for grant of leave preparatory to retirement and by means of a notification dated 16th July 1958 (Annexure "D") the Himachal Pradesh Administration granted him 19 days leave preparatory to retirement with effect from 17th July 1958 to-4th August 1958. By means of a telegram dated 17th July 1958 the Secretary, Co operative Department, Punjab Government, asked the Himachal Pradesh Administration to direct the Respondent to report for duty to the Registrar, Co-oprative Societies, Punjab, at once without availing any joining time (Annexure "E") The Himachal Pradesh Administration sent a telegraphic reply saying that the Respondent had been sanctioned 19 days leave preparatory to retirement and "he is at present

on leave" (Annexure "F"). The Secretary, Co-operative Department, Punjab, by means of a telegram dated 25th July 1958 questioned the right of the Himachal Pradesh Government to grant leave preparatory to retirement to the Respondent which according to him could be granted only by the parent Government viz., the Punjab Government. He asked the Himachal Pradesh Administration to cancel the leave and issue reversion orders in respect of the Respondent (Annexure "G"). A telegram was sent on 31st July 1958 by the same official of the Punjab Government to the Respondent addressed to his village Batahar, Post Office Haripore Tehsil Kulu, District Kangra. The text of the telegram was "you are placed under suspension with effect from 2nd August 1958." A copy was forwarded by post to the Respondent in confirmation (Annexure "H"). This was followed by a registered letter enclosing an attested copy of a charge-sheet which was sent to the Respondent c/o the Registrar, Co-operative Societies, Himachal Pradesh, Simla (Annexure "I"). The Himachal Pradesh Administration issued a notification dated 2nd August 1958 saying that in supersession of the previous notification the Respondent was granted 17 days earned leave with effect from 17th July 1958 to 2nd August 1958 instead of 19 days leave preparatory to retirement (Annexure "J"). It is clear from the same document that according to the endorsement the Respondent was required to report for duty to the Registrar, Co-operative Societies, Punjab, on 4th August 1958 (forenoon) positively without availing any joining time. The Respondent addressed a letter to the Registrar, Co-operative Societies, Punjab, dated 20/25th August 1958 acknowledging receipt of the charge-sheet along with the letter dated 31st July 1958 which according to him had been received on 15th August 1958 and a copy of the telegram in confirmation dated 2nd August 1958 from the Under Secretary to Government, Punjab, Co-operative Department, regarding suspension received on 15th August 1958 and the telegram of the Secretary of the Co-operative Department regarding suspension which, according to him had been received by him on 19th August 1958. In this letter he took up the position inter alia that no communication had ever been received by him till he had retired. He asserted that he had proceeded on leave on 17th July 1958 till 4th August 1958 when he attained the age of superannuation and till then no orders were served on him and therefore, according to him the orders made by the relevant Department of the Punjab Government were invalid and ineffective. Later on, an enquiry was held against him in which he participated under protest and after all the formalities had been complied with, he was ultimately dismissed from service. The order of dismissal was made on 30th July 1960.

3. In the petition filed under Article 226 of the Constitution it had been asserted that the Respondent had actually proceeded on leave preparatory to retirement on the forenoon of 17th July 1958 and had eventually gone to his home village Batahar, Kulu Tehsil, Kangra District. In paragraph 13 it was stated that on 2nd August 1958 the Punjab Government had sent a telegram to him at his home address, a copy of the telegram being Annexure "H". This telegram did not reach him because he was not at home at that time. The result was that the telegram

was redirected to the Simla address. Since he was not even in Simla, the telegram was again redirected to the address of his village and the same was actually received by the Petitioner on 19th August 1958 at his village. In the written statement the reply was as follows:

That para. 13 of the petition is admitted, except regarding date of actual receipt of the telegram by the Petitioner. It is for the Petitioner to prove that he received the telegram late as alleged.

4. Before the learned Single Judge it was not denied that the Respondent was in his village Batahar at the time when the notification (Annexure "J") was published. According to the learned Judge, the despatch entry, Exhibit P. 5, showed that a copy of the aforesaid notification with the endorsement on it was sent to the Respondent on 6th August 1958. It was also not denied that the Respondent was due to retire on the afternoon of 4th August 1958. It had not been challenged that he had gone to his village in Kulu Tehsil after his leave preparatory to retirement had been granted to him. The learned Judge was of the view that he was entitled to treat himself as on leave preparatory to retirement till he received information to the contrary. It was found that no order had been served on him before 4th August 1958 intimating that he had been reverted to the Punjab State or that he had been suspended. It was held in those circumstances that the Respondent had actually retired from service before the orders in question were made and he could not be bound by any subsequent proceedings.

5. For the present appeal the learned Counsel for the Punjab State contends that the question whether the telegram of 31st July 1958 intimating that the Respondent had been placed under suspension with effect from 2nd August 1958 was one which involved a dispute on facts and it was not legitimate in a writ petition to settle such matters. The only course open to the Respondent, therefore, was to institute a suit in which all the material evidence could have been produced by both the parties. This objection does not appear to have been taken before the learned Single Judge and his judgment seems to proceed more or less on facts which were admitted or with regard to which there was no dispute. At any rate, the learned Judge was satisfied that neither any order had been served on the Respondent before 4th August 1958 intimating that he had been reverted to the parent State nor had he been informed that he had been placed under suspension on charges of misconduct. The documents which had been placed on the record, including the letter sent by one S. Bhardwaj dated 12th August 1958 which is at page 85 coupled with the well-known fact that there is no telegraphic office near village Batahar the telegram having gone to Kulu from where it must have been sent by a messenger or by post to the village, leave little room for doubt that the conclusion of the learned Single Judge was unassailable in the matter of the telegram containing orders relating to his suspension not having been delivered to him before 4th August 1958.

6. The learned Counsel for the State has strenuously contended that the order

relating to the suspension of the Respondent would be effective from the date on which it was made and that its validity or effectiveness did not depend on its being conveyed to the Respondent. It is pointed out that in *The State of Punjab Vs. Sodhi Sukhdev Singh*, it has been observed at page 512:

Even if the Council of Ministers had provisionally decided to reinstate the Respondent, that would not prevent the Council from reconsidering the matter and coming to a contrary conclusion later on, until a final decision is reached by them and is communicated to the Rajpramukh in the form of advice and acted upon by him by issuing an order in that behalf to the Respondent. Until the final order is thus communicated to the Respondent it would be open to the Council to consider the matter over and over again, and the fact that they reached provisional conclusions on two occasions in the past would not alter the character of the said conclusions.

It is sought to be argued from this that as soon as an order is issued, that should be deemed to have been communicated to the Government servant concerned. These observations were made in quite a different context and it is obvious that their Lordships were not dealing with a situation which has arisen in the present case. Indeed, the only decision which has a direct bearing on the point is of a Bench of this Court in *Dr. PartaP Singh v. The State of Punjab* ILR (1962) 2 P&H 642, in which it was held that an order passed under Rule 3.26(d) of the Punjab Civil Services Rules takes effect from the day when it is served on the Government servant concerned or it comes to his knowledge. If by that date he has retired, it will have no effect qua him. The aforesaid rule, as it originally stood before its deletion by means of a notification dated 10th February 1963, was as follows:

A Government servant under suspension on a charge of misconduct shall not be required or permitted to retire on his reaching the date of compulsory retirement but should be retained in service until the inquiry into the charge is concluded and a final order is passed there-on.

The learned Counsel for the State suggests that the observations made by the Bench in the aforesaid case were more or less obiter as it was found that the Government servant here had knowledge of the order which had been made against him under Rule 3.26(d). In the present case the fact remains that the Respondent was not in a position to know and could not possibly have submitted to or carried out the orders which had been made before 4th August 1958 and that also without any fault on his part, with the result that the decision of the learned Single Judge must be upheld.

7. Mr. Chawla has sought to raise a number of other points, some of which may be stated below but which need not be decided.

(1) The Respondent after his services had been borrowed by the Himachal Pradesh Administration was no longer governed by the Punjab Civil Services Rules vide rule 1.2 as he was no longer under the administrative control of the

Punjab Government nor was his pay debatable to the Consolidated Fund of the State of Punjab.

(2) It was the Himachal Pradesh Administration alone which could place him under suspension and not the Punjab Government vide Rule 20 of the Central Civil Services (Classification, Control and Appeal) Rules.

(3) Once leave preparatory to retirement had been granted, it could not be subsequently cancelled (Full Bench decision of Calcutta High Court in Nripendra Nath Bagchi v. Chief Secretary AIR 1961 Cal. 1)

8. For the reasons which have already been stated, the appeal is dismissed but in the circumstances the parties are left to bear their own costs.