

Sohan Singh and others v. The State of Haryana and another
(G. R. Majithia, J.)

they had joined the Course. The order that they will apply for leave of the kind due to them was passed when they were selected for the Course. The policy decision, in the circumstances of the case, is only clarificatory.

(12) The learned counsel for the petitioners also urged that since the petitioners had acquired higher qualifications, they were entitled to the scale of pay permissible to those employees who possessed the Degree qualifications. To highlight this submission, the learned counsel submitted that the petitioners at the time of joining the service were only Diploma holders. Subsequently, they improved their qualifications and they are entitled to the grade which was permissible to the employees having Degree qualification. I am afraid this matter cannot be urged in these proceedings. It is for the appropriate Government to decide whether an official on obtaining higher qualifications during service is entitled to a higher scale of pay as is admissible to those in service and similarly situated having higher qualification. The submission has no substance.

(13) As stated above, the service conditions of the petitioners are regulated by the statutory rules and the right or privileges, if any, has to flow from these rules. The petitioners' claim for promotion has also to be rejected for the reason that promotions, if any, have to be made under the provisions of rule 16(1) of the Haryana Service of Engineers Class II Public Works Department (Irrigation Branch) Rules, 1970.

(14) There is no merit in these writ petitions. The same are dismissed. However, in the circumstances of the case, the parties are left to bear their own costs.

P.C.G.

Before G. R. Majithia, J.

GRAM PANCHAYAT AND ANOTHER,—*Petitioners.*

versus

CHIEF JUDICIAL MAGISTRATE, ROPAR AND OTHERS,—*Respondents.*

Civil Writ Petition No. 1250 of 1988.

10th July, 1990.

Constitution of India, 1950—Arts. 226 & 227—Punjab Gram Panchayat Act, 1952—Ss. 21 & 41—Encroachment on public street—Case is of civil nature—Magistrate—Whether can transfer such case from one Gram Panchayat to another.

Held, that proviso to Section 41, lays down that a Chief Judicial Magistrate may for reasons to be recorded in writing transfer any criminal case from one Panchayat to another Panchayat of competent jurisdiction or to another Court Subordinate to him. He can only transfer a criminal case from one Panchayat to another Panchayat having jurisdiction to try the same. Under Section 41 of the Act, he has no jurisdiction to transfer a case pending before a Gram Panchayat under Section 21 of the Act. Section 21, *inter alia*, provides for removal of encroachment and nuisance from a public street, place or drain by the Gram Panchayat. The order under Section 21 of the Act is not passed by the Gram Panchayat in exercise of its criminal jurisdiction. Schedules I-A and I-B appended to the Act illustrate the offences cognizable by a Gram Panchayat. Removal of an encroachment or nuisance from a public street does not fall either in Schedule I-A or Schedule I-B to the Act. Consequently, the order of respondent No. 1 is not envisaged by Section 41 of the Act and is thus without jurisdiction. (Para 3)

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of Certiorari thereby quashing the impugned order, dated 7th January, 1988, (Annexure P-11) and a writ in the nature of Mandamus thereby directing the Respondents not to act upon the impugned order and instead ordaining Respondent No. 3 to appear before petitioner No. 1 in connection with the proceedings that had been initiated against him by petitioner No. 1 under Section 21 ibid and any other writ, order or direction deemed fit and proper in the circumstances of the case may very kindly be issued and costs of this writ petition may also be awarded to the petitioners.

It is further prayed that pending final disposal of this writ petition, further proceedings of the case before Respondent No. 2 with the passing of the impugned order may very kindly be ordered to be stayed.

It is still further prayed that filing of originals/certified copies of the documents marked as Annexures P/1 to P/11 and issuing and serving of notices of stay/motion on the Respondents may very kindly be ordered to be dispensed with.

Mr. R. P. Bali, Advocate, for the Petitioner.

Nemo, for the Respondent.

JUDGMENT

G. R. Majithia, J.

(1) The petitioners-Gram Panchayat of village Hafizabad and Piara Lal, a resident of the village has assailed the order of the

Gram Panchayat and another v. Chief Judicial Magistrate, Ropar
and others (G. R. Majithia, J.)

Chief Judicial Magistrate, Ropar (respondent No. 1), dated January 29, 1988 (copy Annexure P 11 to the writ petition) transferring the case relating to the encroachment on a public street by respondent No. 3, from Gram Panchayat of village Hafizabad to Gram Panchayat of village Khanpur.

(2) The facts :—

On a petition moved by the petitioners to the District Development and Panchayat Officer, Ropar for initiating appropriate proceedings against respondent No. 3 and declaring the said site to be part of the public street vesting in Gram Panchayat under Section 11 of the Punjab Village Common Land (Regulation) Act, 1961, the later,—*vide* his order, dated September 21, 1987 directed petitioner No. 1 to initiate proceedings under section 21 of the Punjab Gram Panchayat Act, 1952 (for short, the Act) against respondent No. 3. Petitioner No. 1 issued a conditional order under Section 21 of the Act to remove the encroachment from the public street and to show, as to why the same be not made absolute. On receipt of the notice from petitioner No. 1 respondent No. 3 moved respondent No. 1 for transferring the case to some other Gram Panchayat. The application was allowed by respondent No. 1,—*vide* his order, dated January 29, 1988, which has been impugned in this writ petition.

(3) Chapter IV of the Act relates to criminal judicial functions of Gram Panchayat. Section 41 of the Act reads thus :—

“41. *Transfers.*—Any magistrate before whom a complaint or report by the police of any offence triable by a Panchayat is brought or who takes cognizance of any such offence upon his own knowledge or suspicion shall transfer the proceeding to a Panchayat of competent jurisdiction:

Provided that a Chief Judicial Magistrate may for reasons to be recorded in writing transfer any criminal case from one Panchayat to another Panchayat of competent jurisdiction or to another court subordinate to him.”

Proviso to Section 41 lays down that a Chief Judicial Magistrate may for reasons to be recorded in writing transfer any criminal case from one Panchayat to another Panchayat of competent jurisdiction or to another Court subordinate to him. He can only transfer a

criminal case from one Panchayat to another Panchayat having jurisdiction to try the same. Under section 41 of the Act, he has no jurisdiction to transfer a case pending before a Gram Panchayat under Section 21 of the Act. Section 21, *inter alia*, provides for removal of encroachment and nuisance from a public street, place or drain by the Gram Panchayat. The order under Section 21 of the Act is not passed by the Gram Panchayat in exercise of its criminal jurisdiction. Schedules I-A and I-B appended to the Act illustrate the offences cognizable by a Gram Panchayat. Removal of an encroachment or nuisance from a public street does not fall either in Schedule I-A or Schedule I-B to the Act. Consequently, the order of respondent No. 1 is not envisaged by section 41 of the Act and is thus without jurisdiction.

(4) The petition is allowed and the impugned order, dated January 29, 1988 (Annexure P-11) is quashed with no order as to costs.

P.C.G.

Before M. R. Agnihotri, J.

GOPAL KRISHAN KHANNA, READER, PUNJAB & HARYANA
HIGH COURT, CHANDIGARH,—*Petitioner.*

versus

THE HON'BLE PUNJAB & HARYANA HIGH COURT,
CHANDIGARH,—*Respondent.*

Civil Writ Petition No. 9211 of 1987.

9th July, 1990.

Constitution of India, 1950—Art. 226—Protection of pay and increments—Employee on deputation to another High Court—Reduction in pay—Employee is entitled to refixation of pay taking into account annual increments earned during the period of deputation.

Held, that the only condition imposed in the order of promotion was that the petitioner would not claim benefit of seniority over his seniors on return from deputation. This only meant that the