evidence at all. This conclusion has to be reached after considering the question whether probabilties and circumstantial evidence do not justify the said conclusion.

In this case, the points are not similar to those which came up for consideration before the Supreme Court. I have arrived at a finding different from that of the Standing Committee on the ground that their conclusion is otiose, and *de hors* the evidence. I further find, that the alleged misconduct is outside the pale of Regulation 13(b) which does not reach the unfair practice of receiving help from any where except from another candidate. The University in passing the order disqualifying the petitioner for a period of two years, acted in the absence of any evidence supporting the finding, that the petitioner copied his answer from somewhere.

For reasons stated above, the petitioner deserves to succeed. I, therefore, allow the petition and direct the University to declare the result of the petitioner. In the circumstances, there will be no order as to costs.

R.N.M.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

MALLU RAM,—*Petitioner*

versus

THE FINANCIAL COMMISSIONER,—AND OTHERS *Respondents*

Civil Miscellaneous No. 1058 of 1964

April 1st, 1968

Punjab Security of Land Tenures Act (X of 1953)—S. 24—Punjab Tenancy Act (XVI of 1887)—S. 88—Revision under S. 24 of Act X of 1953, dismissed in default by the Financial Commissioner—Whether can be restored by him—Constitution of India (1950)—Articles 226 and 227—Scope of—Distinction between the two stated.

Held, that the power of the Financial Commissioner in the matter of restoration of a revision petition under section 24 of the Punjab Security of Land Tenures

Act, 1953, is the same as that of the High Court while dealing with a petition for revision under section 115 of the Code of Civil Procedure. The High Court has jurisdiction to restore a revision petition which might have been dismissed in default of appearance if the Court is satisfied that the revision petitioner or his counsel was prevented by sufficient cause from appearing at its hearing and the procedure prescribed by section 88(2) of the Punjab Tenancy Act for exercise of the revisional jurisdiction of a Financial Commissioner being the same as of the High Court under section 115 of the Code of Civil Procedure, the Financial Commissioner has likewise the jurisdiction to restore for sufficient cause, a revision petition originally dismissed in default or for non-prosecution.

Held, that almost every order which can be brought up before the High Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution can normally be amendable to a writ of *certiorari,* because an order which is without jurisdiction or an order declining to exercise jurisdiction vested in a Tribunal will always be amendable to a *certiorari.* The contention that application under Article 227 of the Constitution is not maintainable if the impugned order is amendable to writ of *certiorari* would amount to wiping out the powers of judicial review of High Court under Article 227, because every person who could come to High Court under Article 227 to seek the setting aside of an order without or in excess of jurisdiction would in the alternative be entitled to invoke its jurisdiction under Article 226, for a writ of *certiorari.* There is no warrant for such a proposition. Powers of High Court under Article 226 of the Constitution are much wider than those under Article 227 in so far as a writ of *certiorari* is concerned. An order of an inferior Tribunal can be quashed under Article 226 for the additional reason that it might suffer from errors of law apparent on its face, a ground on which the order cannot normally be impugned under Article 227. If the impugned order is attacked on the solitary ground that the Tribunal erroneously held that he had no jurisdiction to restore a revision petition once dismissed indefault of appearance, it can certainly be questioned by an aggrived party under Article 227 of the Constitution of India and the High Court can in exercise of its powers of judicial superintendance under that Article set aside the impugned order if it can be set aside in proceedings under section 115 of the Code of Civil Procedure in case the order had been passd by a subordinate Court.

PETITION under Article 227 of the Constitution of India, praying that the order of the Financial Commissioner, dated 12th November, 1963 be set aside and he be directed to hear the petition for revision on merits.

RAJINDER SACHAR, ADVOCATE, for the Petitioner.

H. L. SARIN SENIOR ADVOCATE WITH A. L. BAHL, ADVOCATE, for the Respondents.

ORDER

NARULA, J.—The application of Mallu Ram, petitioner, under section 18 of the Punjab Security of Land Tenures Act (10 of 1953) for purchase of certain land said to be included in his tenancy having been dismissed by the Assistant Collector's order, dated September 7, 1961, and the petitioner's appeal there against having been dismissed by the Collector on December 20, 1961, his further revision petition was recommended by the Additional Commissioner's order, dated November 2, 1962, to the Financial Commissioner for acceptance and for setting aside the order dismissing petitioner's application and for remanding the case for redecision. On the date of hearing before the Financial Commissioner, i.e., on February 28, 1963, the learned counsel for the petitioner could not put in appearance as some relative of his had died. This resulted in the dismissal of the petitioner's revision petition in default of appearance. On petitioner's application for restoration of his revision petition, the Financial Commissioner by his order, dated April 9, 1963, restored the same. At the final hearing of the revision petition after notice to the other side, a preliminary objection was raised on behalf of the contesting respondents to the effect that the order of the Financial Commissioner, dated April 9, 1963, was wholly without jurisdiction as the Financial Commissioner had no authority under any law to restore a revision petition which had once been dismissed in default of appearance. This objection prevailed with the Financial Commissioner who by his impugned order, dated November 12, 1963, held in this connection as follows :—

> "The learned counsel's ground is that neither Order 9, Rule 9 of the Code of Civil Procedure nor section 151 of the Code of Civil Procedure apply to revision petitions, and, therefore, this Court does not have the jurisdiction to restore a revision petition which has been dismissed for default of appearance. In support of this view, *Ram Ditta* v. *Mathra Das and others* (1), a ruling given by Kahlon, F.C., has been cited. This ruling also refers to similar views expressed by Nakulsen, F.C., and myself in the cases cited therein and also *A. Ramamurthi Iyer and others* v. *T. A. Meenakshisundaranmmal and another* (2), in which the

(1) 1961 L.L.T. 17.
(2) A.I.R. 1945 Mad. 103.

> Madras High Court had held that the High Court has no jurisdiction to restore to the file a civil revision petition which had been dismissed for default of appearance. In view of these authorities, I consider that the restoration of the present petition was not in order. Accordingly, I set aside my order, dated April 9, 1963, restoring the petition and restore the original order, dated February 28, 1963, by which the petition was dismissed in default."

The above said order led the petitioner to come to this Court under Article 227 of the Constitution.

At the hearing of the case, a preliminary objection has been raised by Mr. Harbans Lal Sarin, the learned counsel for respondent Nos. 6 to 8, to the effect that the application under Article 227 of the Constitution is not maintainable inasmuch as the impugned order, if the contention of the petitioner is correct, is amenable to a writ *of certiorari*. In support of his contention Mr. Sarin relies on the judgment of Allahabad High Court in *Malti and others* v. *Ram Saran and another* (3). The question that arose before the Allahabad High Court was whether it was open to a Magistrate to transfer a case triable by the Nyaya Panchayat to a Nyaya Panchayat after taking cognizance of it or whether the Magistrate was bound to dispose it of himself. It was held that it was open to the Judicial Magistrate to transfer the case to the Nyaya Adalat and that Nyaya Adalat did not lack jurisdiction over it. Having thus disposed of the application under Article 227 of the Constitution, which had been made before the Allahabad High Court on merits, their Lordships proceeded to observe that a petition under Article 227 was not maintainable when the applicats could apply for *certiorari* to quash the order of the Nyaya Adalat, if according to the applicants, the said Adalat did not acquire any jurisdiction by the order of transfer passed by a Judicial Magistrate. It was on that basis that the Division Bench of the Allahabad High Court held in *Malti's case* (supra) that when the final order of the transferee Adalat could be amenable to a writ in the nature of *certiorari*, the applicants were not justified in invoking the High Court's supervisory powers, and that the applicants should have proceeded in the regular manner for the quashing of the conviction

(3) 1963 A.L.J. 488.

by *certiorari*. The facts of the *Allahabad case* have no relevance with the matter which has arisen before me. In the face of the impugned order passed by the Financial Commissioner, nothing remains in the instant case to be done by the other Tribunals and the question of the applicant's waiting for some other order being passed which could be amenable to a writ of *certiorari* does not arise. The Allahabad High Court did not hold that the application under Article 227 of the Constitution was not maintainable because the applicants should have impugned the very same order of the Magistrate under Article 226. The Division Bench judgment in *Malti's case* does not appear to support the proposition canvassed by Mr. Sarin. Moreover, I am of the opinion that almost every order which can be brought up before this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution can normally be amenable to a writ of *certiorari* because an order which is without jurisdiction or an order declining to exercise jurisdiction vested in a Tribunal will always be amenable to a *certiorari*. The rule canvassed by Mr. Sarin would amount to wiping out the powers of judicial review of this Court under Article 227, because every person who could come to this Court under Article 227, to seek the setting aside of an order without or in excess of jurisdiction would in the alternative be entitled to invoke its jurisdiction under Article 226, for a writ of *certiorari*. There appears to be no warrant for such a proposition. Powers of this Court under Article 226 of the Constitution are much wider than those under Article 227 in so far as a writ of *certiorari* is concerned. An order of an inferior Tribunal can be quashed under Article 226 for the additional reason that it might suffer from errors of law apparent on it's face, a ground on which the order cannot normally be impugned under Article 227. In the instant case the impugned order is attacked on the solitary ground that the Financial Commissioner erroneously held that he had no jurisdiction to restore a revision petition once dismissed in default of appearance. That is a pure question of law relating solely to the matter of jurisdiction of a quasi-judicial Tribunal functioning within the jurisdiction of this Court. I think an order of this particular type can certainly be questioned by an aggrieved party under Article 227 of the Constitution, and this Court can in exercise of its powers of judicial superintendence under that Article set aside the impugned order if it could be set aside in proceedings under section 115 of the Code of Civil Procedure in case the order had been passed by a subordinate Court. In this view of the matter, the preliminary objection raised by Mr. Sarin is repelled.

On the merits of the controversy Mr. Rajinder Sachar, the learned counsel for the petitioner, has firstly relied on the Single Bench judgment of the Madras High Court in *Gobindaraju and another* v. *Lala* (4), wherein it was held that the Madras High Court had the jurisdiction to set aside an order dismissing a revision petition in default of appearance. Another learned Single Judge of the Madras High Court had held in *A. Ramamurthi Iyer and others* v. *T. A. Meenakshisundarammal and another* (2), that the wide power conferred on the High Court by the words "the High Court may make such order in the case as it thinks fit" in section 115 includes the power to dismiss a revision petition for default of appearance, but that the High Court has no jurisdiction to restore such a petition, and the High Court cannot set aside its own order unless jurisdiction to do so is vested in it by some law. The learned Judge had, following earlier cases on the point, held that in the case of suits and appeals the power in question exists under Order 9, Rule 9, and Order 41, Rule 19 of the Code of Civil Procedure to set aside dismissals of suits and appeals in default of appearance; but those provisions do not apply to civil revision petitions and that there is no corresponding provision relating to those proceedings. While holding otherwise Ramaswami, J., in *Govindaraju's case* (supra) relied solely on Rule 41-B which had in the meantime been added to Chapter IV of Part II of the Appellate Side Rules of the Madras High Court on July 31, 1946, in the following terms :—

> "The provisions of rules 11(2), 17, 18, 19 and 21 of order XLI of the Code of Civil Procedure shall apply *mutatis mutandis* to civil revision petitions."

It was in view of the said statutory rule that the learned Judge, held that the combined effect of rule 41-B (quoted above), and of Order 41, rule 19(1) of the Civil Procedure Code was to expressly invest the High Court with power to restore a civil revision petition which might have been dismissed earlier for default of appearance, where it was proved that the petitioner was prevented by sufficient cause from appearing when the petition was called on for hearing. The judgment of Ramaswami, J., is, therefore, of no avail to the petitioner in the instant case as Mr. Sachar has not been able to point out any such amendment having been made by this Court in the relevant rules, in the Code of Civil Procedure.

(4) A.I.R. 1959 Mad. 183.

Mr. Sachar then placed reliance on a Single Bench judgment of the Madhya Pradesh High Court in *Gulam Ali son of Abdulali Bohara* v. *Vishwanath Balwant Mahakal* (5). Besides relying on Rule 12 of Part I of Chapter IV of the rules of the High Court of Madhya Pradesh, the learned Judge relied on general principles of law in the following passages for holding that the High Court could set aside an order of dismissal of a revision petition in default :—

> "The real method of approach in considering the question whether the Court in a given case can act under section 151 Civil Procedure Code is to see whether resort to it is either expressly or by necessary implication prohibited. If there is no specific prohibition and resort to such power serves the ends of justice instead of defeating it then it can always be resorted to. To hold otherwise would be to give preference to form over requirements of justice. The decision of the Privy Council in *Maulvi Md. Abdul Majid* v. *Md. Abdul Aziz* (6), fully supports this method of approach. It may be contended that this may be a proper rule as long as the Court is seized of a case but cannot apply where it acts in exercise of its power 'to make such order as it thinks fit'. But to my mind a case disposed of under circumstances which justify its restoration would be taken to be as much in the seisin of the Court as a case actually pending. This is implicit in the provisions as to restoration contained in Order 41, Rule 19 and Order 9, Rule 9, Civil Procedure Code. The mere fact that the Legislature did not anticipate and provide for a situation such as the one involved in this case cannot mean that the High Court should not exercise this power even if the considerations of justice require it. As observed by Mahmood J., in *Narsingh Das* v. *Mangal Dubey* (7) :
>
> 'The Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle

(5) A.I.R. 1962 M.P. 308.
(6) 24 I.A. 22(32).
(7) I.L.R. 5 All. 163, (172) (F.B.).

that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle, prohibitions cannot be presumed.'

This is also the view taken in *Bhagat Singh* v. *Jagbir Sawhney* (8).

It is too much to say that the Legislature has in mind that a revision petition which is once dismissed for default for the non-appearance of the petitioner or his counsel, should never be heard on merits even if there is sufficient cause for such non-appearance.

In *Neba Ram* v. *Khota Ram*, (9), Jai Lal, J., seems to have expressed the view that a revision petition dismissed for default can be restored. In *Kanshi Ram* v. *Mt. Dharmi*, A.I.R. 1953 Him. Pra. 102, (10) the same view is taken:

Thus both in view of the Rule of this Court as also on general considerations mentioned above, a revision petition dismissed for default can be restored by this Court in proper case."

Reference is then made by Mr. Sachar to the judgment of Jai Lal, J., in *Neba Ram* v. *Khota Ram and another* (9). In that case when a revision petition having been dismissed a fresh one was filed, an objection against its maintainability was taken. The learned Judge treated the second petition for revision as an application for restoration of the previous revision petition, and having been satisfied that there was sufficient reason for the previous default by the petitioner, restored the previous one and granted the same though the learned Judge was of the view that even a fresh petition was maintainable in those circumstances. Counsel also referred to the judgment of Bhandari, C.J., in *Manohar Lal* v. *Mohan Lal* (11), wherein it was held that the Rent Controller had inherent power to set aside an *ex parte* order passed by himself though there was no specific provision in the Rent Control Act, authorising him to do so.

(8) A.I.R. 1941 Cal. 670.
(9) A.I.R. 1928 Lah. 550.
(10) A.I.R. 1953 Him. Pra. 102.
(11) 1957 P.L.R. 38.

Lastly counsel relied on the Division Bench judgment in *Jiwani* v. *Bhagel Singh* (12), (case No. 33). In that case their Lordshibs after referring to section 647 of the Code of Civil Procedure proceeded to hold as below :—

> "But apart from this there is another way of looking at the matter, even if section 647 be ignored. Under section 621, Civil Procedure Code, this Court in revising can pass virtually any order it thinks fit, and it can certainly (and probably should, See *Coates* v. *Kashi Ram* quoted above), dismiss for default in the case of failure to prosecute. The powers, then, in such cases, are something like the powers of an appellate Court—less than those powers in that some matters that can be taken up in appeal cannot be taken up in revision, but quite equal to these powers in dealing with the case within the sometimes restricted limits. Among other things, as we have already stated, the revising Court can dismiss for default, though this is not plainly stated in any section; and in our opinion the power to dismiss for default, in proceedings which in their nature so much approximate to appellate proceedings, naturally connotes the power to restore after default, when the default is satisfactorily explained. If a petitioner has peen prevented by some cause beyond his control, from prosecuting a revision petition under the Punjab Courts Act, he is in no way to blame. It is usually no use to him that the law allows him to present a fresh revision petition, for the time-bar comes in. Even if no time-bar supervenes, he has to pay another *ad valorem* duty, though he has been in no way to blame; and we cannot think that the legislature intended in these ways to penalise innocent defaults.
>
> In our opinion, then, a petition for restoration is competent; and we admit the petition now before us and overrule the respondent's objection."

Mr. Sachar's submission is that the interpretation placed on the powers of the High Court by the Madhya Pradesh High Court and

(12) 1908 P.L.R. 85.

in *Jiwani's case* (supra) is the correct one and this Court should not tend to lean in favour of an interpretation which is apt to defeat the ends of justice. Submission of the learned counsel is that the Financial Commissioner has relied on the analogy of the powers of this Court in exercise of its revisional jurisdiction and that the trend of authority on that point being in favour of the petitioner and the said trend being more consistent with the principles of justice, I should hold that in a case where the Financial Commissioner is satisfied about a revision petitioner having been prevented by sufficient cause from appearing before him when his revision petition was called on for hearing, there is no bar to his allowing the application for restoration of the revision petition. In this view of the matter, contends Mr. Sachar, the order of the Financial Commissioner, dated April 9, 1963, was within his jurisdiction and the Financial Commissioner was in grave error in holding in the impugned order that he had no power to restore the case.

Mr. Sarin has firstly referred to rule 11 of the Punjab Security of Land Tenures Rules, 1953, which is in the following terms :—

> "*Procedure generally.*—The procedure of Revenue Officers in matters under the Punjab Security of Land Tenures Act, 1953, and these rules for which a procedure is not prescribed thereby, shall be regulated as far as may be, by the procedure prescribed for Revenue Officers, by the provisions of the Punjab Tenancy Act, 1887, and the rules thereunder."

In the rules framed under the Tenancy Act, i.e., the Punjab Tenancy Rules, 1909; rule 4 states :—

> "In fixing dates for the hearing of parties and their witnesses in adjourning proceedings, and in dismissing applications for default or for other sufficient reason, a Revenue Officer shall so far as the nature of the case requires or permits, be guided by principles of the procedure for the time being in force in Revenue Court."

No specific rule governing the procedure of Revenue Courts which is relevant for our purposes has been shown to me. In the absence of any such rule and in view of the procedure prescribed under the Punjab Tenancy Act being applicable, we are driven back to

section 88 of the Punjab Tenancy Act, sub-section (1) of which authorises the State Government to make rules for regulating the procedure of Revenue Courts, and sub-section (2) of which states that "until rules are made under sub-section (1) and subject to those rules when made and to the provisions of the Act, (a) the Code of Civil Procedure shall, so far as it is applicable apply to all proceedings in Revenue Courts whether before or after decree; and (b) the Financial Commissioner shall, in respect of those proceedings, be deemed to be the High Court within the meaning of that Code, and shall, subject to the provisions of this Act, exercise, as regards the Courts under his control; all the powers of a High Court under the Code". In these circumstances it appears that the power of the Financial Commissioner in the matter in dispute is the same as that of the High Court while dealing with a petition for revision under section 115 of the Code of Civil Procedure. On the merits of the controversy; Mr. Sarin relies on the Financial Commissioner's judgment in *Ram Ditta* v. *Mathra Das and others* (1) and that of the Madras High Court in *A. Ramamurthi Iyer and others* v. *T. A. Meenakshisundarammal and another* (2), and some other earlier Madras cases and submits that the view taken by the Financial Commissioner in his impugned order is the correct one. I regret I am unable to agree with Mr. Sarin in this connection. The view taken by the Madhya Pradesh High Court which is based on various judgments of other Courts appears to me to be the correct one. This is also in consonance with the principles set down by this Court itself in the various cases already referred to. Mahajan, J., in an unreported judgment, *Charanji Lal* v. *Iqbal Singh* (13), reversed an order of the Rent Controller refusing to set aside an *ex-parte* order relying of an earlier judgment of this Court in *Dwarka Devi and others* v. *Hans Raj* (14). While doing so the learned Judge expressly disagreed with the Madras view.

In this state of law, I have no hesitation in holding : (i) that this Court has the jurisdiction to restore a revision petition which might have been dismissed in default of appearance if the Court is satisfied that the revision petitioner or his counsel was prevented by sufficient cause from appearing at its hearing. With the greatest respect to the learned Judges of the Madras High Court, who held

(13) Civil Revision 711 of 1967 decided on 7th March, 1968.
(14) 1963 P.L.R. 705.

to the contrary, I find myself unable to agree with that view; and (ii) the procedure prescribed by section 88(2) of the Punjab Tenancy Act for exercise of the revisional jurisdiction of a Financial Commissioner being the same as of the High Court under section 115 of the Code of Civil Procedure, the Financial Commissioner has likewise the jurisdiction to restore for sufficient cause, a revision petition originally dismissed in default or for non-prosecution. Consequently it is held that the learned Financial Commissioner was in grave error in holding that he had no jurisdiction to set aside an order dismissing the revision petition in default. So far as the facts are concerned, he had already held in his order, dated April 9, 1963, that there was sufficient cause for non-appearance of the counsel for the petitioner on the date of hearing i.e., on February 28, 1963. I, therefore; set aside the impugned order of the Financial Commissioner, dated November 12, 1963; and restore his order, dated April 9, 1963, and direct the Financial Commissioner to hear the revision petition of the applicant recommended by the Additional Commissioner on merits after notice to all concerned and dispose it of in accordance with law. In the circumstances of the case, I make no order as to costs in this Court.

Before parting with this case, I would like to avail of this opportunity to recommend to my Lord the Chief Justice and the learned Puisne Judges of this Court that in order to avoid any further controversy on the point in question, we may also consider the advisability of amending the relevant rules in the 1st Schedule to the Code of Civil Procedure as was done by the Madras High Court in 1946.

R. N. M.

FULL BENCH

Before Shamsher Bahadur, Gurdev Singh and R. S. Narula, JJ.

KAMTA PARSAD AGGARWAL,—*Petitioner*

versus

THE EXECUTIVE OFFICER, PANCHAYAT SAMITI, BALLABGARH AND ANOTHER,—*Respondents*

Civil Writ No. 354 of 1967

Civil Writ No. 355 of 1967

May 17, 1968

Constitution of India (1950)—*Article* 276—*Punjab Professions, Trades, Callings and Employments Taxation Act* (*VII of* 1956)—*Section* 3—*Punjab Panchayat*