

Before J. V. Gupta, C.J. & R. S. Mongia, J.

MANAGING COMMITTEE DR. HARI RAM CO-EDUCATION
HIGHER SECONDARY SCHOOL, DATARPUR,—*Appellant*.

versus

RATTAN LAL SHARMA AND OTHERS,—*Respondents*.

Letters Patent Appeal No. 1427 of 1982.

31st October, 1990.

Punjab Aided Schools (Security of Service) Act, 1969—S. 3(2)—Enquiry Committee holding respondent guilty of charges—One member of Enquiry Committee stepping into witness box against respondent—Plea of bias—No such plea taken before Deputy Commissioner—Such inaction—Whether amounts to waiver.

Held, that the plea of bias is not such a plea which cannot be waived or not pressed at all. If the respondent was so serious about the induction of Shri Maru Ram as one of the members of the Enquiry Committee and he being biased on account of being a witness to prove one of the charges, such a plea should have been raised before the Authorities below i.e., the Deputy Commissioner as well as the Commissioner. Admittedly, no such plea of bias was taken. Even the learned Single Judge had noticed that such a plea was not taken before the Authorities below. We are of the opinion that a plea of bias if not taken before the Authorities concerned, cannot be allowed to be raised for the first time in a writ petition. Such a point having not been taken before the Authorities below, would be deemed to have been waived. (Para 7)

Appeal under Clause X of the Letters Patent of the Punjab and Haryana High Court from the judgment dated 16 November, 1982 of Honble Mr. Justice J. M. Tandon in Civil Writ Petition No. 1121 of 1974.

B. R. Mahajan Advocate, for the Appellant.

P. S. Patwalia Advocate, for the Respondents.

JUDGMENT

R. S. Mongia, J.

(1) Shri Rattan Lal Sharma, respondent in the present Letters Patent Appeal, was working as a Principal in Dr. Hari Ram Co-education Higher Secondary School, Datarpur, District Hoshiarpur.

A charge-sheet dated 18th October, 1970, containing as many as 12 charges, was served on the said Shri Rattan Lal Sharma by the President of the Managing Committee of the school. Almost all the charges related to some embezzlement of school funds. After receipt of the reply to the charge-sheet, a three member Enquiry Committee was appointed to go into the charges. Enquiry Committee conducted the enquiry as envisaged by the Punjab Aided Schools (Security of Service) Act, 1969 (hereinafter called the Act) and held the Principal Shri Rattan Lal Sharma as guilty of all the charges. After agreeing with the enquiry report, the Managing Committee decided to dismiss the said Principal from service. As required under Section 3(2) of the Act, the confirmation of the proposed punishment was sought from the Deputy Commissioner. The respondent Shri Rattan Lal Sharma made a representation against the proposed punishment before the Deputy Commissioner and after hearing the parties, the Deputy Commissioner Confirmed the order of dismissal,—*vide* order dated 15th March, 1971 (Annexure P-9). Appeal of the respondent before the Commissioner, Jullundur Division, was also rejected,—*vide* order dated 3rd December, 1973 (Annexure P-10).

(2) Aggrieved by the said order, respondent Shri Rattan Lal Sharma, had filed a writ petition in this Court. It may be stated here that one Maru Ram who was a teacher in the same school was one of the members of the Enquiry Committee, which went into the charges against respondent-Principal. Shri Maru Ram had been inducted in the Committee as a representative of the teachers, which is the requirement of the Government instructions to have one representative of the teachers on the Enquiry Committee. Shri Maru Ram was also a witness to prove Charge No. 12, to which a reference shall be made hereinafter. The learned Single Judge held that the Enquiry Committee was biased, inasmuch as Shri Maru Ram who was a witness against the Principal was also a member of the Enquiry Committee. Since, according to the learned Single Judge, the Enquiry Committee was biased, therefore, the report was biased and the order of the Deputy Commissioner confirming the order of dismissal of the writ-petitioner as well as the order of the Commissioner dismissing his appeal were liable to be set aside being based on a biased enquiry. On these premises, the writ petition was allowed and the above-said two orders were set aside. Dissatisfied with the judgment of the learned Single Judge, the Management of the school has come up in Letters Patent Appeal.

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(3) Charge No. 12, to prove which, Shri Maru Ram had appeared as a witness, was in the following terms :—

“12. The following amounts are reported to have been used by you and are unaccounted for :—

A sum of Rs. 129-37 on account of amalgamated fund for the month of December 1969 given to you by Shri Maru Ram teacher incharge amalgamated fund.”

There is no doubt that to prove this charge, Shri Maru Ram had stepped into the witness-box.

(4) Mr. B. R. Mahajan, learned counsel for the appellant, had submitted before us that the plea of bias was not taken before the Authorities under the Act, i.e. Deputy Commissioner and the Commissioner and even before the learned Single Judge the plea of bias had not been taken in the form that since Shri Maru Ram was a witness in the enquiry, he should not have been the member of the Enquiry Committee. According to the learned counsel, only a very vague sort of plea regarding bias was taken before the learned Single Judge. The counsel went on to submit that the learned Single Judge erred in allowing the plea of bias to be raised for the first time in the writ petition. He further argued that while confirming the order of dismissal, the Deputy Commissioner had not even remotely touched Charge No. 12, to prove which Shri Maru Ram had appeared. The Deputy Commissioner had dealt with Charges No. 6, 10(b) and Charge No. 11 and had asked for the explanation on these charges from the delinquent officer and since he could not satisfy the Deputy Commissioner on these charges, the order of dismissal was approved. Similar was the argument regarding the appellate order of the Commissioner.

(5) On the other hand, Mr. P. S. Patwalia, learned counsel for the respondent-Principal submitted that at the very initial stage, his client had objected to the induction of Shri Maru Ram in the Enquiry Committee, but the Management had illegally rejected his objection,—vide order of the Managing Committee, dated 2nd December, 1970 (Annexure P-5). He further submitted that the Deputy Commissioner had confirmed the order of dismissal on the basis of the entire enquiry report, including Charge No. 12 and since the enquiry was biased, no further action could be taken by the Deputy Commissioner on the said report. To the point raised by the learned

counsel for the appellant that the writ-petitioner had not raised the point of bias before the lower Authorities, the learned counsel for the respondent submitted that the plea of bias is a legal plea and can be allowed to be raised at any time as no further facts are to be pleaded and everything was apparent on the face of the record as far as the question of bias was concerned. He went on to argue that once it is held that the Enquiry Committee was biased, it is not necessary to show or prove that any prejudice was caused because of the bias. For this proposition, he strongly relied on the Supreme Court judgments in *Ranjit Thakur v. Union of India and others* (1) and *S. Parthasarathi v. State of Andhra Pradesh* (2). He also cited *Assistant Collector of Central Excise, Calcutta v. National Tobacco Co. of India Ltd.* (3) in support of the contention that if a point goes to the root of the matter and can be decided on the basis of the material already on the record, then the point should be allowed to be raised, though not raised already before the lower Authorities.

(6) After hearing the learned counsel for the parties at length, we are of the opinion that the Letters Patent Appeal deserves to be allowed and the judgment of the learned Single Judge set aside.

(7) It has not been brought on the record as to what objection and in what form it was taken regarding the appointment of Shri Maru Ram as one of the members of the Enquiry Committee. The objections which had been filed by the respondent have not been brought on the record, but we have the order passed thereon in the form of Annexure P-5 and as far as the objection regarding the appointment of Shri Maru Ram as a member of the committee was concerned, it was dealt with as under :—

“Similarly your objection to the appointment of Shri Maru Ram in the enquiry committee is ill-conceived, unfounded, unjustified and invalid because Shri Maru Ram is as good a member of the managing committee as any one else and as such as member is entitled to act on any sub-committee formed by the managing committee and even perhaps more in this case because to give you a fair trial, it was necessary to have a teachers union's representative on the enquiry committee. Mr. Maru Ram represented

(1) 1988 (1) S.L.R. 61.

(2) 1974 S.L.W.R. 22.

(3) A.I.R. 1972 S.C. 2563.

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the Union of the staff of the school and is thus your own representative as such."

The plea of bias is not such a plea which cannot be waived or not pressed at all. If the respondent was so serious about the induction of Shri Maru Ram as one of the members of the Enquiry Committee and he being biased on account of being a witness to prove one of the charges, such a plea should have been raised before the Authorities below i.e., the Deputy Commissioner as well as the Commissioner. Admittedly, no such plea of bias was taken. Even the learned Single Judge had noticed that such a plea was not taken before the Authorities below. We are of the opinion that a plea of bias if not taken before the Authorities concerned, cannot be allowed to be raised for the first time in a writ petition. Such a point having not been taken before the Authorities below, would be deemed to have been waived. The learned Single Judge was in error to allow such a plea to be raised for the first time before him. The pleadings regarding bias of Shri Maru Ram are also very vague in the writ petition and when asked to point out the plea regarding bias, the learned counsel for the respondent referred to paragraphs 16(b) and (g) of the writ petition containing the grounds of attack. These are reproduced below:—

"16 (b) That the enquiry committee was biased, partial and inimical towards the petitioner. During the middle of the enquiry Shri Maru Ram, a member of the staff with whom the petitioner was not on good terms and who was the root cause of whole trouble, was joined in the enquiry committee and after his inclusion the whole enquiry was summed up in a slipshod manner as is apparent from Annexures P. 5 and P. 6. On 2nd December, 1970 his prayer for copies was rejected and on the same day the report was submitted without even hearing the petitioner. The whole enquiry is biased and partial.

16. (g) That the enquiry committee was not an independent and impartial committee. The president himself along with Shri Maru Ram, who was joined later on have acted in a hasty manner as has been narrated in preceding paragraphs.

(8) It would be seen from the pleading above that nowhere it was stated that since Shri Maru Ram was a witness against the

petitioner for proving one of the charges, therefore, he could not be inducted as a member of the Enquiry Committee, and, was therefore, biased. The whole pleadings are that Shri Maru Ram was inimical towards the petitioner. Apart from the bald allegation in the writ petition, there is nothing to support that Shri Maru Ram was biased because of enmity. The argument of the learned counsel for the respondent that the point of law can be allowed to be raised at any time if it does not require any further pleadings is unexceptionable. However, we are of the opinion that plea of bias is not a point of law as it depends upon facts and also that it can be waived or given up. That being the position, we hold that the learned Single Judge was not correct in allowing such a plea to be raised.

(9) We are also of the view that the Deputy Commissioner gave opportunity to the writ petitioner to explain certain charges and was not at all influenced by Charge No. 12 to prove which, Shri Maru Ram had appeared. From the perusal of the order it is quite evident that the Deputy Commissioner was impressed with Charges No. 6, 10(b) and 11, which according to him, were sufficient to confirm the order of dismissal. The Commissioner also did not find anything wrong with the enquiry as such.

(10) For the reasons recorded above, we allow this appeal, set aside the judgment of the learned Single Judge and dismiss the writ petition. The parties will bear their own costs.

P.C.G.

Before A. L. Bahri, J.

R. K. SUKHUJA,—Petitioner.

versus

CHANDER PARKASH,—Respondent.

Civil Revision No. 3213 of 1990.

15th February, 1991.

*East Punjab Urban Rent Restriction Act, 1949—Ss. 13-A, 13(3)
(a) (i)—Landlord already in possession of a portion of house—Ejection of tenant sought as specified landlord—Plea of additional/insufficiency of accommodation—Leave to defend—Whether should be granted.*