

Prithvi Raj Mehra *v.* The State of Punjab (Jain, J.)

(19) This criminal miscellaneous application, therefore, succeeds and is allowed. The case should now go back to the learned Single Judge for decision on merits.

SHAMSHER BAHADUR, J.—The *ultima ratio* of judicial process undoubtedly resides in the highest tribunal of the land and if the finality in a criminal judgment envisaged in section 369, Code of Criminal Procedure, is to be attached to the High Court as well, its supremacy cannot be preserved. In the authorities as also the relevant statutory provisions, both of which have been fully and elaborately discussed by Sandhawalia, J., the power of the High Court to rectify and amend accidental and inadvertent errors is maintained. While the order of judgment of an original Court or even a Court of appeal can be set right if so needed by a superior tribunal, the inherent powers alone can enable a High Court to do likewise. Only the clearest language of a statute can deprive the High Court of this useful and necessary adjunct of judicial power.

(21) I agree entirely with the reasoning and conclusion of my learned brother.

K. S. K.

CIVIL MISCELLANEOUS.

Before Daya Krishan Mahajan and Prem Chand Jain, JJ.

PRITHVI RAJ MEHRA,—Petitioners.

versus

THE STATE OF PUNJAB,—Respondents.

Civil Writ No. 2241 of 1967.

October 11, 1968.

Punjab Service of Engineers, Class I, Public Works Department (Irrigation Branch) Rules, (1964)—Rule 8—Constitution of the Screening Committee under—All the Chief Engineers not on the Committee—Such Committee—Whether validly constituted—Rule 8(1)—Provisions of—Whether directory—Officers whose cases reviewed by the Committee—Whether entitled to an opportunity of hearing.

Held, that from the plain reading of Rule 8 of the Punjab Service of Engineers, Class I, Public Works Department (Irrigation Branch) Rules, 1964, it is clear that the Committee constituted under the rule, has to have, amongst others, all the Chief Engineers, P.W.D., Irrigation Branch, as its members. The purpose of including all the Chief Engineers in this rule is that all the Chief Engineers under whom the officer, whose work is under review, has worked, should be present in order to give their opinion about the suitability of such an officer. The absence of any of the Chief Engineers can cause prejudice to the cases of the officers whose cases are being reviewed by the Screening Committee. The absence of any of the Chief Engineers from the Screening Committee, makes the Committee not validly constituted as its composition is incomplete. (Para 9)

Held, that provisions of rule 8(1) of the Rules are not merely directory and the improper constitution of the Screening Committee will affect the final decision of the Public Service Commission. When the foundation crumbles, there is no place for the structure to stand. If the Screening Committee is not a validly constituted one, the list prepared by it will not be a legal document. When this list goes, the list prepared by the Public Service Commission has no legal value or force. An order passed on such an illegal list cannot be of any legal effect. (Para 10)

Held, that the officers whose cases are to be screened by the Screening Committee are entitled to an opportunity of hearing and if the same is not given to them, then the rules of natural justice and fair-play are infringed. In view of the elaborate procedure which the Committee has to carry out, it will be reasonable to hold that the Committee before making the recommendation to the Commission should hear the officer concerned according to the rules of natural justice and that this right of hearing is implicit in the rule itself. (Para 11)

Petition under Article 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order dated 3rd September, 1966, passed by the respondent.

J. N. KAUSHAL, SENIOR ADVOCATE, WITH A. L. BAHRI, AND M. R. AGNIHOTRI, ADVOCATES, for the Petitioners.

M. S. PUNNU, ADVOCATE, for ADVOCATE-GENERAL, PUNJAB, for the Respondent.

JUDGMENT.

JAIN, J.—Prithvi Raj has filed this petition under Articles 226 and 227 of the Constitution of India for the issuance of a writ of *certiorari*, *mandamus*, or any other appropriate writ, direction or order, quashing the order dated the 3rd of September, 1966 (Annexure 'A') passed by the State of Punjab.

(2) The facts as alleged in the petition are that the petitioner was appointed as a temporary Engineer on the 2nd of September, 1953, by the Government of Pepsu and was attached to the Irrigation Department. On the merger of the State of Pepsu with the State of Punjab, the petitioner continued in service of the Punjab as a temporary Engineer. According to the rules in force in Pepsu at the time the petitioner joined as a temporary Engineer, he was eligible to officiate as an Executive Engineer without being included in Class I Service of the Punjab Service of Engineers Class I P.W.D., (Irrigation Branch) Service Rules, 1956 (hereinafter called the old Rules). The petitioner, on the 2nd May, 1961, was promoted by the respondent to the post of Executive Engineer under rule 9 of the old Rules with the approval of the Public Service Commission. The period of probation of members of the Service is prescribed in rule 14 of the old Rules and having completed the period of probation the petitioner would be deemed to be confirmed in Class I Service. On 10th July, 1964, the Punjab Service of Engineers, Class I, Public Works Department (Irrigation Branch) Rules, 1964, (hereinafter called the new Rules) were promulgated. Under these rules a procedure is prescribed for promoting officers of Class II Service or temporary Engineers to Class I Service. It is alleged in the petition that without following the mandatory procedure as laid down in rule 5 and rule 8 of the new Rules, the petitioner has been reverted from the post of officiating Executive Engineer. It is alleged that the new rule 8 envisages a committee for considering the names of those officers who could be appointed to Class I Service, by promotion, but no such committee screened the case of the petitioner. It is also alleged that adverse remarks made by Shri N. K. Berry, Superintending Engineer, were communicated to the petitioner against which he made representation for expunging those remarks and that a list submitted by the committee constituted under rule 8 did not include the petitioner's name and on that basis the petitioner was ordered to be reverted,—*vide* Annexure 'A', dated 3rd September, 1966. By way of this petition, the order (Annexure 'A') has been challenged to be illegal, arbitrary, *mala fide*, and contrary to the provisions of the new Rules, and against the principles of natural justice and fair-play on the grounds as given in the petition.

(3) In the return filed by the Secretary to Government, Punjab, P.W.D., B. & R. Public Health, Architecture and Irrigation Departments, on behalf of respondent No. 1, the material allegations in the petition were controverted.

(4) Mr. Jagan Nath Kaushal, the learned counsel appearing on behalf of the petitioner vehemently contended that the committee constituted under rule 8 of the new Rules was not a properly constituted committee and as such any recommendation made by such committee was without jurisdiction. It was further submitted that as the screening committee was to judge the suitability of the officers for promotion to the senior-scale of the Service, it was essential that an opportunity of hearing should have been afforded to the petitioner and by not doing so, principles of natural justice and fair-play had been infringed. According to the learned counsel, the right of hearing is implicit in rule 8 of the new Rules. In support of his argument, reliance was placed on a decision of the Supreme Court in *Jagdish Pandev v. The Chancellor, University of Bihar and others* (1), and that of the Mysore High Court in *Kenchiah and others v. State Level Recruitment Committee, Government of Mysore and others* (2).

(5) On the other hand, Mr. Pannu, the learned counsel appearing on behalf of the State, submitted that under rule 5(7) (b) of the new Rules, the petitioner, after the expiry of three months from the date of enforcement of the new Rules, automatically stands reverted as he was not declared suitable for appointment to the service within a period of three months and any relief granted to the petitioner in this writ petition would be infructuous.

(6) He further argued that the screening committee was properly constituted. It was not necessary to include all the Chief Engineers as according to section 13 of the General Clauses Act, singular would include plural and *vice versa*, and as such inclusion of one Chief Engineer in the committee would satisfy the requirements of rule 8. Moreover provisions of rule 8 are merely directory because the matter had to be considered finally by the Public Service Commission and any non-compliance of this rule with regard to the constitution of the committee would not be fatal. Reference was made to the proceedings before the Public Service Commission from which it was sought to be proved that departures were made by the Public Service Commission from the opinion of the committee and the cases were examined in their entirety and after careful scrutiny,

(1) A.I.R. 1968 S.C. 353.

(2) A.I.R. 1966 Mysore 36.

Prithvi Raj Mehra v. The State of Punjab (Jain, J.)

the final list was sanctioned. The committee, according to the learned counsel, is only an advisory body and the illegality in its constitution, would not affect the result or the opinion of the final authority. In support of his contention, reliance was placed on a decision of the Supreme Court reported in *State of U. P. v. Manbodhan Lal Srivastava* (3). It was further submitted that no hearing was necessary because the petitioner had no vested right to the post which he was holding in an officiating capacity; moreover no penalty was being inflicted on him by way of reversion nor any disciplinary action was being taken against him. Reliance was placed on decisions in *State of Punjab and others v. Appar Apar Singh* (4), and *State of Bombay v. F. A. Abraham* (5).

(7) In order to appreciate the respective contentions of the learned counsel for the parties, it is necessary to reproduce the relevant provisions of the new Rules.

"5. Recruitment to service:

1. Recruitment to the service shall be made by Government by any one or more of the following methods—
 - (a) by direct appointment;
 - (b) by transfer of an officer already in Class I service of the Government of India or of a State Government;
 - (c) by promotion from Class II service.
2. Recruitment to the Service shall be so regulated that the number of posts filled by promotion from Class I Service shall not exceed seventy-five per cent of the number of posts in the service, excluding the posts of Assistant Executive Engineers for the first ten years from the date of commencement of these rules and thereafter shall not exceed fifty per cent of the number of posts in the service excluding the posts of Assistant Executive Engineers:

Provided that in case an adequate number of Assistant Executive Engineers, who are eligible and considered fit for promotion, are not available, the actual percentage of officers promoted from Class II Service, may be larger than seventy-five per cent or of fifty per cent, as the case may be.

(3) A.I.R. 1957 S.C. 912.

(4) A.I.R. 1967 Pb. 139.

(5) A.I.R. 1962 S.C. 794.

3. In the service as constituted immediately after the commencement of these rules, it shall be assumed that the number recruited by promotion from Class II Service is seventy-five per cent of the senior posts in the service, and future recruitment shall be based on this assumption.
4. All first direct appointments to the Service shall be to the posts of Assistant Executive Engineers.
5. An officer promoted from Class II Service shall be recruited to the post of Executive Engineer.
6. Appointment by transfer of an officer will normally be made to the rank of Executive Engineer.
7. No person—
 - (a) —
 - (b) who is not considered suitable for appointment to the Service as provided in rule 23 read with Appendix F; shall hold the post of Executive Engineer, or above, even in an officiating capacity, unless he is declared, within a period of three months from the date of enforcement of these rules, as suitable for appointment to the Service under the provisions of these rules.”
- “8. Appointment by Promotion.
 - (1) A Committee consisting of the Chairman of the Public Service Commission or where the Chairman is unable to attend, any other member of the Commission representing it, the Secretary, P.W.D. (Irrigation Branch) and the Chief Engineers, Punjab, P.W.D., Irrigation Branch, shall be constituted.
 - (2) The Chairman or the member of the Commission, as the case may be shall preside over the meetings of the Committee.
 - (3) The Committee shall meet at intervals, ordinarily not exceeding one year, and consider the cases of all eligible officers for promotion to the senior-scale of the Service, as on the first day of January of that year.
 - (4) The Committee shall prepare a list of officers suitable for promotion to the senior-scale of the Service. The selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority.

Prithvi Raj Mehra v. The State of Punjab (Jain, J.)

(5) The names of the officers included in this list shall be arranged in order of seniority in Class II Service:

Provided that any junior officer, who in the opinion of the Committee is of exceptional merit and suitability may be assigned a place in the list higher than that of officers senior to him.

- (6) The list shall be prepared every year.
- (7) If in the process of preparing the list it is proposed to supersede any eligible candidate, the Committee shall draw up a list of such officers and may record its reasons for the proposed supersession.
- (8) The list prepared in accordance with sub-rules (4), (5) and (6) shall then be forwarded to the Commission by Government along with—
- (i) the records of all officers included in the list;
 - (ii) records of all officers proposed to be superseded as a result of the recommendations made by the Committee;
 - (iii) the reasons, if any, recorded by the Committee for the proposed supersession of any officer;
 - (iv) the observations, if any, of the State Government on the recommendations of the Committee.
- (9) The Commission shall consider the list prepared by the Committee along with other documents received from the State Government and, unless it considers any change necessary, approve the list.
- (10) If the Commission considers it necessary to make any changes in the list received from Government, the Commission shall make the changes it proposes and forward the list it considers suitable to the State Government.
- (11) Appointment to the service shall be made by Government from this list in the order in which names have been placed by the Commission.
- (12) Appointment by promotion may be made to an ex-cadre post, or to any post in the cadre in an officiating capacity from the list prepared under this rule."

“23. Constitution of Service.

The Service shall be constituted at the commencement of these rules, or as soon thereafter as possible, in the manner laid down in Appendix ‘F’..”.

(8) Before I advert to the questions that require determination in this case, it is necessary to refer to certain facts. On 3rd September, 1966, 22 officiating Executive Engineers of P.W.D. (Irrigation Branch) were ordered to be reverted to their respective posts,—*vide* order of reversion Annexure ‘A’. Feeling Aggrieved from this reversion order, representations were made on which the Governor of Punjab,—*vide* order dated 12th December, 1966, Annexure ‘B’ stayed the implementation of the order dated 3rd September, 1966, till further orders. During the pendency of this matter of reversion, opinion of the Legal Remembrancer was sought who advised that the constitution of the Screening Committee was not in accordance with rule 8 of the Rules as the requirement of the rule was that all the Chief Engineers should have been on this Committee, and not only the Chief Engineer dealing with establishment alone. No further action was taken, rather on 3rd March, 1967, an order, copy of which is attached with the petition (Annexure ‘D’), was issued that the Governor of Punjab was pleased to cancel his previous order dated the 12th December, 1966, and the original order dated 3rd September, 1966, reverting those officers would hold good.

(9) The first question that falls for determination is whether the committee constituted under rule 8 of the new Rules was or was not validly constituted committee. From the plain reading of rule 8 it is clear that a committee is to consist of (1) Chairman of the Public Service Commission or in his absence any other member of the Commission representing it, (2) the Secretary of the P.W.D. (Irrigation Branch) and (3) all the Chief Engineers, Punjab, P.W.D., Irrigation Branch. The purpose of including all the Chief Engineers in this rule appears to be that all the Chief Engineers, under whom the officer whose work was under review, had worked, should be present in order to give their opinion about the suitability of such an officer. The absence of any of the Chief Engineers could cause prejudice to the cases of the officers whose cases were being reviewed by the Screening Committee. Section 13 of the General Clauses Act has no application as in rule 8 it is explicitly mentioned that all the Chief Engineers shall be included in the Screening Committee.

Prithvi Raj Mehra *v.* The State of Punjab (Jain, J.)

It is not disputed by the learned counsel for the State that the Screening Committee which considered and reviewed the case of the petitioner and other officers included only the Chief Engineer, establishment and not all the Chief Engineers. For the aforesaid reasons I hold that the Screening Committee constituted under rule 8 for the purposes of reviewing the cases of the petitioner and other officiating Executive Engineers was not a validly constituted Committee as its composition was incomplete. The view which I am taking is fully supported by the decision of the Mysore High Court in *Kenchiah's case* where in somewhat similar circumstances, the learned Judges held that failure on the part of the Government to nominate an officer made the composition of the Committee incomplete.

(10) The learned counsel for the State next contended that even if the Committee was not properly constituted, it was immaterial as the provisions of rule 8(1) were merely directory and the improper constitution of the Committee would not affect the final decision of the Commission. The decision in *Kenchiah's case* was sought to be distinguished on the ground that the Committee in that particular case was the Selection Committee whose decision was final while in the case in hand, the Committee's function was only of an advisory nature. After giving my thoughtful consideration to this argument of the learned counsel for the State, I find no force in the same. When the foundation crumbles, where would the structure stand? The Screening Committee was not a validly constituted one; the list prepared by it would not be a legal document. When this list goes away, how would the list prepared by the Commission based more or less on an illegal document, have any legal value or force; of course, the order in question based on such an illegal list cannot possibly be of any legal effect. Having once constituted the Committee under rule 8 for screening the cases of the officiating Executive Engineers, it would not be permissible for the State to take up the position that provisions of rule 8 were directory and the Commission could consider the list prepared by an illegally constituted committee. In this view of the matter, notification, dated 3rd September, 1966, Annexure 'A' cannot be upheld.

(11) The next question that requires determination is whether the officers whose cases are to be reviewed by the Committee are entitled to an opportunity of hearing and if the same is not afforded to them as in the present case, whether it infringes the principles of

natural justice and fair-play. After considering the respective contentions of the learned counsel for the parties and the law cited at the bar, I am of the view that the officers whose cases are to be screened by the Committee are entitled to an opportunity of hearing and if the same is not given to them, then the rules of natural justice and fair-play are infringed. Under rule 8, the Committee is required to prepare a list of officers suitable for promotion to the senior-scale of the service. The selection according to this rule shall be based on merit and suitability in all respects with due regard to seniority, provided that any junior officers, who in the opinion of the Committee is of exceptional merit and suitability, may be assigned a place in the list higher than that of officers senior to him. A power is also given to the committee to supersede any eligible candidate but while doing so reasons are to be recorded. After the list is prepared, the same is forwarded to the Commission through the Government with all the relevant record. After this the Commission considers the list prepared by the Committee along with other documents received from the State Government and unless it considers any change necessary approves the list; but if any change is considered necessary then the same is made and the list is forwarded to the Government from which the appointments are made to the Service by the Government. In view of the elaborate procedure which the Committee has to carry out, it would be reasonable to hold that the Committee before making the recommendation to the Commission should hear the officer concerned according to the rules of natural justice and that this right of hearing is implicit in the rule itself. *Jugdish Pandey's case* fully supports the view I am taking; it would be useful to reproduce the following observations of their Lordships of the Supreme Court:—

“It is then urged that no provision was made in section 4 for hearing of the teacher before passing an order thereunder. Now section 4 provides that the Chancellor will pass an order on the recommendation of the Commission. It seems to us reasonable to hold that the Commission before making the recommendation would hear the teacher concerned, according to the rules of natural justice. This to our mind is implicit in the section when it provides that the Commission has to make a recommendation, to the Chancellor on which the Chancellor will pass necessary orders. If an order is passed under section 4 even though on the recommendation of the Commission but without complying with

the principles of natural justice, that order would be bad and liable to be struck down as was done by the Patna High Courts in A.I.R., 1964 Pat. 41. But we have no difficulty in reading section 4 as requiring that the Commission before it makes recommendation must hear the teacher concerned according to principles of natural justice."

(12) Mr. Pannu's argument that the petitioner cannot claim any right of hearing as he has no right to the post and the Government has a right to revert him back to his substantive post, does not appeal to my mind. The decision of the Supreme Court in *Abraham's case* and of this Court in *Appar Apar Singh's case*, relied upon by him, are clearly distinguishable and have no bearing on the facts of the present case. In the case in hand, reversion has taken place under the procedure prescribed by a special enactment and as held above, right of hearing is implicit in rule 8. Thus the impugned notification which has been passed without hearing the officers, infringes the principles of natural justice and must be struck down on this ground also.

(13) It was next contended by Mr. Pannu that the petitioner was not entitled to any relief as according to rule 5(7)(b) of the new Rules, after the expiry of three months from the date of enforcement of the new Rules, he automatically stands reverted having not been declared suitable during this period. The argument on the face of it is fallacious. The Government did not constitute Committee during the prescribed period and it would not be permissible for the State to take up the position that the officers automatically stand reverted if they are not declared suitable within three months from the date of enforcement of the rules.

(14) It may be mentioned that certain other points were also raised by the learned counsel for the petitioner but at the time of giving reply to the argument of the learned counsel for the State, the same were given up and were not pressed.

(15) For the reasons recorded above, this petition is allowed and the impugned order dated 3rd September, 1966, Annexure 'A' is quashed. In the circumstances of the case, there will be no order as to costs.

(16) This judgment will also dispose of Civil Writs Nos. 448 of 1967, 2304 of 1966, 288 of 1967, 2305 of 1966, 2523 of 1966, 2144 of 1966, 2143 of 1966, 2125 of 1966, 2026 of 1966 and 2238 of 1967, as in these petitions also this very order has been challenged on the same grounds. Accordingly, these petitions are also allowed and the impugned order is quashed. In the circumstances of the case, there will be no order as to costs.

D. K. MAHAJAN, J.—I agree.

K.S.K.

REVISIONAL CIVIL

Before Mehar Singh, C.J.

HOYA RAM AND ANOTHER,—*Petitioners.*

versus

KESHO RAM GUPTA,—*Respondent.*

Civil Revision No. 85 of 1967.

October 15, 1968.

Transfer of Property Act (IV of 1882)—Section 50—Principles of—Whether applicable to Haryana State.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13—Property under tenancy auctioned—Tenant having no knowledge and paying rent to the previous owner for period subsequent to the auction—Such tenant—Whether in arrears of rent and liable to evicted.

Held, that there is no notification of either the previous Punjab State or the present Haryana State which applies Section 50 of the Transfer of Property Act to the State of Haryana, but the underlying principles of the section has always been applied in Punjab on considerations of Justice, equity and good conscience. A right has never been permitted to have been defeated because of the technical non-application of a particular provision for want of issue of a notification in that behalf. The technicalities have been ignored, and it is the substance which has been applied. Hence the principles underlying section 50 of the Act apply to the State of Haryana.

(Para 5)