

*Union of India* (1), a person cannot be deemed to be a member of a service unless he is permanently absorbed therein and he cannot be deemed to be a holder of a civil post unless he holds the said post in a permanent capacity.

The State of  
Punjab  
v.  
Prem Parkash  
Dixit  
and others

Bhandari, C. J.

For these reasons I am of the opinion that the petitioner was not the holder of a civil post under the State and that even if he were to be deemed to be the holder of a civil post he was the holder of the said post in a temporary capacity and is not entitled to the benefit of Article 311 of the Constitution. I would accordingly allow the appeal, set aside the order of the learned Single Judge and dismiss the petition filed by the petitioner. There will be no order as to costs.

Khosla, J.—I agree.

Khosla, J.

APPELLATE CIVIL.

*Before Bhandari, C. J. and Tek Chand, J.*

S. KABUL SINGH,—Appellant

*versus*

NIRANJAN SINGH AND OTHERS,—Respondents.

Letters Patent Appeal No. 62 of 1955.

*Constitution of India, Articles 226 and 227—Writs of Mandamus, prohibition and certiorari—Meaning and scope of—Writ of certiorari when to issue—Failure of tribunal to give effect to executive instructions, whether a ground for issue of the writ.*

1957  
Feb., 19th

*Held, as follows:—*

(1) An order of *mandamus* is, in form, a command directed to some inferior Court, tribunal or board or to some corporation or person requiring the performance of a particular duty therein specified which duty results from the official station of the party to whom the writ is directed or from operation of law. It compels a tribunal to exercise a jurisdiction which it possesses but declines to exercise.

(2) A writ of prohibition commands the Court or tribunal to whom it is issued to refrain from doing something which it is about to do. It prevents a tribunal possessing judicial or quasi-judicial powers from assuming or threatening to assume jurisdiction which it does not possess.

(3) A writ of certiorari is issued primarily with the object of securing an inspection of the record of the proceedings of an inferior tribunal in order that the High Court may determine from the face of the record whether the inferior tribunal has acted without or in excess of jurisdiction or has not proceeded according to the essential requirements of the law. The purpose of the writ is to review judicial and quasi-judicial acts, and to quash the decision of a tribunal which has assumed a jurisdiction which it does not possess.

A writ of certiorari cannot be issued for the purpose of correcting mere errors and irregularities, or of reviewing orders passed in exercise of discretionary power or authority, or of revising the decision on a question of fact respecting which the evidence was conflicting, or of examining the sufficiency of the evidence to support the finding. It lies only to correct errors of law affecting materially the rights of parties and only if the tribunal has entered an illegal judgment or order. If it appears upon the face of the record that the determination of the inferior tribunal is wrong in law, certiorari to quash will be granted; but if the errors are accidental, harmless, technical or formal which do not operate to the prejudice of the petitioner or have not caused substantial injustice to him, the writ will be refused.

The error on the face of the record which justifies the issue of an order of certiorari must be an error of law. The failure on the part of the tribunal to give effect to an executive instruction which has not been vested with statutory authority cannot be deemed to be an error on the face of the record which would justify the Court in exercising the extraordinary powers vested in it by Article 226 of the Constitution.

*Appeal under Clause 10 of the Letters Patent against the judgment, dated 19th May, 1955, passed in Civil Writ No. 77 of 1955, by Hon'ble Mr. Justice J. L. Kapur.*

H. S. GUJRAL and H. L. MITTAL, for Appellant.

H. S. DOABIA and H. L. SIBAL, for Respondents.

## JUDGMENT

Bhandari, C.J.—This appeal from an order of Kapur, J, raises the question whether the learned Single Judge was justified in setting aside an order of the Deputy Custodian-General. Bhandari, C. J.

Bhagat Singh respondent complained to the Rehabilitation Department that Kabul Singh, Niranjana Singh and Gurbachan Singh had obtained allotments of land in excess of the allotments to which they were entitled and the Department finding the allegations to be true, withdrew an area of 37 standard acres  $13\frac{3}{4}$  units from Kabul Singh and his companions and allotted the same to Bhagat Singh and his two brothers.

Kabul Singh was dissatisfied with the order of the Deputy Custodian and presented a revision petition to the Deputy Custodian-General. The latter came to the conclusion that although the Administrative Department was justified in withdrawing some area from Kabul Singh, the area actually withdrawn was in excess to the extent of 11 standard acres  $6\frac{1}{4}$  units. He accordingly accepted the petition and remanded the case to the Custodian for redecision in accordance with law. In the concluding portion of his order dated the 3rd September, 1953, the learned Deputy Custodian-General (Mr. Chhakan Lal) observed as follows:—

“Before concluding I would like to say that Kabul Singh, Niranjana Singh and Gurbachan Singh have all cheated the Rehabilitation Department by obtaining allotments of much larger areas than were due to them. It does not appear that any action has been taken against

S. Kabul Singh  
v.  
Niranjan Singh  
and others  

---

Bhandari, C. J.

them under section 8 of the East Punjab Refugees (Registration of Land Claims) Act, 1948. In this case I have a shrewd suspicion that though the real state of affairs was known to Kabul Singh, Niranjan Singh and Gurbachan Singh by mutual connivance at the time of oral verification of their respective claims they combined to cheat the Rehabilitation Department, by Kabul Singh getting his claim verified in respect of the entire area owned by him and the other two and in addition the other two got an allotment of two-thirds area over again. The present is a fit case in which the penalty provided under section 8 should be exacted. I therefore direct that the learned Additional Custodian shall take steps to re-examine the matter and take suitable action under the provision of the law."

In compliance with this order the Department proposed that a plot of land measuring 11 standard acres  $6\frac{1}{4}$  units including the area in which Kabul Singh had installed a tube-well at considerable expense, should be withdrawn from Bhagat Singh and handed over to Kabul Singh. The Additional Custodian found considerable difficulty in giving effect to this proposal, for the land withdrawn from Kabul Singh had been allotted to Bhagat Singh and in view of the provisions of rule 14(6), the Additional Custodian had no power to cancel Bhagat Singh's allotment in respect of this area of 11 standard acres  $6\frac{1}{4}$  units. He accordingly recorded an appropriate order on the 19th July, 1954, and declined to cancel Bhagat Singh's allotment.

Kabul Singh who was aggrieved by the order of the Additional Custodian endeavoured to seek

redress at the hands of the Deputy Custodian-General (Mr. Pahwa) under section 27 of the Administration of Evacuee Property Act. The learned counsel for Bhagat Singh contended that as the plot of land in question was allotted to his client on the 4th February, 1953, it was not within the competence of the Additional Custodian to cancel this allotment. The Deputy Custodian-General was unable to concur in this contention. He held that the Additional Custodian had full power to order cancellation (a) because the allotment was made after the 22nd July, 1952, (b) because a revision against the order dated the 4th February, 1953, was already pending before him, and (c) because every tribunal exercising judicial or quasi-judicial functions possesses inherent power to direct restitution of property wrongly given. He was clearly of the opinion that the area which had been wrongly withdrawn from Kabul Singh should be restored to him, particularly when the latter had sunk a tube-well at considerable expense for the express purpose of irrigating the fields allotted to him. He accordingly accepted the petition, set aside the order of the Additional Custodian, and directed that the land in which the tube-well is situate should be restored to Kabul Singh. This order was passed on the 2nd March, 1955.

S. Kabul Singh  
v.  
Niranjan Singh  
and others  
Bhandari, C. J.

Bhagat Singh was dissatisfied with the order of the Deputy Custodian-General and presented a petition to this Court under Articles 226 and 227 of the Constitution. Kapur, J., before whom this petition came up for consideration expressed the view that in passing the order under review the Deputy Custodian-General had omitted to give effect to an executive instruction issued by Government, namely, that if as a result of information given by a person land which has been obtained by fraud becomes available for allotment, that land

S. Kabul Singh should be allotted to the informant and not to the sitting allottee. He accordingly set aside the order of the Deputy Custodian-General and directed that Bhagat Singh should not be disturbed from the property allotted to him. It is from this order that the present appeal has been preferred.

v.  
Niranjan Singh  
and others  
Bhandari, C. J.

Article 226 of the Constitution empowers a High Court to issue writs of various kinds including writs in the nature of *mandamus*, prohibition and *certiorari*. An order of *mandamus* is, in form, a command directed to some inferior Court, tribunal or board or to some corporation or person requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed or from operation of law. It compels a tribunal to exercise a jurisdiction which it possesses but declines to exercise.

A writ of prohibition commands the Court or tribunal to whom it is issued to refrain from doing something which it is about to do. It prevents a tribunal possessing judicial or quasi-judicial powers from assuming or threatening to assume jurisdiction which it does not possess.

A writ of *certiorari* is issued primarily with the object of securing an inspection of the record of the proceedings of an inferior tribunal in order that the High Court may determine from the face of the record whether the inferior tribunal has acted without or in excess of jurisdiction or has not proceeded according to the essential requirements of the law. The purpose of the writ is to review judicial and quasi-judicial acts, and to quash the decision of a tribunal which has assumed a jurisdiction which it does not possess. It cannot be issued for the purpose of correcting mere

errors and irregularities, or of reviewing orders passed in exercise of discretionary power or authority, or of revising the decision on a question of fact respecting which the evidence was conflicting, or of examining the sufficiency of the evidence to support the finding. It lies only to correct errors of law affecting materially the rights of parties and only if the tribunal has entered an illegal judgment or order. If it appears upon the face of the record that the determination of the inferior tribunal is wrong in law, *certiorari* to quash will be granted) *R. v. Northumberland Compensation Appeal Tribunal Ex-parte Shaw* (1), but if the errors are accidental, harmless, technical or formal which do not operate to the prejudice of the petitioner or have not caused substantial injustice to him, the writ will be refused.

S. Kabul Singh  
v.  
Niranjan Singh  
and others  
Bhandari, C. J.

A perusal of the order passed by the Deputy Custodian-General on the 2nd March, 1955, makes it quite clear that the said officer had jurisdiction to deal with the matters in controversy between the parties, that he did not refuse to exercise the jurisdiction vested in him and that he did not act without jurisdiction or in excess of it or in violation of the rules of natural justice. It is contended, however, that he committed a grave error or irregularity for he failed to comply with an executive instruction of Government which requires that a person who gives information in regard to an allotment which has been obtained by fraud should be given the land which is released by the allottee. This error, it is argued, appears on the face of the proceedings and has resulted in manifest injustice to Bhagat Singh. I regret I am unable to concur in this contention. The error on the face of the record which justifies the issue of an order of *certiorari* must be an error of law. The

(1) (1952) 1 K.B. 338

S. Kabul Singh failure on the part of the Custodian-General to give  
 v. effect to an executive instruction which has not  
 Niranjani Singh been vested with statutory authority cannot be  
 and others deemed to be an error on the face of the record  
 Bhandari, C. J. which would justify the Court in exercising the  
 extraordinary powers vested in it by Article 226  
 of the Constitution. The order in question was  
 passed by the Deputy Custodian-General under  
 section 27 of the Administration of Evacuee Pro-  
 perty Act which is in the following terms:—

“27(1) The Custodian-General may at any  
 time, either on his own motion or on  
 application made to him in this behalf,  
 call for the record of any proceeding in  
 which any District Judge or Custodian  
 has passed an order for the purpose of  
 satisfying himself as to the legality or  
 propriety of any such order and may  
 pass such order in relation thereto as he  
 thinks fit: \* \* \* \*

The Deputy Custodian-General was of the opinion  
 that having regard to all the circumstances of the  
 case it was just and equitable that the land of  
 Kabul Singh which had been wrongly allotted to  
 Bhagat Singh should be restored to Kabul Singh.  
 I can see nothing wrong or improper in the order  
 which was passed by the Deputy Custodian-Gener-  
 al. He merely exercised the discretionary powers  
 which have been conferred upon him by section 27  
 of the statute. He did not violate any established  
 rule of law, statutory or otherwise. He did not  
 commit an error of law. He did not enter an il-  
 legal judgment or order. There was no error on  
 the face of the record. There was no clear or mani-  
 fest abuse of discretion. It seems to me, therefore,  
 that it was not within the competence of this  
 Court to set aside an order which complied with



the essential requirements of law but which failed to take into consideration an executive instruction issued by Government.

S. Kabul Singh  
v.  
Niranjan Singh  
and others

Bhandari, C. J.

After the case had been argued at length by the learned counsel for the parties, Mr. Doabia stated that the order passed by the learned Single Judge was not open to appeal under clause 10 of the Letters Patent as this order was passed under Article 227 of the Constitution and not under Article 226 thereof. This contention is in my opinion too flimsy to merit serious consideration. It is true that the application presented by Mr. Doabia's client was presented under Articles 226 and 227, but there is nothing in the order of the learned Single Judge to justify the assertion that the order was passed by him under Article 227. The order under appeal must in my opinion be deemed to have been passed under Article 226.

For those reasons I would accept the appeal, set aside the order of the learned Single Judge and direct that the petition be dismissed. I would order accordingly. There will be no order as to costs.

Tek Chand, J.—I agree.

Tek Chand, J.

APPELLATE CIVIL.

*Before Bishan Narain and Chopra, JJ.*

THE PUNJAB NATIONAL BANK, LTD.,—Appellant

*versus*

THE PUNJAB PROPERTY DEVELOPMENT COMPANY  
K BLOCK, CONNAUGHT CIRCUS, NEW DELHI,  
AND OTHERS,—Respondents.

F.A.O. No. 62-D of 1955

*Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Section 2(10)—Whether firm a displaced person*

1957

Feb., 21st