

The Gram Panchayat, Village Barwa, Tehsil and District Karnal  
 v.  
 The Collector, Karnal, and others  
 ———  
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lease was granted to Ranjha Singh's group and its earlier termination by the Collector in 1953, was in contravention of the Act and beyond the powers of the Collector. It is also clear that this order was obtained by the owners by representation that they had reclaimed the land and on enquiry this representation has been found to be incorrect. The Collector has after a detailed enquiry found that the lessees, in fact, reclaimed the land and actually cultivated a portion of it and that the proprietors took the law into their hands and destroyed the crop sown by the lessees. In these circumstances it must be held that the impugned order is eminently just. Interference with this order at this stage will only result in injustice to lessees and such a result must be avoided in proceedings under Article 226 of the Constitution. The purpose of this power granted to the High Court is to advance justice and to repress injustice. This justice will not be achieved by setting aside the impugned order in the present case.

For these reasons, I dismiss this petition with costs. Counsel's fee Rs. 50.

#### CIVIL WRIT

*Before Bhandari, C.J. and Dulat, J.*

SHRI BAL KRISHAN AGGARWAL,—*Petitioner*

*versus*

THE PUNJAB STATE,—*Respondent*

**Civil Writ No. 16 of 1955.**

1956  
 ———  
 April, 24th

*Constitution of India—Article 226—Writ of Mandamus—Office and scope of—Principles regarding issuance of or interference in, stated—Article 234—Rules framed under, for appointment of Subordinate Judges—Scope of—Whether retrospective—Selection and appointment, how made—In operation.*

*Held*, that the Courts can by *mandamus* compel the performance of acts prescribed by law, but they have no power to interfere with the discretion of the Government or require Government to act or to decide in a particular manner. They can ask Government to act but not how to act.

*Held*, that the Courts exercise no general supervisory power over Government or executive officers of Government ; they cannot coerce or control their actions in matters which require the exercise of official judgment or discretion, and they cannot override or interfere with their decision even if erroneous, when it is based on a sound and reasonable discretion founded on facts and exercised in good faith without collusion or fraud, and not from motives of personal favouritism or ill-will.

*Held*, that whenever a writ of *mandamus* would be unavailing or if granted fruitless, it will be refused.

*Held further*, that the rules framed under Article 234 of the Constitution relating to the appointment of Subordinate Judges, which were promulgated on 26th October, 1951, cannot apply retrospectively to an examination which was held in the year 1950.

*Petition under Article 226 of the Constitution of India, praying as follows :—*

- (1) *That a writ in the nature of mandamus may be issued directing the respondent to take the necessary steps and to select the petitioner as a candidate for appointment to the Regular cadre of Subordinate Judges, Punjab.*
- (2) *That a writ in the nature of mandamus may be issued directing the respondent to treat the order of termination of petitioner's service as a temporary Sub-Judge as wholly void and ineffective.*
- (3) *That such other writs and directions may be issued as may be deemed necessary and expedient in the circumstances of the case.*
- (4) *That the petitioner may be awarded costs of this petition.*

D. N. AGGARWAL and H. L. SARIN, for Petitioner.

S. M. SIKRI, Advocate-General for Respondent.

## ORDER

**Bhandari, C.J.** Bhandari, C.J.—This petition raises the question whether the petitioner has acquired a clear legal right to appointment as a Subordinate Judge in the Punjab.

Shri Bal Krishan Aggarwal, a law graduate of the Banaras University, appeared in the examination of candidates for appointment to the Judicial Branch of the Punjab Civil Service which was held in the year 1950 and obtained the 25th position in the order of merit. The first six candidates were selected for appointment as officiating Subordinate Judges in the regular cadre while eight of the remaining candidates including the petitioner, were selected for appointment as Subordinate Judges on a temporary basis. In June, 1954 the High Court addressed a communication to Government in which they stated that whereas the Honourable Judges were completely satisfied in regard to the character and ability of six of the temporary Subordinate Judges and could safely recommend them for appointment as officiating Subordinate Judges in the regular cadre they were unable to vouch for the character or reputation of the remaining two candidates, including the petitioner, and were unable to make a similar recommendation in their favour. They expressed a desire, however, that they would like to watch the work and conduct of these two officers before recommending their confirmation or removal. The State Government accepted a part of this recommendation and selected the following candidates for appointment as Subordinate Judges on a permanent basis—

Name	Position in order of merit.
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(1) Shri Brij Lal Mogo	
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20

(2) Shri Pritpal Singh	20	Shri Bal Krishan Aggarwal
(3) Shri Iqbal Singh	23	v. The Punjab State
(4) Shri Kanwal Krishan Gujral	23	
(5) Shri Ved Parkash Aggarwal	25	Bhandari, C.J.
(6) Shri Amar Nath Aggarwal	27	

It directed, however, that the services of the remaining two candidates who were unable to maintain good reputation and who were recruited as Subordinate Judges strictly on a temporary basis should be terminated immediately in accordance with the terms of their temporary appointment, that is, after giving them one month's notice.

On the 1st February, 1955, the petitioner submitted a petition under Article 226 of the Constitution for the issue of a mandamus requiring the State Government to appoint the petitioner to the regular cadre of Subordinate Judges as the selection of Shri Ved Parkash Aggarwal and Shri Amar Nath Aggarwal who ranked below him in order of merit was contrary to the rules framed by the Governor and was wholly illegal, arbitrary and discriminatory.

The procedure for the selection and appointment of candidates to the Judicial Branch of the Punjab Civil Service has been set out in the rules concerning the appointment of Subordinate Judges which were framed by the Governor under Article 234 of the Constitution. These rules

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provide that an examination of candidates for appointment as Subordinate Judges shall be held from time to time under the supervision of the Public Service Commission; that the result of the examination shall be published in the Punjab Government Gazette, that candidates shall be selected for appointment strictly in the order in which they have been placed by the Public Service Commission and that their names shall be entered in the High Court register in the order of their selection. They further provide that whenever a vacancy arises in the cadre of the Judicial Branch of the Punjab Civil Service the Honourable Judges will make a selection from the High Court register in the order in which the names have been entered and the name of the selected candidate will be forwarded to Government for appointment as a Subordinate Judge under Article 234 of the Constitution. These rules make it quite clear that candidates must be appointed in the order in which they have been placed in the list of successful candidates.

But there are other rules which are equally important. One rule empowers the Judges, for any reason which may seem fit to them, to remove from the High Court register the name of any candidate borne on that register. Another rule provides that no person shall be appointed to be a Subordinate Judge who cannot give satisfactory evidence of his good moral character. Yet another rule declares that every Subordinate Judge shall be appointed on probation for not less than one year. These rules empower the competent authority to weed out undesirable elements at all stages of the proceedings, that is not only before but even after the recruitment has been made.

The petitioner complains that although candidates have to be selected for appointment strictly in the order in which they have been placed by the Public Service Commission, Government proceeded to select Shri Ved Parkash Aggarwal who was bracketed with him and Shri Amar Nath Aggarwal who had obtained a lower position in the order of merit in preference to the petitioner who had obtained the 25th position. The rules, it is contended, leave no discretion with the appointing authority to ignore the order in which the candidates have been placed by the Public Service Commission, and as the State Government in the present case has ignored the provisions of these rules the order by which the claims of the petitioner have been overlooked must be deemed to be void and of no effect.

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Article 234 of the Constitution declares that appointments to the post of Subordinate Judges shall be made in accordance with the rules framed by the Governor and imposes an obligation on the appropriate authority to make the appointments in the manner prescribed by the rules. One of these rules declares that no person shall be appointed a Subordinate Judge unless he produces satisfactory evidence of good moral character. The power of deciding whether a person does not possess good moral character has been vested in Government and Government is thus entitled to exercise its own judgment and discretion in the matter. The Courts can by *mandamus* compel the performance of acts prescribed by law, but they have no power to interfere with the discretion of Government or require Government to act or to decide in a particular manner. They can ask Government to act, but not how to act. Courts exercise no general supervisory powers over Government or executive officers of

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Government; they cannot coerce or control their action in matters which require the exercise of official judgment or discretion, and they cannot override or interfere with their decision even if erroneous, provided it is based on a sound and reasonable discretion founded on facts and exercised in good faith without collusion or fraud and not from motives of personal favouritism or ill-will. In *Decatur v. Paulding*, (1) a question arose whether the Circuit Court of the District of Columbia had a right to issue a writ of *mandamus* to the Secretary of the Navy to perform an executive office, not merely ministerial but involving the exercise of judgment. Chief Justice Taney made the following pertinent observations—

“The Court could not entertain an appeal from the decision of one of the Secretaries, nor revise a judgment in any case where the law authorized him to exercise discretion or judgment. Nor can it by *mandamus* act directly upon the officer and guide and control his judgment or discretion in the matter committed to his care in the ordinary discharge of his official duties. \* \* \* \*  
Interference of the Courts with the performance of the ordinary duties of the executive department of the Government would be productive of nothing but mischief; and we are quite satisfied that such a power was never intended to be given to them.”

The State Government in the present case has decided to terminate the services of the petitioner on the ground that he has not been able to maintain a satisfactory reputation during the short period that he has worked as a temporary

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(1) 10 L.Ed. 559, 568

Subordinate Judge. This decision is based on the report of the High Court who had ample opportunity of appraising the general character and reputation of the petitioner. The decision cannot be said to have been arrived at corruptly or to have been actuated by spite or ill-will against the petitioner. The rules require that persons should be appointed strictly in the order of merit and the petitioner, who had obtained the 25th position in the order of merit, was appointed to the post of a temporary Subordinate Judge strictly in the order in which he had been placed by the Public Service Commission. The provisions of this rule were thus fully complied with as long ago as the year 1952, and there is not the slightest suggestion that the rules were disregarded either in the letter or in the spirit. The petitioner continued to hold the post of Subordinate Judge for 2½ years and was not removed from the said post until it was found, on the basis of a report submitted by this Court, that he was unable to maintain a satisfactory reputation for integrity. The rules framed by the Governor under Article 234 do not contemplate, and could not possibly have contemplated, that the judicial service of the State should come into hatred and contempt by the appointment to, or continuance in, office of persons who do not inspire confidence among the members of the public or whose conduct is not above reproach. It may be that there is no direct evidence to show that the petitioner received any illegal gratification, but a Judicial Officer who suffers his conduct to justify the impression that he can be improperly influenced or allow his reputation to be damaged or destroyed is almost as great a danger to society as a person who actually receives a monetary gift.

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Although a person, who has a clear legal title to an office or a *prima facie* right thereto, can be

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put in possession of the office by mandamus, the petitioner in the present case has not been able to give satisfactory evidence of his good moral character and has thus failed to prove the existence of a condition precedent to the acquisition of the said right. Appointment to a public office is not complete until all the essential formalities required by law have been complied with.

Assuming for the sake of argument that the petitioner is a person of good moral character, the utmost that this Court can do is to direct that he should be appointed a Subordinate Judge on probation, for the rules require that every Subordinate Judge shall be appointed on probation for not less than one year in the first instance. As he has failed to give a satisfactory account of himself during the period of his appointment as a Subordinate Judge in a temporary capacity, it will be within the competence of Government to remove him again immediately on appointment. It is a well-known rule that whenever a writ of *mandamus* would be unavailing, or if granted fruitless, it will be refused, *State ex rel. Goodnow v. Police Commissioners* (1).

“We are not” said Best J. in *R. v. Griffiths* (2), “obliged to do so absurd a thing as to order a person to be restored to an office (however irregularly he has been removed from it), who ought to be removed again the moment that he is restored. The writ of *mandamus* was not intended to enable a party, by taking advantage of the want of form, to defeat justice.”

Although the petition can, in my opinion, be dismissed on the short ground that the order of the State Government is *bona fide* and is based partially on the opinion entertained by this Court, it seems to me that there is at least one

(1) 80 MO. App. 206 affirmed in 184 MO. App. 71 S.W. 215

(2) 5 Barnaned Ald. 731

other ground for ordering its dismissal. The rules relating to the appointment of Subordinate Judges were promulgated by the Governor on the 26th October, 1951, and cannot apply to the petitioner who appeared in an examination before the commencement of these rules. Rule 10 of Part 'C' declares that the result of the examination will be published in the *Punjab Government Gazette* and that the candidates will be selected for appointment strictly in the order of merit. The examination which has been referred to in the said rule is an examination held under the provisions of these rules, that is, an examination held after the 26th October, 1951. These rules cannot apply retrospectively to an examination which was held in the year 1950, particularly when the syllabus of the earlier examination was different from the syllabus of the later examination.

For these reasons I would uphold the order of the State Government and dismiss the petition. There will be no order as to costs.

Dulat, J. I agree.

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APPELLATE CIVIL

*Before Kapur and Bishan Narain, JJ.*

LAHORI MAL AND OTHERS,—Appellants

*versus*

KASTURI LAL AND OTHERS,—Respondents

First Appeal from Order No. 32 of 1954.

*Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Sections (2)(b), 2(9), 10, 11, 16 and 48—"Debt", meaning of—"Mortgage with possession" whether debt—Legal representative of a deceased mortgagor—Whether*

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