

# **Mewa Singh & Ors vs Shiromani Gurdwara Prabandhak ... on 10 December, 1998**

**Author: D.P.Wadhwa**

**Bench: S. Saghir Ahmad, D.P. Wadhwa**

PETITIONER:

MEWA SINGH & ORS.

Vs.

RESPONDENT:

SHIROMANI GURDWARA PRABANDHAK COMMITTEE

DATE OF JUDGMENT: 10/12/1998

BENCH:

S. Saghir Ahmad, D.P. Wadhwa.

JUDGMENT:

D.P.Wadhwa. J.

Leave granted.

There are 4 appellants. All are employees of the respondent Shiromani Gurdwara Prabandhak Committee (SGPC), a body constituted under the Sikh Gurdwara Act, 1925 (for short, the 'Act'). They were, however, dismissed from service by order dated January 13, 1996. They approached the Punjab and Haryaba High Court under Articles 226 and 227 of the Constitution. High Court, by the impugned judgment dated April 18, 1998, refused to grant any relief to them and rather told them to avail alternative remedy provided under Section 1.42 of the Act by filing appeal against the orders of dismissal to the Sikh Gurdwara Judicial Commission. Aggrieved these four employees have approached this Court.

Appellants contend that not only that the High court wrongly refused to exercise its jurisdiction but the impugned judgment is contrary to its earlier Division Bench decision in Ajaib Singh vs. The Shiromani Gurdwara Prabandhak Committee (CWP No. 7236 of 1996 decided on October 3, 1996 wherein the High Court held that Section 142 did not provide any alternative remedy to dismissed employee of the respondent.

It is alleged that on June 3, 1995 appellants were given the duty of taking pious saroop from Darbar Sahib to Calcutta. They were issued charge sheets on November 9, 1995 for committing had acts

during journey to Calcutta and for consuming liquor. The appellants filed their reply to the charge sheets explaining therein that the charge of taking liquor etc. was not true. President of the respondent after considering the replies filed by the appellants passed an order on December 16, 1995 imposing a fine on them. The appellants, it is stated, deposited the fine. In pursuance to the order of the President of respondent the appellants were re-instated in the service. When the matter stood concluded, the Executive Committee of the respondent, it appears, took up the matter again and without holding any further proceedings by order dated January 30, 1996 dismissed the appellants from service. Appellants state that their dismissal is wrong as it is against the service rules framed by the respondent and by filing writ petition in the High Court they sought quashing of their orders of dismissal. They submitted that under Rule 4 of the Service Rules an appeal lies to the Executive Committee against the order of punishment by the President of the respondent. Under the Rules Executive Committee of the respondent is Appellate authority, The appellants did not file any appeal before the Executive Committee and it, therefore, could not assume jurisdiction and order punishment or dismissal, particularly when no inquiry as contemplated under Rule 4 was held. Respondent said that it was not amenable to the jurisdiction of the High Court and that the appellants, if they felt aggrieved, could challenge the orders of the Executive Committee by approaching the Judicial Commission under Section 142 of the Act. It is also stated that appeal lies to the Judicial Commission under Rule 4(b) of the Service Rules framed under Section 132 which have been framed in exercise of powers of the respondent under Section 69 of the Act. The respondent then says that Rule 4(b) was wrongly translated by the appellants and that its correct translation is as under :-

"(b) any employee under the control of management any department and Gurdwara may prefer an appeal against any order of any punishment, (suspension, dismissal, fine, warning etc,) within 30 days from the date that order is passed.

(i) any employee of the Shiromani Committee can be dismissed or degraded for his bad character, drinking or becoming a 'Patit' but before he is dismissed or degraded, the allegations in the form of written charge sheet shall be supplied to him along with the statement of allegations, on the basis of which the charges are levelled against him.

Representation against these charges shall be received from the employee within reasonable time and in case he denies these charges and prays for holding an enquiry into the presence of the employee and for each item of the charge sheet, which has not been admitted, evidence shall be recorded in his presence and the employees shall be entitled to cross-examine these witnesses. In case an employee wishes to produce his defence, the same shall be entertained, but in case if the inquiry committee feels that certain witnesses are not necessary for evidence, it shall not be permitted to be produced for the reasons to be recorded in writing. Action shall be taken against the employees only when the charge is established.

To appreciate rival contentions of the parties it may be useful to refer to certain provisions of the Act. Under Section 40, for the purpose of the Act there shall be constituted a Board and for every Notified Sikh Gurdwara a committee of management and there shall also be constituted from time to

time a Judicial Commission in the manner provided in the Act. The management of every Notified Sikh Gurdwara shall be administered by the Committee constituted thereof, the Board and the Commission in accordance with the provisions contained in Part III of the Act. Chapter VI in Part III provides that the Board shall be known by such name as may be decided upon at the general meeting of the first Board constituted under the provisions of the Act. This Chapter contains provisions for the composition and constitution of the Board. Section 62 provides as to how Executive Committee of the Board is to be constituted. Under Section 64, the Executive Committee of the Board shall exercise on behalf of the Board all powers conferred on the Board by the provisions of the Act which are not expressly reserved to be exercised by the Board in its general meeting. There is also provision for delegation of powers of the Committee to sub-committee. Then under Section 69, the Executive Committee is empowered to appoint employees and prescribe their duties. Section 42, 64, 69, 132 and 142 are as under :-

"42. Name of Board. - (1) The Board shall be known by such name as may be decided upon at a General Meeting of the 1st Board constituted under the provisions of this Act, provided that not less than three-fifths of the members present at the meeting have voted in favour of the name selected, and that such name has been approved by the State Government.

(2) If the Board fails to select a name in accordance with the provisions of sub-section (1) or the name selected is not approved by the State Government the Board shall be designed the Central Board.

(3) The Board shall by such name be a body corporate and shall have a perpetual succession and a common seal and shall by such name sue and be sued.

64. Powers of executive committee of Board The Executive Committee of the Board shall exercise on behalf of the Board all powers conferred on the Board by the provisions of this Act which are not expressly reserved to be exercised by the Board in general meeting. But the Executive Committee may, if it so decides by a majority of three-fourth of its members present in the meeting delegate any of its powers to a Sub-Committee consisting of one or more of its members.

69. Servants of the Board, their appointment and punishment.- The Executive Committee of the Board may appoint such servants as it may deem to be necessary for the due performance by itself of its duties, and may from time to time determine the number, designations, grades and scales of salary, or other remuneration of such servants, and may at any time fine, reduce, suspend or remove any servant.

123. Power of Board to make by laws:- (1) The Board may in general meeting make by

-laws, not inconsistent with this Act, regulating its procedure, and the fees to be levied under the provisions of sub-section (8) of section 137, provided that the Board shall not, without the previous sanction of the State Government, make any by-law--

(a) Prescribing the form in which the budgets of the Board and of committees shall be presented;

(b) providing for the custody and investment of the funds of the Board and prescribing the procedure by which sanction of the Board may be accorded to the deposits of surplus funds in specified banks;

(c) Prescribing the qualification of candidates for membership of the Board and committees;

and provided further that no by-law falling within the purview of clause (c) shall impose any disqualification upon a Sikh only because he is a Sahjdhari Sikh.

(2) All by-laws framed under this section shall have force of law.

142. Right of interested person to complain to commission in respect of Misfeasance etc. (1) Notwithstanding anything any thing contained in Section 92 of the Code of Civil procedure, 1908, or in the Specific Relief Act, 1877, any of the person having interest, in a Notified Sikh Gurdwara may, without joining any of the other persons interested therein, make an application to the Commission, against the Board, the Executive Committee of the Board, or the Committee or against any member or past member of the Board, of the Executive Committee or of the Committee or against any office-holder or past officeholder of the Gurdwara or against any employee past or present of the Board or Gurdwara in respect of any alleged malfeasance, misfeasance, breach of trust; neglect of duty, abuse of powers conferred by this Act or any alleged expenditure on a purpose not authorised by this Act and the Commission if it finds any such malfeasance, misfeasance, breach of trust neglect of duty, abuse of powers or expenditure proved, may consistently with the provisions of this Act and of any other law or enactment in force for the time being, direct any specified act to be done or forbore for the purpose of remedying the same and may award damages or costs against the person responsible for the same, and may order the removal of any office-holder or member of the Board Executive Committee or Committee responsible for the same and may also disqualify any member of the Board, Executive Committee, or Committee, thus removed from such membership for a period not exceeding five years from the date of such removal;

Provided that no such application shall be entertained by the Commission, if it is made more than six years after the date of the act or omission from which the right to make an application under this subsection accrues and, in the case of an application against a member of the Board, the Executive Committee of the Board or the Committee, if it is made after such period or after six years of the date of his ceasing to be a member, whichever is later.

(2) The Board may make a similar application to the Commission which may, in like manner, dispose of it.

(3) The Board or any person aggrieved by an order passed by the Commission under the provisions of sub-section (1) or sub-section (2) may, within ninety days of the orders, appeal to the High

Court."

Executive Committee of the Board in exercise of its powers has framed Service Rules for the employees of SGPC prescribing their service conditions which include their appointment and removal from service. Rules 4 and 5 provided for dismissal and termination of services of the employees of the SGPC and they are as under :

"4. Dismissal- (a) The employee can be dismissed in accordance with the below mentioned rule by this appointment authority, but appeal against the dismissal by the president shall lie to the Executive Committee within 30 days from the date of dismissal.

(b) Any employee under control of Management of any Department of Gurdwara Under Shiromani Gurdwara Prabandhak Committee may prefer an appeal against any punishment of suspension, dismissal, fine, warning etc, within 30 days from the date of issuance of the order :-

(i) any employee of the Shiromani Committee can be dismissed or degraded for his bad character, dishonesty, drinking or becoming a "patit" but before he is dismissed or degraded, the allegations in the form of written charge sheet shall be supplied to him along with the statement of allegations, on the basis of which the charges are levelled against him.

Representation against these charges shall be received from the employee within reasonable time and in case he denied these charges shall be got inquired into in the presence of the employee and for each item of the charge sheer, which has not been admitted, evidence shall be recorded in his presence and the employee shall be entitled to cross examination these witnesses. In case an employee shall be entitled to cross examination these witnesses. In case if the inquiring Committee feels that certain evidence is not necessary, it shall not be permitted to be produced for the reasons to be recorded in writing. Action shall be taken against the employees only when the charge is established.

(ii) In case the employees wish to produce any record or document in their defence, he shall be permitted to do so end if he asks for the copies of these documents, the same shall be supplied to him without any objection and he shall be permitted to inspect the record free of cost.

(iii) Every employee, who has been dismissed or degraded or removed shall be supplied with the copies of the report of inquiry committee and also final decision of the Executive Committee free of cost.

(iv)(a) The record pertaining to the dismissal or degradation of an employee shall not be destroyed for three years, rather it shall be kept in safe custody.

(b) If an employee is reinstated on exoneration after his suspension he shall be entitled to the arrears of salary of the suspension period.

5. Termination :- In case the Shiromani Committee at any time terminates permanent employee, the Committee shall be responsible to give him a notice of one month or the salary for one month along with the admissible allowances. In the same way, in case an employee wishes to leave his service, he shall give a notice of one month to the Committee or shall pay one months salary along with the admissible allowance."

In the case of Ajaib Singh vs. The Shiromani Gurdwara Prabandhak Committee the services of the petitioner, who was working as Assistant Manager in the service of the respondent, were terminated by order dated May 2, 1996. There were certain allegations against the petitioner that he was responsible for the disappearance of the wife of an employee of the respondent. Certain news items also appeared in local newspapers of Amritsar. The Executive Committee of the respondent thereupon made an inquiry. Certain statements were said to have been recorded during the course of inquiry and thereafter the petitioner was served with the termination order. He was given one month's salary in lieu of notice. He challenged his order of termination by filing writ petition in the High Court. He pleaded that no show-cause notice or charge-sheet was served upon him and Rule 4 of Service Rules was violated and that by not given an opportunity of being heard principles of natural justice were violated inasmuch as he was condemned without being heard. Respondent raised objections that the writ petition was not maintainable as it was not amenable to the writ jurisdiction of the High Court even though it was created under statute and that petitioner did not avail alternative remedy against his order of termination as provided under Section 142 of the Act. High Court referred to the provisions of Section 42, 43, 64, 69 and 142 of the Act and also to Rules 4 and 5 of the Service Rules. It also referred to certain decisions of this court showing that writ would lie against the respondent. High Court, however, said that controversy before it was not whether respondent was an instrumentality or even an agency of the State or whether it was the creation of the statute and that the real controversy was whether service of an employee could be terminated in violation of the rules framed by the respondent which rules had been framed under an authority conferred by the Act. It held that petition filed under Articles 226 and 227 of the constitution was maintainable. As to alternative remedy under Section 142 of the Act, High Court said as under :-

"Section 142 of the Act, on a plain reading, does not appear to be relevant for the purposes of the present controversy. It confers a right on a person who has any interest in a notified Sikh Gurdwara to make an application to the Commission of the Board. This application may be in respect of any alleged malfeasance, breach of trust, neglect of duty, abuse of powers or any alleged expenditure on a purpose not authorized by the Act. On such an application, the Judicial Commission, constituted under the Act, may look into the matter and order the removal of any office holder or member of the Board or the Executive Committee responsible for the Act. It may also disqualify any member of the Board or the Executive Committee. It is thus clear that section 142 does not deal with the right of an employee in respect of filing an appeal against an order of termination or dismissal. The plea raised by the respondent that an alternative remedy is available under Section 142 of the Act has no force and is

rejected."

A mere reading of various provisions of the Act and Rules set out above unmistakably show that SGPC is a creation of the statute and Service Rules framed by it exercise of its statutory power have force of law. Any violation of the provision of the Act and the Rules will certainly make SGPC amenable to writ jurisdiction of the High Court under Article 226 of the constitution. We do not find any basis for the SGPC to contend that no writ can be issued against it even if its action is contrary to the provision of law and the Rules framed thereunder. SGPC is a creation of the statute. It has to act within the four corners of the law constituting it and the rules framed by it under the powers conferred upon it under the Act. We do not think any discussion is needed to dispel this argument by the SGPC that it is immune from the writ jurisdiction of the High Court. Language of Article 226 does not admit of any limitation on the powers of the High Court for the exercise of its jurisdiction thereunder. Subba Rao, J. in *Dwarkanath vs. ITO* 1965 (3) SCR 536) said that Article 226 "is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against who it can be exercised."

We have examined the provisions of Section 142. It does not provide any alternative remedy to an employee of the SGPC, who has been dismissed or whose services have been terminated. Section 142 does not cover any such type of case. In our view High Court in *Ajaib Singh* case rightly held that Section 142 of the Act was inapplicable in the case and that petitioner therein could not seek remedy under Section 142, which does not provide any alternative remedy.

In the impugned judgment we find that unfortunately High Court side tracked the issues raised before it which were fully covered by its earlier decision in *Ajaib Singh* case. High Court in *Ajaib Singh* case had said that writ did lie against SGPC in case where its employee was dismissed in violation of the service rules and further that Section 142 did not provide any alternative remedy. In spite of this clear statement of law laid by the earlier Bench High Court dismissed the writ petition by the impugned judgment and asked the appellants to seek alternative remedy under Section 142 of the Act. High Court, in our view, was unnecessarily swayed by irrelevant consideration while interpreting statutory provisions. Impugned judgment of the High Court, therefore, does not stand any further scrutiny and is liable to be set aside.

We, therefore, set aside the impugned judgment dated April 18, 1998 of the High Court and allow the writ petition filed by the appellants in the High Court. Orders of the SGPC dismissing the appellants are set aside. They shall stand reinstated with all consequential benefits.

The appeal is allowed with costs.