

Excise & Taxation Commissioner and another v. Jagan Nath Sharma
and others (S. S. Sandhawalia, C.J.)

Before S. S. Sandhawalia C.J., J. V. Gupta, J.

EXCISE & TAXATION COMMISSIONER and another,—Appellants.

versus

JAGAN NATH SHARMA and others,—Respondents.

Letters Patent Appeal No. 69 of 1976.

April 17, 1980.

Punjab Excise Subordinate Services Rules 1943—Rule 6—Power of recruitment vesting in Excise and Taxation Commissioner—Executive instructions issued by the Government authorising an Internal Committee to recruit candidates—Commissioner automatically appointing persons selected by the said Committee—No independent assessment made by the Commissioner—Such recruitment—Whether violative of rule 6—Executive instructions—Whether can supplant a statutory rule.

Held, that the bare language of Rule 6 of the Punjab Excise Subordinate Services Rules, 1943 leaves no manner of doubt that the statutory power of appointment to the service rests in the Excise & Taxation Commissioner. The internal committee was not a mere advisory or a fact finding body but had been virtually vested with the power of appointment which otherwise by rules lay in the hands of the Commissioner. An overall construction of these instructions indicate that far from being supplementary to Rule 6, the said instructions virtually supplant power of appointment from the Commissioner to the Internal Committee rendering the former as a rubber stamp therefor. The Commissioner having not applied his own authority specifically vested in him by the rule would invalidate the selection. The executive instructions issued by the Government cannot possibly conflict with or override the provisions of statutory rules. In this view of the matter the appointments automatically made by the Commissioner in view of the recommendations of the internal committee would be violative of rule 6. (Paras 8, 9, 10 and 11).

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Single Judge Mr. Justice Muni Lal Verma, passed in Civil Writ No. 4062 of 1971 on 7th January, 1976.

S. K. Sayal, A.A.G., Punjab, for the Petitioner.

M. R. Agnihotri, Advocate for contesting respondents.

Kuldip Singh, Advocate for proforma respondents.

JUDGMENT

S. S. Sandhawalia, C.J.

(1) Whether the power of appointment of inspectors expressly vested by Rule 6 of the Punjab Excise Subordinate Services Rules, 1943 in the Commissioner of Excise and Taxation, can be overridden by a mere executive instruction constituting an Internal Committee for the recruitment to the aforesaid posts? — is the solitary question that falls for consideration in this appeal under Clause-X of the Letters Patent.

(2) Learned counsel for the parties are agreed that though a number of other issues also arose in the writ petition before the learned Single Judge, the above question is the only surviving one now in this appeal. Therefore, it suffices to notice the facts directly relevant thereto.

(3) It is not necessary to delineate the chequered history of the earlier dispute which had impelled the writ petitioners to challenge their reversion by way of Civil Writ Petitions Nos. 3096, 3137 and 3138 of 1971. It suffices to mention that in Civil Writ Petition No. 4062 of 1971 giving rise to the present appeal, the 15 petitioners, who were Excise and Taxation Inspectors posted at Patiala had *inter alia* challenged the appointment of respondents Nos. 3 and 5 to 14 as Inspectors under the purported orders of the Excise and Taxation Commissioner, Punjab. This challenge was based on a three-fold ground, namely :

- (i) that neither any test had been held nor any person had been interviewed for appointment to the posts ;
- (ii) that the impugned orders smack of favouritism and arbitrariness ; and
- (iii) that the Excise and Taxation Commissioner was the appointing authority and he did not himself assess or consider the merits of the candidates while passing the impugned order and he merely acted on the recommendations made by an Internal Committee — the constitution of which was illegal and without jurisdiction.

Excise & Taxation Commissioner and another v. Jagan Nath Sharma
and others (S. S. Sandhawalia, C.J.)

(4) The learned Single Judge unhesitatingly rejected the grounds (i) and (ii) but ground No. (iii) found favour with him and on this limited point he quashed annexure A/2 appointing respondents Nos. 3 and 5 to 14 to the posts of Excise Inspectors.

(5) It bears repetition that now the sole surviving issue is — whether the appointment of inspectors to the posts by a mere Internal Committee can hold water in face of the clear provisions of Rule 6 of the Punjab Excise Subordinate Services Rules, 1943 (hereinafter called the Rules). Perhaps at the out-set it must be pointedly noticed that Mr S. K. Sayal, the learned Assistant Advocate-General, Punjab, appearing for the appellant-State of Punjab was wholly luke-warm in pressing the appeal. It was conceded by him that there was no precedent in his favour on which he could possibly rely. It was also fairly stated that the only direct authority on the point in *Lakhmira Singh v. The State of Punjab and others*, (1) was frontally against the stand taken by the appellants. Mr. Sayal did not even choose to challenge the said decision or attempt to distinguish the same.

(6) Rather surprisingly Mr Kuldip Singh for the private proforma respondents had attempted to take up cudgels on behalf of the appellant-State whilst as noticed above, the learned counsel therefor himself was hardly serious in pressing the appeal. We are extremely doubtful whether in the Letters Patent jurisdiction the learned counsel for the respondents whose appointments have been set aside can be allowed to agitate the points on which his clients have not even chosen to prefer an appeal against the judgment of the learned Single Judge to which they were parties. However, without making a precedent we do not herein like to fore-close the submissions of Mr. Kuldip Singh on the basis of this weighty objection. Even on appreciating them on merits, we are in the present case unable to find much substance therein. Mr Kuldip Singh had sought to submit that the instructions issued by the respondent-State for the constitution of an Internal Committee for the appointment of inspectors were not directly at conflict with the statutory rules but were merely supplementary thereto. On this assumption, he had sought to argue on the principle of *Sant Ram v. State of Rajasthan*, (2) that these executive instructions could nevertheless hold the field.

(1) 1975 (1) S.L.R. 672.

(2) A.I.R. 1967 S.C. 1910.

(7) Now before adverting to the legal aspect it calls for notice that the present case has certain peculiar features. It is not in dispute at all that power of appointment of inspectors is squarely vested by rule 6 in the Excise and Taxation Commissioner. For facility of reference this may first be quoted :—

“Except as otherwise provided by these rules, all appointment to the posts in the service shown in Appendix ‘A’ shall be made by the Excise and Taxation Commissioner.”

The bare language of the aforesaid provision would leave no manner of doubt that the statutory power of appointment of inspectors to the service rests in the Excise and Taxation Commissioner. In the writ petition itself, both expressly and by its whole tenor, it was sought to be shown that in fact the Excise and Taxation Commissioner (hereinafter called ‘the Commissioner’) had not at all exercised his judgment or discretion in the impugned appointment of inspectors. This could obviously be rebutted by the Commissioner himself. However, despite this clear-cut situation, the Commissioner did not choose to file any affidavit or make any averment on the point to remotely assail the stand of the writ petitioners that he had neither exercised his judgment nor his discretion with regard to the recruitment of inspectors made by the Internal Committee under his purported name. In the light of the above, the learned Single Judge had rightly concluded that the Commissioner had not applied his own authority which was specifically vested in him by the Rule. On the existing state of pleadings, the learned Single Judge, therefore, pointedly noticed as follows :—

“..... It is pertinent to note that the impugned orders appointing the respondents to the posts had been made by Shri P. K. Kathpalia. No affidavit had been secured from him or filed to show that he had passed the impugned orders appointing the respondents to the posts on the basis of his own judgment. In the absence of any such affidavit from Shri P. K. Kathpalia the position which emerges from the statements made in paragraph 8 and sub-para (i) and (ii) of paragraph 10 of the return filed on behalf of respondents 1 and 2 is that the Internal Committee (Respondent No. 2) had been constituted in pursuance of the decision or instructions issued by the Government and the said Internal Committee selected the

**Excise & Taxation Commissioner and another v. Jagan Nath Sharma
and others (S. S. Sandhawalia, C.J.)**

respondents from the members of the Ministerial Establishment for appointment and recommendation made by it (the internal Committee) that the Excise and Taxation Commissioner passed the impugned orders appointing the respondents to the posts"

No serious challenge could be posed to the aforesaid conclusion of the learned Single Judge and even on an independent appraisal, we are inclined to affirm the same.

(8) The executive instructions constituting the Internal Committee are Annexure A/1 to the petition. Now a plain look at the contents thereof would show that this Internal Committee was not a mere advisory or a fact finding body, but indeed had been virtually vested with the power of appointment of inspectors which otherwise by Rules lay in the hands of the Commissioner. An overall construction of these instructions would, to our mind, indicate that far from being supplementary to Rule 6 it tended virtually to supplant the power of appointment from the Commissioner to the Internal Committee rendering the former as a mere rubber stamp therefor. The intent and purpose of these executive instructions run diametrically opposite to rule 6 of the Rules and was in patent conflict therewith.

(9) Again in this context what deserves highlighting is the fact that annexure A/1 containing the executive instructions, was issued by the government itself and not by the Excise and Taxation Commissioner in whom the power of appointment of inspectors vested by the Rule. Had the situation been the latter, it might perhaps have been arguable that the appointing authority had either delegated its powers or created a merely advisory body for its own aid. This, however, is not remotely the case here. The constitution of the Internal Committee was by an authority other than the Commissioner in whom the power of appointment vested and by the government itself which was superior to him in hierarchy. This virtually either supplanted or by-passed the power of appointment laid by the Rules in the Commissioner. On the pleadings, it was, therefore, rightly noticed in this context by the learned Single Judge that the creation of the Internal Committee by the government was embarrassing for the Commissioner as it denuded him of the said power and it was with this background indeed that the non-filing of any affidavit by the Commissioner had to be viewed.

(10) On this aspect of the case, we are clearly of the view that the executive instructions and the constitution of the Internal Committee herein cannot be held as either supplementary to the rule or a mere filling of a gap therein. Consequently, the present case is one to which the ratio of *Sant Ram's case* (supra) is not at all attracted.

(11) In this judgment of affirmance, it is perhaps wasteful to elaborate the matter as it appears to us that the view taken by the learned Single Judge on merits is impeccable and does not call for the least interference. However, even independently, we have arrived at the conclusion that on the totality of the peculiar circumstances of this case, it must be held that the executive instructions had the effect of overriding and supplanting the power of appointment vested in the Commissioner. Once that is so, it is more than amply well settled that the mere executive instructions cannot possibly conflict with or override the provisions of statutory rules. The answer to the question posed at the out-set, therefore, must be rendered in the negative.

(12) In view of the above, the only issue now arising in this appeal has to be decided against the appellants. The appeal is without merit and is dismissed. However, in view of the relatively fair stand taken by the learned counsel for the appellants, we do not wish to burden the State with costs.

J. V. Gupta, J.—I agree.

S. C. K.

Before D. S. Tewatia, J.

DIAL CHAND and others,—*Petitioners*.

versus

HARI CHAND,—*Respondent*.

Civil Revision No. 1219 of 1977.

April 23, 1980.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Section 24—Sale certificate issued and conveyance deed executed—Chief Settlement Commissioner—Whether becomes functus officio—Such Officer—Whether can subsequently cancel sale certificate and conveyance deed.