

Parkash Chander Batra and another v. The State of Haryana and others
(Sandhawalia, J.)

(9) For the foregoing reasons, I would dismiss this appeal with costs. Counsel's fee: Rs. 50.

N. K. S.

CIVIL MISCELLANEOUS

Before Harbans Singh and S. S. Sandhawalia, JJ.

PARKASH CHANDER BATRA AND ANOTHER,—Petitioners.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ No. 199 of 1969

September 15, 1969.

The Punjab Municipal (Executive Officer) Act (II of 1931)—Sections 3(1) and 3(4)—Executive Officer—Government's power of appointment of—Whether must be for a fixed period of five years—Renewal of such appointment by the Government—Whether can exceed a period of five years in all.

Held, that the resultant difference that arises by the use of the extra word 'not' in section 3(4) of the Punjab Municipal (Executive Officer) Act, which has not been used in section 3(1) is that whereas under section 3(1) the Municipal Committee when appointing an executive Officer can do so only for a fixed period of five years there exists no such limitation on the power of the Government when appointing an Executive Officer under section 3(4). The Government would be wholly within the ambit of the last mentioned provisions in appointing an Executive Officer for a period of less than five years, e.g., for one, two or three years as it may deem fit.

(Para 5)

Held, that the words 'for a renewable period not exceeding five years' in sub-section (4) of section 3 of the Act does not mean that the power of the Government even to renew cannot in the total ever exceed a period of five years. There is no warrant for the proposition that this sub-section should be so construed as to bring in the words 'in all' after the above said words, when the legislature had not chosen to place them therein. Sub-section (4) does not lay down any fetter on the overall period in case of the renewal of the appointment of an Executive Officer and the power of the Government to renew the appointment beyond a period of five years does exist under this sub-section.

(Para 6)

Petition under Articles 226 and 227 of the Constitution of India praying that a Writ of Quo-warranto and Mandamus be issued directing the Respondents to show cause by what authority Respondent No. 2 purports to hold the office of an Executive Officer, Municipal Committee, Rohtak and also directing that the appointment of Respondent No. 2 be treated null and void.

RAJINDER SACHAR, ADVOCATE, for the Petitioners.

G. C. GARG, ADVOCATE FOR ADVOCATE-GENERAL, HARYANA, MR. G. C. MITTAL, ADVOCATE, for the Respondent No. 2.

JUDGMENT

SANDHAWALIA, J.—This petition under Articles 226 and 227 of the Constitution of India has been admitted to a hearing by the Division Bench as the provisions of section 3 of the Punjab Municipal (Executive Officer) Act, 1931, fall for construction therein.

(2) The facts are hardly in dispute. The Punjab Municipal (Executive Officer) Act of 1931 (hereinafter called the Act) was extended to the Municipal Committee of Rohtak by a notification in the year 1963. The existing Municipal Committee failed to muster the requisite 5/8ths majority of the total constituted members of the Committee which is necessary for the appointment of an Executive Officer by the Committee and consequently the Committee could not recommend any person for appointment as an Executive Officer. Accordingly the Government acting under the provisions of section 3(4) appointed N. C. Bhardwaj, respondent No. 2, as the Executive Officer for a period of five years on the 23rd December, 1963. The elections to the present Municipal Committee, Rohtak, which consists of 27 elected members took place in March, 1968 and 12 members were returned on the Congress ticket and 9 on the Jan Sangh ticket. The two petitioners in the writ petition are respectively the leaders of the Congress and the Jan Sangh parties in the Municipal Committee. As the term of office of respondent No. 2 as an Executive Officer was to expire on the 23rd December, 1968, a special meeting of the Committee was called on the 21st November, 1968, for the purpose of considering the appointment of an Executive Officer. However, it was noticed that the calling of the said meeting was defective as the requisite seven days notice had not been given an objection being raised the said meeting was adjourned on the 17th of December, 1968. Meanwhile as the term of the office of respondent No. 2 was to expire on the 23rd of December, 1968, the Governor of Haryana by his order,

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dated the 20th December, 1968, renewed the appointment of respondent No. 2 for a further period of five years with effect from the 24th of December, 1968, in the time-scale of Rs. 500—50—750 which he was drawing at the relevant time. It is this renewal of the appointment of respondent No. 2 which has been challenged in the present writ petition. Allegations of bias and lack of bona fides had also been made against respondent No. 3, the Deputy Commissioner, Rohtak suggesting that he was interested in the re-appointment of respondent No. 2, but these were not pressed at the time of the hearing of the petition.

(3) The primary contention of Mr. Sachar on behalf of the petitioners is that the power of the Government to appoint or renew any appointment of an Executive Officer under section 3(4) of the Act can in no case exceed a period of five years in all. Reliance for this submission was placed on the language of sub-section (4) itself and the contention was sought to be buttressed by the variance in the language used in sub-section (1) of section 3 regarding the period of appointment by the Municipal Committee of an Executive Officer. It was argued with vehemence that the right of appointment of an Executive Officer vests primarily in the Municipal Committee and on their failure once to do so this right cannot be defeated for a period of more than five years. Reliance was placed on a Single Bench judgment of this Court in *Ram Das Passi v. The State of Punjab and others* (1).

(4) To appreciate the rival contentions raised it is necessary to refer briefly to the outlines of the rather exhaustive provisions of section 3 of the Act regarding the appointment of the Executive Officer. Sub-section (1) thereof provides for the appointment of the Executive Officer by the Committee with the approval of the Government by a resolution passed by not less than 5/8ths of the total number of members constituting the Committee, at a special meeting convened for this purpose. Sub-sections (2) and (3) lay down that if in a special meeting so convened the requisite majority cannot be secured for any candidate, the Chairman shall on a requisition convene another meeting to be held within 14 days thereof and in this adjourned meeting also the resolution for appointment must again be carried by the earlier prescribed majority of 5/8ths. On the failure of the Municipality to appoint an Executive Officer sub-section (4) gives the power

(1) 1956 P.L.R. 89.

of appointment to the Government for a renewable period not exceeding five years. Sub-sections (5) and (6) merely provide that a member of a Committee when appointed an Executive Officer shall cease to be a member of the Committee and that the remuneration of the Executive Officer shall be payable from the municipal Fund. Sub-section (7) gives the powers to suspend or remove the Executive Officer to the State Government and further lays down that if the Committee passes a resolution with the 5/8ths majority referred to above, the Executive Officer shall be so suspended or removed and the Committee will then appoint a person to officiate as an Executive Officer with the approval of the Government. Lastly sub-sections (8) and (9) relate to the granting of leave and for making provision in the event of death, resignation or removal of the Executive Officer. The crucial provisions on which the present case turns are sub-sections (1) and (4) of section 3 which may be set down *in extenso* against each other:—

Section 3(1)

Sub-section (4) of section 3

Appointment and Pay of Executive Officer.—(1) Notwithstanding anything to the contrary contained in sections 36 and 27 of the Municipal Act, the committee shall, by resolution to be passed by not less than five-eighths of the total number of members constituting the committee for the time being, or the meeting convened the purpose of appointing an Executive Officer at which no other business may be transacted, appoint, within three months from the date of the notification issued under sub-section (2) of section 1, a person, with the approval of the State Government, as Executive Officer, for a renewable period of five years on such rate of pay not exceeding one thousand and five hundred rupees inclusive of all allowances, as it may deem fit:

If the committee fails to appoint an Executive Officer within three months from the date of notification issued under sub-section (2) of section 1, the State Government may appoint any person as Executive Officer of the committee for a renewable period not exceeding five years on such rate of monthly pay not exceeding Rs. 1,500 inclusive of all allowances as it may deem fit.

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(5) Learned counsel had placed reliance on *Ram Das Passi's case* (1). In this case *Bishan Narain J.*, whilst considering the provisions of section 3(1) of the Act had observed as follows:—

“Under section 3(1) the Municipal Committee was bound to appoint the petitioner for a period of five years and could not do it for a longer or shorter period. Therefore, the Government could not reduce the period of the appointment under section 3(1) to any period other than five years.”

We are in agreement with the above view expressed by the learned Judge, but fail to see how this authority advances the case of the petitioner. On the contrary this authority pin-points the resultant difference that arises by the use of the extra word ‘not’ in section 3(4) which has not been used in section 3(1). The only result of this variance in the language that follows is that whereas under section 3(1) the Municipal Committee when appointing an Executive Officer can do so only for a fixed period of five years there exists no such limitation on the power of the Government when appointing an Executive Officer under section 3(4). The Government would be wholly within the ambit of the last mentioned provisions in appointing an Executive Officer for a period of less than five years, e.g., for one, two or three years as it may deem fit. Neither from the provisions of sub-section (4) nor from the authority relied upon does any necessary inference follow that the power of the Government to renew the appointment beyond a period of five years does not exist.

(6) Mr. Sachar had then contended that the words ‘for a renewable period not exceeding five years’ necessarily mean that the power of the Government even to renew cannot in the total ever exceed a period of five years. We are unable to agree. In fact if this construction is placed on these words it would involve the importing of the words ‘in all’ after the words ‘for a renewable period not exceeding five years’, under section 4(4). We hence find no warrant for the proposition that this sub-section should be so construed as to bring in the words ‘in all’ when the legislature had not chosen to place them therein. The settled canons of interpretation are that at first the grammatical language of the statute has to be given its plain meaning. In the present case we find no serious difficulty in arriving at the meaning of the language used in sub-section

(4) which does not lay down any fetter on the overall period in case of the renewal of appointment of an Executive Officer.

(7) Mr. Sachar had then vehemently argued that the effect of so construing the provisions of section 3(4) would lead to the harsh result that a Municipal Committee which had once failed to make a recommendation with the requisite majority would lose the right of appointment of its Executive Officer altogether if the Government choose to renew the appointment for five-year periods. A complete answer to this contention is provided by the provision of sub-section (7). These clearly lay down that if the Committee has the requisite 5/8ths majority, it can always call a meeting and move for the suspension and removal of the Executive Officer and it has been made mandatory that on such a resolution being passed the Executive Officer shall be removed or suspended and a person to officiate in his place be appointed under the above-said provision.

(8) Lastly a faint argument was raised on behalf of the petitioners that section 3(4) was a penal provision and relying upon *Madho Saran Singh and others v. Emperor* (2), it was argued that the same should be very strictly construed. The authority relied upon relates to the criminal law and it is hardly possible to equate section 3(4) of the Act with the punishing sections of a criminal statute.

(9) Mr. G. C. Mittal on behalf of the respondent has argued that a power to renew the original appointment is common to both the Municipal Committee under section 3(1) and to the Government under section 3(4). It has been submitted that if the word 'renewable' which is the common factor in both is excluded for facility of construing the provision, its meaning becomes plain. If this word is excluded the relevant part of sub-section (4) would read as "for a period not exceeding five years". This would relate to the appointment, and the renewal thereof would not be fettered by any necessary period of time. In fact both the Government and the Municipal Committee under the relevant provisions have the power to renew the appointment beyond a period of five years. We find patent merit in the submission of Mr. Mittal.

(10) We are thus of the view that section 3(4) is no bar to the Government renewing the appointment of an Executive Officer beyond a period of five years. That being so the impugned order of the

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renewal of the appointment of respondent No. 2 in the present writ petition was in consonance with the provisions of the Act and hence suffers from no jurisdictional defect whatsoever.

(11) The petition, therefore, must fail and is dismissed, but we make no order as to costs.

HARBANS SINGH, J.—I agree.

N. K. S.

CIVIL MISCELLANEOUS

Before Prem Chand Jain, J.

RAJ KUMAR,—Petitioner.

versus

THE VICE-CHANCELLOR AND ANOTHER,—Respondents.

Civil writ No. 23 of 1969

September 16, 1969.

Punjabi University Calendar, Volume I, Chapter III—Ordinances 4, 5 and 6—Use of unfair means in an examination—Candidate incurring disqualification referred to in Ordinance 4(b)—Such disqualification—Whether relates only to the particular examination in which unfair means used.

Held, that the disqualification referred to in Ordinance 4(b) relates only to that particular examination in which the candidate is found guilty of using unfair means and cannot be extended to other different examinations in which the candidate may have appeared or may be appearing during the period of disqualification. Chapter III of the Punjabi University Calendar, Volume I, relates to use of unfair means and different disqualifications are provided in different situations and for different types of acts in which a candidate may indulge. Reference to the relevant portions of Ordinances 5 and 6 shows that wherever the framers of the Ordinance have thought it proper to disqualify a candidate from all or any of the University examinations, the same has been mentioned definitely in those Ordinances. The framers of the Ordinances never intended to penalise a candidate in one and the same manner whether it was for a minor act or a grave act of use of unfair means and, therefore, punishment has been provided differently according to the gravity of the misconduct. If the framers of the Ordinances had thought it proper to disqualify a candidate from appearing in any examination of the University even under Ordinance 4(b) then a provision similar to the one made in Ordinances 5(c) and 6(a) (i) and (ii)