

K. N. Bahl vs State Of Punjab & Ors on 5 October, 1978

Equivalent citations: 1979 AIR 220, 1979 SCR (2)1089

Author: P.N. Shingal

Bench: P.N. Shingal, N.L. Untwalia, Syed Murtaza Fazalali

PETITIONER:

K. N. BAHL

Vs.

RESPONDENT:

STATE OF PUNJAB & ORS.

DATE OF JUDGMENT 05/10/1978

BENCH:

SHINGAL, P.N.

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SHINGAL, P.N.

UNTWALIA, N.L.

FAZALALI, SYED MURTAZA

CITATION:

1979 AIR 220

1979 SCR (2)1089

1978 SCC (4) 336

ACT:

Services and dismissals-Abolition of post-Post temporary and continued from time to time-Post abolished and incumbent reverted to parent department--Neither shown that the reversion was ordered for a collateral purpose nor for the ostensible purpose of abolishing an unnecessary post-Jurisdiction to interfere under Art. 226 of Constitution.

Administrative Law-Administrative Order-Person alleging mala fides to prove mala animus-Both direct and circumstantial evidence admissible to establish lack of bona fides or bad faith.

HEADNOTE:

The appellant who was an employee of the State Government in the Horticulture department, was on deputation with the Central Government. In May, 1952 he was selected by the State Public Service Commission as Landscape Architect on a temporary basis. From time to time he sought extension of time for joining the post and it was granted. Eventually

when he reported for duty in June, 1953 he was informed that the offer made to him stood cancelled as he did not join in time and that the post had been filled by appointing someone else. He therefore rejoined the Government of India. In 1954 the State Service Commission again advertised the post stating that it was a temporary post but was likely to continue. The appellant was selected for the post and joined it on November 6, 1954. His period of probation was extended but he was not confirmed in the post. Eventually the State Government decided to abolish the post of Landscape Architect with immediate effect and the appellant reverted to his substantive post in the State service on November 4, 1958.

The High Court dismissed the appellant's writ petition.

In appeal to this Court it was contended on his behalf that (i) the order of premature abolition of the post was male fide in that it was the result of inordinate hostility of higher officers towards him; (ii) the discontinuance of the post was due to personal reasons because the higher officers were displeased with him for pointing out irregularities in incurring expenditure and (iii) the order abolishing the post was illegal because it denied the benefit of three months notice for termination of his appointment.

Dismissing the appeal,

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HELD: (1) (a) Although the appellant has based his case almost entirely on mala fides, he has not succeeded in proving the allegation. [1102G]

(b) He did not furnish the necessary particulars for the allegation. What he had to prove was not malice in its legal sense but males animus indicating that the State Government was actuated either by spite or ill-will against him,

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or by indirect or improper motives. It was also not shown that his reversion was ordered for a collateral purpose and not for the ostensible purpose of abolishing an unnecessary post, or by proving that the ostensible purpose of abolishing the post was so unconvincing and absurd as to lack bona fides. Both direct and circumstantial evidence were admissible to establish lack of bona fides or bad faith, but the appellant has not succeeded in proving the allegation.

[1102 H-1103 B]

(c) It is for the person seeking to invalidate an order to establish the charge of bad faith. Such a charge may be made easily or without any sense of responsibility. That is why courts examine it with care and attention.

[1103

C]

S. Pratap Singh v. The State of Punjab, [1964] 4 SCR 733 at 741; referred to.

(2) It cannot be said that the post was abolished without reason or justification, but with the intention of getting rid of the appellant somehow. The post was a temporary one all through. The question of continuation of the post was referred to a special committee presided over by the Minister and that committee came to the conclusion that the post was no longer necessary and should therefore be abolished. The Cadre Committee to which also a reference was made, made a similar recommendation. The reason for abolishing the post was that almost all the plans which were needed for the project had been prepared and the Chief Engineer's Organization would have no difficulty in carrying on the outstanding work. [1097 H, 1097 E-G]

State of Haryana v. Des Raj Sengar, [1976] 2 SCR 1034; held not applicable.

(3) There is nothing on record to show that the appellant's alleged exposure of irregularities in the expenditure led to an adverse decision against him. While the controversy regarding the alleged unauthorised expenditure was raised in December, 1954, the decision to revert him was taken four years later.

[1098 F]

(4) There was no term in the order of appointment given to the appellant that he would be entitled to a three months' notice for termination of his appointment. The State Public Service Commission specified in the impugned notification that the post was temporary upto February, 1955 but was likely to continue thereafter. If the appellant knew that the term of the post was to expire in November, 1958, he could not possibly claim that he should have been given three months' notice. He was fully aware of his precarious tenure from month to month. [1099 F-H]

(5) The earlier order of the Chief Minister dated February 13, 1958 in the appellant's favour could not give rise to any right as it was not expressed in the name of the Governor as required by Art. 166 of the Constitution and was not communicated to the appellant. It was only a provisional order which was open to reconsideration by the Chief Minister and did not bind anyone. Nothing could, therefore, turn on the Chief Minister's order dated February 13, 1958, when it was specifically rescinded by his subsequent order dated October 29, 1958. There could be no question of appellant's confirmation as Landscape Architect as it was a temporary post all through until it was allowed to lapse on November 4, 1958. [1101 G-1102 B]

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Bachittar Singh v. State of Punjab, [1962] Suppl. 3 SCR 713; referred to.

(6) This was not really a case of abolition of the post of Landscape Architect, for the post was sanctioned upto November 4, 1958 and was allowed to lapse thereafter.

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1836 of 1978.

From the Judgment and Order dated 27-5-1963 of the Punjab and Haryana High Court in Letters Patent Appeal No. 273/61.

Appellant in Person R. S. Sodhi and Hardev Singh for Respondent No. 1. Govind Das, Badri Das Sharma and R. N. Sachthey for Respondent Nos. 2 and 3.

The Judgment of the Court was delivered by SHINGHAL J. This case for rehearing the appeal has come up before us in these circumstances.

Appellant K. N. Bahl was B.Sc. (Agriculture) when he was appointed Overseer, Government Archaeological Gardens in Lahore, in 1935. After the partition of the Country, he was employed as Subdivisional Officer (Horticulture) P.W.D.B.&R. (Development) by the Government of East Punjab. He was selected for appointment as Assistant Superintendent of Archaeological Gardens in Delhi by the Union Public Service Commission and took up that appointment in 1950 with the concurrence of the East Punjab Government. While serving on that post, he went to U.S.A. for further studies in Harvard and Cornell Universities in 1951. While he was still there, the Punjab Government issued an advertisement, in 1952, inviting applications for the post of Landscape Architect, Capital Project, Chandigarh, in the scale of Rs. 625-1275. He applied for the post, and was appointed as Landscape Architect on a temporary basis by an order dated May 24, 1952. He returned after graduating M.Sc. (Cornell) and becoming an Associate of the Institute of Landscape Architects, England, in 1953. The Punjab Government issued an order fixing his pay at Rs. 825/-. The Government of India requested the Punjab Government by a telegram dated May 30, 1953, for a short extension in the time allowed to Bahl to join as Landscape Architect, Chandigarh. He was relieved by the Government of India on June 27, 1953, and reported for duty at Chandigarh on June 30, 1953. He was however not allowed to join as the Chief Engineer took the stand that he was not in possession of the order of his appointment. The State Government in fact appears to have taken the view that as Bahl had failed to join the Capital Project by June 1, 1953, the post had been filled by another candidate and the offer of appointment to him stood cancelled on May 30, 1953. The Punjab Government appointed Harinder Singh Dhinsa as Landscape Architect by its order dated July 16, 1953. Even though the Government of India sent a letter on August 8, 1953, explaining the delay in relieving Bahl and pointing out that it was not due to his fault, he was not allowed to join. The Punjab Government wrote back in reply that the offer stood cancelled on May 30, 1953, and could not be revived. Bahl therefore rejoined the Government of India on September 30, 1953.

It so happened that the Punjab Government once again advertised the post of Landscape Architect in 1954 stating that it was a temporary post but was likely to continue after February 28, 1955, and the period of probation would be six months in case of persons already in Government service and one year for direct recruits. The Public Service Commission selected Bahl for the post and recommended a starting pay of Rs. 825/- in its letter dated July 13, 1954. The State Government was requested to send special assessment Reports on the amount and quality of Bahl's work in

accordance with the earlier instructions. Accordingly, a letter of his temporary appointment as Landscape Architect on a starting pay of Rs. 825/- was issued by the State Government on October 21, 1954, requesting the Government of India to relieve him immediately. Bahl joined that post, and a notification was issued in the State Gazette dated November 23, 1954, intimating that he had taken over charge as Landscape Architect and Sub-divisional Officer (Horticulture Subdivision) on November 6, 1954.

The probationary period of six months expired on May 5, 1955, but no action was taken about Bahl's confirmation. On the other hand, his period of probation was extended upto June 14, 1957. Bahl's representations for confirmation went unheeded. It has been specifically stated in paragraph 13 of the writ petition that there was "further extension of the post upto February 28, 1958 and the end of March, 1958 and after that the post was extended monthly but the petitioner was not paid after May, 1958, although the post had been extended upto November, 1958."

Soon after taking over charge on November 6, 1954, Bahl examined the statement of the sanctioned work for which liabilities were being incurred without sanction or estimates, and made a report thereof to the Executive Engineer on December 3, 1954. He followed that up by another letter dated December 17, 1954, pointing out how those liabilities were incurred under verbal orders and even without authority involving "large liability". He endorsed a copy of that letter to the Superintending Engineer, Capital Project Circle, for requesting the Financial Adviser to ask an Assistant Accounts Officer to check the statement of unsanctioned work for the month of November, 1954. He himself addressed a letter to the Superintendent, Checking Party, Office of the Chief Accounts Officer, Capital Project, pointing out the irregularities. Check was therefore taken up, and an interim report was sent on March 23, 1955. It was stated in the report that an expenditure of Rs. 3,49,000/- was unauthorised as none of the estimated amount had been technically sanctioned or administratively approved. The Finance Secretary also took up the matter on April 19, 1955, and asked the Chief Engineer to investigate into the serious irregularities and to tighten up the procedure in order to stop the leakage or waste of public money. Another letter was issued on April 19, 1955, by way of reminder, which contained a suggestion for vesting the Landscape Architect with powers of Sub-divisional Officer in his field of work. The Finance Secretary also addressed a letter dated September 7, 1955, suggesting the delegation of some executive powers to the Landscape Architect and providing him with the necessary staff so that he could take charge of the Horticulture sub-division. The Accountant General sent a letter to the State Government on September 9, 1955, for sanctioning either an extension in the probationary period, or the confirmation of Bahl. He followed that up by another letter dated May 15, 1956, by way of a reminder.

Bahl has placed reliance on a note dated September 5, 1957 to show that the Secretary P.W.D. (B.&R.) had recommended his confirmation on the temporary post of Landscape Architect "which was sanctioned till 28-2-57," and that the Public Works Minister had agreed to it but had inquired the date from which the confirmation was to take effect. The case was however not submitted to him till November 15, 1956 when the Chief Engineer wrote that there was no necessity for the post and Bahl may be served with three months' notice and reverted to the Agriculture Department. One S. Vohra took over as Secretary, Capital Project. In his note dated September 5, 1957, he referred to the Chief Engineer's earlier suggestion that Bahl's work may be watched during the extended period of

six months probation upto June 14, 1957 "as a last chance." By then the Superintending Engineer had written to the Chief Engineer that he was not impressed by Bahl's behaviour towards his colleagues and he was not "needed for the post of Landscape Architect as the work is being done by AA/SA or for execution of Landscape plans, in view of the defects of character that have repeatedly come to notice." The Secretary recommended that Bahl's services should be terminated and he may be sent back to his parent department. He suggested that that could be done by abolishing the post of Landscape Architect and that as Bahl was likely to get much lesser pay there, that matter could be taken up separately with the Agriculture Department. It appears that the Estimates Committee of the Vidhan Sabha recorded a statement of Bahl on September 25, 1957, to the effect that proper thought had not been given to plantation of trees before he took over. Reference was made in the statement to H. S. Randhawa, Chairman of the Landscape Committee, and it was stated that while he might have knowledge of trees, that did not mean that he was an expert in landscaping.

Some adverse entries were made about Bahl's work, and he made a representation to the Chief Minister for expunging them on November 5, 1957. He specifically stated there that he had already submitted his application for appointment under the Government of India, and the Union Public Service Commission was likely to have his personal file in that connection. For that reason he asked for early action to expunge the remarks. The Minister concerned recorded a minute on February 11, 1958, saying that he had carefully considered the representation of Bahl and pointing out that the previous two Ministers had given him good reports. He therefore recommended to the Chief Minister that the adverse entries made against Bahl should be expunged and he should be confirmed on completion of his period of probation. The Chief Minister recorded his minute dated February 13, 1958, agreeing with the Minister but suggested that he may arrange to assign the requisite staff to the Landscape Architect so that his services may be fully utilised in the preparation and execution of landscape plans. Orders were issued on April 3, 1958, expunging the adverse remarks against Bahl for the period April 1, 1955 to November 20, 1956, and December 15, 1956 to March 31, 1957. That was followed by a minute of the Minister dated August 5, 1958, referring to his earlier note dated July 8, 1958 for confirmation of Bahl and asking for the file. He recorded another minute on August 18, 1958, to the effect that the post of Landscape Architect was most essential and stating that Government had ordered Bahl's confirmation and provision for staff to him. It was stated further that order of the Government had still to be implemented.

Bahl has invited our attention to the Chief Engineer's draft for the abolition of the post of Landscape Architect, which he sent to Randhawa on September 20, 1958, and to the note of the Secretary dated October 16, 1958, that the Committee had come to the conclusion that the post of Landscape Architect may be abolished with immediate effect. The Committee had met under the chairmanship of the Minister and he recorded his sanction to that proposal on October 19, 1958. The Secretary prepared a note on October 22, 1958, accordingly, stating that Bahl should be reverted to his parent department. He also recommended that the earlier decision to expunge the adverse entries from Bahl's service record should be reviewed and those entries allowed to stand. The Minister agreed with that recommendation on October 24/28, 1958. The Chief Minister passed an order on October 29, 1958, that it would not look proper to modify the orders already passed by the previous Minister about expunging the remarks with which he had agreed. He however agreed to Bahl's reversion to his parent department with immediate effect. Orders were accordingly issued for his reversion, and

it is not in dispute that he stood reverted on November 4, 1958, to the Agriculture Department.

Bahl felt aggrieved and filed a writ petition in the Punjab High Court on May 27, 1959. It was traversed by the State Government, and a learned Single Judge of the High Court dismissed it on September 7, 1961, leaving the parties to bear their own costs. Bahl preferred an appeal, but it was dismissed by the High Court on May 27, 1963. A certificate was however issued by the High Court for appeal to this Court. It was heard by a Bench of three judges and was dismissed on February 2, 1972. Bahl filed an application for review of that judgment but it was dismissed on April 16, 1973. He filed another review petition and it was dismissed on July 29, 1974. It was restored by this Court's order dated September 30, 1974, and a notice was issued to the respondent to show cause why the review petition should not be granted. The matter was then taken up on October 27, 1975, when the Court allowed the review petition and directed that appeal to be listed for hearing. It is in these circumstances that this appeal has come up for hearing once again.

The arguments which have been advanced by the appellant relate to mala fides, and it will be desirable to refer to the allegation in that respect in the writ petition. He has alleged that "by his good and honest work" he had incurred the "displeasure of his senior officers who from the very beginning were averse to his being brought over as Landscape Architect." He has further alleged that "his senior officers were not happy with him" and the order for the abolition of the post of Landscape Architect was passed and he was reverted to his parent department "mala fide, the result of inordinate hostility of the High Officers of the respondent who had not taken kindly to the petitioner, and who did not like that the petitioner should hold the post of Landscape Architect." This has been reiterated by alleging that the post was abolished "solely by the desire to remove the petitioner". It would thus appear that the allegations regarding mala fides or bad faith were quite vague and indefinite, and did not contain any such detail as could enable the other party to answer them adequately. Even so, we have examined the arguments of the appellant with reference to the evidence on the record.

It has been argued that although the appellant was appointed as Landscape Architect on a temporary basis in the Capital Project, Punjab, on May 24, 1952, he was not allowed to join that post when he reported for duty at Chandigarh on June 30, 1953, and had to rejoin his post with the Government of India on September 30, 1953. This has been cited by the appellant as the first and the clearest instance of bad faith on the part of the State Government, and he has tried to trace his subsequent misfortune from that initial episode. We have gone through the order of appointment dated May 24, 1952, and we find that it was categorically stated in paragraph 4 that if the appellant found the terms of his appointment acceptable, he should report for duty to the Senior Architect, Capital Project, Simla, 'not later than June 30, 1952.' That was reiterated in the subsequent letter of June 28, 1952. But as will appear from the reply of the respondents, the appellant did not join the post on the appointed date and asked for extension of the joining time. That was allowed upto November, 1952, but the appellant returned to India only in January 1953. He did not care to join his post and raised the question of higher pay. He was allowed further extension in the joining time upto May 21, 1953, with the clear stipulation that if he did not do so his appointment would be considered as canceled. He did not join even then, and again raised the question of higher pay. The State Government could not therefore be blamed if it took the view that the offer of appointment

was not open to him when he wanted to take over charge on June 30, 1953, after a lapse of one year from the date of the appointment, and appointed H. S. Dhinse as Landscape Architect. An attempt has been made to argue that Dhinse was a favorite of the Government and that was the motive for preventing the appellant from joining the post, but that is easily disproved by the further fact that the Government displaced H. S. Dhinse and asked the Public Service Commission soon after, on April 22, 1954, to recruit a suitable officer for the post. Nothing could therefore possibly turn on the appellant's discomfiture in missing the first appointment for, as has been shown, he himself was to blame for it.

It has next been argued that after the appellant was selected for appointment as Landscape Architect by the Public Service Commission and took charge on November 6, 1954, the post was abolished prematurely, out of malice, simply because the authorities concerned wanted to terminate his services somehow. The appellant tried to contend that the post of Landscape Architect was meant to continue even after November, 1958 because of the provision in the budget estimates for the year 1958-59. The contention is futile because the appellant has himself admitted in paragraph 13 of the writ petition that the post was extended upto February 28, 1958 and the end of March, 1958 and "after that the post was extended monthly." It has further been stated that the extension continued upto November 4, 1958. There is therefore no force in the argument that the post was abolished prematurely for, as has been held by the High Court, it was merely allowed to lapse on the expiry of its extended term on November 4, 1958.

The appellant has tried to argue that the abolition of the post was a device to remove him and to punish him, and he has tried to support his argument by a reference to this Court's decision in *State of Haryana v. Des Raj Sanger and another* (1) with the further contention that the abolition was without reason or justification. The Punjab Government has dealt with this point in paragraphs 15-17 of its reply and has referred to the appellant's inability to get along with his subordinates and colleagues as well as with the senior officers, and his habit of proceeding on leave without prior sanction during the plantation season. Reference has also been made to the fact that his post was temporary all through. It has been pointed out that the question of the continuation of the post was referred to a Special Committee consisting of the Minister of Public Works, M. S. Randhawa and Saroop Krishna, Secretary to the Government (Capital Project). It has been stated that the Committee arrived at the conclusion that the post of Landscape Architect was no longer necessary and decided to abolish it for that reason. The matter was in fact referred to the Cadre Committee which also made a similar recommendation. The order abolishing the post is on the record, and it shows that the reason for abolishing the post was that almost all the plans which were needed for the project had been prepared and the Chief Engineers' organisation could have no difficulty in carrying on the outstanding work of only Rs. 1.66 lakhs. It cannot therefore be said that the post was abolished without reason or justification, with the intention of getting rid of the appellant somehow and the appellant cannot find any support from the decision in *Des Raj Sanger's* case (*supra*).

An ancillary argument has been raised that the abolition of the post was in violation of the Rules of Business of the State Government according to which a post carrying a salary of Rs. 800/- per mensem or more could be abolished only by the Council of Ministers. While examining the argument, the trial court took notice of the fact that it was not raised in the writ petition, and

examined the relevant government files for satisfying itself that the final order was passed by the Minister concerned and the Chief Minister. It has also to be remembered that this was not really a case of abolition of the post of Landscape Architect for, as has been stated, it was sanctioned upto November 4, 1958, and was allowed to lapse thereafter.

The appellant has tried to argue that his discontinuance on the post of Landscape Architect was due to personal reasons because the Chief Engineer and the Superintending Engineer were displeased with him for pointing out certain irregularities in incurring expenditure even though it was his duty to do so for he might otherwise have been held responsible for them. We have made a reference to the developments that took place in this connection when the appellant sent a letter on December 17, 1954, reporting that certain references were untraceable and liabilities had been incurred under verbal orders or without authority involving considerable amounts and expressing his inability to submit the statements without examining the matter. But that could not have created any hostility against him because a recommendation was all the same made for his confirmation by the Separately concerned as mentioned in the copy of the note dated September 5, 1957 filed by the appellant. Moreover, while the controversy regarding the alleged unauthorised expenditure was raised on December 17, 1954, the decision to revert the appellant was taken after some four years on October 29, 1958, and we are not persuaded that there is any force in the argument that the appellant's alleged exposure of irregularities in the expenditure led to an adverse decision against him after such a long time. It is also significant that it is not the appellant's case that any adverse remark was entered in his confidential report before April 1, 1956. That would not have been so if the senior officers were against him and wanted to run him down because he had made an allegation regarding the irregularities in incurring the expenditure.

The appellant has in this connection invited our attention to his statement before the Estimates Committee of the Punjab Legislature in which he pointed out the defects in the earlier planning and management, with particular reference to M. S. Randhawa who was Chairman of the Landscape Committee. The appellant stated there that while Randhawa may have knowledge of trees, that did not mean that he was an expert in landscaping. It has been urged before us that it was that statement which proved the appellant's undoing, and he was thrown out by Randhawa's influence. There is however no force in this argument also because the adverse entries against him related to the period April 1, 1956 to April 23, 1956 and November 15, 1956 to March 31, 1957, whereas the Estimates Committee met in September, 1957. The other argument that the Chief Engineer went to the extent of preparing the memorandum for the abolition of the post of Landscape Architect at the behest of Randhawa who was then Additional Secretary, Government of India, New Delhi, and was not serving the Punjab Government, and that it was sent for his approval on September 20, 1958 before circulation, is also of no consequence because he was, all the same, a member of the Capital Project Committee while serving the Government of India. He was therefore directly concerned with the matter and there was nothing wrong in consulting him before sending the memorandum for circulation to the other officers concerned. In fact, as has been stated, it came up for consideration before a Committee under the chairmanship of the Minister, and there is nothing on the record to show that there was bad faith on the part of the members of the Committee including M. S. Randhawa in arriving at a decision on October 16, 1958, that the post shall be abolished. Saroop Krishna was the Secretary concerned, and the appellant has not found it possible to urge anything

against him. He has also not found any fault with the Minister under whose chairmanship the Committee met and took the decision which proved the appellant's undoing. We are therefore unable to think that the decision was brought about by bad faith.

The appellant has argued further that the order abolishing the post of Landscape Architect was illegal as it denied him the benefit of three months' notice for termination of his appointment in terms of paragraph 5 of the notification which was issued by the Public Service Commission inviting applications for the post. Reference in this connection has been made to a Secretariat note dated September 5, 1957. There is no force in this argument because no such term was specified in the letter of temporary appointment dated October 21, 1954. Moreover it was specified in the notification of the Public Service Commission that the post was temporary upto February, 1955, but was likely to continue thereafter. So if the term of the post was to expire on November 4, 1958, to the appellant's knowledge, he could not possibly claim that he should have been given three months' notice all the same as he was fully aware of his precarious tenure from month to month.

The appellant has tried to argue that the post of Landscape Architect was not continued after November 4, 1958, because the Chief Engineer wanted to recruit Hardayal Singh Johal on that post later on. It has been pointed out that it was for that purpose that the qualifications of the post were reduced to M.Sc. (Agriculture) as Johal did not possess any higher qualification. This argument is again futile because while the post of Landscape Architect was allowed to lapse on November 4, 1958 it has been admitted before us by the appellant that Hardayal Singh Johal assumed charge as Executive Engineer (Horticulture) in January, 1968. The intervening period of 10 years is sufficient to show that there was no ulterior motive of the nature suggested by the appellant.

Then it has been argued that it was out of malice that confidential reports on the appellant's work were obtained from R. N. Dogra, Principal, Punjab Engineering College, by a letter dated March 11, 1958 for the period April 1, 1955 to March 31, 1956, and a similar report was obtained from P. L. Verma by a letter dated April 9, 1958, for the period November 6, 1954 to March 31, 1955. The argument is of no consequence because it is not unusual, or out of the way, for the department concerned to complete the record by asking for missing reports from officers who were in a position to supply them and had not retired. At any rate, if it had been the intention to run down the appellant, R. N. Dogra or P. L. Verma would not have missed the opportunity of entering the adverse reports at the appropriate time.

It is also the grievance of the appellant that although he had become quite senior in his parent department (Agriculture), he was reverted to a non-gazetted post in the scale of Rs. 100-300 which virtually amounted to the termination of his services. It has further been argued that even if it had been decided to discontinue the post of Landscape Architect, there was no reason why he should not have been retained on the post of S.D.O. (Horticulture). Here again, the argument loses sight of the fact that the order which the Chief Minister had made was that the appellant should be reverted to his parent department, and if the appellant had cared to join, there, it would have been open to him to make a representation for his appointment on a proper post with due regard to his seniority and service record. If he did not do so, and stayed away from his parent department, it is not open to him to argue that he was not given a proper post there. While doing so the appellant could lay a

claim to the post of S.D.O. (Horticulture) if it belonged to his parent department, and if that was not so, there could be no justification for his asking for appointment to that post.

Considerable reliance has been placed by the appellant on the Chief Minister's minute dated February 1, 1958, on the Minister's recommendation dated February 11, 1958. The Minister stated in his minute that he considered that the "adverse entries made against him (Bahl) should be expunged and he should be confirmed on the completion of his probation." That led to the following order of the Chief Minister dated February 13, 1958,-

"I agree with R. M. but he may kindly arrange to assign requisite staff to the Landscape Architect so that his services may be fully utilised by the Capital Project Administration in the preparation and execution of Landscape Plans."

The appellant could justifiably argue that what the Chief Minister had agreed to was not only the expunction of the adverse entries, but also the Minister's proposal for his confirmation, and that an order should have been issued accordingly. But the fact remains that order was not issued for his confirmation and, on the other hand, when the Minister concerned sent the case back to the Chief Minister on October 24/28, 1958, with the proposal to review the earlier decision for expunction of the adverse entries, and to abolish the post of Landscape Architect and to revert the appellant to his parent department, the Chief Minister passed the following order on October 29, 1958,-

"It would not look proper to modify the orders already passed by the previous Minister about expunging of the remarks, and agreed to by me. I agree regarding reversion of Shri Bahal to his parent Dept. with immediate effect."

It is therefore quite clear that after the matter had been examined further in consultation with the officers concerned, the Chief Minister modified his earlier order dated February 15, 1958 and passed an order for the appellant's immediate reversion to his parent department. It was therefore permissible for the department to issue orders accordingly. At any rate, the earlier order of the Chief Minister dated February 13, 1958 could not give rise to any right in favour of the appellant as it was not expressed in the name of the Governor as required by article 166 of the Constitution and was not communicated to the appellant. As has been held by this Court in *Bachhittar Singh v. The State of Punjab*(1) it was only a provisional order which was open to reconsideration by the Chief Minister and did not bind anyone. Nothing could therefore turn on the Chief Minister's order dated February 13, 1958, when it was specifically rescinded by his subsequent order dated October 29, 1958. There could in fact be no question of appellant's confirmation as Landscape Architect as it was a temporary post all through until it was allowed to lapse on November 4, 1958.

The appellant has invited our attention to some developments which took place after he demitted office on November 4, 1958. He has pointed out that the Government reversed the earlier order expunging the adverse entries by the subsequent order dated December 18, 1958, and it has been argued that this was enough to prove bad faith. Our attention has in this connection been invited to the Deputy Secretary's note dated August 28, 1959, that there was no cause for reversing the earlier order. The respondents have pointed out that the Government re-examined the matter and reversed

the earlier decision because of subsequent developments. But even if it were assumed that there was no justification for restoring the remarks which had once been expunged, that could not establish bad faith in issuing the order for the appellant's reversion as it had been passed much earlier.

It appears that the appellant made a representation to the Governor of Punjab on April 22, 1959, and he has reproduced the Governor's minute dated July 17, 1959 thereon in his petition of appeal to this Court. We have gone through the minute and it shows that the Governor has expressed himself strongly in favour of the appellant. All the same, he realised that he was unable to do anything for him; and it has not been urged before us that the Governor was in a position to order the appellant's reinstatement on the post of Landscape Architect.

It would thus appear that although the appellant has based his case almost entirely on mala fides, he has not succeeded in proving the allegation. As has been stated, he did not furnish the necessary particulars for the allegation, so that it was not obligatory for the respondents to deal with it in details in their reply. Even as the allegation stood, what the appellant had to prove was not malice in its legal sense, for that was not his case. He had therefore to prove malus animus indicating that the respondent State of Punjab was actuated either by spite or ill will against him or by indirect or improper motives, but no such particulars were furnished by him. The appellant could also establish lack of bonafide either by proving that his reversion was ordered for a collateral purpose and not for the ostensible purpose of abolishing an unnecessary post, or by proving that the ostensible purpose of abolishing the post was so unconvincing and absurd as to lack bonafide in the circumstances of the case. Both the direct and circumstantial evidence, as well as the respondents' admission and the surrounding circumstances of the case, were admissible to establish lack of bonafide, or bad faith, but the fact remains that, for reasons already stated, he has not succeeded in proving the allegation. As has been held by this Court in *S. Pratap Singh v. The State of Punjab*(1) it is for the person seeking to invalidate an order to establish the charge of bad faith. It has to be remembered that such a charge may be made easily or without a sense of responsibility, and that is why it is necessary for Courts to examine it with care and attention. As the appellant failed in establishing his case, we find nothing wrong with the impugned judgment of the High Court dated May 27, 1963, and the appeal is dismissed. In the circumstances of the case, the parties are left to bear their own costs.

Before parting with the case we will like to say that even though the appellant has not succeeded in establishing mala fides or bad faith on the part of the respondent State of Punjab, it is apparent that he was a highly qualified Landscape Architect and there is nothing on the record to show that he faked integrity. The Governor has made strong observations in his favour in his minute dated July 17, 1959, and we think it is desirable that the government or governments concerned should make a lump sum payment to him in addition to any terminal benefit he might have received already, so that he may be able to find some solace now that he has attained the age of superannuation and cannot look out for fresh employment. It may also be mentioned that the appellant made applications for the production of some record by the State Governments but we were satisfied, while hearing the arguments, that the State Governments had placed whatever record was available with them for the disposal of this appeal and the appellant cannot have any legitimate grievance on that account. So far as we are concerned, we have not found any difficulty in disposing of this appeal on the basis of the material on the record.

N.V.K.

Appeal dismissed.