

PETITIONER:
STATE OF HARYANA

Vs.

RESPONDENT:
DES RAJ SANGAR & ANR.

DATE OF JUDGMENT 16/12/1975

BENCH:
KHANNA, HANS RAJ
BENCH:
KHANNA, HANS RAJ
FAZALALI, SYED MURTAZA

CITATION:
1976 AIR 1199 1976 SCR (2) 1034
1976 SCC (2) 844
CITATOR INFO :
RF 1979 SC 220 (13)
RF 1982 SC 1107 (32)

ACT:

Civil Service-Right of Government to abolish post and dispense with services of incumbent-Abolition of post held by permanent officer while retaining post held by non-permanent officer, legality.

Punjab Civil Service Rules, r. 3.14-Scope of-Abolition of ex-cadre post- Right of person holding post to revert to his permanent cadre post.

HEADNOTE:

The respondent was Head Assistant in the Panchayat Department of the Punjab Government. While he was officiating as Superintendent in the Department, he was appointed Panchayati Raj Election Officer, which was an ex-cadre post. On the reorganisation of the State, the respondent was allocated to the appellant-State and he continued to work as Panchayati Raj Election Officer in the appellant-State. In 1972, the State Government abolished the post of Panchayati Raj Election Officer and the services of the respondent were dispensed forthwith. He challenged the order and it was quashed by the High Court.

In appeal to this Court,

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HELD: Since the order of the appellant abolishing the post of Panchayati Raj Election Officer did not suffer from any infirmity, the High Court was in error in quashing it; but on the abolition of that post, under r. 3.14 of the Punjab Civil Service Rules, the lien of the respondent on the post of Head Assistant stood revived. [1040 F-G]

(1)(a) Whether a post should be retained or abolished is essentially a matter for the Government to decide, and as long as the decision is taken in good faith, it could not be set aside by the Court but, if it is found that the abolition was not in good faith, but was a cloak or device to terminate the services of an employee, then the abolition of the post may be set aside. [1037 H-1038 C]

M. Ramanatha Pillai v. The State of Kerala & Anr. [1974] 1 S.C.R. 515, followed.

(b) In the present case, the decision to abolish the

post was taken because of administrative reasons. The Government re-organised the Panchayat Department, and all those duties which had nothing to do with the job of Panchayati Raj Election Officer were given to other officers. The only work left with the Panchayati Raj Election Officer was that of conducting elections of Panchayat Raj Bodies, and, as this work was of a periodical nature, the appellant abolished that post because of financial stringency. [1038 G-1039 C]

(c) Whether greater economy could have been brought about by adopting some other course is not for the Court to go into. The fact that some of the functions which were being previously performed by the respondent are now being performed by others, whose posts have not been abolished, would not show that the decision to abolish was not taken in good faith. In deciding which post to abolish, the appellant took into account the relative usefulness of each post, and as this matter was within the administrative discretion of the appellant and as the decision was taken in good faith, the Court cannot interfere with it. [1039 C-1039 F]

(d) The fact that the post which was abolished was held by a person who is confirmed in that post and the posts which were not abolished were held by persons who were not permanent would not also affect the legality of the decision to abolish the former, if the decision was taken in good faith. [1039 F-G]

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(2) Under r. 3.14(a), a competent authority shall suspend the lien of a Government servant on a permanent post which he holds substantively, if he is appointed in a substantive capacity, to a permanent post outside the cadre on which he was borne; and under r. 3.15, in the absence of the written request by the employee, the lien cannot be terminated. Under r. 3.14(e), the Government servant's lien which has been so suspended shall revive as soon as he ceases to hold a lien on the ex-cadre post. In the present case, since there was no request by the respondent for terminating his lien on the post of Head Assistant, his lien on that post should be held to have immediately revived as soon as the post of Panchayati Raj Election Officer which was an ex-cadre post was abolished. [1039 H-1040 C]

T. R. Sharma v. Prithvi Singh & Anr. [1976] 2 S.C.R. 716, followed.

[It was for the Government to pass all consequential orders regarding his seniority, pension etc.] [1040 C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1942 of 1974.

Appeal by Special Leave from the Judgment and Order dated the 20-5-1974 of the Punjab and Haryana High Court at Chandigarh in Civil Writ No. 2169 of 1972.

L. N. Sinha, Solicitor General and Naunit Lal for the Appellant.

Kapil Sibal and P. R. Ramesh for Respondent No. 1.

P. P. Rao for the Applicant-Intervener.

The Judgment of the Court was delivered by

KHANNA, J. This appeal by special leave by the State of Haryana is directed against the judgment of Punjab and Haryana High Court whereby petition under articles 226 and 227 of the Constitution of India filed by Des Raj Sangar respondent was allowed and order dated July 13, 1972 of the Haryana Government abolishing the post of Panchayati Raj

Election Officer and terminating the services of the said respondent was quashed.

Des Raj Sangar respondent (hereinafter referred to as the respondent) joined service as a clerk in the Panchayat Department of the then Punjab Government in 1942. The respondent was in due course promoted and confirmed as Head Assistant. In 1961 while the respondent was officiating as a Superintendent in the Panchayat Department, he was appointed Officer on Special Duty (Elections). The post of Officer on Special Duty (Elections) was an ex-cadre post, while that of Superintendent was included in the cadre. With effect from November 1, 1961 the post of Officer on Special Duty was re-designated as Panchayati Raj Election Officer. The respondent held the post of Panchayati Raj Election Officer temporarily till 1964 when that post was made permanent. The respondent was confirmed as Panchayati Raj Election Officer with effect from September 19, 1964. The decision to confirm the respondent was taken with a view to ensure the lien of the respondent on that post as the respondent had been selected by the Government of India as Gram Panchayat Officer in the Indian Aid Mission, Nepal. An undertaking was also obtained from the respondent at the time he was confirmed that this would not affect the seniority of B. N. Sharma, who was senior to the respondent and who was then holding the temporary post of Planning Officer. On the reorganization of the erstwhile State of Punjab with effect from

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November 1, 1966 the post of Planning Officer held by B. N. Sharma was allocated to the State of Punjab, while that of Panchayati Raj Election Officer held by the respondent was allocated to the State of Haryana. From November 1, 1966 till April 16, 1971 the respondent worked as Planning-cum-Panchayati Raj Election Officer in the Panchayat Department of Haryana Government. On April 16, 1971 the Haryana Government created eight temporary posts of Deputy Directors in the Panchayat Department in the pay scale of Rs. 400-1100. The post of the respondent was also re-designated as Deputy Director Panchayat with effect from April 16, 1971. A notification was subsequently issued on May 13, 1971 superseding the earlier notification and the respondent's post was again designated as that of planning-cum-Panchayati Raj Election Officer. On the same day instead of the eight temporary posts of Deputy Directors, nine posts of Deputy Directors were created. Two of those Deputy Directors were to be posted at the headquarters, one to deal with land development work and the other to deal with legal work, while seven of the Deputy Directors were to work in the field. These seven posts of Deputy Directors meant for the field work were subsequently abolished. Another post of Officer on Special Duty (Planning) in the grade of Rs. 400-800 was created in October 1971. A. N. Kapur, who was junior to the respondent but who had been confirmed as Superintendent, was appointed Officer on Special Duty (Planning). On April 13, 1972 the impugned order was made and the same reads as under:

ORDER

The Governor of Haryana is pleased to order that in view of the extreme financial stringency the permanent post of the Panchayati Raj Election Officer in the Panchayat Department, Haryana, in the scale of Rs. 400-40-1000/50-1100 should be abolished with immediate effect.

2. Consequent upon the abolition of the post of the Panchayati Raj Election Officer the Governor of

Haryana is further pleased to order that the services of Shri Des Raj Sangar who is holding the post of the Panchayati Raj Election Officer in a substantive permanent capacity should be dispensed with immediate effect. He should relinquish the charge of his post immediately. He is allowed three months' emoluments i.e. pay and allowances as gratuity in lieu of three months notice in accordance with the provisions of rule 5.9 of the Civil Services Rules, Volume II. He shall be entitled to pension/gratuity in accordance with the rules in Chapter VI of the Civil Service Rules, Volume II, as amended from time to time, but the pension shall not be payable for the period in respect of which he has been allowed gratuity in lieu of three months' notice.

J. S. Sarohia

Secretary to Govt. Haryana

Chandigarh Development & Panchayat Department
Dated: 13th July, 1972

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The respondent in his petition while assailing the impugned order levelled allegations of mala fide against Shri Shyam Chand, then Minister for Development and Panchayats, Haryana but the said allegations were not pressed at the time of arguments. Following two contentions were advanced on behalf of the respondent:

(1) The impugned order dated July 13, 1972 abolishing the post of Planning-cum-Panchayati Raj Election Officer held by the respondent and the consequent termination of his services was arbitrary and had no reasonable nexus with the object sought to be achieved, namely, meeting the financial stringency. The impugned order was stated to be violative of articles 14 and 16 of the Constitution inasmuch as the respondent who was at all times selected for higher posts and got promotions from the lower posts in the cadre was being thrown out of the job on the pretext of the abolition of the post permanently held by him, whereas persons junior to him in rank and less meritorious were retained in service.

(2) In view of the provisions of rule 3.14 and other relevant rules of Punjab Civil Services Rules, the moment the post held by the respondent was abolished his lien got revived on the post of Head Assistant which he had held substantively before his promotion to the ex-cadre post and therefore his services could not be terminated, and he was in any case entitled to the admittedly existing post of Head Assistant.

As against the above, it was urged on behalf of the State of Haryana that the Government was well within its rights to decide as to which posts should be abolished to effect economy to meet the financial stringency and that the court could not go into the matter and decide whether the abolition of the post was justified or not. It was also stated that the respondent could not be reverted to the post of Head Assistant as his lien on the post had been terminated when he was confirmed against the permanent post of Planning-cum-Panchayati Raj Election Officer.

The learned Judges of the High Court held that the impugned order was arbitrary, unreasonable and violative of articles 14 and 16 of the Constitution. The order as such was quashed. In view of the above finding, the learned Judges did not go into the second contention advanced on behalf of the respondent on the basis of rule 3.14 of the Punjab Civil Services Rules.

In appeal before us learned Solicitor General on behalf

of the appellant-State has urged that it is for the State Government to decide as to which post should be abolished and in case the State Government so decides for administrative reasons, its order in this respect should not have been quashed by the High Court. As against that, Mr. Sibal on behalf of the respondent has canvassed for the correctness of the view taken by the High Court. There is, in our opinion, considerable force in the contention advanced on behalf of the appellant in this respect.

Whether a post should be retained or abolished is essentially a matter for the Government to decide. As long as such decision of

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the Government is taken in good faith, the same cannot be set aside by the court. It is not open to the court to go behind the wisdom of the decision and substitute its own opinion for that of the Government on the point as to whether a post should or should not be abolished. The decision to abolish the post should, however, as already mentioned, be taken in good faith and be not used as a cloak or pretence to terminate the services of a person holding that post. In case it is found on consideration of the facts of a case that the abolition of the post was only a device to terminate the services of an employee, the abolition of the post would suffer from a serious infirmity and would be liable to be set aside. The termination of a post in good faith and the consequent termination of the services of the incumbent of that post would not attract article 311. In *M. Ramanatha Pillai v. The State of Kerala & Anr.* (1) Ray C.J. speaking for the Constitution Bench of this Court observed:

"A post may be abolished in good faith. The order abolishing the post may lose its effective character if it is established to have been made arbitrarily, malafide or as a mask of some penal action within the meaning of article 311 (2)."

It was further observed:

"The abolition of post may have the consequence of termination of service of a government servant. Such termination is not dismissal or removal within the meaning of article 311 of the Constitution. The opportunity of showing cause against the proposed penalty of dismissal or removal does not therefore arise in the case of abolition of post. The abolition of post is not a personal penalty against the government servant. The abolition of post is an executive policy decision. Whether after abolition of the post, the Government servant who was holding the post would or could be offered any employment under the State would therefore be a matter of policy decision of the Government because the abolition of post does not confer on the person holding the abolished post any right to hold the post."

According to the impugned order, the post of the Panchayati Raj Election Officer was abolished in view of the extreme financial stringency. In support of the above order, Shri G. L. Bailpur, Secretary to the Government of Haryana, filed affidavit. According to that affidavit, the post of Panchayati Raj Election Officer was created simply for the conduct of elections of the Panchayati Raj Bodies. The other duties which were performed by the respondent were only as a measure of temporary arrangement. In order to streamline the Department the Government felt that the Department should be reorganised and as a result of reorganisation those duties which had nothing to do with the job of the Panchayati Raj Election Officer were withdrawn and given to separate

Deputy Directors of Panchayats. The

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duties pertaining to legal matters and complaints against Panchas, Sarpanches and the members of the Panchayat Samitis were of such nature that the same required a legal background and field experience by the officer handling the subject. Those duties were, therefore, given to Deputy Director of Panchayat (Legal) who was a Law graduate and had a long field experience as Block Development and Panchayat Officer. After the reorganisation of the Department, the only work left with the Panchayati Raj Election Officer was that of conducting elections of Panchayati Raj Bodies. As this work was of a periodical nature, the Government thought it fit to abolish it. It was also stated in another affidavit filed on behalf of the appellant-State that the post of Panchayati Raj Election Officer and the seven posts of field Deputy Directors were abolished as an economy measure to meet financial stringency. We see no cogent ground to question the averments made in the above affidavits. The averments show that the decision to abolish the post of Panchayati Raj Election Officer was taken because of administrative reasons. The question as to whether greater economy could have been brought about by adopting some other course is not for the court to go into, for the court cannot sit as a court of appeal in such matters. It may be that some of the functions which were being previously performed by the respondent are now being performed by Deputy Directors whose posts have not been abolished, this fact would not show that the decision to abolish the post held by the respondent was not taken in good faith. After the posts of Deputy Directors had been created and had been in existence along with the post of Panchayati Raj Election Officer for a number of months, the Government, it would appear, decided to abolish some of the posts to meet the financial stringency. In taking the decision as to which post to abolish and which not to abolish, the Government, it seems, took into account the relative usefulness of each post and decided to abolish the seven posts of field Deputy Directors and the one post of Panchayati Raj Election Officer. This was a matter well within the administrative discretion of the Government and as the decision in this respect appears to have been taken in good faith, the same cannot be quashed by the court. The fact that the post to be abolished is held by a person who is confirmed in that post and the post which is not abolished is held by a person who is not permanent would not affect the legality of the decision to abolish the former post as long as the decision to abolish the post is taken in good faith. We would, therefore, hold that the High Court was in error in quashing the order of the Government whereby the post of Panchayati Raj Election Officer had been abolished.

There appears to be, however, considerable force in the second contention advanced on behalf of the respondent that on the abolition of the post of Panchayati Raj Election Officer, his services should not have been terminated. According to clause (a) (2) of rule 3.14 of Punjab Civil Services Rules Vol. I Part I as applicable to Haryana State, a competent authority shall suspend the lien of a Government servant on a permanent post which he holds substantively if he is appointed in a substantive capacity to a permanent post outside the cadre on which he is borne. According to clause (e) of that rule, a

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Government servant's lien which has been suspended under

clause (a) of that rule shall revive as soon as he ceases to hold a lien on the post of the nature specified in sub-clauses (1), (2) or (3) of that clause. The above provisions were considered by us in the case of T. R. Sharma v. Prithvi Singh & Anr.(1) and it was held that in the absence of a written request by the employee concerned, the lien on the post permanently held by him cannot be terminated. It is nobody's case that any written request was made by the respondent for terminating his lien on the post of Head Assistant. As such, the lien of the respondent on the post of Head Assistant should be held to have immediately revived as soon as the post of Panchayati Raj Election Officer was abolished.

It has been pointed out by Mr. Sibal that officials who were junior to the respondent have in the meanwhile been promoted to higher posts. It would be for the authorities concerned to take such consequential steps as may be necessary in accordance with the rules because of the revival of the lien of the respondent on the post of Head Assistant.

Mr. Sibal has also stated that the respondent may exercise his option of taking compensation pension in accordance with rule 5.2 of the Punjab Civil Services Rules Vol. II because of the abolition of the post of Panchayati Raj Election Officer. In case the respondent does so, it would be for the Government to pass appropriate orders in the matter. Submission has further been made by Mr. Sibal that the respondent should not in view of the hardship suffered by him be compelled to make refund out of the salary which he has been drawing during the pendency of the appeal. This again is a matter which is entirely for the Government to decide and we are sure that the Government would pass appropriate order keeping in view all the circumstances of the case.

We accordingly accept the appeal and set aside the judgment of the High Court. We hold that the order of the Government abolishing the post of Panchayati Raj Election Officer does not suffer from any infirmity and as such is not liable to be quashed. We further hold that on the abolition of that post, the lien of the respondent on the post of Head Assistant stood revived. The parties in the circumstances shall bear their own costs throughout.

V.P.S.

Appeal allowed.

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