

Before V. Ramaswami CJ. and G. R. Majithia, J.

PREM CHAND AND OTHERS,—Petitioners.

*versus*

STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 4315 of 1987

February 8, 1989.

*Constitution of India, 1950—Art. 311—Punjab Tehsildar Rules, 1932—Rls. 3, 6(b)—Abolition of post—Not a personal penalty against government servant—Does not amount to dismissal or removal from service—However, creation of another post with identical duties and responsibilities after abolition of previous post—Effect of, stated—Colourable action—Courts can disregard such abolition—Government servant allowed to continue in service.*

*Held*, that the abolition of post results in termination of service. But such termination is not dismissal or removal within the meaning of Art. 311 of the Constitution of India, 1950 because both in case of dismissal or removal there is a stigma. The abolition of post is not a personal penalty against the government servant. The opportunity of showing cause against the proposed penalty of dismissal or removal, does not arise in the case of abolition of post. It also does not confer on the person any right to hold the office after it is abolished or to any other employment. (Para 15).

*Held*, that the power of the executive to abolish a post has been well recognised but it must always be exercised in good faith and in public interest and never arbitrarily. A formal order of abolition of a post is not decisive of the question whether the post has factually been abolished. Whether a particular post has been abolished or not would depend upon the facts of an individual case. Where a post is formally abolished but another post by some other designation of the same nature and character with identical duties and responsibilities and conditions of service is created, the court may find that no post was abolished, change being merely in designation. Similarly it is also possible that an existing post is abolished and another post of an entirely different nature but with the same designation is created. In that case it would not necessarily follow that simply because another post is created with the same designation, the existing post was not abolished. (Para 16).

*Civil Writ Petition under Articles 226/227 of the Constitution of India praying that :—*

- (i) complete records of the case be summoned;
- (ii) a writ in the nature of Certiorari or any other appropriate writ, order or Direction quashing the order of Respondent

No 1, dated 15th July, 1987, Annexure P/1, abolishing 18 posts of Naib Tehsildars and also consequent order, a specimen of which is the order issued by Respondent No. 2, dated 16th July, 1987, Annexure P/2, terminating the services of the petitioners, be issued;

- (iii) It is further prayed that during the pendency of the writ petition, the operation of the impugned orders be stayed and the petitioners be permitted to continue in the service as Naib Tehsildars.
- (iv) condition regarding filing of certified copies of the Annexures be dispensed with;
- (v) condition regarding service of advance notice of the writ petition be dispensed with;
- (vi) cost of the petition be also awarded.

Bhoop Singh & P. S. Pathwalia, Advocates, for the petitioners.

S. C. Mohunta, A.G. Hy. with N. S. Pawar, Senior DAG, Hy., for the respondents.

Pardeep Gupta, Advocate, for respondents 3 to 9.

#### JUDGMENT

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(1) This judgment will dispose of C.W.P. Nos. 4315, 4316, 4319, 4435, 5103, 5211 of 1987, C.W.P. No. 718 of 1984, and L.P.A. Nos. 966, 989, 990 and 991 of 1988. Some interim directions were given in Writ Petitions Nos. 4316, 5103 and 5211 of 1987 by a learned Single Judge of this Court and the L.P.As. Nos. 966, 989 and 990 of 1988 have been filed by the State Government against those orders. L.P.A. No. 991 of 1987 is directed against the interim order in C.W.P. No. 1103 of 1988.

(2) In C.W.P. No. 718 of 1984, the petitioners have levied a challenge against the instructions contained in letter No. 2311-IGSI-72/15727, dated 26th May, 1972, issued by Respondent No. 1. Under these instructions, the State Government could fill up vacancies occurring in a particular Department within six months of the receipt of the recommendations from the Commission/Board. Any vacancy arising within six months of the receipt of the recommendations could be filled up out of the recommendations made by the Commission/Board.

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(3) The challenge was made under the following circumstances.

(4) On July 7, 1981 and September 22, 1981, the Subordinate Services Selection Board, Haryana, (for short, "the Board") advertised 22 posts of Naib Tehsildars (11 posts of Naib Tehsildars for Ambala Division and 11 posts for Hissar Division). The Board made selections on November 19, 1982, and recommended the names of 102 candidates for these posts. The Commissioners, Ambala and Hissar Divisions, filled up the vacancies out of this list of 102 candidates not only created upto the years 1981 and 1982 but also which were created in the year 1983. The Commissioner, Hissar Division, Hissar, made appointments on May 17, 1983, May 18, 1983, and on June 23, 1983, out of the recommendations made by the Board. The Commissioner, Ambala Division, Ambala, made appointments of 21 candidates on July 12, 1983, out of the same list. The grouse of the petitioners is that they were fully qualified for the said posts. The action of the Commissioners in not inviting fresh applications for appointment to the posts of Naib Tehsildars, which fell vacant after the expiry of six months from the date of the original recommendations made by the Board, is illegal and bad in law.

(5) On behalf of the State, the action was justified on the ground that the Board was not in existence and it was under these circumstances that the validity of the waiting list of the candidates for the posts of Naib Tehsildars already sent by the Board to the Divisional Commissioners was extended and the Government was fully competent to make these appointments and were justified on the basis of specific instructions contained in circular letter No. 2367-5-GS-I-76/12144, dated 17th May, 1976. The State, however, admitted that normally the vacancies created after six months of the date of the recommendations by the Board are not filled out of that list.

(6) On behalf of the Board, the recommendation of more candidates than the advertised number of posts of Naib Tehsildars was justified on the ground that the Board had the information that actual number of posts of Naib Tehsildars had considerably increased by the time the result was declared. The Board also justified its action on the basis of the instructions under challenge.

(7) The Commissioner, Hissar Division, Hissar, in its reply admitted that out of the candidates recommended by the Board, appointments were made against the vacancies created for the year 1983. He filled up 49 posts out of this list on various dates in the years 1983 and 1984. To the same effect is the reply of the Commissioner, Ambala Division. He admitted in his reply that he filled up 52

posts of Naib Tehsildars out of the list of 53 candidates recommended by the Board on various dates in the years 1983 and 1984.

(8) In other writ petitions, substantially the same issue has been raised. The pleadings in the writ petitions followed substantially the same pattern. With the consent of the parties' counsel, C.W.P. No. 4315 of 1987, was treated as the main writ petition. It would, therefore, be convenient to refer to the pleadings in C.W.P. No. 4315 of 1987. Whatever we say in regard to this writ petition would apply to the other writ petitions.

(9) In the year 1981, twenty-two posts of Class 'A' Naib Tehsildars were advertised in response to which the petitioners submitted their applications. The petitioners along with a number of other persons were selected. The petitioners joined as Naib Tehsildar candidates in Ambala Division, Ambala, during the period May, 1984 to November, 1984. They successfully completed the training period, qualified the Naib Tehsildar's Examination, and were appointed on regular basis. Their work and conduct was found to be satisfactory. The terms and conditions of service of the cadre of Naib Tehsildars are contained in the statutory rules called the Punjab Tehsildari Rules, 1932 (for short 'the Rules'). Rule 6(b) of the Rules provides that the recruitment to the post of Naib Tehsildar is made either by direct recruitment or by transfer from among officials employed in the revenue, irrigation, excise or police establishment of the Division. The Financial Commissioner, in exercise of the powers under the Rules, issued Standing Order No. 12 (for short 'the Order') regarding the appointment and conditions of service of Tehsildars and Naib Tehsildars. Para 22 of the Order provides two sources of recruitment to the post of Naib Tehsildar. 'A' Class Naib Tehsildars are appointed by way of direct recruitment and 'B' Class Naib Tehsildars by way of promotion. Kanungos and other revenue officials are promoted as 'B' Class Naib Tehsildars. Para 23 of the Order provides that Kanungos and other revenue officials are promoted as 'B' Class Naib Tehsildars and before their appointment as Naib Tehsildar, they have to pass the Naib Tehsildar's Examination. The Rules and the Order make it mandatory that all Naib Tehsildar candidates, either 'A' Class or 'B' Class, must pass the Naib Tehsildars' Examination. Those candidates who fail to qualify as Naib-Tehsildar's Examination are not qualified to be appointed as Naib Tehsildars and their names are liable to be removed from the list of candidates. Paras 34 and 35 deal with the period within which the Naib Tehsildars Examination has to be passed. The Financial Commissioner can extend the

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period in which the candidate has to pass the examination, he can even exempt any candidate from passing the examination in exceptional cases on the recommendations of the Commissioner. The petitioners claim that they have successfully completed their training period and have qualified in the Naib Tehsildars' Examination and were appointed on regular basis. They are working in the Ambala Division, Ambala, against the permanent posts of Naib Tehsildars. The State of Haryana issued order dated July 15, 1987, whereby 35 posts of Naib Tehsildars (18 posts in Ambala Division and 17 posts in Hissar Division) were abolished. The order stipulates that it only relates to the appointees belonging to the general category and will not affect the members of the Scheduled Castes, Scheduled Tribes, the Backward Classes, the ex-Servicemen and the physically handicapped persons, because they were already short of their quota amongst the Naib Tehsildars. In pursuance of the said order, the Commissioner, Ambala Division, issued the order of termination dated July 16, 1987.

(10) The impugned orders in the other writ petitions are identical. It is averred that only the services of erstwhile 'A' Class Naib Tehsildars have been terminated consequent upon the abolition of 35 posts of Naib Tehsildars. The termination of services of direct recruits have resulted in hostile discrimination. The nine Kanungos were promoted as Naib Tehsildars in June, 1985, January, 1986, and May, 1987. All these Kanungos were promoted after the petitioners and none of them has qualified the Naib Tehsildars' Examination. They have been retained in service while the petitioners' services have been terminated. The Order and the Rules provide quota for the posts of Naib Tehsildars and the quota for appointment to the posts of Naib Tehsildars by direct recruits and by promotion is 50 : 50 per cent. Equal number of Naib Tehsildars have to be appointed from both the sources. It is only the direct recruit quota posts which have been abolished and the posts held by the promotees have not been abolished, and the action is discriminatory and violative of Articles 14 and 16 of the Constitution. Twenty-six promotee Naib Tehsildars could not qualify the Naib Tehsildars' Examination despite numerous changes having been given to them. The services of qualified Naib Tehsildars have been terminated. The abolition of the posts is for extraneous consideration. The posts which have been abolished stand sanctioned in the existing budget. Provisions have been made for old age pension and unemployment allowances to the youths. The petitioners who are young and have already crossed the age of

employment would suffer irreparable loss if their services are terminated as a result of abolition of the posts. The order of abolition of the posts has been passed by the State Government while the competent authority to take the decision was the Commissioner. The Scheduled Castes, the Scheduled Tribes and the Backward Classes candidates were recruited along with the petitioners and they were placed below the petitioners on the merit list. There was hardly any justification to retain them in service and terminate the services of the petitioners. Even this condition in the impugned order was violated with impunity. The services of one Backward Classes candidate, namely, Narang Dass, were terminated in order to accommodate Gurmeet Singh, a close relation of Shri H. S. Chatha, the Speaker of Haryana Vidhan Sabha.

(11) The State in its reply justified the abolition and the defence of the State Government is substantially unfolded in para 8 of its written statement which reads thus:—

“That para No. 8 of the writ petition is admitted to the extent that 18 posts of Naib Tahsildars in Ambala Division have been abolished. It is wrong and denied vehemently, that no reasons have been given for abolishing the posts. While abolishing the posts the answering respondent has taken into consideration the qualification of the petitioners. The factual position is as under :—

Before July, 1981, the cadre strength of Naib Tahsildars was 116 (Ambala 60, Hissar 56). As per the Tahsildari Rules, 1932 read with Financial Commissioner's Standing Order 12, 50 per cent of the posts of Naib Tahsildars are to be filled in by direct recruitment and 50 per cent by promotion. There was a short-fall of 22 direct Naib Tahsildars 11 each in Ambala and Hissar Division. Requisition for filling up these posts was sent to Subordinate Service Selection Board in July, 1981. Against the demand of 22 posts, the Board however, recommended 103 candidates (53 Ambala Division and 50 for Hissar Division), in November, 1982. Twenty-two candidates for which the requisition was sent, were appointed in December, 1982, January, 1983. Subsequently, in March, 1983 the cadre strength of Naib Tahsildars was raised from 116 to 159 (Ambala Division 81, Hissar

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Division 78) and in April, 1984, it was again increased from 159 to 180 (Ambala 92, Hissar 88) keeping in view the following facts :—

- (i) Creation of new sub-tahsils and ungradation of sub-tahsils ;
- (ii) Recovery of huge amount of arrear on account of lining water courses by MITC.
- (iii) Recovery of loans under High Migh Scheme of the Housing Department.
- (iv) For the appointment of whole time Administrations in the Municipalities in 'B' and 'C' Class.
- (v) Appointment of Naib Tahsildars/Tahsildars as District Saving Development Officer.
- (vi) Training reserve.
- (vii) Deputation.

As a result of the enhancement of the cadre the selection list was got re-validated from time to time and all the candidates were appointed against these posts.

In November, 1986 the Government decided to waive off the recovery of 113 Crores on account of lining of water courses incurred by the MITC. Therefore, the work relating to the recovery of MITC dues was no longer there and hence the 13 posts of Naib Tahsildars created for the purpose have been declared surplus.

Since the Government in the Finance Department have not so far agreed for the creation of 12 posts of District Saving Development Officers against these posts. Naib Tahsildars were to be appointed as District Development Officers. In this situation these posts became surplus and were accordingly abolished.

Out of the 30 deputation posts, 7 vacant posts of Administrators in the Municipalities and one post of Naib Tahsildar colonization at Hissar were no longer required as the Government had separately decided to

hold elections of the Municipalities on 30th August, 1987 and as a result of the election these posts will not be needed and hence abolished. With the abolition of the above posts, two posts of Training Reserve have also been abolished on proportional basis.

After the abolition of these posts which are under challenge there are 74 posts in Ambala Division, against which 37 are direct and 35 promotees and 2 vacant meant for promotees. Likewise in Hissar Division against the 71 posts of Naib Tahsildars, thirty-six are from direct candidates and 33 for promotees and 2 vacant meant for departmental promotees. It may be seen that ratio in between the direct candidates and the promotees has not been disturbed. After the abolition of these 35 posts the promotees are manning the posts of Naib Tahsildars is less than their 50 per cent quota so the allegation of the petitioners that no promotee Naib Tahsildar has been terminated is without any substance."

(12) The Commissioner Ambala Division, Ambala justified the action taking shelter under the Financial Commissioner's circular letter No. 7691-E-4-87/21507, dated 15th July, 1987 (Annexure P-1).

(13) The Commissioner, Hissar Division, Hissar did not file any reply.

(14) The expression 'civil post' *prima facie* means an appointment or office on the civil side of the administration as distinguished from a post under the Defence Forces. The expression 'public service and post' in connection with the affairs of the Union or a State includes the holder of both the civil and military posts and is, thus, co-extensive with the scope of Article 311 (1) of the Constitution of India though the defence personnel are excluded from the protection of Article 311. Every person who is a member of public service mentioned in Article 310 of the Constitution holds office during the pleasure of the President or the Governor. The power under Article 310 of the Constitution is unfettered except by the provisions of Article 311. The pleasure of the President or of the Governor cannot be fettered by ordinary legislation. The tenure of a public



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servant is subject to the limitations or qualifications mentioned in Article 311 of the Constitution. Parliament or legislatures of the States cannot make a law abrogating or modifying the tenure so as to impinge upon the over-riding power conferred upon the President or the Governor under Article 310, as qualified by Article 311. Parliament or legislatures of the States can make a law regulating the conditions of service of such a member which includes proceedings by way of disciplinary action, without affecting the powers of the President or the Governor under Article 310 read with Article 311 thereof. The Parliament and the Legislatures also can make a law laying down and regulating the scope and content of the doctrine of "reasonable opportunity" as embodied in Article 311 of the Constitution but the said law is subject to judicial review. Rules could also be made by an authority in exercise of the rule making power subject to the limitations that they do not impinge upon the doctrine of pleasure.

(15) The power to create, continue and abolish any civil post is inherent in every sovereign Government. It is a policy decision exercised by the executive and is dependent on exigencies of circumstances and administrative necessity. The abolition of post results in termination of services. But such termination is not dismissal or removal within the meaning of Article 311 of the Constitution because both in case of dismissal or removal there is a stigma. The abolition of post is not a personal penalty against the Government servant. The opportunity of showing cause against the proposed penalty of dismissal or removal does not arise in the case of abolition of post. It also does not confer on the person any right to hold the office after it is abolished or to any other employment. Of course, the appropriate Government could frame rules offering alternative posts to the holder of the civil office or post which has been abolished. It is a matter of policy decision of the Government. The nature and the scope of power to abolish a post has been the subject-matter of several decisions. It was pointed out in *N. Ramanatha Pillai v. The State of Kerala and another*, (1) by their Lordships of the Supreme Court as under :—

"A post may be abolished in good faith. The order abolishing the post may lose its effective character, if it is established to have been made arbitrarily, *mala fide* or as a

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(1) A.I.R. 1973 S.C. 2641.

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mask of some penal action within the meaning of Article 311 (2) of the Constitution of India.”

A similar view was also taken in the *State of Haryana v. Shri Des Raj Sangar and another* (2). Again, the Supreme Court observed in *K. Rajendran and others etc. v. State of Tamil Nadu and others*, (3) in the words of E. S. Venkataramiah, J., as under :—

“The power to abolish a civil post is inherent in the right to create it. The Government has always the power, subject, of course, to the constitutional provisions, to re-organise a department to provide efficiency and to bring about economy. It can abolish an office or post in good faith. The action to abolish a post should not be just a pretence taken to get rid of an inconvenient incumbent.”

It was further pointed out that whether the action taken is legislative or executive, it is always subject to judicial review. It was stated thus :—

“The power to abolish a post which may result in the holder thereof ceasing to be a Government servant has got to be recognised. But we may hasten to add that any action legislative or executive taken pursuant to that power is always subject to judicial review.”

(16) The power of the executive to abolish a post has been well recognised but it must always be exercised in good faith and in public interest and never arbitrarily. A formal order of abolition of a post is not decisive of the question whether the post has factually been abolished. Whether a particular post has been abolished or not would depend upon the facts of an individual case. Where a post is formally abolished but another post by some other designation of the same nature and character with identical duties and responsibilities and conditions of service is created, the court may find that no post was abolished, change being merely in designation. Similarly it is also possible that an existing post is abolished and another post of an entirely different nature but with the same designation is created. In that case it would not necessarily follow that simply because another post is created with

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(2) A.I.R. 1976 S.C. 1199.

(3) A.I.R. 1982 S.C. 1107.

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the same designation, the existing post was not abolished. *Shankaranarayan vs. State of Mysore*, (4) is an instance of a case where the existing post was held to be abolished even though the newly created post had the same designation. It was observed thus :—

“It is argued that even after abolition, the same posts are sought to be continued. It is no doubt true that the names of the offices have not been changed but there is a basic structural difference between the posts that have been abolished and the posts that have been created. The posts created by the new Act are stipendiary posts. They carry salaries according to the grades created by the rules. The incumbents are transferable and their service is pensionable. Different qualifications are prescribed for the new posts. From a consideration of the incidents attached to the new posts it is clear that the old posts have been abolished and new posts have been created and that the whole complexion of the posts has been changed.”

(17) The rules applicable to the State of Haryana regulate the services of the Tehsildars and the Naib Tehsildars in the State. Rule 6 of the Rules relates to the method of recruitment and it postulates that in case of Tehsildar, the post could be filled either by promotion of Naib Tehsildars or by direct appointment or by transfer from among officials employed as Superintendents of Deputy Commissioner's offices or head vernacular Clerks of a Commissioner's or Deputy Commissioner's office or district Kanungos of not less than five years' standing. In the case of Naib Tahsildars, the post could be filled either by transfer from among officials employed in the revenue, irrigation, excise or police establishment of the division or by direct appointment.

(18) Rule 3 of the Rules provides that all substantive appointments to the post of Tahsildar shall be made by the Financial Commissioner, Revenue. All officiating appointments to the post of Tahsildar and all appointments to the post of Naib Tahsildar, shall be made by Commissioners.

(4) A.I.R. 1966 S.C. 1571.

(19) The quota under the Rules and the Standing Orders for appointment to the post of Naib Tahsildars by direct appointment and by way of promotion is 50 : 50. Equal number of Tahsildar have to be appointed from both the sources.

(20) The circumstances attendant to the abolition of the post may now be noticed.

(21) A number of posts of Class 'A' (Naib Tahsildars) were advertised. In response to which the petitioners submitted their applications. They were selected by the Subordinate Services Selection Board. They joined as Naib Tahsildar candidates in Ambala Division, Ambala, during the period from May, 1984 to November, 1984. After necessary training, they qualified in the Naib Tahsildars' Examination and were appointed as Naib Tahsildars on regular basis. In C.W.P. 4315 of 1987 in para 7 of the petition, the following specific averments were made :—

“It is submitted that the petitioners have completed their training and have also qualified the Naib Tehsildar Examination and thereafter they have been appointed as Naib Tahsildars on regular basis. The petitioners are serving in Ambala Division as Naib Tahsildars against permanent posts on regular basis. It is, however, correct that the petitioners have not as yet been confirmed. It is submitted that all the Naib Tahsildars who are working in Ambala Division are unconfirmed and as submitted earlier, they were working on regular basis.”

The State in its reply to para 7 of the petition stated thus :

“In reply to para 7 of the writ petition it is submitted that under scheme of rules and Standing Order No. 12, all persons who are accepted either Class 'A' candidates or 'B' Class Candidates have to qualify the examination of Naib Tahsildar prescribed under the rules. The rest of para needs no comments as reply thereto is being filed by respondent No. 2.”

(22) Respondent No. 2 in its reply to para 7 of the petition stated thus :

“It is submitted that it is correct that the petitioners completed their training successfully, but it is wrong to say

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that all the petitioners qualified in the Departmental Examination of Naib Tahsildars as already stated in reply to para 2 above. The petitioners were appointed on temporary basis. It is pertinent to mention here that the persons so deputed for training, after completion of their training, they are to qualify the Naib Tahsildari Examination within two years, failing which their names are liable to be removed from the list of Naib Tahsildar candidates."

In para 2 of the reply, it was stated that only petitioners Nos. 1 10 and 13 have passed the Departmental Examination in all the papers. Rest of the petitioners have partly qualified the Departmental Naib Tahsildari Examination.

(23) The averment made in the petition that the petitioners are serving in Ambala Division, Ambala, as Naib Tahsildars against permanent posts on regular basis was not controverted. An inference can be drawn that a plea which was not controverted, has been admitted. It can be assumed that the petitioners are serving in Ambala Division, Ambala, as Naib Tahsildars against permanent posts on regular basis.

(24) On 15th July, 1987, through memo No. 7691-E-4-87/21567 (Annexure P.1) the Financial Commissioner and Secretary to Government of Haryana, Revenue Department through a confidential communication informed Commissioners, Ambala Division, Ambala, and Hissar Division, Hissar, that 35 posts of Naib Tahsildars (18 in Ambala Division and 17 in Hissar Division) have been abolished. The relevant portion of the said communication reads thus:

"The Governor of Haryana is pleased to abolish 35 (Thirty five) posts of Naib Tahsildars as under :—

1. Ambala Division—18 (Eighteen)
2. Hissar Division— 17 (Seventeen).

It is requested that action with regard to termination of the services of incumbents are no longer required on account of abolition of posts following the principle of last come first go may please be taken at your end immediately.

It may please be ensured that only candidates, appointees belonging to general category are relieved. Members of Scheduled Castes/Scheduled Tribes, Backward Classes, ex-servicemen and physical handicapped persons are not to be relieved because they are already short of their quota amongst the Naib Tahsildars."

In the communication, it is mentioned that only the appointees belonging to general category are to be relieved. The members of Scheduled Castes, Scheduled Tribes, Backward Classes, ex-servicemen and physically handicapped persons are not to be relieved because they are already short of their quota amongst the Naib Tahsildars.

(25) In C.W.P. No. 4319 of 1987, the petitioner in sub-paras iv, v, vi and ix of para 8 of the petition made the following averments:—

"Para : 8:

- (iv) That the petitioner was selected as a Naib Tahsildar by the Subordinate Services Selection Board constituted by the then Congress (I) Government headed by Mr. Bhajan Lal. After the exit of Mr. Bhajan Lal as Chief Minister in June, 1986 the successive Chief Ministers have a tendency to get rid of the persons employed during that period and to employ their own persons in their places and have tried various means to dispense with their services. The Lok Dal-BJP alliance which formed the Government on the 20th June, 1987 in Haryana declared in so many words their intentions to undo the acts of the previous Government. As a result of that declaration the Lok Dal BJP Government cancelled about 1100 plots allotted by HUDA in the year 1986-87. The H.S.E.B. issued notices and disconnected the connection of various industries. The newly constituted Subordinate Service Selection Board by the present Government of Haryana has cancelled the lists of selected candidates for the post of Over-seers, Panchayat Secretaries and various other categories, prepared by the previous Boards in order to accommodate their own people. News items showing the intention of the present Government to accommodate and employ their

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own persons have also appeared in a Section of Press. The orders Annexures P-2 and P-3 have been passed in a *mala fide* manner in order to accommodate the persons close to the functionaries of Lok Dal-BJP Government. So the orders Annexures P-2 and P-3 are liable to be set aside as they have been passed in a *mala fide* manner. The posts have been abolished only as a pretence to terminate the services of the petitioner and others. The orders have not been passed in good faith, and the order Annexure P-2 is a non-reasoned and non-speaking.

- (v) That the orders of termination in bulk are passed only due to the change of the Government in the State of Haryana and the orders have been issued in a mechanical manner. The posts are still required and there is bulk of work-load on the petitioner and others similarly terminate.
- (vi) That even after joining of the services by the petitioner as 'A' Class Naib Tahsildar nine persons have been appointed as B-Class Naib Tahsildars from June, 1985 till May, 1987 who are retained, showing thereby that the Naib Tahsildars are still required and the posts are required to do the various jobs allotted to the Naib Tahsildars. It is also pertinent to mention here that still two sanctioned posts of Naib Tahsildars are lying vacant in the Ambala Division. Therefore, the order Annexure P-2 abolishing 35 posts of Naib Tahsildars in the face of it is bad and smacks of *mala-fide* and lacks *bona fide* and good faith.
- (ix) That the respondents have not offered any alternative post to the petitioner before terminating his services. There are number of alternative posts which are available with the respondents where the petitioner can be accommodated but the respondents in their eagerness to terminate the services of the petitioner have not acted in a legal and *bona fide* manner. The respondents were under an obligation to offer an alternative post to the petitioner instead of terminating his services due to the alleged abolition of the posts."

The State did not file any reply to the written statement, but the Commissioner Ambala Division Ambala — respondent No. 2 in its reply to the corresponding paragraphs of the petition stated as under :—

- “8(iv) In reply to sub para (iv) it is submitted that the petitioner was recommended by the Subordinate Services Selection Board, Haryana for the post of Naib Tahsildar. The other contents of this sub-para are wrong and denied. Wild allegations have been levelled against the Government in order to get sympathy of this Hon'ble Court. Even otherwise the contents of this para have no relevancy for the adjudication of this case.
- 8(v) Sub-para (v) is wrong and denied. The change of Government has nothing to do with it. The posts were found to be surplus and were, thus, abolished.
- 9(vi) In reply to sub-para (vi) it is submitted that the officiating promotees as Naib Tahsildars from the post of Kanungo has nothing to do with the direct appointment of the petitioner as these departmental promotions were within their 50 per cent quota.
- 8(ix) The petitioner should have made a mention of statutory provisions under which it is obligatory/incumbent for the State Government to offer alternative post which has not been done.”

Thus, the factual averments made in sub-paras (iv), (v), (vi) and (ix) of para 8 of the petition were not controverted. An inference can be drawn that the facts stated in the petition are correct. The allegations are serious but we refrain from expressing any opinion on this matter for the reasons that the abolition of post of Naib Tahsildars have been otherwise found by us to be unsustainable. We do not think it desirable to go into the question of lack of *bona fides* in abolition of post of Naib Tahsildar under challenge. Under the circumstances of the instant case, on consideration of the entire material placed before us, we are of the opinion that abolition of post was only a device to terminate the services of the employees and the abolition suffers from serious infirmity.

(20) The Government creates posts, determines its cadre and fix its pay scales. The posts are created, persons appointed to the posts for the purposes of carrying out



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governmental functions. The sovereign functions of the Government are never functionality abolished or could be abolished. Certain statutory functions vest in the Government and for the purpose of carrying out those functions, the posts are created. They may be called civil posts under the Statute. The statute may be repealed and the functions may be taken out or abolished, then there is no need for the post and the post is abolished. If the post is functionally abolished the person holding the post gets no right and his services would stand terminated, but in the case of sovereign functions, they are always there and they cannot be abolished and the post created for carrying out those functions can never be abolished though the number of posts may be reduced or increased or there may be change in the pay scale and other service conditions. Even if in a particular cadre, for some reason or the other, the number of posts are reduced. On that ground the services cannot be terminated on abolition of posts because the governmental functions are still there and had to be carried out and the incumbents cannot be sent out as the functions had to be carried out along with others. The sovereign functions cannot be equated to those in commercial establishments.

(27) At this stage, it will be useful to deal with *State of Haryana v. Des Raj Sangar and another*, (5). The respondent, while he was officiating as Superintendent, which was a cadre post in the Panchayat Department of the Government, was appointed an Officer on Special Duty (Election), which post was the ex-cadre post. This post of Officer on Special Duty (Election) was re-designated as Panchayati Raj. Election Officer, to the ex-cadre post and therefore his services could not be terminated, and he was in any case entitled to the admittedly existing post of Head Assistant.

(28) On the first contention, the Supreme Court reiterating the earlier view taken in *N. Ramanatha Pillai's case* (supra), observed as under :—

“Whether a post should be retained or abolished is essentially a matter for the Government to decide. As long as such decision of the Government is taken in good faith, the same cannot be set aside by the court. It is not open to the court to go behind the wisdom of the decision and

substitute its own opinion for that of the Government on the point as to whether a post should or should not be abolished. The decision to abolish the post should however, as already mentioned, be taken in good faith and be not used as a cloak or pretence to terminate the services of a person holding that post. In case it is found on consideration of the facts of a case that the abolition of the post was only a device to terminate the services of an employee, the abolition of the post. The respondent was confirmed on that post. By the order dated April 13, 1972, the Government ordered that in view of the extreme financial stringency the permanent post of the Panchayati Raj Election Officer in the Panchayat Department should be abolished with immediate effect. The Government further ordered that consequent upon the abolition of post, the services of the respondent should be dispensed with. Two contentions were advanced on behalf of the respondent; (a) The impugned order dated July 13, 1972 abolishing the post of Planning-cum-Panchayati Raj Election Officer held by the respondent and the consequent termination of his services was arbitrary and had no reasonable nexus with the object sought to be achieved, namely, meeting the financial stringency. The impugned order was stated to be violative of Articles 14 and 16 of the Constitution inasmuch as the respondent who was at all times selected for higher posts and got promotions from the lower posts in the cadre was being thrown out of the job on the pretext of the abolition of the post permanently held by him, whereas persons junior to him in rank and less meritorious were retained in service. (b) In view of the provisions of Rule 3.14 and other relevant rules of Punjab Civil Services Rules, the moment the post held by the respondent was abolished his lien got revived on the post of Head Assistant which he had held substantially before his promotion would suffer from a serious infirmity and would be liable to be set aside. The termination of a post in good faith and the consequent termination of the services of the incumbent of that post would not attract Art. 311."

The Apex Court having accepted the contention of the Government of their right to abolish the post, went into the question of good faith. While accepting the right of the Government to abolish the

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post or to create a new post, termination itself was not accepted. The whole discussion on facts was with reference to functional abolition. Though considering under the head of good faith and the decision taken on administrative reasons, it was held that the respondent had a lien on the post of Head Assistant and as soon as the post of Panchayati Raj Election Officer is abolished, he is entitled to be taken back as Head Assistant. This could only be on the basis that once a person is in Government service, he is always a Government servant and his services could only be dispensed with under Article 311 of the Constitution. The abolition of a post in order to disentitle a person to continue on that post shall be a functional abolition and not an abolition of post simpliciter while the functions are still to be performed by some one or the other under different designations. Forty-four posts of Naib Tehsildars were created for appointment of Administrators of 'C' Class Municipalities in Haryana. If the strength in the cadre had to be reduced, there was no need to create these posts. The present incumbents of the posts could be transferred and posted as Administrators. Thus, we hold that there was no functional abolition of the posts of Naib Tehsildars. Accordingly, we strike down the order dated 15th July, 1987 appended to C.W.P. No. 4315 of 1987, as Annexure P-1. The writ petition is accordingly allowed and there will be an order in terms in other writ petitions. The letter patent appeals have become infructuous in view of our order quashing the order of abolition of posts.

(29) Now we deal with C.W.P. No. 718 of 1984, in which challenge has been made to the Government instructions contained in letter No. 2311-IGSI-72/15727, dated May 26, 1972, in which it is provided that any vacancy arising within six months of the date of recommendation made by the Commission/Board could be filled up from that list. The precise grouse of the petitioners is that on the date of advertisement made by the Subordinate Services Selection Board inviting applications for 22 posts of Naib Tehsildars, they were not eligible and became eligible when more appointments were made out of the list in the years 1982, 1983 and 1984. According to them, the action of the State Government offends Article 14 of the Constitution. There is some force in the submission of the learned counsel. The Subordinate Services Selection Board filed affidavit through its Secretary in which it took positive stand that the Board had information that the actual number of posts of Naib Tahsildars had considerably increased by the time the result was declared and the

recommendations were made to the Department. We fail to understand on what basis the Board has taken this stand. The Board had transgressed its limits. Normally, the Board could not even invite candidates for interview more than twice or at the highest thrice the number of vacancies to be filled for which advertisement was issued. The number of posts advertised were only 22. In *Ashok Kumar Yadav and others v. State of Haryana and others*, (6), it was held as under :—

“It has, therefore, always been the practice of the Union Public Service Commission to call for interview, candidates representing not more than twice or thrice the number of available vacancies. Kothari Committee’s Report on the ‘Recruitment Policy and Selection methods for the Civil Services Examination’ also points out, after an indepth examination of the question as to what should be the number of candidates to be called for interview:

“The number of candidates to be called for interview, in order of the total marks in written papers, should not exceed, we think, twice the number of vacancies to be filled.”

The Board could not recommend 102 candidates for filling 22 posts of Naib-Tahsildars which were originally advertised. The Board had not received any communication from the State Government authorising it to make recommendations of 102 candidates for filling 22 posts of Naib Tehsildars. The Board could at the most send a list of five or six more candidates to be kept on the waiting list. The settled practice adopted by the Union Public Service Commission and the Kothari Committee’s Report on the ‘Recruitment Policy and selection methods for the Civil Services Examination’ has been violated with impunity. The action cannot be justified.

(30) The State Government in its written statement has conceded that normally the vacancies occurring after six months of the date of recommendation by the Commission/Board are not filled from that list. However, in the instant case, the departure was made since the Subordinate Services Selection Board was not in existence and it was felt expedient in public interest to extend the validity of the list of Naib Tahsildar candidates already sent by the Board to

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the Divisional Commissioners. The defence taken by the State Government is unsustainable. If the Board was not in existence, the State Government could take appropriate action for constituting the Selection Board, and in the alternative proper authority for making the selection to the posts of Naib Tahsildars is the Divisional Commissioner and it should have been left to the discretion of the Divisional Commissioner to make the selection. We abhor the action of the Board and the State Government. Their action has resulted in injustice to deserving candidates because they were deprived of an opportunity to compete in selection for the posts of Naib Tehsildars which were filled in the years 1982, 1983 and 1984. We had thought of quashing the entire selection beyond the prescribed number of vacancies which were originally advertised but we restrain from doing so, as it will cause injustice to the selected candidates who have passed the departmental tests and were appointed against regular vacancies and have been in service for the last four years. In some cases, they may have become over-age for Government job. The Government also have spent enormous amount in training them. So, in the interest of justice, we have not quashed the selection. This Court in *Gurbax Rai Sood and others v. The State of Punjab and others* (7) upon two earlier decisions held that although the appointments were not in order but the relief was declined on the ground that the persons appointed had been in service for a number of years and they were likely to be hard hit if their appointments were quashed. It will be useful to refer to the decision rendered by the Apex Court in *Ajit Singh and others v. Service Selection Board, Haryana and others* (8). On Appeal from a Bench decision of this Court where this Court had quashed the selection of Head Masters on the ground that the State Government could not fill up vacancies from the list of recommended candidates submitted by the Subordinate Services Selection Board for the vacancies which arose after the expiry of six months from the date of submission of that list and it was held as under :—

“Having regard to the special facts and circumstances of the case we direct that all those Head Masters involved in these appeals, who have been appointed till today on the basis of the select list prepared by the Subordinate Services Selection Board shall be treated as validly

(7) 1984(1) SLR 83.

(8) 1988(1) SLR 352.

appointed Head Master and continued in service. All those candidates who were selected but are not appointed in pursuance of the order of the High Court shall be permitted to make application in response to any advertisement calling for application for making selections for the posts of Head Masters which may be issued on or before 31st December, 1989 without raising any objection on the ground of age. The learned counsel for the State Government agreed to relax the qualification of age to the aforesaid extent in the case of such candidates. The judgment of the High Court is accordingly modified."

(31) In view of the authoritative pronouncement of the Apex Court and in view of the totality of the circumstances of this case, we think it will not be justified to quash the selection of the candidates made by the State Government out of the list submitted by the Subordinate Services Selection Board for the vacancies which arose in the years 1982, 1983 and 1984. However, for the future, we direct that the Commission/Board will not make more recommendations than number of vacancies. Of course, they will keep in view that waiting list has to be prepared and in the event a selected candidate does not join, a candidate from the waiting list could be offered appointment and the number of candidates on the waiting list shall not also be high and it shall be very reasonable having regard to the number of persons selected. With these observations, this writ petition No. 718 of 1984 is disposed of.

*P.C.G.*

*Before : V. Ramaswami, CJ and G. R. Majithia, J.*

*GURPREET SINGH AND OTHERS,—Appellants.*

*versus*

*STATE OF PUNJAB AND OTHERS,—Respondents.*

*Letters Patent Appeal No. 748 of 1987.*

*February 28, 1989.*

*Punjab Revenue Patwaris Class III Service Rules, 1966 (as amended in 1986)—Rls. 2(a) and 7—Constitution of India, 1950—Arts. 14, 15 and 16(2)—Selection of Patwaris—Departmental Selection Committee competent to make selection under Rl. 2(a)—Selection made by Subordinate Services Selection Board not mandatory when*