

Supreme Court of India

Union Of India vs Gurbaksh Singh & Another on 5 February, 1975

Equivalent citations: 1975 AIR 641, 1975 SCR (3) 444

Author: P Bhagwati

Bench: Bhagwati, P.N.

PETITIONER:

UNION OF INDIA

Vs.

RESPONDENT:

GURBAKSH SINGH & ANOTHER

DATE OF JUDGMENT 05/02/1975

BENCH:

BHAGWATI, P.N.

BENCH:

BHAGWATI, P.N.

MATHEW, KUTTYIL KURIEN

UNTWALIA, N.L.

CITATION:

1975 AIR 641

1975 SCR (3) 444

1975 SCC (3) 638

ACT:

Displaced Persons (Compensation and Rehabilitation) Act 1954 and General Clauses Act (10 of 1897) S. 16, and Constitution of India 1950, Art. 310(1)--Post of Asstt. Commissioner under 1954 Act--Whether services of Incumbent could be terminated by State Government.

HEADNOTE:

Under s. 3(1) of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the post of Assistant Settlement Commissioner is a post under the Union of India to which the appointment is to be made by the Central Government.

In exercise of this power the Central Government appointed the first respondent to the post by order dated 3rd September, 1955. Since the post was created by the President of India only for a period of 6 months the sanction for the post came to an end on 29th February 1956. The first respondent, how-ever, continued to function on the basis of sanction to its continuance given by the State Government. Thereafter, by an order dated 17th April, 1956, the State Government purported to terminate the services of the first respondent with immediate effect. After some correspondence, on February 18, 1959, the Central Government

issued a memorandum that on the expiry of the period of one month given in the earlier memorandum of January 18, 1959 his services stood terminated with effect from February 18, 1959. The respondent filed a suit against the Central and the State Governments contending that both their orders terminating his services were illegal and invalid and for recovery of arrears of salary, and allowances. The trial court dismissed the suit. In appeal to the High Court, he contended that his service was validly terminated only by the memorandum dated 18th January 1959, issued by the Central Government, and that he was therefore entitled to arrears of Wary and allowances upto 18th February, 1959. This contention was accepted by the High Court.

Dismissing the appeal to this Court,

HELD : The Central. Government alone could terminate the appointment, both as the appointing authority as also under Art. 310(1) of the Constitution. [451 H]

(a) The State Government had no power to make the appointment to the post unless such power was conferred upon it by virtue of a direction given by the Central Government under s. 34, but there was no such direction, in the present case. The Central Government only empowered the State Government to nominate the person to be appointed to the post but the appointment of the person so nominated could only be made and, in fact, was made by the Central Government by its order dated 3rd September, 1955. [450 D-F]

(b) The State Government's order dated 1st December, 1955 purporting to appoint the first dent was merely a formal appointment letter pursuant to the suggestion of the Central Government. It had no legal consequence since by that the first respondent was already appointed to the post. [450 G]

(c) Moreover, the post was sanctioned by the President of India and created by the Central Government and the whole of the expenditure in connection with it was to be home out of funds allocated by the Central Government. The State. Government's. order purporting to accord sanction to the creation of the post was only for the purpose of regularizing its own accounts procedure in disbursing the amount allocated by the Central Government. [450 H-451 B]

(d) When the question regarding the issue of pay clip in favour of the first respondent for the period subsequent to 29th February, 1950, arose, the Accountant General of the State pointed out that the sanction to the continuance

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of the post given by the State Government was meaningless and ineffective and it could not be acted upon until receipt of sanction to its continuancy from the Central Government. [451 C-D]

Therefore, the Central Government, which was the appointing authority, could terminate the service of the first-respondent, under s. 6, General Clauses Act, 1897. [451 G]

(e) There is no provision under which the State Government

could have the power to determine the appointment as Assistant Settlement Commissioner made by the Central Government under s. 3. The person appointed would hold the post during the pleasure of the President and only the Central Government would be entitled to terminate it. [451 G-H]

The High Court was, therefore, right in taking the view that the, order of the State Government dated April 17, 1956, was ineffectual and invalid and that the service of the first respondent was validly terminated only on February 18, 1959, by the Central Government. [452 A-B]

S. R. Tiwari v. Dt. Board, Agra [1964] 3 S.C.R. 55, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11 of 1968. From the judgment and order dated the January 16, 1967 of the Punjab & Haryana High Court in Civil Regular First Appeal No. 324 of 1961.

R. N. Sachthey, for the appellant.

Harbans Singh, for respondent No. 1.

The Judgment of the Court was delivered by BHAGWATI, J. The question that arises for determination in this appeal is as to which authority was entitled to terminate the service of the first respondent the Central Government or the Government of Punjab.

The first respondent was, prior to his appointment as an Assistant Settlement Commissioner, holding the post of Deputy Registrar, Land Record in a temporary capacity under the State of Punjab. The first respondent had no lien on any permanent post and was a temporary servant of the Punjab Government. On the coming into force of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as the Act) it became necessary to appoint officers and staff in the State of Punjab for the purpose of carrying out various functions and duties under the Act. One of such functions and duties was grant of proprietary rights to quasi permanent allottees of agricultural land and houses in the rural areas in the State of Punjab. The President of India, therefore, sanctioned the creation of certain posts-which included two posts of Assistant Director to be designated as Assistant Settlement Commissioner under the Act for a period of six months from the date of promulgation of the Rules framed under the Act "for the work connected with the conversion of quasi-permanent allottees into permanent ones" and the Central Government, by its letter dated 18th April, 1955 conveyed its sanction to the State Government. This letter contained a direction that the over-all expenditure in connection with these posts be sanctioned by the President of India should not exceed Rs. 6.50 lacs and it would be shared between the Central Government and the State Government in the ratio of 50-50. It was also suggested in this letter that the names of officers appointed as Assistant Directors and Naib Tehsildars should be intimated in

due course for issue of necessary notifications under the provisions of the Act. The State Government, by its letter dated 3rd July, 1955, pointed out to the Central Government that having regard to the large magnitude of the work involved, it would be necessary to have two whole-time officers exclusively devoted to this work and suggested that two posts should, therefore, be permitted to be created, one of a Deputy Secretary "who would have administrative control over all the managing officers and settlement officers and the staff appointed in connection with the conferment of permanent rights" and the other of an Assistant Settlement Commissioner. It appears that the Central Government in the meantime reconsidered its earlier decision that the expenditure on the posts in connection with the grant of proprietary rights to quasi-permanent allottees should be borne 50-50 between the Central Government and the State Government and by its letter dated 20th July, 1955 intimated to the state Government that the Central Government would bear the entire expenditure on the staff appointed to these posts on condition that "the staff in question will be engaged for a period of six months only". The Central Government thereafter, by its letter dated 23rd July, 1955 conveyed the sanction of the President of India to the creation of one post of Additional Settlement Commissioner and one post of Assistant Settlement commissioner "for a period of six months for the work connected with the conversion of quasi-permanent allotments into permanent ones on the scale of pay noted against each plus usual allowances admissible to the State Government employees of their status". We are concerned in this appeal with the post of Assistant Settlement Commissioner sanctioned by the President of India as mentioned in this letter dated 23rd July, 1955.

Though the order of appointment of the first respondent to the post of Assistant Settlement Commissioner was not yet passed, the first respondent relinquished charge of his post of Deputy Registrar, Land Record and assumed charge of the post of Assistant Settlement Commissioner on the forenoon of 1st August, 1955 as appears from the certificate dated 1st August, 1955 (EX. D-1). The Central Government thereafter, in exercise of the powers conferred by sub Section (1) of section 3 of the Act, issued a notification dated 3rd September, 1955 appointing the first respondent to the post of Assistant Settlement Commissioner "for the purpose of performing the functions assigned to an Assistant Settlement Commissioner by or under the Act". The Central Government also issued another notification of the same date in exercise of the powers conferred by sub-section (1) of section 3 of the Act directing inter alia that the 'first respondent, who has been appointed under that sub-section to the post of Assistant Settlement Commissioner, shall perform the assigned to an Assistant Settlement Commissioner by or under the Act only in respect of agricultural land situated in the State of Punjab in rural area as defined in clause (f) of rule 2 of the Displaced Persons (Compensation) ' and Rehabilitation) Rules, 1955, including houses, if any, in any such area allotted along with such lands". A copy of the notification dated 3rd September, 1955 appointing the first respondent to the post of Assistant Settlement Commissioner was forwarded by the Central Government to the State Government along with its letter dated 3/7th September, 1955. The Central Government also addressed a letter dated 21st September 1955 to the State Government pointing out that since the 1st Respondent was to work as a whole time Assistant Settlement Commissioner, it was presumed that he had relinquished charge of his previous office and adding that the first respondent having already been notified as an Assistant Settlement Commissioner and a copy of the relevant notification having been forwarded to the State Government along with the letter dated 3rd/7th September, 1955, "formal I appointment letter" may be issued by the State Government and

copies endorsed to this Ministry".

It appears that the Governor of Punjab also, by an order dated 30th November, 1955, sanctioned the creation of certain posts which included one post of Assistant Settlement Commissioner "for six months connected with the conferment of permanent ownership rights on quasi-permanent allottees of the land in the Rehabilitation Department with effect from forenoon of 1st August, 1955". There-after, on 1st December, 1955 the Governor of Punjab issued an order appointing the first respondent as Assistant Settlement Commissioner against the temporary post created in the Rehabilitation Department for the work connected with the conferment of permanent ownership rights on the quasi-permanent allottees of evacuee lands for a period of six months with effect from the 1st of August, 1955". The State Government, by its letter dated 15th December, 1955 intimated to the Central Government that the first respondent, appointed as Assistant Settlement Commissioner, had been given the scale of pay as sanctioned by the Central Government and confirmed that the first respondent was working as a whole time Assistant Settlement Commissioner. The first respondent accordingly held the post of Assistant Settlement Commissioner and carried out the functions and duties attached to that post. Since the post of Assistant Settlement Commissioner was created by the President of India only for a period of six months and the first respondent was appointed to that post by the Central Government on September 1955, the sanction for the post obviously came to an end on 20th February, 1956. The first respondent, however, continued to function as Assistant Settlement Commissioner on the basis of sanction to the continuance of the post given by the Government of Punjab. The Accountant General, Punjab took the view that the post of Assistant Settlement Commissioner held by the first respondent having been created by the Central Government, the sanction to the continuance of the post received from the Punjab Government was futile and could not be acted upon until receipt of sanction from the Central Government. and by his letter dated 21st April, 1956, pointed out to the State Government that the pay slip in favour of the first respondent for the period from 18th January, 1956 to 29th February, 1956 was being issued, but so far as the pay for the subsequent period upto 30th April, 1956 was concerned, "the sanction to the continuance of the post of Assistant Settlement Commissioner upto 30.4.1956 which has been received in this office from the Assistant Secretary to the Government of Punjab, Finance Department will be acted upon on receipt of "Sanction" from the Government of India as the post was created by them" and an attested copy of the same, if received, "may please be sent to enable this office to issue a pay slip to the officer upto 30-4-1956". In the meantime, however, the Government of Punjab, by an order dated 17th April, 1956, purported to terminate the service of the first respondent with immediate effect and directed that the first respondent would be paid one month's salary in lieu of notice. The first respondent thereafter made several representations to the Central Government as well as to the State Government contending inter alia that he was an employee of the Central Government and the State Government was not entitled to terminate his service and the order of termination of his service passed by the State Government was, therefore, invalid. There was no response to these representations for a long time. It was only on 10th January, 1959 that the Central Government issued a memorandum informing the first respondent that "he was not a servant of the Government of India and that, even in case he considered himself to be such, this memorandum should be treated as a notice terminating his services "without prejudice to the contention that he was not the Government of India's servant." The Central Government also issued another memorandum on 18th

February, 1959 intimating to the first respondent that on the expiry of the period of one month given in the earlier memorandum dated 10th January, 1959, his service stood terminated with effect from 18th February 1959.

The first respondent thereupon gave notices to the Central Government as well as the State Government under section 80 of the Code of Civil Procedure and filed a suit against the Union of India and the State of Punjab in the Court of the Senior Sub-Judge, Jullundur claiming a declaration that the order of the State Government dated 17th April, 1956 as also the order of the Central Government dated 10th January, 1959 terminating the services of the first respondent were illegal and invalid and the first respondent continued as an Assistant Settlement Commissioner in the service of the Central Government and praying for recovery of arrears of salary and allowances from 21st April, 1956 being the date on which he was relieved of the office of Assistant Settlement Commissioner. Both the Union of India as well as the State of Punjab resisted the suit. The common defence put forward by them was that the first respondent was a servant of the Government of Punjab and being a temporary servant, the Government of Punjab was entitled to terminate his service on giving one month's notice of salary in lieu of-notice and his service was, therefore, rightly terminated by the order of the Government of Punjab dated 17th April, 1956. The Trial Court accepted this defence of the Union of India and the State of Punjab and dismissed suit of the first respondent with costs.

The first respondent preferred an appeal to the High Court of Punjab and Haryana. The only contention put forward on behalf of the first respondent at the hearing of the appeal was that the first respondent was servant of the Union of India and not of the State of Punjab and the order dated 17th April, 1956 passed by the State of Punjab was, therefore, ineffectual to terminate the service of the first respondent and it was only on 18th February, 1959 that his service was validly terminated by the Central Government by its memorandum dated 10th January, 1959 and he was accordingly entitled to arrears of salary and allowances from 21st April, 1956 to 10th February, 1959. This contention found favour with the High Court and taking the view that the first respondent was a servant of the Union of India and not of the State of Punjab, the High Court held that his service was validly terminated only from 10th February, 1959 under the memorandum of the Central Government dated 10th January, 1959 and accordingly passed a decree in favour of the first respondent against the Union of India for Rs. 22,927.34P. representing arrears of salary and allowances from 4th August, 1956, being the date three years prior to the institution of the suit upto 10th February, 1959. The Union of India being aggrieved by the decree passed against it preferred the present appeal in the Court on certificate obtained under Article 133(1) (a) of the Constitution as it stood at the material time. As in the High Court, so also before us the only question debated was as to whether it was the Central Government or the State Government or the State Government which was entitled to terminate the service of the first respondent. The first respondent did not contend that the termination of his service was by way of penalty and though it was disguised as termination simpliciter, it was in reality and substance dismissal and hence violative of Article 311(2) of the Constitution. He conceded that if the State Government was entitled to terminate his service, the order dated 17th April, 1956, passed by the Government of Punjab, would be valid. But his contention was that the Central Government alone was competent to terminate his service and he was,, therefore, continued as an Assistant Settlement Commissioner until 10 February, 1959

when his service was terminated by the Central Government by the memorandum dated 10th January, 1959. The Union of India, on the other hand, contended that the first respondent was a servant of the State of Punjab and hence the Government of Punjab was entitled to terminate his service as it did by passing the order dated 17th April, 1956.

Now, if we look at the provisions of the Act, it is clear that it is the Central Government which is constituted the ultimate authority responsible for the administration of the provisions of the Act. There is a hierarchy of officers constituted under the Act for the purpose of discharging various functions and duties and the final revisional authority in respect of these functions and duties is vested in the Central Government. Section 3, sub-section (1) confers power on the Central Government to appoint "a Chief Settlement Commissioner, a Joint Chief Settlement Commissioner and as many Deputy Chief Settlement Commissioners, Settlement Commissioners, Additional Settlement Commissioners, Assistant Settlement Commissioners, Settlement officers, Assistant Settlement Officers and managing officers as may be necessary for the purpose of performing the functions assigned to them "by or under the Act and the Central Government is also given the power by general or special order to provide for the distribution or allocation of work to performed by them under the Act. The post of Assistant Settlement Commissioner-that being the post with which we are concerned in this appeal-is, therefore, clearly a post under the Union of India to which appointment is to be made by--the Central Government. It Was in exercise of this power conferred by section 3, sub-section (1) that Central, Government appointed the first respondent to the post of Assistant Settlement Commissioner by its order dated 3rd September, 1956. The Government of Punjab had no power to make appointment to the post of Assistant Settlement Commissioner by its. order dated 3rd September, 1955. The Government of Punjab had no power to make appointment to the post of Assistant Settlement Commissioner, unless such power was conferred upon it by virtue of a direction given by the Central Government under section 34, but admittedly there was no such direction in the present case. In fact, the Central Government, by its letter dated 18th April, 1955 requested the State Government to intimate "the names of officers appointed as Assistant Settlement Commissioner" for issue of necessary notification under the Act. Ile Central Government did empower the State Government to nominate the person to be appointed to the post of Assistant Settlement Commissioner but the appointment of the person so nominated could only be made and Was, in fact made by the Central Government by its order dated 3rd September, 1955. Once the appointment of the respondent as Assistant Settlement Commissioner was made by the Central Government by its order dated 3rd September , 1955 there 'was no question thereafter of the State Government once again, appointing him to the same post. The State Government, no doubt, by its order dated 1st December, 1955, purposed to, appoint the first respondent as Assistant Settlement Commissioner. but that was merely a formal "appointment letter" pursuant to the suggestion contained in the letter of the Central Government dated 21st September 1955. It was an ineffectual and futile exercise which had no legal consequence since by that time the first respondent was already appointed to the post of Assistant Settlement Commissioner by the Central Government legally competent so to appoint and he was already functioning as such Assistant Settlement Commissioner. Moreover. the post of Assistant Settlement Commissioner, to which the first respondent was so appointed, was a post sanctioned by the President of India and created by the Central Government and the whole of the expenditure in connection with that post was to be borne out of the funds allocated by the Central Government, vide the letter of the Central Government

dated 23rd July, 1955. It is true that the State Government also, by its order dated 30th November, 1955, purported to accord sanction to the creation of one post of Assistant Settlement Commissioner but that was obviously for the purpose of regularizing its own account procedure because the amount of Rs. 6.50,lacs for meet-

ing the expenditure in connection with the staff for this work was made available by the Central Government to the State Government and it Was the State Government which was to disburse the expenditure out of that amount. The post of Assistant Settlement Commissioner having already been created by the Central Government by the sanction of the President of India as conveyed under the letter dated 25rd July, 1955, did not need validation from the order of the, Government of Punjab dated 30th November, 1955. in fact, when the question arose in regard to issue of pay slip in favour of the first respondent for the period subsequent to 29th February, 1956, when the original sanction of the President of India for the post of Assistant Settlement Commissioner expired, the Accountant General, Punjab pointed out in his letter dated 21st April, 1956 that the sanction to the continuance of the post given by the Punjab Government was meaningless and ineffective and it could not be acted upon until receipt of sanction to the continuance of the post from the Central Government since "the post was created by them." It would therefore, be seen that the post of Assistant Settlement Commissioner was created by the Central Government and the expenditure in connection with it was to be met out of the funds provided by the Central Government and it was the Central Government alone which was competent to make appointment to the post and in fact, the first respondent was appointed to the post by the Central Government by its order dated 3rd September, 1956. It this be the correct position, as it undeniable is, there can be no doubt that the Central Government alone could terminate the service of the first respondent. It is now a well settled rule of interpretation that a power to appoint ordinarily implies a power to determine the employment. That was pointed out by this Court in S. R. Tiwari v. District Board, Agra(1) :

"Power to appoint ordinarily carries with it the power to determine appointment, and a power to terminate may in the absence of restrictions express or implied be exercised, subject to the conditions prescribed in that behalf, by the authority competent to appoint."

This rule is also found incorporated in section 16 of the General Clauses Act, 1897. It is, therefore, clear that the Central Government which is given the power to make appointment to the post of Assistant Settlement Commissioner under section 3, would also have the power to determine the appointment. The Central Government would also be entitled to terminate the appointment, since the post of Assistant Settlement Commissioner is a post under the Union of India and the person appointed to it would hold it during the pleasure of the President. There is no provision under which the Government of Punjab could have the power to determine the appointment as Assistant Settlement Commissioner made by the Central Government under section 3. The Central Government alone could terminate the appointment, both as the appointing authority as also under Art. 310(1) of the Consti-

(1) [1964] 3 S. C. R. 55.

tution. The High Court was, therefore, right in taking the view that the order of the Punjab Government dated 17th April, 1956 was ineffectual and invalid and the service of the first respondent as Assistant Settlement Commissioner was validly terminated only on 10th February, 1959 when the Central Government, by its memorandum dated 10th January, 1959, gave notice terminating the service of the first respondent., There was no dispute before us that if the service of the first respondent came to an end on 10th February, 1959, and not earlier on 17th April, 1956, the first respondent would be entitled to a sum of Rs. 22,927.34P. as decreed by the High Court.

The appeal, therefore, fails and is dismissed with costs in favour of the first respondent.

V.P.S.

Appeal dismissed.