

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

RAM PARKASH,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ No. 1678 of 1968.

February 2, 1970.

Punjab Agricultural Produce Markets Act (XXIII of 1961)—Sections 2(p), 3(11), 12 and 20(4)—Power of transfer of an employee, dealing with accounts, of one Marketing Committee to another—Whether against the scheme of the Act—Such power—Whether arbitrary and ultra vires the Constitution or the Act.

Held, that the Punjab Agricultural Produce Markets Act, 1961, vests the supervision and control over the Market Committees in the State Government and for the purposes of exercising that supervision and control the State Government has been empowered by section 3 of the Act to constitute Agricultural Marketing Board, which has been given the necessary powers for exercising such control and supervision. Section 3 (11) of the Act which gives the power to transfer an employee, dealing with accounts, of one committee to another, to the Chairman of the Board, is not against the scheme of the Act. (Para 3)

Held, that there is nothing wrong in the Legislature giving power to the Chairman of a high-powered Board, constituted for exercising supervision and control over the working of Market Committees, to transfer an employee, dealing with accounts, of one Committee to another. The policy behind this power is that accounts is a very important subject and it has to be seen that the accounts are kept regularly and honestly. Too long a stay of one Accountant in one Committee may lead to some mal-practices and it may become desirable to make transfers of the employees dealing with accounts in the interest of the Committees. In the case of Market Committees this power of transfer cannot be taken exception to because of the provisions contained in section 20(2) of the Act, which provides that a Committee may employ such officers and servants, other than the Secretary, as may be necessary for the management of the market, only with the previous approval of the Chairman of the Marketing Board. Thus the power of transfer of an employee dealing with accounts of one Market Committee to another given to the Chairman of the Marketing Board is not *ultra vires* the Act of the constitution, and cannot be struck down. (Para 4)

Held that the power given to the Chairman of the Board to transfer an employee dealing with accounts from one Market Committee to another

is not without guidance nor can it be said to be arbitrary. This power has to be exercised administratively in the interest of the Market Committees and for the effective exercise of the power of supervision and control over the working and management of the Market Committees. These guide lines are quite apparent from the preamble and the provision of the Act. Hence the power of transfer cannot be struck down for want of guidance in the Act. (Para 6)

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari, or any other appropriate writ, order or direction be issued quashing the order of respondent No. 2, dated 3rd May, 1968 and also declaring the impugned provisions of sections 3(ii) and 20(4) of the Act as ultra vires.

HARBANS LAL, ADVOCATE, for the petitioner.

S. K. AGGARWAL, FOR ADVOCATE-GENERAL (PUNJAB), for respondent No. 1.

G. C. GARG, ADVOCATE, for respondent No. 2.

B. S. SHANT, ADVOCATE, for respondent No. 3.

JUDGMENT

TULI, J.—The petitioner was appointed as Fee Collector in the Market Committee, Jaitu, in the district of Bhatinda in 1949 and after about six months was promoted to the post of an Accountant in which post he was confirmed on June 4, 1952, by the Market Committee, Jaitu. The Market Committee, Jaitu, had been established under the provisions of the Patiala Agricultural Produce Markets Act, 2004 Bk. After the merger of the two States of Punjab and Pepsu with effect from November 1, 1956, the Patiala Agricultural Produce Markets Act, 2004 Bk, and the Punjab Agricultural Produce Markets Act, 1939, were repealed and replaced by the Punjab Agricultural Produce Markets Act, 1961 (hereinafter called the Act). The Market Committees constituted under the Act are corporate bodies having perpetual succession and common seal. Each Market Committee is thus a separate corporation for a notified market area and is constituted in the manner provided in section 12 of the Act. Section 3(11) of the Act gives the power to the Chairman of the Marketing Board to transfer the Secretary or any employee dealing with accounts of one Committee to another Committee within the same region and section 20(4) of the Act provides that the services of the Secretary or any employee dealing with accounts of a Committee shall be

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transferable within the same region. The word "region" has been defined in section 2(p) of the Act as meaning 'the Hindi Region or the Punjabi Region as specified in the First Schedule to the Punjab Regional Committees Order, 1957.' By order dated May 3, 1968, the petitioner was transferred from the Market Committee, Jaitu, to the Market Committee, Makhu, as Accountant by the Joint Director of Marketing, Punjab. The petitioner has filed the present writ petition challenging that order. The return to the writ petition has been filed by Shri Mohinder Singh Pannu, Director and Secretary, State Agricultural Marketing Board, Punjab, the officer who passed the impugned order. The Chairman of the Market Committee, Jaitu, has filed a written statement supporting the petition.

(2) The learned counsel for the petitioner has submitted that the Market Committees have been classified into three classes, namely, 'A' Class, 'B' Class and 'C' Class. Jaitu Market Committee is in the 'B' class while Makhu Market Committee is in 'C' class. The State Agricultural Marketing Board by circular No. 57, dated September 3, 1962, advised the Chairmen of all Market Committees in the State of Punjab about the fixation of cadres and grades. According to this circular, the grade of Head Clerk-cum-Accountant has been fixed as Rs. 116-8-180/10-250, that of an Accountant as Rs. 80-5-120/6-180, and that of the Accountant-cum-Fee Collector as Rs. 70-4-90/5-175.

(3) The Board further advised model strength for different Market Committees classified as 'A' Class, 'B' Class and 'C' Class. For 'A' class Market Committee, one Head Clerk-cum-Accountant has been provided, for 'B' class Market Committee one Accountant has been provided while for 'C' class Market Committee one Accountant-cum-Fee Collector has been provided, in addition to some other personnel, with which we are not concerned in this writ petition. The learned counsel for the petitioner has vehemently argued that the petitioner was working on the date of his transfer as Accountant in a 'B' class Market Committee and he was transferred to a 'C' class Market Committee wherein the post of an Accountant does not exist but the post of an Accountant-cum-Fee Collector in a lower grade exists. He could not, therefore, be transferred from 'B' Class Market Committee to 'C' class Market Committee and this transfer amounts to reduction in rank. He has further submitted that because each Market Committee, being a separate and distinct corporation, is entitled to employ the staff it needs except the Secretary, the employees of one Market Committee cannot be transferred to

another. Each Market Committee has made rules of service for its employees, whereunder their emoluments are fixed as also the other benefits and perquisites to be given to them. They are entitled to contributory provident fund, gratuity and pension, and the rules also provide for the subjects like leave and other conditions of service. By transferring an employee of one Market Committee to another the rights of the transferred employee are prejudicially affected and, therefore, it is against the scheme of the Act and the well-recognised principles of relationship between master and servant. The argument is an ingenious one but without any substance. The power to transfer an employee dealing with accounts of one Market Committee to another has been given to the Chairman of the Marketing Board by the Legislature in the Act wherein it has also been provided that the services of an employee dealing with accounts of a Committee are transferable from one Committee to another. The scheme of the Act has to be gathered from the provisions of the Act read as a whole. The Act vests the supervision and control over the Market Committees in the State Government and for the purposes of exercising that supervision and control the State Government has been empowered by section 3 of the Act to constitute Agricultural Marketing Board, which has been given the necessary powers for exercising such control and supervision. Section 3(11) of the Act gives the power, to transfer an employee dealing with accounts of one Committee to another, to the Chairman of the Board. It cannot, therefore, be said that this provision is against the scheme of the Act.

(4) The other argument that the provision for transfer of an employee from one Market Committee to another is against the well-recognised principles of relationship between master and servant is equally without substance. The provisions of sections 3(11) and 20(4) of the Act cannot be declared *ultra vires* on that account. The provisions of a statute can be declared to be *ultra vires* if the Legislature is not competent to enact the same or the provisions of the enactment violate any Article of the Constitution. It is admitted that the Punjab Legislature was competent to enact the law which is contained in the Act and none of its provisions violates any Article of the Constitution. In these days of social legislation, the Legislatures, both at the Centre and in the States, have enacted various Acts for the amelioration of the service conditions of employees of various kinds whereby the principle of freedom of contract between an employer and an employee has been considerably taken away.

There seems to be nothing wrong in the Legislature giving power to the Chairman of a high-powered Board, constituted for exercising supervision and control over the working of Market Committees, to transfer an employee dealing with accounts of one Committee to another. The policy behind this power is that accounts is a very important subject and it has to be seen that the accounts are kept regularly and honestly. Too long a stay of one Accountant in one Committee may lead to some mal-practices and it may become desirable to make transfers of the employees dealing with accounts in the interest of the Committees. In the case of Market Committees this power of transfer cannot be taken exception to because of the provisions contained in section 20(2) of the Act, which provides that a Committee may employ such officers and servants, other than the Secretary, as may be necessary for the management of the market, only with the previous approval of the Chairman of the Marketing Board. In order to provide uniformity of conditions of service to the employees of the Market Committees, the Marketing Board has fixed their cadres, grades and model conditions of service which apply to every Market Committee. I am, therefore, unable to hold that the power of transfer of an employee dealing with accounts of one Market Committee to another given to the Chairman of the Marketing Board is *ultra vires* the Act or the Constitution, and cannot be struck down. The abuse of power, however, can be struck down if the abuse is proved to the satisfaction of the Court.

(5) The learned counsel has next argued that this power of transfer should be struck down on the ground that the Legislature has given no guidance and the power can be exercised arbitrarily and discriminately. For this submission he has relied upon the judgment of their Lordships of the Supreme Court in *Jyoti Pershad v. Administrator for the Union Territory of Delhi and others* (1), wherein it has been observed :—

“The enactment or the rule might not in terms enact a discriminatory rule of law but might enable an unequal or discriminatory treatment to be accorded to person or things similarly situated. This would happen when the Legislature vests a discretion in an authority, be it the Government or an administrative official acting either as an executive officer or even in a quasi-judicial capacity by a

(1) A.I.R. 1961 S.C. 1602.

legislation which does not lay down any policy or disclose any tangible or intelligible purpose, thus clothing the authority with unguided and arbitrary powers enabling it to discriminate.

.....In such circumstances the very provision of the law which enables or permits the authority to discriminate, offends the guarantee of equal protection afforded by Article 14."

(6) The learned counsel submits that the Chairman of the Board has been clothed with the authority to transfer an employee dealing with accounts of one Committee to another with unguided and arbitrary powers enabling it to discriminate and, therefore, this power must be struck down as offending the guarantee of equal protection afforded by Article 14 of the Constitution. I do not find it possible to agree to this submission. By section 3 of the Act the power of supervision and control over the working and management of the Market Committees is vested in the State Government and for the purpose of exercising that supervision and control a Marketing Board has been constituted. In that section itself the provision for transfer of an employee dealing with accounts has been made in subsection (11), which shows that this is one of the forms of exercising supervision and control over the working of the Market Committees. It cannot, therefore, be said that there is no guiding principle, or arbitrary power has been given. In the said judgment their Lordships further observed :—

"It is manifest that the above rule would not apply to cases where the legislature lays down the policy and indicates the rule or the line of action which should serve as a guidance to the authority. Where such guidance is expressed in the statutory provision conferring the power, no question of violation of Article 14 could arise, unless it be that the rules themselves or the policy indicated lay down different rules to be applied to persons or things similarly situated. Even where such is not the case, there might be a transgression by the authority of the limits laid down or an abuse of power, but the actual order would be set aside in appropriate proceedings not so much on the ground of a violation of Article 14, but as really being beyond its power.

It is not, however, essential for the legislation to comply with the rule as to equal protection, that the rules for the guidance of the designated authority, which is to exercise the power or which is vested with the discretion, should be laid down in express terms in the statutory provision itself.

.....

.....

Such guidance may thus be obtained from or afforded by (a) the preamble read in the light of the surrounding circumstances which necessitated the legislation, taken in conjunction with well-known facts of which the Court might take judicial notice or of which it is appraised by evidence before it in the form of affidavits.....

(b) or even from the policy and purpose of the enactment which may be gathered from other operative provisions applicable to analogous or comparable situations or generally from the object sought to be achieved by the enactment."

In the light of these observations, it is absolutely clear that the power given to the Chairman of the Board to transfer an employee dealing with accounts from one Market Committee to another is not without guidance nor can it be said to be arbitrary. This power has to be exercised administratively in the interest of the Market Committees and for the effective exercise of the power of supervision and control over the working and management of the Market Committees. These guidelines are quite apparent from the preamble and the provisions of the Act. I, therefore, repel this argument of the learned counsel for the petitioner.

(7) In the return filed by respondent 2, it has been stated categorically that the petitioner has been transferred to the Market Committee, Makhu, as an Accountant in the same grade of pay as he was getting in the Market Committee, Jaitu. He has not been transferred to the Market Committee, Makhu, as Accountant-cum-Fee Collector and, therefore, his emoluments in no way have been prejudicially affected. It is further stated that the petitioner will be entitled to

the same benefits to which he was entitled while he was serving in the Market Committee, Jaitu, that is, there is continuity of service without any break and, therefore, the petitioner's rights have not been affected in any manner. In order to protect the interests of the transferred employee, provision has been made by the proviso to section 3(11) of the Act that the case of any increase or decrease of emoluments of a transferred employee shall be referred to the State Government whose decision on such reference shall be final. Under this provision the State Government can always safeguard the interests of the transferred employee. The resort had not been taken to this proviso in the present case because the emoluments of the petitioner on transfer were not decreased. The learned counsel for the State of Punjab has adopted the written statement filed by respondent 2 and is, therefore, bound by the same assurances contained in that written statement. In view of these facts, no injustice has been done to the petitioner nor have his conditions of service been changed or affected. According to section 20(4) of the Act, the post of an employee dealing with accounts is transferable within the region and it is not the case of the petitioner that he has been transferred to a Market Committee outside the region. I, therefore, find no merit in the writ petition which is hereby dismissed but without any order as to costs.

R. N. M.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

VIJAY KUMAR,—Petitioner.

versus

THE PANJAB UNIVERSITY,—Respondent.

Civil Writ No. 2341 of 1966.

February 3, 1970.

Panjab University Calendar, 1966, Volume III, Chapter XXIX Rule 6—Grace marks—Meaning of—Whether include marks to get higher class—Candidate passing M.A. examination in lower division and re-appearing in any one part to improve division—Whether entitled to claim grace marks under rule 6(d).