

Judges of this Court are set aside and the case is remanded to the learned Single Judge for a fresh decision in accordance with law. December 15, 1976.

Chinnappa Reddy, J.—I agree.

Surinder Singh, J.—I agree.

FULL BENCH

MISCELLANEOUS CIVIL

Before R. S. Narula, C.J., S. S. Sandhawalia and
Prem Chand Jain, JJ.

PARKASH SINGH BAWA,—Petitioner.

versus

THE PUNJAB STATE AGRICULTURAL MARKETING BOARD,
CHANDIGARH, THROUGH ITS CHAIRMAN AND ANOTHER

Respondents.

Civil Writ No. 1146 of 1971

December 16, 1976

Punjab Agricultural Produce Markets Act (XXIII of 1961)—Sections 3(1), 3(14) and 43—Punjab Agricultural Produce Markets (General) Rules 1962—Dismissed employee of a statutory body—Declaration that such employee continues to remain in service—When can be granted—Punjab State Agricultural Marketing Board—Whether a statutory authority.

Held, that the decision of their Lordships of the Supreme Court in *Sirsi Municipality v. Cecelia Kom Francis Tellis* has impliedly overruled the decision in *Executive Committee of U. P. State Warehousing Corporation v. Chandra Kiran Tyagi*, insofar as it laid down that a regulation framed by a statutory body itself under a power conferred on it by the statute did not create any mandatory obligation thereon and consequently did not confer any statutory status on its employees. The services rules or bye-laws or regulations by whatever name they be called where framed by a statutory authority within the meaning of Article 12 of the Constitution of India

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1950 under an enactment empowering it to do so, have themselves the force of law so as to give a statutory status to the employees of such an authority. The infraction of such service rules entitles an employee to claim a declaration of continuation in service. However, the statutory status of the employees of a statutory authority is not to be easily inferred. It has to be in express terms established that the rules, regulations or bye-laws framed by it have in strictness the force of law which would bind the same. It is a matter which has to be firmly established and cannot be merely implied.

(Paras 11, 13, 14 and 26)

Held, that the Punjab State Agricultural Marketing Board is a statutory body constituted under section 3(1) of the Punjab Agricultural Produce Markets Act 1961 and falls within the ambit of the term 'other authority' as used in Article 12 of the Constitution.

(Para 2)

Note.—On the facts of this case it has been held that the resolution of the Board adopting the Punjab Civil Services Rules has no statutory force.

—Editor.

Case referred by Hon'ble Mr. Justice S. S. Sandhawalia on 31st October, 1973, to a larger Bench for decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble the Chief Justice Mr. R. S. Narula, Hon'ble Mr. Justice S. S. Sandhawalia, and Hon'ble Mr. Justice P. C. Jain, finally decided the case on 16th December, 1976.

Petition under Articles 226 and 227 of the Constitution of India praying that :

- (i) *issue a rule nisi against the respondents;*
- (ii) *order the respondents to produce in this Hon'ble Court all relevant record and correspondence relating to the petitioner's case;*
- (iii) *issue a writ in the nature of certiorary, mandamus, prohibition, direction or order, and thereby quashing the order No. 50, dated 23rd November, 1970 (Annexure 'O') and order dated 29th January, 1971, copy of which has not been supplied to the petitioner;*
- (iv) *declare that notwithstanding the aforesaid order, the petitioner continues to hold the post of Secretary, Market*

Committee, and direct the respondent No. 1 to treat him accordingly;

(v) *direct respondent No. 1 to post the petitioner as Secretary, Market Committee, so as to enable him to perform his duty immediately;*

(vi) *issue such other order or direction as may be deemed appropriate to the petitioner; and*

(vii) *allow costs of the petition.*

Arun Nehra, Advocate, for the petitioner.

N. K. Sodhi, Advocate, and J. S. Batra, Advocate, for the respondents.

JUDGMENT

Judgment of the Court was delivered by—

S. S. Sandhawalia, J.

(1) Whether the decision of their Lordships in *Sirsi Municipality v. Cecelia Kom Francis Tellis* (1), impliedly overrules or dissents from their earlier view expressed in *Executive Committee of U. P. State Warehousing Corporation, Lucknow vs. Chandra Kiran Tyagi* (2), is the salient issue which has necessitated this reference to the Full Bench.

(2) In order to examine the aforesaid preliminary legal question one need not get enmeshed in the details of the facts at the outset. It suffices to mention at this stage that the respondent, Punjab State Agricultural Marketing Board (hereinafter called "the Board") is a statutory body constituted under section 3(1) of the Punjab Agricultural Produce Markets Act, 1961. It is not in serious dispute that this Board may well come within the ambit of the term 'other authority' as used in Article 12 of the Constitution of India. The writ petitioner claims to be a permanent employee of the Board. Apart from other reliefs, he claims a declaration that notwithstanding the impugned order of removal or termination of

(1) 1973 S.C. 855.

(2) 1970 S.C. 1244.

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his services by the Board, he still continues to hold the post of the Secretary, Market Committee, and prays that the respondent-Board should treat him accordingly. In the argument before us, this claim has been rested on the ground that the Board by a resolution had adopted the Punjab Civil Service Rules as being applicable to its employees. By virtue of rule 3.13, 3.14 and 3.15 contained in Volume I, Part I of the aforesaid Service Rules, the petitioner claims that his lien on the permanent post held by him under the Board continues despite the impugned orders of the Board to the contrary.

(3) In the written statement filed on behalf of the Chairman of the Board, objections have been taken to the effect that the petitioner does not enjoy any statutory status as regards his employment with the Board. It is the case that the relations between the writ petitioner and the respondent Board are contractual, being those of a master and a servant and hence a writ claiming a declaration that he continues to be in the service of the Board is not maintainable. It is the respondent's case that the removal or termination of the petitioner's services can at the highest be deemed wrongful for which the only legal relief is a suit for damages. It is contended that even on the assumption that the Punjab Civil Service Rules are in terms applicable to the case of the petitioner and further that there has been violation thereof, nevertheless, the relief of a declaration that the petitioner continues to be in service of the Board cannot be granted.

(4) It is perhaps unnecessary and burdensome to advert to the precedents prior to the succinct statement of the law made by Vaidialingam, J. speaking for the Bench in the *U. P. State Warehousing Corporation's case* (supra). The appellant Corporation therein was created under the Agricultural Produce (Development and Warehousing) Corporations Act, 1956. Section 54 of the said Act gave power to the Warehousing Corporation to make regulations not inconsistent with the Act and the rules made thereunder. In exercise of that power the Corporation had framed the Uttar Pradesh State Warehousing Corporation Regulations, 1961. Regulation 16 thereof provided for the imposition of penalties against an employee of the Corporation but sub-clause (3) thereof in terms laid down that no punishment shall be imposed on an employee without giving him an opportunity for tendering an explanation in

writing and cross-examining the witnesses against him, if any, and of producing evidence in defence. A dismissed employee of the Corporation had instituted a suit wherein, apart from other reliefs, he had claimed a declaration that his dismissal was null and void and he was, therefore, entitled to reinstatement with full pay and other emoluments. The suit was decreed in his favour, and upheld by the hierarchy of the appellate Courts above. The Warehousing Corporation appealed to the Supreme Court and in a very considered judgment, their Lordships laid down the law that no declaration to enforce a contract of personal service will be normally granted but mentioned three well-recognized exceptions to this rule, namely; (1) A public servant who has been dismissed from service in contravention of Article 311. (2) Reinstatement of a dismissed worker under Industrial Law by Labour or Industrial Tribunals. (3) A statutory body when it has acted in breach of a mandatory obligation, imposed by statute. However, whilst holding clearly that the dismissal of the employee in this case was in patent violation of regulation 16(3) framed by the Corporation, it was observed as follows:—

“As pointed out by us, the regulations are made under the power reserved to the Corporation under section 54 of the Act. No doubt they lay down the terms and conditions of relationship between the Corporation and its employees. An order made in breach of the regulations would be contrary to such terms and conditions, but would not be in breach of any statutory obligation, as was the position which this Court had to deal with in the *Life Insurance Corporation's case*, (3). In the instant case, a breach has been committed by the appellant of regulation 16(3) when passing the said order of dismissal, inasmuch as the procedure indicated therein has not been followed. The Act does not guarantee any statutory status to the respondent, nor does it impose any obligation on the appellant in such matters. As to whether the rules framed under section 52 deal with any such matters, does not arise for consideration in this case as the respondent has not placed any reliance on the rules and he has rested his case only on regulation 16(3). It is not in dispute that, in this case, the authority who can pass an order of dismissal has passed the same. Under those circumstances, a violation of regulation 16(3) as alleged and established

(3) (1964) 5 S.C.R. 528 = (AIR 1964 S.C. 847).

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in this case, can only result in the order of dismissal being held to be wrongful and, in consequence, making the appellant liable for damages. But the said order cannot be held to be one which has not terminated the service, albeit wrongfully or which entitles the respondent to ignore it and ask for being treated as still in service. We are not concerned with the question of damages, because no such claim has been made by the respondent in these proceedings”.

(5) The above said view was for sometime consistently followed by their Lordships and reiteration of this view was made by Shelat, J. speaking for the Bench in *Indian Airlines Corporation vs. Sukhdev Rai* (4) and in numerous other cases to which reference is perhaps unnecessary.

(6) Before us the learned counsel for the petitioner placed heavy reliance on the *Sirsi Municipal Committee's* case for his vehement argument that the decision in the *U.P. State Warehousing Corporation's case* and the subsequent reiteration of that rule in other authorities is no longer good law in view of the observations of a larger Bench subsequently. The argument patently has considerable weight and plausibility. The case aforesaid was that of a municipal employee, who had been dismissed in violation of rule 143 framed by Sirsi Municipality, under the power derived from section 46 of the Bombay Dist. Municipalities Act, 1901. The express argument raised before their Lordships was that even if the dismissal was in violation of rule 143 and was unlawful, nevertheless the remedy lay only in damages and there was no entitlement to any declaration for continuation in service. Ray, J. (as his Lordship then was) prepared the main judgment and adverted to a number of cases including the *U.P. State Warehousing Corporation's case* but made no observation as to the correctness or otherwise of the view expressed therein as also in the *Indian Airlines Corporation case*. It was, however, held that rule 143 framed by the Municipality imposed a mandatory obligation because it was framed in exercise of the power conferred on the municipality by a statute and was, therefore, binding on it.

(4) A.I.R. 1971 S.C. 1828.

(7) However, Beg, J., who wrote a concurring, but separate judgment highlighted the conflicting view expressed in this connection by the Bench in this case with the earlier decision in these terms;

“Although *Indian Airlines Corporation v. Sukhdeo Rai*, (5), which was cited on behalf of the appellant, could perhaps be distinguished on facts, I am unable to reconcile the decision of this Court in the case of (6) with our view in the case before us. In *Tyagi's case* (supra) as in the case before us, no express statutory provision was contravened by the impugned dismissal, but a rule, made under powers conferred by statutes, which protects the servant concerned from punishment by way of dismissal contrary to rules of natural justice, was violated. If a guaranteed “statutory status” means only an express statutory protection, such as the one found in Art. 311 of the Constitution, and a rule made under a statutory power is not enough to confer it, there was none either in *Tyagi's case* (supra) or in the case before us. An express statutory provision or guarantee is not the only basis of a mandatory duty or obligation. It can be imposed either by a rule made in exercise of a statutory power or it may arise by implication when exercising a quasi-judicial function.”

(8) Ultimately, the grant of a declaration in favour of the dismissed employee that she continued to be in service of the Municipality was unanimously upheld by the Supreme Court.

(9) Much water has flown down the bridge of precedent since the aforesaid candid comment was made by Beg. J. It has, however, only served to highlight the direct class of precedent on the point at issue. It would perhaps be wasteful to advert individually to each of these cases because the conflict has been forthrightly noticed again authoritatively in the recent decision of their Lordships in *Sukhdev Singh's case*, (7). Chief Justice Ray, who prepared the main judgment for the majority view, therein first noticed the main precedents in these terms:—

“The character of regulations has been decided by this Court in several decisions. One group of decisions consists of

(5) 1971 Supp. S.C.R. 510=A.I.R. 1971 S.C. 1828.

(6) (1970) 2 S.C.R. 250=A.I.R. 1970 S.C. 1244.

(7) A.I.R. 1975 S.C. 1331.

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S. R. Tewari v. District Board Agra, (8), *Life Insurance Corporation of India v. Sunil Kumar Mukherjee*, (9), *Calcutta Dock Labour Board v. Jaffar Imam* (10), *Mafatlal Narandas Barot v. Divisional Controller S. T. Mehsana* (11), *The Sirsi Municipality v. Cecelia Kom Francis* (12), *U.P. State Warehousing Corporation v. C. K. Tyagi*, (13) and *Indian Airlines Corporation v. Sukhdeo Rai*, (14)."

After analysis of the aforementioned cases, he categorically concluded as follows:—

"The decisions of this Court in *U.P. Warehousing Corporation and Indian Airlines Corporation* are in direct conflict with the decision of this Court in *Narandas Barot's case*, (15), which was decided by the Constitution Bench."

(10) It is thus plain that there is not only an evident conflict of views but the same has also been authoritatively noticed at the highest level. Therefore, so far as this Court is concerned, it would be futile to examine the matter on principle in face of a plethora of binding precedents of the superior Court which covers the field. All that is necessary to be done in this context is to determine as to which view shall have precedence over the other. Fortunately, the mode of determination in such a situation is now itself laid down in recent judgments of the Supreme Court.

(11) The issues of substance which arise herein and demand an answer are (1) whether the Service Rules (or by-laws or regulations by whatever name called) framed by a statutory authority within the meaning of Article 12 of the Constitution under an enactment empowering it to do so have themselves the force of law? (2) whether such Service Rules would give a statutory status to the employees of such a statutory authority? and (3) whether the infraction of such service rules would entitle an employee to claim a declaration of continuation in service?

(8) (1964) 3 S.C.R. 55=A.I.R. 1964 S.C. 1680:

(9) (1964) 5 S.C.R. 528=(A.I.R. 1964 S.C. 847)

(10) (1965) 3 S.C.R. 453=A.I.R. 1966 S. C. 282)

(11) (1966) 3 S.C.R. 40=A.I.R. 1966 S.C. 1364

(12) (1973) 1 S.C.R. 409=A.I.R. S.C. 855

(13) (1970) 2 S.C.R. 250=A.I.R. 1970 S.C. 1244.

(14) (1971) 2 S.C.C. 192=A.I.R. 1971 S.C. 1828

(15) (1966) 3 S.C.R. 40=A.I.R. 1966 S.C. 1364

(12) I believe that in view of the opinions expressed by larger Bench of the Supreme Court and the weight of binding precedent, the answers to all the three aforementioned questions must be returned in the affirmative.

(13) The rule to be followed in the event of a conflict of decisions of the Supreme Court has been succinctly stated in the recent judgment of their Lordships in *The State of U.P. v. Ram Chandra Trivedi*, (16), in the following terms:—

“* * *. It is also to be borne in mind that even in cases where a High Court finds any conflict between the views expressed by larger and smaller benches of this Court, it cannot disregard or skirt the views expressed by the larger benches. The proper course for a High Court in such a case, as observed by this Court in *Union of India v. K. S. Subramanian* (17) to which one of us was a party, is to try to find out and follow the opinion expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court which practice, hardened as it has into a rule of law is followed by this Court itself.”

Applying the aforesaid rule it is first worthy of notice, that a Bench of five Judges in *Mafatal Narandas Barot v. J. D. Rathod, Divisional Controller, State Transport Mehsana and another*, (18), issued a writ of *certiorari* (whilst reversing the High Court, which had dismissed the writ petition *in limine*) quashing the order of dismissal of an employee of the State Transport Corporation, Gujarat where such a dismissal was made in contravention of the provisions of clause 4(b) of the Regulations framed by the said Corporation. *The Sirsi Municipality's case* again was unanimously decided by a Bench of five Judges and had upheld the continuation in service of the dismissed employee which was in violation of rule 143 framed by the municipality under the power conferred on it by section 46 of the

(16) (1974) 4 S.C.C. 52.

(17) (1976) 3 S.C.C. 677

(18) A.I.R. 1966 S.C. 1364.

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Bombay District Municipalities Act, 1901. In *Sukhdev Singh's case* (7) (supra), Chief Justice Ray speaking for the majority of a Bench of five Judges categorically observed as follows:—

“There is no substantial difference between a rule and a regulation inasmuch as both are subordinate legislation under powers conferred by the statute. A regulation framed under a statute applies uniform treatment to every one or to all members of same group or class. The oil and Natural Gas Commission, the Life Insurance Corporation and Industrial Finance Corporation are all required by the statute to frame regulations *inter alia* for the purpose of the duties and conduct and conditions of service of officers and other employees. *These regulations impose obligation on the statutory authorities. The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by courts to invalidate actions in violation of rules and regulations.* The existence of rules and regulations under statute is to ensure regular conduct with a distinctive attitude to that conduct as a standard. The statutory regulations in the cases under consideration give the employees a statutory status and impose restriction on the employer and the employee with no option to vary the conditions.”

As against the three authoritative pronouncements noted above (it is unnecessary to refer to others expressing a similar view) the contrary view expressed in the *U.P. Warehousing Corporation's case* and in the *Indian Airlines' case* is by Division Benches of two and three Judges respectively. The view expressed in the former set of cases is, therefore, clearly entitled to precedence. It has, therefore, to be held that a part of the ratio *decidendi* in the *U.P. Warehousing Corporation's case* now stands impliedly overruled and is no longer good law in view of the decisions of the larger Benches of the Supreme Court itself.

(14) Nevertheless to avoid any diffusion it is necessary to carefully demarcate that part of the ratio in the *U. P. Warehousing Corporation's case* which stands superseded by weightier pronouncements.

In the aforesaid case, apart from others, it was held that as an exceptional remedy the Court would grant a declaration of continuation in service in appropriate cases when a statutory body has acted in the breach of a mandatory obligation imposed by statute. In applying this principle, however, the Bench took the view that a regulation framed by a statutory body itself under a power conferred on it by the statute did not create any mandatory obligation thereon and consequently did not confer statutory status on its employees. Therefore, a breach of such a regulation did not entitle the employees to a declaration of continuation in service and relegated them to the ordinary remedy of damages for a breach thereof. It is this view which stands now eroded by the more authoritative decisions referred to above. To my mind, the rest of the reasoning and the *ratio decidendi* in the said case remains still unimpaired.

(15) In this view of the matter, it is plain that if the writ petitioner is able to establish that he enjoys a statutory status by virtue of the rules or regulations framed by the respondent-Board and that his removal is in violation thereof, then he would be entitled to a writ quashing the orders of the termination of his services and a declaration that he continues to be in the employment of the respondent-Board. The legal hurdle sought to be placed by the preliminary objection in his path by the respondents is out of the way. It hence becomes necessary to examine the case on merits and advert to the facts in some detail.

(16) In December, 1962, the petitioner was appointed as the Secretary, Market Committee, Rajpura, by the respondent-Board who is his appointing authority and was later confirmed in the said post in the year 1967 and he thus claims to be a permanent employee of the Board. It is his claim that on the basis of the recommendations made by the respondent-Board, the petitioner was offered the post of a Manager Grade I by the Punjab State Co-operative Supply and Marketing Federation Ltd., Chandigarh (hereinafter referred to as the Markfed) in January, 1969. The terms offered to him included the conditions that he would be on probation for a period of one year and would be governed by the Punjab Shops and Commercial Establishments Act, 1958, and the Punjab State Supply and Marketing Co-operative Services (Common Cadre) Rules, 1967. The penultimate part of the offer made to the petitioner,—*vide* Annexure R. 1/3, further required that he should resign his present job as a precondition to join the service of the Federation and bring along with

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him the relieving chit from his present employer. It, however, appears that the petitioner did not in fact resign formally from the service of the Board and on the 10th of March, 1969, presented himself before his new employers with the assurance that he had accepted the terms and conditions of the employment with reference to their communication, dated the 3rd of March, 1969, and is not in dispute that he joined the Markfed on the 13th of March, 1969.

(17) The petitioner avers that the respondent-Board is a State within the meaning of Article 12 of the Constitution of India and by a resolution (Annexure 'A') passed on the 9th of January, 1963, it had unanimously adopted the Punjab Civil Service Rules (and the Pepsu Provident Fund Rules) as being applicable to all its employees with effect from the 26th of May, 1961. On this basis his claim is that these Rules constituted the statutory conditions of service by which he was governed. By virtue of these Rules, the petitioner claims that he retained a lien on a permanent and substantive basis on the post of the Secretary of the Market Committee under the Board despite the fact of his having joined the employment of the Markfed. It is also his case that before joining his new employment he had,—*vide* registered letter (Annexure 'B') specifically requested the Board that his lien on the post of the Secretary, Market Committee, be retained but it is the common case that no orders were passed on the said application. The petitioner, however, does not seem to have been much of a success in his new post and on the 9th of February, 1970, he applied to the Chairman of the Board,—*vide* Annexure 'C', with the prayer that he may be taken back in the service of the Board as the Secretary, Market Committee, because his lien on the said post continued under rules 3.13(b) and 3.14(b) of the Punjab Civil Services Rules, Volume I, Pt. I. Herein the parties are at some dispute on facts. Whilst the petitioner claims that he did not find the atmosphere congenial in his job, the respondent-Board alleges that the services of the petitioner were terminated by the Markfed because his work and conduct was not satisfactory. There appear to have been second thoughts on behalf of the respondent-Board as regards the petitioner's return to the service, but the then Chairman of the Board, *vide* communication Annexure 'D' dated the 16th of October, 1970, directed that the petitioner be reposted as the Secretary, Market Committee, Tapa, in district Sangrur. The petitioner attempted to join duty on the post aforesaid, but it is his case that he was effectively obstructed from doing

so by Shri Harbhagat Singh, respondent No. 2, who was then holding additional charge of the said post. In para 12 of the petition, the petitioner vaguely averred that respondent No. 2 wielded political influence with the then Akali Government in Punjab because he was a close relation of Shri Ajit Singh, M.L.A., and on account of this influence he did not hand over the charge of the post allocated to the petitioner. It is alleged that the conduct of respondent No. 2 in not handing over the additional charge to the petitioner in spite of the orders of the Board was unjustified and was tantamount to gross misconduct punishable under the Rules but because of his political influence no action was taken against him.

(18) The primary grievance of the petitioner is against the order (Annexure 'G'); passed by the Chairman on the 23rd of November, 1970, whereby the earlier office Order No. 44 (Annexure 'D') was formally cancelled. It is further not in dispute that on the 29th of January, 1971, the Board formally resolved,—*vide* Resolution No. 10, that the petitioner did not retain his lien on the post because the condition-*precedent* for his appointment with the Markfed was to resign his employment from the Board and, therefore, in the absence of any lien, his request for coming back into service was not acceptable. It was further resolved that the petitioner could not be considered for employment as a fresh entrant also because his work in the Markfed was not satisfactory and it was on that account that his services were terminated. The petitioner seeks the quashing of the order (Annexure 'G') and of the resolution of the Board (Annexure 'R. 1/4') and claims a declaration that notwithstanding these he continues to hold the post of the Secretary, Market Committee, and further seeks a direction that respondent No. 1 should treat him accordingly.

(19) As would be evident hereafter, the fate of the present writ petition turns on a primarily legal aspect and it, therefore suffices to briefly notice the stand taken by the respondent-Board through the affidavit of Shri Shivinder Singh Sodhi, Establishment Officer. It is firmly pleaded on behalf of the Board that the adoption of the Punjab Civil Service Rules by a resolution (Annexure 'A') was merely to provide some guiding principles pertaining to the conditions of the service of its employees and the said adoption was in no way statutory. It has been clearly reiterated that the petitioner never retained any lien with the Board on the post which he held because the concept of a lien is peculiar to Government service and the

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Board is certainly not the Government and, therefore, the moment the petitioner was relieved from the services of the Board the relationship of master and servant betwixt them came to an end. It is highlighted that one of the terms and conditions for the petitioner to accept the post with the Markfed was that he would resign from his previous employment and when he joined in the said post he necessarily severed his relations with his previous master completely and his conduct amounted to an implied resignation or abandonment of service. It has been explained that the order (Annexure 'D') by the Chairman was passed under some misapprehension of his powers and when it was realized that the power to reappoint the petitioner to the service vested in the Board alone, the earlier unauthorised order (Annexure 'D') had necessarily to be withdrawn,—vide Annexure 'G'. All the allegations regarding *mala fides* have been in terms denied and a further objection has been taken that the petitioner had the remedy of approaching the Government against the orders of the Board under section 42 of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as the Act) which remedy he has not exhausted before approaching this Court.

(20) Before advertng to the primary contention raised on behalf of the petitioner, it is perhaps best to dispose of the ancillary one on the point of *mala fides*. It is significant to note that the allegations of *mala fides*, if any, are being levelled entirely against respondent No. 2, Shri Harbhagat Singh, who is merely a Secretary of the Market Committee, Rampura Phul, district Bhatinda. The impugned orders which the petitioner seeks to challenge are those of the Chairman of the respondent-Board and the resolution of the Board itself. It is nowhere shown and not even alleged how Shri Harbhagat Singh, respondent No. 2, was in a position to overawe or override the will or discretion of either the Chairman himself or the Board as a body. The allegations, therefore, seem to be misconceived and merely go off at a tangent by alleging that Shri Harbhagat Singh, respondent No. 2, was reluctant to hand over the additional charge of the Secretary, Market Committss, Tapa. One, therefore, fails to see how these allegations can advance the case of the petitioner.

(21) This apart, the charge of *mala fides* has been squarely and firmly denied through an affidavit of Shri Harbhagat Singh, respondent No. 2 himself. In this affidavit it has been categorically averred that

this respondent did not even receive any orders either directly or through the Chairman of the Committee to hand over charge to the petitioner. The allegations of *mala fides* in paragraph 12 and the others have been controverted as absolutely false and have been vehemently denied. All suggestions of any political influence exercised through Shri Ajit Singh, M.L.A., have been equally characterized as wrong and fanciful, and it has been pointed out that the said Shri Ajit Singh has not been impugned as a party to the petition. As has already been noticed, the similar allegations have been equally denied on behalf of the respondent-Board. There is thus no option but to hold that the charge of *mala fides* levelled by the writ-petitioner is patently misconceived.

(22) Now the primary contention raised by Mr. Nehra on behalf of the writ petitioner is that the latter enjoys a statutory status in his employment under the respondent Board. It is argued that the respondent-Board is a statutory body-created under section 3 of the Act and falls well within the meaning of Article 12 of the Constitution of India. Section 3 (14) of the Act empowers the Board to frame bye-laws and the rules framed under the Act further amplify the scope of such bye-laws. Counsel contends that by the adoption of the Punjab Civil Service Rules, *vide* Annexure 'A', the said Rules must in the eye of law be deemed as bye-laws duly framed by the Board and, therefore, they are binding on the respondent-Board itself and have the force of law. Any infraction of these Service Rules would, therefore, violate the alleged statutory status of the writ-petitioner and he would, therefore, be entitled to claim a writ against the violation of such bye-laws and a declaration that he continues to be in service of the Board. On these premises primary reliance is placed on rules 3.13 to 3.16 of the Punjab Civil Services Rules, pertaining to the lien of an employee on a permanent post held by him.

(23) It is patent that the core of the matter here is whether the resolution (Annexure 'A') informally adopting the Punjab Civil Service Rules is tantamount to validly framing bye-laws by the Board under the power given to it by the Act. If it is so, it would be plain that the Punjab Civil Service Rules so adopted would in the eye of law become the bye-laws of the Board having a binding effect thereon. On the contrary, if it is not so, the adoption of these bye-laws would be merely laying down broad guidelines of conduct which would confer no statutory status on the writ-petitioner. To

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determine this issue, some reference to the contents of the relevant provisions becomes inevitable.

(24) Section 3(12) of the Act lays down that subject to the provisions of the Act and the Rules and bye-laws made thereunder, the Board may employ persons for the performance of its functions and may suspend, remove, dismiss or otherwise punish any person so employed. Then section 3(14) of the Act is in the following terms:—

“Subject to rules made under this Act, the Board may, *with the approval of the State Government* frame bye-laws for—

- (a) regulating the transaction of business at its meetings ;
- (b) the assignment of duties and powers of the Board to its Chairman, Secretary or persons empowered by it; and
- (c) such other matters as may be prescribed. The State Government under section 43 of the Act is empowered to frame Rules for carrying out the purposes of the Act. In exercise of that power, the Punjab Agricultural Produce Markets (General) Rules, 1962, have been duly promulgated. The relevant rule therein is rule 5(j) which also deserves reference in *extenso*:—

“5. *Matters on which Board may frame bye-laws.*—In addition to the matters specified in sub-section (14) of section 3, the Board may frame bye-laws regulating.....

* * * * *

- (j) any other purpose which, in the opinion of the Board, is calculated to promote the interests of the Board or the Committees, or to lead to improvement of marketing and agriculture in general.”

Reading the aforesaid provisions together, it is perhaps possible to infer that the respondent-Board would be entitled to frame bye-laws for determining the conditions of service of its employees.

The only question that remains is whether it has in fact done so by merely passing the resolution (Annexure 'A').

(25) Mr. Sodhi on behalf of the respondent-Board forcefully contends that the mere passing of the resolution (Annexure 'A') would not and cannot raise the adopted provisions of the Punjab Civil Service Rules to the pedestal of formal bye-laws framed by the Board. Counsel contends that before a provision can be raised to be status of having the force of law, it must in all strictness comply with the provisions of the Act conferring the power to frame such subordinate legislation. He highlights the fact that under section 3(14), one of the pre-conditions for the framing of the bye-laws is that these shall have the approval of the State Government. He reiterates firmly that in the present case not only no such approval of the State Government has ever been given but, in fact, the writ-petitioner does not even allege any such approval in the pleadings.

(26) There is patent merit in the objection raised on behalf of the respondent-Board. The conflict of authority which stands noticed in the earlier part of the judgment would show that the statutory status of the employees of a statutory authority is not to be easily inferred. An analysis of the authoritative pronouncement in *Sukhdev Singh's case* (supra) would show that it has to be in express terms established that the rules, regulations or bye-laws framed by a statutory authority have in strictness the force of law which would bind the same. It is a matter which has to be firmly established and cannot be merely implied. Obviously, the burden of establishing that the provisions on which he lays reliance have the force of law, is on the writ-petitioner.

(27) In the present case, it is plain that the writ-petitioner has not even remotely been able to discharge that burden. The respondent-Board is categorical that at no stage the approval of the State Government was ever sought or secured for framing any bye-laws to govern conditions of its employees. Without such an approval no valid bye-laws could, therefore, come into being. In fact, it was pointed out that the State Government later framed regular Rules in 1973 to determine the status and the conditions of the service of the employees of the Board, thus negating any assumption of any earlier bye-laws on the point. The adoption of a resolution like Annexure 'A' would at best be no more than providing broad guidelines for determining *inter se* the relationship of the Board with its

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employees. Such a resolution, therefore, cannot clothe the adopted provisions with the authority of law. In order to do so, the relevant provisions of the Act as well as of the Rules framed thereunder have to be complied in all strictness.

(28) It is significant to notice that in the writ-petition it has nowhere been pleaded that the resolution (Annexure 'A') was ever passed with the previous or the subsequent approval of the State Government as required by section 3(14) of the Act. Even when the respondent-Board in its reply took up the firm position that Annexure 'A' was no more than the adoption of broad guidelines, no replication was filed on behalf of the writ-petitioner to assert that the adoption was tantamount to the framing of valid bye-laws with the approval of the State Government. Apart from the pleadings, we had even in the course of arguments required the learned counsel for the petitioner to establish, if he could, any prior or subsequent approval of the State Government in this context, and ultimately he conceded his inability to do so.

(29) We conclude, therefore, that the writ-petitioner has failed to establish that the basic provisions which he invokes in his aid have any statutory force in the present context. He is, therefore, disentitled the claim a writ for quashing the impugned orders or to secure a declaration that he continues to be in the service of the respondent-Board. At the highest he might suggest that the action of the respondent-Board was wrongful for which the remedy, if any could be for a claim of damages which cannot possibly be awarded to him in these proceedings. The writ-petition is without merit and is hereby dismissed. In view of the rather ticklish question of law arising herein, we leave the parties to bear their own costs.

R. S. Narula, C.J.—I agree.

Prem Chand Jain, J.—I also agree.

N. K. S.