

CIVIL MISCELLANEOUS

Before Mehar Singh, C. J., and R. S. Narula, J.

AJIT SINGH AND ANOTHER,—Petitioners

versus

THE STATE OF PUNJAB,—Respondent.

Civil Writ No. 3088 of 1968.

January 29, 1970.

Constitution of India ((1950)—Article 311—Abolition of a permanent post—Termination of the services of the incumbent thereof—Whether amounts to removal—Article 311—Whether attracted.

Held, that in the case of abolition of a permanent post, there is no question of removal or dismissal. Hence the termination of the services of the incumbent of a permanent post which has been validly abolished, does not amount to removal and Article 311 of the Constitution is not attracted.

(Para 3)

Case referred by Hon'ble Mr. Justice R. S. Narula, on 8th December, 1969, to a larger Bench as an important question of law is involved in this case. The Division Bench consisting of Hon'ble the Chief Justice Mr. Mehar Singh and the Hon'ble Mr. Justice R. S. Narula, decided the case finally on 29th January, 1970.

Petition under Articles 226 and 227 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the impugned orders and notification of the respondent government, dated the 11th September, 1968, and further praying that the respondent government be directed to restore the Subordinate Services Selection Board and allow the petitioners to function in their respective posts till the expiry of their unexpired period of appointment or in the alternative to provide them any alternative jobs in the government with the same terms and emoluments as required by law.

AMAR SINGH SANDHU, AND B. S. KHOJI, ADVOCATES, for the petitioners.

M. R. SHARMA, DEPUTY ADVOCATE-GENERAL, for the respondent.

JUDGMENT

MEHAR SINGH, C.J.—The Subordinate Services Selection Board, Punjab, was first constituted on September 11, 1953, by a notification

(copy Annexure 'D'), but it appears that the Board came to an end with the reorganisation of the then Punjab State under the provisions of the Punjab Reorganisation Act, 1966 (Act 31 of 1966), and this was sometime in October, 1966. It was reconstituted by Punjab Government Notification of January 12, 1968 (copy Annexure 'C'). It has not been necessary to deal with its history between 1953 and 1968, for in the present petition the only question for consideration is the appointment of the petitioners as members under the notification reconstituting the Board on January 12, 1968. The notification provides a fixed term for a member of the Board of three to five years, among other matters. On the very date, that is to say on January 12, 1968, the Punjab Government made an order under this very notification appointing Mr. Jamna Das Akhtar petitioner, as Chairman and Mr. Ajit Singh, petitioner, and Mr. Shamsher Singh Saroj, as members, of the Board for a period of five years effective from that very date. In paragraphs 8 to 12 of this petition under Articles 226 and 227 of the Constitution, this is what is stated—"That petitioner No. 2 (Mr. Jamna Das Akhtar) as Chairman of the Subordinate Services Selection Board received certain complaints against the other member, S. Shamsher Singh Saroj, which were serious in nature. He wrote to the Chief Minister, Punjab, on 29th July, 1968, to look into the matter urgently. Again on 12th July, 1968, he reiterated the said suggestion of looking into the complaints, but nothing came out of it because the Ministry resigned on 17th August, 1968. On 27th August, 1968, petitioner, No. 2 as chairman again saw the Governor of Punjab and placed before him the serious complaints against S. Shamsher Singh Saroj, which required immediate looking into to maintain the public confidence. The Governor, however, told petitioner No. 2, that he would call him later for detailed discussion into that matter before taking any action in that behalf. Again on 29th August, 1968 petitioner No. 2 met the Chief Secretary and handed over to him the written complaint against Shri Shamsher Singh Saroj. That in the meeting of the Subordinate Services Selection Board on 31st August, 1968, the matter relating to the corrupt practices by Shri Shamsher Singh Saroj was brought on the agenda for discussion. In that meeting petitioner No. 2 as chairman placed all the complaints and material before the said member S. Shamsher Singh and asked him to state his position. As a result of that discussion he was advised by petitioner No. 2 to put in his resignation, which he did the same day. That resignation was forwarded by petitioner No. 2 to the Chief Secretary, Punjab, the same day for necessary action. That after Shri Shamsher Singh Saroj had put in

his resignation, he applied to the Chief Secretary to permit him to withdraw his resignation. In spite of all that the Punjab Government instead of proceeding in the matter on the complaints against Shri Shamsheer Singh Saroj and deal with him as a public servant in case he was found guilty, suddenly by notification No. 7574-SII-4(2)-67/26448, dated 11th September, 1968, Government rescinded the notification No. 9311-SII-4(2)-67/1216, dated 12th January, 1968 from 11th September, 1968 and the Chief Secretary,—*vide* his letter No. 7574-SII-4(2)-68/26452, dated 11th September 1968, informed, the petitioners and the other member of the Board that consequent upon the abolition of the Subordinate Services Selection Board, Punjab, the President of India was pleased to order that their services were no more required. They would, however, be entitled to get salaries on the existing terms and conditions up to 11th October, 1968 afternoon in lieu of one month's notice. They were thus directed to relinquish charge from the office from the afternoon of 11th September, 1968." The copies of the relevant notifications in this respect are Annexures 'A' and 'B', both of September 11, 1968. In their petition the petitioners took the grounds, attacking the validity and constitutional vires of the order abolishing the Board and terminating their services, (a) that there was no justification with the State Government for abolishing the Subordinate Services Selection Board, (b) that the State Government had no power and was not competent in law to abolish the Subordinate Services Selection Board, (c) that their appointments were for a term of five years and the termination of their services without complying with the provisions of Article 311 of the Constitution was void and unconstitutional, and (d) that, in any case, even if the State Government had the power to abolish the Subordinate Services Selection Board, that did not automatically extinguish the rights of the petitioners to remain in Government service. After the petition had been filed, the petitioners took an additional ground of *mala fide* which they have reproduced in paragraph 15-A of their amended petition and the position there urged is that after the abolition of the Subordinate Services Selection Board the constitution of the same had been kept alive and it remained functioning throughout without break, so that the abolition was not genuine but was a *mala fide* act with a view to remove the petitioners from their posts. The respondent State in its return has stated that the Subordinate Services Selection Board 'was abolished as a result of acceptance of the implementation of a recommendation of the Administrative Reforms Commission and not on account of reorganisation of the State, * * * * *

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* * * * * in view of bickering among the members (of the Board) and the recommendations of the Administrative Reforms Commission, it was decided in public interest to abolish the Board. This decision was administrative. The termination of the service of the petitioners does not attach any stigma and hence they have no cause of action to file the petition." Broadly, it was admitted in the return that the chairman (Mr. Jamna Das Akhtar petitioner) had levelled charges against Mr. Shamsheer Singh Saroj, who had submitted his resignation, which resignation he had attempted to withdraw, but it was explained that the real reason for the abolition of the Board was as already reproduced above. In regard to the allegation of *mala fide* in paragraph 15-A of the petition, there was denial to the same and it was stated that "the residuary work of the Board has been got completed by the Government by a Secretariat Committee. The Secretary of the defunct Board with the skeleton staff was retained to assist the Committee in this respect." Obviously the petition was opposed by the respondent State. It does not appear from the proceedings that the third member, Mr. Shamsheer Singh Saroj, has been a party to these proceedings.

(2) It has not been denied that the respondent State Government has had the power to abolish the Subordinate Services Selection Board. The respondent has given two reasons for abolition of the Board, (a) that the Administrative Reforms Commission advised its abolition, and (b) that there was such bickering among the members of the Board affecting its functioning that it was in the public interest to abolish it. There is nothing that detracts from the genuineness of these reasons. So the respondent abolished the Subordinate Services Selection Board and there is no adequate ground available for challenge against the abolition of the same.

(3) There is an argument on the side of the petitioners that their appointments were for a fixed term of five years and the termination of the same before the expiry of the term of the tenure without complying with Article 311 of the Constitution amounts at least to removal from service contrary to that article. There are two cases which support this view. The first case is *Abdul Khalik Renzu v. The State of Jammu and Kashmir* (1), in which the State Government had abolished the Special Police Squad resulting in the termination of the services of the members of the Squad, which services had

(1) A.I.R. 1965 J. & K. 15 (F.B.)

sometime earlier been made permanent. The learned Judges referred to two decisions of the Supreme Court in *Parshotam Lal Dhingra v. Union of India* (2), and *Moti Ram Deka v. General Manager, North East Frontier Railway* (3), and relying on the observations of their Lordships in the last of these two cases, which observations the learned Judges considered were somewhat derogating from the dictum of their Lordships in the first case, held that abolition of the Special Police Squad, a permanent establishment resulting in the termination of the services of the petitioners before them, without complying with Article 311 of the Constitution was removal contrary to that article and could not be sustained. A similar view was taken by *Tripathi, J.*, in *Dr. Prem Behari Lal Saxena v. State of Uttar Pradesh* (4), on precisely the same basis. If the matter stood there and if the approach of the learned Judges in these two cases is correct, the argument on the side of the present petitioners is obviously unanswerable, but in *P. V. Naik v. State of Maharashtra* (5), the learned Judges considered and discussed in detail not only *Parshotam Lal Dhingra's case* (2), and *Moti Ram Deka's case* (3), but also the two cases just cited above, and the learned Judges pointed out that the decision on the question, now under consideration, in *Parshotam Lal Dhingra case* (2), has remained the law on the subject. In the last-mentioned case, in paragraph 12 of the judgment, their Lordships held that "in the absence of any special contract the substantive appointment to a permanent post gives the servant so appointed a right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years' service or the post is abolished and his service cannot be terminated except by way of punishment for misconduct, negligence, inefficiency or any other disqualification found against him on proper enquiry after due notice to him" and again in paragraph 26—"It has already been said that where a person is appointed substantively to a permanent post in Government service, he normally acquires a right to hold the post until under the rules, he attains the age of superannuation or is compulsorily retired and in the absence of a contract, express or implied, or a service rule, he cannot be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or other

(2) A.I.R. 1958 S.C. 36.

(3) A.I.R. 1964 S.C. 600.

(4) A.I.R. 1965 All. 406.

(5) A.I.R. 1967 Bom. 482.

disqualification and appropriate proceedings are taken under the service rules read with Article 311(2)". This last observation of their Lordships in *Parshotam Lal Dhingra's case* (2), was reproduced by their Lordships in paragraph 41 of the judgment in *Moti Ram Deka's case* (3), and after reproducing the same their Lordships dealt with, while discussing the matter, other questions than the question of abolition of a post and its effect. This matter was not in question and for consideration in *Moti Ram Deka's case* (3), and their Lordships have made no observation on the matter of abolition of a permanent post. This is exactly what, after detailed consideration of the observations of their Lordships in the two cases, the learned Judges in *P. V. Naik's case* (5), have pointed out and they have stated their conclusion in paragraph 17 of their judgment that the observations in *Parshotam Lal Dhingra's case* (2), with regard to the effect of the abolition of a post are not disapproved by their Lordships in *Moti Ram Deka's case* (3), so that it may be justifiably inferred that the same have been approved of. The learned Judges have come to a clear conclusion, with which after considering the dicta of their Lordships in *Parshotam Lal Dhingra's* (2) and *Moti Ram Deka's cases* (3), I agree with respect that there is nothing observed by their Lordships in *Moti Ram Deka's case* (3), which derogates from the decision in *Parshotam Lal Dhingra's case* (2), that in the case of abolition of a permanent post there is no question of removal or dismissal and Article 311 of the Constitution is not attracted. Subsequently a Full Bench of the Allahabad High Court has, by a majority, in *State of Uttar Pradesh v. Dr. Prem Behari Lal Saxena* (6), the very case decided by Tripathi, J., in appeal, reversed the judgment and order of Tripathi, J. and held that in the case of abolition of a post, Article 311 does not come in for consideration and the termination of services consequently is not removal. So in the present case, on the abolition of the Subordinate Services Selection Board, the termination of the services of the petitioners has not been removal attracting Article 311 of the Constitution. So this argument, which has been the main argument on their side, does not prevail.

(4) The return of the respondent State Government has clearly shown justification for the abolition of the Subordinate Services Selection Board and, if anything the recommendation of the Administrative Reforms Commission has been more than sufficient justification. As stated, there is no manner of doubt that the Government has had the power to abolish the Board and the necessary consequence of

(6) A.I.R. 1969 All. 449.

the same has been the termination of the services of the petitioners, it not having been shown how in spite of abolition of the Board they continue in Government service.

(5) The only basis of the allegation of *mala fide* against the respondent State Government has been that after the order abolishing the Subordinate Services Selection Board, it has, in substance, continued the functions of that Board through the instrumentality of others and so the order of abolition of the Board was merely a cloak for terminating their services, but this is factually not true as explained in the return of the respondent State Government, because what it did was merely to constitute a temporary committee with a skeleton staff, consisting of Government servants, to dispose of what was at the time of its abolition work pending with the Subordinate Services Selection Board. On no consideration can such an arrangement be described as a *mala fide* act on the part of the respondent State Government or having any relation to the termination of the services of the petitioners. If anything, it was an act which the respondent State Government had as of necessity to do for the disposal of what was left over as the work of the Subordinate Services Selection Board after the date of its abolition. No case of *mala fide* has been made out on the side of the petitioners either.

(6) In consequence, this petition fails and is dismissed, but, in the circumstances of the case, there is no order in regard to costs.

(7) R. S. NARULA, J.—While disposing of a batch of 51 writ petitions in my Single Bench judgment in Civil Writ 2099 of 1967—*Bhagwant Rai v. The State of Punjab and three others*, on April 19, 1968, I had dismissed the writ petitions of the temporary police officials whose services had been terminated on the abolition of their posts, but had allowed the petitions of Ram Krishan and Man Singh (Civil Writs 1776 and 2401 of 1967 respectively), and had declared as void and consequently set aside the order purporting to terminate their services without compliance with the requirements of Article 311(2) of the Constitution though the posts against which they were serving had been abolished. While allowing the writ petitions of the permanent police officials, though I did not agree with the submission of their counsel to the effect that the termination of their services amounted to compulsory retirement, yet I was persuaded to follow the Single Bench judgment of Tripathi, in *Dr. Prem Behari Lal Saxena v. State of Uttar Pradesh and another* (4), and the Full

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Bench judgment of the Jammu and Kashmir High Court in *Abdul Khalik Renzu and others v. The State of Jammu and Kashmir* (1). It appears that subsequently the Single Bench judgment of Tripathi, J. has been reversed in appeal by a majority decision of a Full Bench of the Allahabad High Court in *State of Uttar Pradesh and another v. Dr. Prem Behari Lal Saxena* (6). I feel somewhat relieved on being informed that Letters Patent Appeal No. 508 of 1968, against my said judgment is still pending. On a careful reconsideration of the matter, I am inclined to agree with the view taken by the Division Bench of the Bombay High Court in *P. V. Naik and others v. State of Maharashtra and another* (5).

(8) I, therefore, entirely agree with the conclusion arrived at by my lord, the Chief Justice, in the judgment prepared by his Lordship, as well as with everyone of the reasonings given in support thereof. I consequently concur that this writ petition should be dismissed though without any order as to costs.

K. S. K.

CIVIL MISCELLANEOUS.

Before D. K. Mahajan and S. S. Sandhawalia, JJ.

SANT SADHU SINGH AND OTHERS,—Petitioners

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ No. 2820 of 1969

January 29, 1970.

Punjab Co-operative Societies (Amendment) Act (XXV of 1969)—Sections 4, 6, 9 and 10—Constitution of India (1950)—Schedule VII List I, Entries 43, 44 and 45—List II, Entry 32—Co-operative Societies engaged in Banking business—Functioning of—State Legislature—Whether has jurisdiction to regulate—Amendment Act—Whether ultra vires the Constitution.

Held, that Central Legislature is no doubt competent to legislate with regard to Corporations engaged in the business of banking, in view of entry No. 43, List I of the Schedule VII of Constitution of India, but so far as the Co-operative Societies are concerned, they are taken out of the ambit of entry No. 43 and put in entry No. 32 of List II,