

T. R. Sharma vs Prithvi Singh & Anr. Etc on 17 November, 1975

Equivalent citations: 1976 AIR 367, 1976 SCR (2) 716, AIR 1976 SUPREME COURT 367, 1976 LAB. I. C. 294, 1976 UJ (SC) 11, 1972 2 SCR 716, 1976 (1) SCC 226, 1976 SERVLJ 97, 1976 (1) SERVLR 55

Author: Hans Raj Khanna

Bench: Hans Raj Khanna, P.N. Bhagwati, Syed Murtaza Fazalali

PETITIONER:

T. R. SHARMA

Vs.

RESPONDENT:

PRITHVI SINGH & ANR. ETC.

DATE OF JUDGMENT 17/11/1975

BENCH:

KHANNA, HANS RAJ

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KHANNA, HANS RAJ

BHAGWATI, P.N.

FAZALALI, SYED MURTAZA

CITATION:

1976 AIR 367 1976 SCR (2) 716

1976 SCC (1) 226

CITATOR INFO :

F 1976 SC1199 (8)

F 1989 SC1985 (5,6,7)

ACT:

Punjab Civil Service Rules, rr. 3, 12 and 3, 14 (a)
(2)-Scope of.

HEADNOTE:

While holding the post of Agricultural Inspector in the Agricultural Department, the appellant was appointed against a temporary post of Block development and Panchayat officer in the Development Department of the State, and was confirmed in that post with effect from April 1, 1964. As a result of the partition of Punjab, the appellant and the respondents (who were also Agricultural Inspectors) were allocated to the State of Haryana. On February 26, 1969 at

the request of the appellant, the Governor of Haryana deconfirmed the appellant from the post of Block Development and Panchayat officer with effect from that date. On March. 20, 1969, the Governor passed an order promoting the appellant temporarily as District Agricultural officer describing him as "Agricultural Inspector, now working as Block Development and Panchayat officer".

The respondents challenged the order, and the High Court allowed their writ petition holding that the appellant's lien on the post of Agricultural Inspector-from which post alone he could have been promoted to the post of District Agricultural officer-automatically stood terminated under r. 3.12 Punjab. Civil Service Rules, on his confirmation as Block Development officer.

Allowing the appeal to this Court,

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HELD: Under r. 3. 12 normally, a Government servant, on substantive appointment to any permanent post, acquires a lien on that post and ceases to hold any lien previously acquired on any other post. But, the opening words of the rule show that it would apply unless it is otherwise provided in the Rules. Rule 3.14 (a) (2) provides otherwise by carving out an exception. It provides that a competent authority shall suspend the lien of a Government servant on a permanent post which he holds substantively, if he is appointed in d substantive capacity to a permanent post outside the cadre on which he is borne. When the appellant was appointed as Block Development and Panchayat officer in a substantive permanent capacity, his case fell squarely within the ambit of r. `3 14(a) (2) as, the post of Block Development and Panchayat officer was outside the cadre of Agricultural Inspectors to which the appellant belonged. The use of the word "shall" in cl. (a) against the use of the word "may" in cl. (b) of the rule shows that it was imperative for the competent authority to suspend the lien of the appellant on the permanent post of Agricultural Inspector which he held substantively. He should not suffer because of the competent authority's failure to do so. [720 E, H, 721 A]

Further, under r. 3.15, in a case covered by r. 3.14 (a) (2) the suspended lien of a Government servant may not, except on the written request of the Government servant, be terminated while he remains in Government service; but no written request was made by the appellant in the presnt case for terminating his suspended lien on the post of Agricultural Inspector. [712-B, C]

Therefore, when the Governor deconfirmed the appellant from the post of Block Development and Panchayat officer, the suspended lien of the appellant on the post of Agriculture Inspector stood revived with effect from February 26, 1969, and his promotion in his parent Agricultural Department from the post of Agricultural Inspector to that of District Agricultural officer by the

impugned order, does not suffer from any legal infirmity.
[721-D-E]
717

JUDGMENT:

CIVIL. APPELLATE JURISDICTION: Civil Appeal Nos. 354 and A 355 of 1971.

From the Judgment dated 28th October 1970 of the Punjab and Haryana High Court at Chandigarh in L.P.As. Nos. 85 and 86/70.

M. N. Phadke, P. C. Bhartari and K. K. John for the Appellant (in both the appeals).

S. K. Mehta, K. R. Nagaraja, M. Qarnaruddin and P. N. Puri for Respondent No. 1 (In CA 354) and Respondents Nos. 1 and 2 (in C.A. 355) Naunit Lal and R. N. Sachthey for Respondent 2 in CA 354 and respondent 3 in CA 355.

The Judgment of the Court was delivered by KHANNA, J.-This judgment would dispose of two civil appeals Nos. 354 and 355 of 1971 which have been filed on certificate by Tuhi Ram Sharma appellant against the Full Bench judgment of the Punjab and Haryana High Court.

The appellant joined service as Agricultural Inspector in the Agricultural Department of Punjab Government in 1945. Teja Singh, Bhale Ram and Prithvi Singh joined as Agricultural Inspector in the said Agricultural Department on different dates between 1950 and 1958. The appellant was confirmed as Agricultural Inspector in 1959. On May 20, 1961 the appellant was appointed against a temporary post of Block Development and Panchayat officer in the Development Department of the State. By order dated October 28, 1966 the appellant was made substantive permanent Block Development and Panchayat officer with effect from April 1, 1964. As a result of partition of Punjab the appellant as well as Teja Singh, Bhale Ram and Prithvi Singh were allocated to the State of Haryana. On February 26, 1969 the Governor of Haryana passed an order deconfirming the appellant on his request from the post of Block Development and Panchayat officer with effect from that date. On March 20, 1969 the Governor of Haryana passed the impugned order which reads as under:

"The Governor of Haryana is pleased to promote temporarily Shri Tuhi Ram Sharma, Agricultural Inspector, now working as Block Development and Panchayat officer as District Agricultural officer in H.A.S. Class IT subject to the approval of the Haryana Public Service Commission and to post him at Rohtak in place of Shri Narain Singh who is transferred to Narnaul as District Agricultural officer, Shri Prithvi Singh who is working against the post of District Agricultural officer, Narnaul is reverted to the post of Agricultural Inspector being the junior-most.

The character roll file of Shri Tuhi Ram in two parts is sent herewith. Its receipt may

please be acknowledged."

Two writ petitions were filed praying the quashing of the above order. one petition was filed by Prithvi Singh respondent and the other was filed by Bhale Ram and Teja Singh respondents. Learned single Judge (Tuli J.) as per judgment dated January 30, 1970 allowed both the writ petitions and quashed the impugned order on the following two grounds:

"(i) the impugned promotion had been made in violation of the mandatory requirements of rule 7 of the Haryana Agricultural Service Class II Rules, 1947 (hereinafter called the 1947 rules) which required appointment being made to the service by promotion by selection on the advice of Haryana Public Service Commission inasmuch as Sharma had been promoted without obtaining the advice of the Commission which had to be taken before the selection for promotion was made, and not after having promoted Sharma, and

(ii) in view of the binding earlier Division Bench judgment of this Court in Labhu Ram & ors. v.

The State of Punjab and Ors. 1968 S.L.R. 319 it was held that Sharma had on his confirmation as Block Development and Panchayat officer on October 28, 1966 (with effect from April 1, 1964, vide Annexure A) in the Development Department of the Haryana State, ceased to be a member of the Haryana Agricultural Service from which post alone he could have been promoted to the post in question, and his lien on the post of Agricultural Inspector automatically stood terminated under Rule 3.12 of the Punjab Civil Services Rules Volume I, Part I."

It was also observed by learned single Judge that but for the earlier Division Bench judgment in the case of Labhu Ram & Ors. v. State of Punjab, he would have been inclined to hold in favour of Sharma appellant on the second point mentioned above. Four Letters Patent appeals were filed against the judgment of the single Judge. Two of those appeals were by Sharma appellant, while the other two were filed by the State of Haryana. When the appeals came up for hearing before the Division Bench, the learned Judges referred the matter to the Full Bench. In the meantime, on March 5, 1970 the Governor of Haryana in consultation with the Haryana Public Service Commission promoted Sharma appellant as District Agricultural officer in Class II on regular basis and posted him as such with effect from April 1, 1969. All the learned Judges constituting the Full Bench held that the first ground on which the impugned order had been quashed, namely, non-procuring of the advance advice of the Haryana Public Service Commission was not well founded. It was also observed that the earlier case of Labhu Ram was clearly distinguishable and had no bearing. By a majority of two to one the Full Bench upheld the judgment of the single Judge on the second ground, namely, that the lien of the appellant on the post of Agricultural Inspector had automatically been terminated.

It is the above conclusion of the majority which has been assailed in these two appeals before us.

Mr. Phadke on behalf of the appellants has invited our attention to the relevant rules on the subject and has contended that the conclusion of the majority of the learned Judges of the Full Bench that the lien of the appellant on the post of Agricultural Inspector had stood terminated is not well-founded. As against that, Mr. Nagaraja has canvassed for the correctness of the above view of the learned Judges of the High Court. After hearing the learned counsel for the parties, we are of the opinion that there is considerable merit in the contention of Mr. Phadke.

We may at the outset reproduce the relevant rules of the Punjab Civil Service Rules, Volume I, Part I as applicable to the State of Haryana:

"3.12. Unless in any case it be otherwise provided in these Rules, a Government servant on substantive appoint appointment to any permanent post acquires a lien on that post and cases to hold any lien previously acquired on any other post. E, 3.14. (a) A competent authority shall suspend the lien of a Government servant on a permanent. post which he holds substantively; if he is appointed in a substantive capacity.

- (1) (2) to a permanent post outside the cadre on which he is borne, or
(3)

.....

..... .

3.15. (a) Except as provided in clause (c) of this rule and in note under rule 3.13, a Government servant's lien on a post may, in no circumstances, be terminated, even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post.

(b) In a case covered by sub-clause (2) of clause

(a) of rule 3.14 the suspended lien may not, except on the written request of the Government servant concerned, be terminated while the Government servant remains in Government service.

(c) Notwithstanding the provisions of rule 3.14(a), the r lien of a Government servant holding substantively a permanent post shall be terminated while on refused leave granted after the date of compulsory retirement under rule 8.21; or on his appointment substantively to the post of Chief Engineer of the Public Works Department.

Note.-In a case covered by rule 3.14(a)(2), where a Government servant is appointed in a substantive capacity to a permanent post outside the cadre on which he is borne, rule 3.15(b) precludes permanently the termination of his suspended lien unless and until a written request to this effect is received from him. The result is that it is possible for such a Government servant to stop his suspended lien being removed from the parent cadre indefinitely and, thus cause inconvenience to the parent office. Such a situation may be met by appropriate executive action

being taken by the controlling officer who may refuse his consent to such a Government servant being confirmed or retained in a permanent post outside his cadre unless he agrees to his lien on a permanent post in his parent office being terminated."

The learned Judges constituting the majority of the Full Bench 3: in holding that the appellant's lien on the post of Agricultural Inspector had stood terminated relied upon rule 3.12. Perusal of the above rule shows that normally a Government servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post. The opening words of the above rule, however, show that it would apply unless it be otherwise provided in the rules. Rule 3.14(a)(2) carves out an exception to the general rule contained in rule 3.12. According to rule 3.14(a)(2), a competent authority shall suspend the lien of a Government servant on a permanent post, which he holds substantively if he is appointed in a substantive capacity to a permanent post outside the cadre on which he is borne. When the appellant was appointed as Block Development and Panchayat officer in a substantive permanent capacity, his case squarely fell within the ambit of rule 3.14(a)(2) as the post of Block Development and Panchayat officer was outside the cadre of Agricultural Inspectors to which the appellant belonged: In the circumstances, it was imperative for the competent authority to suspend the lien of the appellant on the permanent post of Agricultural Inspector which he had held substantively. The competent authority, however, failed to suspend the lien of the appellant on the post of Agricultural Inspector. The appellant plainly cannot suffer because of such inaction or omission on the part of the competent authority. A reading of the rule leaves no doubt that a duty is cast upon the competent authority to suspend the lien of a Government servant on a permanent post which he holds substantively if he is appointed in a substantive capacity to a permanent post outside the cadre on which he is borne. The imperative nature of the rule is also clear from the use of the word "shall" in clause (a) as against the use of the word "may" in clause (b) of that rule. The appellant, in our opinion, cannot be penalised because of the omission of the competent authority to do so in accordance with the mandatory provisions of rule 3.14 (a)(2). Clause (b) of rule 3.15 also makes it clear that in a case covered by sub-clause (2) of clause (a) of rule 3.14, the suspended lien of the Government servant concerned may not, except on the written request of that Government servant, be terminated while he remains in Government service. The note to rule 3.15 shows a way out in case any difficulty is experienced on account of the operation of rule 3.14(a) (2). It is nobody's case that any written request was made by the appellant for terminating his suspended lien on the post of Agricultural Inspector. As such, we find it difficult to uphold the finding of the majority of the learned Judges that the lien of the appellant on the post of Agricultural Inspector had stood terminated. In our opinion, the third Judge who was in the minority took a correct view of the matter when he observed that the Government servant is not to be penalised and cannot be deprived of the safeguards provided by rule 3.14 because of the fact that the competent authority had not taken the necessary steps.

As the Governor has deconfirmed the appellant from the post of Block Development and Panchayat officer, the suspended lien of the appellant on the post of Agricultural Inspector would stand revived with effect from February 26, 1969. The promotion of the appellant in the parent Agricultural Department from the post of Agricultural Inspector to that of District Agricultural officer by the impugned order cannot in the circumstances be held to suffer from any legal infirmity.

We accordingly accept the two appeals, set aside the judgments of the learned single Judge and the Full Bench and dismiss the writ petitions filed by Prithvi Singh, Bhale Ram and Teja Singh respondents. The parties in the circumstances shall bear their own costs throughout.

V.P.S.

Appeals allowed