when he was considered for promotion along with Respondent 2 and 3 as admitted by Respondent No. I in para 8 of the return. As already held, the petitioner had by then had attained 8 years requisite experience in Class II Service since he was promoted to Class II Service with effect from 19th June, 1971 and was a Diploma Holder. It is not disputed that he has also passed departmental examination.

(14) For the foregoing reasons notification dated 14th January, 1985 (Annexure P-4) amending Rules 6 and 9 of the Class I Rules is quashed being violative of the provisions of Articles 14 and 16 of the Constitution of India and *ultra vires* the State Government by accepting this writ petition. Respondent No. 1 is directed to promote the petitioner with effect from 20th June, 1979 when he was considered for promotion along with Respondents 2 and 3, on the basis of seniority circulated in the year 1987, with all the consequential benefits, within two months of this order. The respondent-State may, however, consider the desirability of creating a supernumerary posts, to avoid hardship to Respondents 2 and 3. The petitioner shall also be entitled to the costs of this petition from Respondent No. 1 which are quantified at Rs. 1,000.

R.N.R.

Before G. C. Mital & G. S. Chahal, JJ.

S. S. VIRDI,—*Petitioner.*

versus

CHANDIGARH ADMINISTRATION, CHANDIGARH AND OTHERS,—*Respondents.*

Civil Writ Petition No. 13783 *of* 1990

10th December, 1990.

Haryana Housing Board Act. 1971—*Ss.* 3 & 7—*Appointment to tenure post—Chief Engineer on deputation from Punjab appointed as Chairman, Chandigarh Housing Board for satutory period of* 3 *years by notification—Period of* 3 *years running beyond date of superannuation—Punjab State not withdrawing petitioner from deputation—Appointment to Board does not amount to re-employment beyond superannuation—Such contractual appointment cannot be determined before expiration of* 3 *years without hearing—Action of*

S. S. Virdi *v.* Chandigarh Administration, Chandigarh and others
(G. S. Chahal, J.)

U.T. Administration in transferring petitioner from tenure post of Chairman to Chief Engineer, U.T. Administration void—Petitioner entitled to continue as Chairman of the Board—Administration has no statutory power to curtail period of appointment.

Held, that the Chandigarh Housing Board is a statutory body and appointment to any of its offices cannot amount to re-employment or extension beyond superannuation. (Para 4)

Held, that the entire service record of the petitioner was with the respondent-administration when he was appointed as Chairman and the Administration could have seen that he was attaining the superannuation age on 31st October, 1990. His appointment to head the statutory body, therefore, cannot be considered to be a case of promotion. (Para 4)

Held, that to byepass the law, the respondent-authorities thought of a novel method of transferring the Chairman of the statutory Board to the post of Chief Engineer which post he held prior to his appointment. As the notings will show the Administrator had thought that withdrawing of the notification with respect to appointment might create some legal complications and it wanted to avoid the same. The petitioner was not given an opportunity of being heard and his appointment was terminated in arbitrary manner. Though he was not suffering from any disqualification at the time of his appointment, nor did he acquire any disqualification during his tenure within the meaning of Section 6 of the Act. Hence, it has to be held that the petitioner shall hold the office of the Chairman of the Board. (Paras 8 & 9)

Writ petition under Articles 226/227 of the Constitution of India praying that :—

(i) *that the records of the case may kindly be called for;*

(ii) *That after a perusal of the record and hearing upon the counsel for the parties, this Hon'ble Court may be pleased to grant the following reliefs :—*

(a) *Issue a writ of certiorari,* mandamus *or any other appropriate writ or order quashing the order dated 16th August,* 1990, (*Annexure P-5*), *declaring the same as illegal and* ultra vires *of the Haryana Housing Board Act,* 1971, *and for a direction to the Respondents to put petitioner back in the position of Chairman, Chandigarh Housing Board with immediate effect, so that he is able to complete his full term of three years to which he has a legal right as per the appointment order itself and as per provisions of Section 7 of the aforesaid Act; and it be held that the petitioner is entitled*

to complete the balance term on the same terms, privileges and emoluments, which included house, telephone, car and other facilities;

(iii) That any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may kindly be issued;

(iv) that any other relief to which the petitioner may be found entitled in the facts and circumstances of the case by this Hon'ble Court may kindly be granted ;

(v) That the requirement of filing the certified copies of annexures may kindly be dispensed with;

(vi) that there requirement of serving advance notices of this petition on the respondents herein may kindly be dispensed with;

(vii) that the costs of this petition may kindy be awarded in favour of the petitioner and against the Respondents;

(viii) It is further prayed that in view of the circumstance that the petitioner is attaining the age of superannuation on 31st October, 1990 and that as he has illegally and arbitrarily been deprived of his tenure post of Chairman, Housing Board and after 31st October, 1990 he would be left without any work and job because of the illegal action of the Respondents, the applicant be permitted to continue as Chairman of the Housing Board pending decision of this petition, on the same terms and conditions, emoluments and facilities which were made available to him when he worked as Chairman Housing Board in compliance with the appointment order or any other interim order which this Hon'ble Court may deem fit and proper may be passed.

H. L. Sibal, S. C. Sibal, Sr. Advocates with R. K. Handa & Miss Karan Randhawa, Advocates, for the Petitioner.

Anand Sarup Sr. Advocate with Rajiv Vij, Advocate, for the Respondents.

JUDGMENT

(1) The petitioner has, by means of this writ petition, sought a writ of certiorari and *mandamus* for quashing the order dated 16th August, 1990, Annexure P5 passed by the Administrator, Union Territory, Chandigarh Administration after declaring the same to be illegal and *ultra vires* of the Haryana Housing Board Act, 1971 as extended to the Union Territory, Chandigarh (shortly the Act) with a direction to the respondent-authorities to put him back as Chairman of the Chandigarh Housing Board (the 'Board' in brief).

(2) The petitioner was in the rank of Superintending Engineer, P.W.D., B & R, Punjab and was working as Chief Engineer, Punjab Housing and Development Board when he was sent on deputation to the respondent-Administration where he was appointed as Chief Engineer and Secretary, Engineering Department. *Vide* notification dated 3rd May, 1990, Annexure P2, the petitioner was appointed as Chairman of the Board which was constituted under section 3 of the Act. *Vide* the same notification, seven other members of the Board were also appointed. It was specifically stated that the Members would hold office for a period of three years from the date of the notification. The petitioner took over the charge on 3rd May, 1990. *Vide* order, Annexure P4 dated 5th June, 1990, it was ordered that the petitioner would continue to hold the additional charge of the post of Chief Engineer and Secretary, Engineering Department of the respondent-Administration till further orders. On 16th August, 1990,-- *vide* Annexure P5, the notification Annexure P2 was partially modified and Smt. Tejinder Kaur, IAS, Finance Secretary was appointed as Chairperson of the Board in addition to her own duties as Finance Secretary in place of the petitioner who was shown to have been transferred as Chief Engineer of the Union Territory, Chandigarh. On the same day, order dated 16th August, 1990, Annexure P5, was passed and the petitioner was shown to have been transferred as Chief Engineer, Union Territory, Chandigarh. The petitioner impugns these orders on the ground that under the provisions of the Act and also under orders Annexure P2, his period of appointment was for three years. The order withdrawing the notification is in violation of section 7 of the Act. It was passed without any notice to him and was an arbitrary act of the respondent-authorities who had no power to transfer him from a tenure post of the Chairman of the Board to the post of Chief Engineer under the respondent-Administration. The arrangement of appointing Smt. Tejinder Kaur as the Chairperson was with an oblique motive and was *mala fide*. The same was neither in the interest of the public nor was it permitted by law. The petitioner had represented to the Administrator that there was no statutory power with the respondent-authorities to curtail the period of his appointment.

(3) The respondent-authorities have contested the writ petition by way of filing written statement. It has been stated in the return that no rights of the petitioner have been infringed by the impugned orders. The facts of petitioner being taken on deputation from the Punjab Government and his appointment as Chief Engineer and

ex officio Secretary, Engineering Department were amitted. Further in para 3 of the return, it has been stated that the term of the previous Board had expired on 8th January, 1990 and the Finance Secretary was appointed as one Member Board and given temporary charge of the post of Chairperson till such time as the new Board was constituted. In exercise of powers under sub-section (4) of section 3 of the Act the Administrator appointed a Chairman and seven other members of the Board. They had been ordered to hold office for a period of three years from the date of the notification, but the terms and conditions of appointment of the Chairman and Members were not finalised. Thereafter a doubt arose as to the legality of appointment of the petitioner as Chairman of the Board. This matter was then examined at various stages. It was then found that petitioner's appointment as Chairman was illegal and void. It could only be treated to be an order of transfer from the post of Chief Engineer to that of Chairman of the Board. As a result, on 16th August, 1990 the petitioner was transferred back to the post of Chief Engineer. This order was only in the form of rectification of the mistake and to regularise the matter consequent upon the passing of the order dated 3rd May, 1990. It was only an administrative order passed on the needs of the respondent-administration which fact had been ordered by the Home Secretary to be conveyed to the petitioner.

(4) Undisputedly, the Act had been extended to the Union Territory, Chandigarh. Annexure P 1 is the extract from the Chandigarh Administration Gazette dated 1st March, 1975. Section 6 of the Act enumerates the terms and conditions of the Members which are as follows :

> "6(1) A person shall be disqualified for being appointed or for continuing as the Chairman or member of the Board, if he,—
>
> (a) holds any office or place of profit under the Board;
>
> (b) is of unsound mind;
>
> (c) is an undischarged insolvent;
>
> (d) has, directly or indirectly by himself or by any partner, any share or interest in any contract or employment with, by or on behalf of, the Board;
>
> (e) is a Director or a Secretary, Manager or other salaried officer of any incorporated company which has any share or interest in any contract or employment with, by or on behalft of, the Board or ;

(f) has been convicted of any offence involving moral turpitude; and

(g) (i) has become incapable of acting or ;

(ii) is otherwise unfit to continue as a member."

section 7 provides that every member shall hold office for a period of three years from the date of his appointment. In the notification Annexure P-2, it has been specifically recorded that the Members will hold office for a period of three years from the date of this notification. The respondent-authorities have tried to take the stand that the appointment of the petitioner was illegal and void *ab initio* on the basis that he was a deputationist from the State of Punjab and due to retire on 31st October, 1990. Since no concurrence had been obtained from the Punjab Government (the principal employer of the petitioner), his appointment was bad. Under section 6 of the Act, the holding of any other post is no bar to the appointment as a Member or the Chairman of the Board. A reference to paragraph 3 of the written statement on behalf of the respondent-authorities will show that previously Shri J. S. Kohli, who was also a deputationist from the Punjab was appointed as Chairman of the Board. The Board is a statutory body and appointment to any of its offices cannot amount to reemployment or extension beyond superannuation. Thinking on this line by the respondent-authorities cannot be justified. At this stage, the necessary notings of the Department itself may be examined. (These are being extracted from the return of the respondent-authorities). On 25th July, 1990, the Finance Secretary sent the following note to the Adviser to the Administration:

"The appointment of Shri Virdi as Chairman does not appear to be in order for reasons which are discussed below:

In 1987 Shri J. S. Kohli was appointed Chairman, Chandigarh Housing Board while in service. He too was a Punjab deputationist and was to retire on superannuation some time during his term as Chairman. At that time, the Punjab Government wrote to the U.T. Administration desiring to know how and under what circumstances the prior approval of the parent department was not sought before appointing him as Chairman. According to the Government of

India, instructions regarding criteria and procedure for extension/reemployment the "proposal for grant of extension of service to officers working in posts outside the cadre to which they permanently belong should have specific concurrence of the cadre authority". Shri Virdi being a Punjab Government employee cannot be granted extension/reemployment without their approval.

In the order passed by the former Administrator it is not clear whether Shri Virdi will automatically continue in service beyond the date of superannuation i.e. 31st October, 1990. It is also not clear as to which of the 2 charges which he is holding is a substantive charge and which is an additional charge.

Further orders are solicited please."

On 27th July, 1990, the Adviser to the Administrator ordered that the matter be examined in the personnel department of the Administration in the light of the instructions of the Govt. of India. On such examination of the matter, the Home Secretary put up the following note on 31st July, 1990, relating to the orders of the Adviser to the Administrator dated 27th July, 1990 :

"———Serious doubts have arisen about the procedure for issue of Notification, dated 3rd May, 1990. The insufficiency in the contents of this notification relating to absence of terms and conditions has been noted. Absence of approval of Cadre Controlling authority is another drawback. Finally, in theory, the post of Chairman is of higher rank as there is provision for a Chief Engineer working under the Chairman.

In view of these difficulties, I agree with the Deputy Secretary, Home that the appointment of Shri Virdi as Chairman is void *ab initio*. Therefore, it is desirable that notification dated 3rd May, 1990 be withdrawn and action be initiated to reconstitute the Board after following the necessary procedure and after finalising the terms and conditions of appointment of the Chairman and the Members. The Board should ideally include representatives of Finance and Law Departments also.

It is proposed that simultaneous with the withdrawal of the notification, dated 3rd May, 1990, interim arrangement be made for running the Board. It may kindly be considered that Finance Secretary may be appointed as one-person Board to carry on the activities of the Board till such time as the full Board is constituted."

On 8th August, 1990, the Adviser to the Administrator passed the following orders which were approved by the Administrator on 11th August, 1990:

"The file was recalled by me after discussion with the Administrator.

The Chandigarh Housing Board was constituted with approval of the Administrator,—*vide* notification, dated 3rd May, 1990. The matter was discussed with the Administrator a few days ago. There are certain infirmities in the constitution of the Board. The Chief Engineer has been appointed as Chairman of the Board for a period of three years without seeking concurrence of his parent department and without specifying his terms of appointment. Further his appointment as Chairman of the Board amounts to re-employment of Group 'A' officer, which is against the instructions of the Government of India on the subject.

The case has been examined in detail in the Finance and Personnel Departments of the Administration and it has been suggested that the Board may be reconstituted after cancelling the notification, dated 3rd May, 1990, so as to remove the infirmities and as an interim measure, Shrimati Tejinder Kaur, IAS, Finance Secretary, may be appointed as one person Board.

However, taking into account the various aspects of the case, it is recommended that Shrimati Tejinder Kaur, Finance Secretary may be appointed as Chairman of the Housing Board in place of Shri S. S. Virdi, Chief Engineer, who is retiring from the service with effect from 31st October, 1990 as his appointment as Chairman of the Board for three years is *ab initio* wrong in the light of

the position explained above. There is no need for reconstitution of the Board and cancellation of the notification, dated 3rd May, 1990 as this may create certain legal complications."

A perusal of the above notings will show that the respondent-Administration had tried to find out the ways and means as to how the petitioner could be removed from the post of the Chairman of the Board since his continuation for three years would run beyond the date of superannuation. It is not on record that the respondent-authorities had tried to approach the Punjab Government to find out if there was any objection to petitioner's continuing as head of the statutory body after the date of his superannuation. The entire service record of the petitioner was with the respondent-administration when he was appointed as Chairman and the Administration could have seen that he was attaining the superannuation age on 31st October, 1990. His appointment to head the statutory body, therefore, cannot be considered to be a case of promotion.

(5) Mr. Anand Swaroop, learned Senior Counsel for the respondents has taken us through the Punjab Civil Services Rules to show the manner in which an officer can be sent on deputation and the rights of the parent department to withdraw the deputationist. In support of his argument he has also referred to *Sohan Singh* v. *The State of Punjab and others*, (1), which lays down that no contract comes into being between Government and the Officer when he is sent on deputation under Rule 10.2 of the Rules and his legal position continues to be more one of status than of contract. He cannot be said to have any indefeasible right to insist that he should not be recalled before the expiry of specified period. Hence, the State Government having lent the services of its officer on deputation of foreign service for a specified period can, before the expiry of the aforesaid period, legally recall the officer unilaterally without the consent of the officer concerned. It is further held that the provisions of Article 311 of the Constitution of India are not attracted where an officer, who has been enjoying, on his transfer to foreign service, greater emoluments and higher status and rank, is recalled, before the expiry of the specified period, to his parent department in lower rank with lesser emoluments without his consent or a notice to him. There can be no dispute with any

(1) A.I.R. 1970, P. & H. 322 (F.B.).

of these propositions of law, but they are not attracted to the facts of the case before us. In the instant case, the parent Punjab State had not withdrawn the petitioner from deputation. When the petitioner approached the respondent-authorities with a representation, he was informed,—*vide* Annexure P-8, dated 12th September, 1990 that it was only an administrative order, passed on the needs of the Administration.

(6) The question that arises for decision is, whether the respondent-authorities had the power to remove the petitioner from the office of the Chairman of the Board. Guidelines on the matter may be sought from the two judgments of the Apex Court. In *State of Orissa* v. *Dr. (Miss) Binapani,* (2), the Supreme Court made the following observations:

> "It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority of the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed: it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

(7) In *Dr. Bool Chand* v. *Chancellor, Kurukshetra University,* (3), their Lordships also observed as under :

> "—— —— —— The University Act, the Statutes and the Ordinances do not lay down the conditions in which the appointment of the Vice-Chancellor may be determined nor does the Act prescribe any limitations upon the exercise of the power of the Chancellor to determine the employment. But once the appointment is made in pursuance of a Statute, though the appointing

(2) A.I.R. 1967, S.C. 1269.
(3) A.I.R. 1968, S.C. 292.

authority is not precluded from determining the employment, the decision of the appointing authority to terminate the appointment may be based only upon the result of an enquiry held in a manner consistent with the basic concept of justice and fairplay"

(8) To byepass the law, the respondent-authorities thought of a novel method of transferring the Chairman of the statutory Board to the post of Chief Engineer which post he held prior to his appointment. As the notings will show the Administrator had thought that withdrawing of the notification with respect to appointment might create some legal complications and it wanted to avoid the same. The petitioner was not given an opportunity of being heard and his appointment was terminated in an arbitrary manner by passing orders Annexures P-5 and P-6 though he was not suffering from any disqualification at the time of his appointment, nor did he acquire any disqualification during his tenure within the meaning of Section 6 of the Act.

(9) Keeping the foregoing discussion in view, we hereby accept the writ petition and quash the impugned orders Annexures P-5 and P-6 and direct that the petitioner shall hold the office of the Chairman of the Board and be deemed to have continued to hold that office with all consequential benefits irrespective of the passing of the said orders. The respondent-authorities shall also pay costs of the writ petition, which are assessed at Rs. 2,000.

R.N.R.

Before A. L. Bahri, J.

M/S VENUS PLYWOODS PVT. LTD., JALANDHAR,—*Petitioner.*

versus

Y. D. BANGA,—*Respondent.*

Civil Original Contempt Petition No. 986 of 1990.

1st April, 1991.

Central Excise and Salt Act, 1944—S. 11-A—Central Excise Tariff Act, 1985—Chapter 44—Contempt of Courts Act, 1971—S.12—Petitioner held entitled to refund of excise duty—High Court directing refund of Refusal of excise department on plea of unjust enrichment—Such doctrine—Cannot be pleaded—Contempt petition admitted.