

before declaring his post vacant. In *The Gwalior District Co-operative Central Bank Ltd., Gwalior v. Ramesh Chandra Mangal and others* (4), the apex Court observed that the consensus of opinions of various High Courts is that an employee who overstays his leave is not guilty of 'mis-conduct'. The action of the University in declaring the post vacant cannot be upheld since it was passed in breach of the principles of natural justice and is thus rendered void. The only other question which requires consideration is whether the plaintiff should be re-instated in service with full back wages and allowances. The conduct of the plaintiff for not approaching the authorities for more than 1½ years after the expiry of his leave cannot be appreciated. It may not amount to 'mis-conduct' but the same must be deprecated. The employee is expected to act in the best interest of his employer of course not jeopardising his own position and interest. Keeping in view the totality of the circumstances of the case, it will meet the ends of justice if the plaintiff is taken back in service from the date his post was declared vacant. He will be entitled to fifty percent of back wages and allowances only from that date till his re-instatement and in this respect I am supported by Ramesh Chandra Mangal's case supra.

(7) For the reasons aforesaid, the appeal succeeds; the judgment and decrees of the Courts below are set aside; the suit of the plaintiff is decreed as indicated above. However, the parties are left to bear their own costs.

P.C.G.

Before : G. C. Mital & H. S. Bedi, JJ.

NIRANJAN SINGH,—Appellant.

versus

DISTRICT JUDGE, KAPURTHALA AND OTHERS,—Respondents.
Letters Patent Appeal No. 1138 of 1988.

18th March, 1991.

Letters Patent, 1919—Cl. X—Defeated candidate alleging casting of three fake votes in favour of elected person—No evidence produced by defeated candidate that the three votes had been polled in favour of elected candidate—Onus lies on defeated candidate—Onus—Whether discharged in the absence of any evidence.

(4) 1984 (3) S.L.R. 315.

Niranjan Singh v. District Judge, Kapurthala and others
(H. S. Bedi, J.)

Held, that the onus was on the defeated candidate to prove that three fake votes had been positively cast in favour of the elected person. That onus has not been discharged. It is, therefore, not possible to hold that any deduction is to be made in the tally of the elected person, as it has not been proved that these votes had been cast in his favour.

(Para 5)

Appeal Under Clause X of the Letters Patent of Punjab and Haryana High Court against the judgment of Hon'ble Mr. Justice J. V. Gupta, dated 22nd September, 1988 passed in C.W.P. No. 5261 of 1987.

Somesh Ojha, Advocate, for the Appellant.

O. P. Goyal, Additional Advocate General, Punjab, for Respondent No. 1 & 2.

Jasbir Singh, Advocate, for Respondent No. 3.

JUDGMENT

H. S. Bedi, J.

(1) The present Letters Patent Appeal has been filed against the judgment of the learned single Judge dismissing the writ petition.

(2) Niranjan Singh appellant, herein, filed an election petition on October 24, 1983 against Joginder Singh respondent on the election of the latter as Sarpanch of the Gram Panchayat. The election was challenged, *inter alia* on the ground that respondent Joginder Singh had managed to secure a number of fake votes in his favour in connivance with the polling staff. The election petition was heard by the prescribed authority and on May 7, 1985, the election of Joginder Singh, the present respondent, was set aside and Niranjan Singh appellant was declared elected as Sarpanch. Joginder Singh aforesaid filed an appeal before the Appellate Authority and the appeal was allowed and the case remanded to the prescribed authority with a direction that he should exhibit the tendered votes in the presence of the parties so as to give a clear finding as to in whose favour the tendered votes were cast. The prescribed authority after examining the evidence found that three votes that were tendered had been cast in favour of Niranjan Singh appellant. It was also held by the prescribed authority that three votes which were disputed ones had been cast in favour of Joginder Singh and

as the three votes were fake, they had to be deducted from the total number of votes cast in favour of that person. The inference that was to be drawn was that if the three tendered votes had been cast in favour of Niranjana Singh appellant that would take his tally to 346 and if the three fake votes were to be deducted from Joginder Singh's total, that would bring his total down from 347 to 344. It was on this basis that Niranjana Singh appellant was declared elected.

(3) The matter was once again taken in appeal to the Appellate Authority, i.e., the learned District Judge, who after examining the matter afresh, came to the conclusion that no evidence had been produced by the election-petitioner which could positively determine that the fake votes had been cast in favour of Joginder Singh, respondent and as such, in this view of the matter, it was difficult to hold that three votes were to be deducted from the total number of votes cast in favour of Joginder Singh.

(4) After hearing the learned counsel, we are of the opinion that no interference is called for in this Letters Patent Appeal.

(5) Admittedly, the onus was on Niranjana Singh to prove that three fake votes had been positively cast in favour of Joginder Singh. That onus has not been discharged. It is, therefore, not possible to hold that any deduction is to be made in the tally of Joginder Singh, as it has not been proved that these votes had been cast in his favour.

(6) In view of the facts of the case as set out above, the matter could have been remanded for fresh decision to the prescribed or the appellate authority. However, since the matter pertains to the year 1983, it would not be in the interest of justice to remand the case. The Letters Patent Appeal is, therefore, dismissed, but with no order as to costs.

P.C.G.

Before Jai Singh Sekhon, J.

SHYAM LAL,—Petitioner.

versus

STATE OF HARYANA AND OTHERS,—Respondents.

Criminal Misc. No. 237 of 1989.

22nd April, 1991.

Criminal Procedure Code, 1973—S. 482—Prevention of Food Adulteration Act, 1954—Ss. 7 & 16(1)(c)—Food Inspector prevented from taking sample of Haldi powder—Trial Court taking 2½ years