

State of Punjab and others v. Tejbir Singh (P. C. Jain, C.J.)

were answered in this manner—

“I, therefore, on the basis of the evidence adduced on the record of this case unhesitatingly hold that the respondent (the petitioner herein) did have a child from one Bhupinder Kaur whether after contracting a legal marriage with her or otherwise. Whether Sampuran Singh had actually married Bhupinder Kaur or was living with her without marriage, both ways it will detract from his claim to the custody of the child.”

(3) In view of the aforesaid finding, at least one fact was clear that the petitioner by keeping another woman in his house, whether legally wedded wife or not, and siring a son from her, was obviously barred by his conduct from estopping the wife to claim maintenance merely on the existence of a decree of restitution of conjugal rights in his favour. It is clear that the learned Additional Sessions Judge, Ludhiana, committed no illegality in taking the aforesaid judgment into consideration for, it was an event which had supervened while the claim for maintenance was pending. The Court was well within its rights to mould the relief and in accordance therewith encash the supervening event to the advantage of the wife.

(4) For the foregoing reasons, I find no merit in the plea as raised. Since no other point has been raised, this petition fails and is hereby dismissed.

H.S.B.

Before P. C. Jain, A.C.J. & I. S. Tiwana, J.

STATE OF PUNJAB AND OTHERS,—Appellants

versus

TEJBIR SINGH,—Respondent.

Letters Patent Appeal No. 838 of 1983.

January 22, 1985.

*Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—
Sections 21 and 35—Punjab Civil Services (Punishment and Appeal)
Rules, 1952—Rule 8—Block Development and Panchayat Officer*

appointed as Executive Officer of Panchayat Samiti—Administrative control over said officer vested in the Samiti—Said officer punished under 1952 Rules for lapse committed as Executive Officer—Government— Whether competent to punish such officer—Administrative control over the Executive Officer—Whether can be deemed to include disciplinary control as well.

Held, that a perusal of section 21(1) of the Punjab Panchayat Samitis and Zila Parishads Act, 1961, would show that the Block Development and Panchayat Officer had become the *ex officio* Executive Officer of the Panchayat Samiti and by virtue of the provisions of sub-section (2), the Panchayat Samiti had administrative control over him. Reading of the Punjab amendment of sub-section (3) of section 35 of the Act would, however, show that the conditions of service of the servants who have been placed at the disposal of the Panchayat Samiti by the Government shall be the conditions of service applicable to the class of Government servants to which they belonged. Under the proviso to the amended sub-section (3) of section 35 it is specified that the Panchayat Samiti shall in respect of these servants exercise such administrative and disciplinary powers as may be delegated to it by the Government. With this analysis of the statutory powers, there can be no gainsaying that the Panchayat Samiti has only the administrative control over the officers whose services had been placed at its disposal and that too only to the extent which may be delegated to it by the Government. The Block Development and Panchayat Officer remains essentially the Government servant and merely as a result of placing his services at the disposal of the Samiti—he does not become an employee of the Samiti. As such the said officer had to be dealt with for the purposes of taking disciplinary action under rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952.

(Paras 3, 7, 8 & 9).

Letters Patent Appeal under Clause X of the Letters Patent against the Judgment of Hon'ble Mr. Justice S. S. Sodhi passed in Civil Writ Petition No. 4679 of 1976 on 30th May, 1983.

A. S. Sandhu, Addl. A. G. (Pb.), for the Appellants.

A. S. Cheema, Sr. Advocate, with G. S. Nagra, Advocate, for the Respondent.

JUDGMENT

Prem Chand Jain, A.C.J.

(1) State of Punjab has filed this appeal under clause X of the Letters Patent against the judgment of a learned Single Judge

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of this Court, dated 30th May, 1983, by which Civil Writ Petition No. 4679 of 1976, filed by Tejbir Singh, respondent, was allowed, and the impugned orders, copies Annexure P-5 and P-8, dated 17th March, 1973 and 27th April, 1976, respectively, were quashed.

(2) In order to appreciate the controversy, certain salient features of the case may be noticed. Tejbir Singh, respondent, who was Block Development and Panchayat Officer, was appointed as Executive Officer of the Panchayat Samiti, Sirhind. This appointment of his was under Section 21 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961 (hereinafter referred to as 'the Act'). By virtue of his appointment as such, the respondent came under the administrative control of the Panchayat Samiti. It appears that some irregularities were alleged to have been committed by him in purchasing books for the Panchayat Samiti Library, with the result, action was initiated against him under rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, which culminated in the order passed by the Governor of Punjab, dated 17th March, 1973, copy Annexure P-5 to the paper book, resulting in stoppage of one increment with cumulative effect and recovery of Rs. 331.56. Feeling aggrieved, the respondent filed a petition in this Court calling in question the legality and the propriety of the said order. The main plea taken in the petition was that the administrative control over the respondent (writ petitioner) as Executive Officer vested in the Panchayat Samiti; that the imposition of punishment also vested in the Panchayat Samiti, and that the order passed by the Governor of Punjab was thus without jurisdiction. In support of this plea, the respondent had placed reliance on the judgment of a learned Single Judge of this Court in *Block Samiti, Nabha v. The Secretary to Government, Punjab and others* (1). The learned Single Judge, before whom the matter came up for final hearing, found force in the plea, and on the basis of the judgment in *Block Samiti, Nabha's* case, the writ petition was allowed, and the impugned order was quashed. Dissatisfied from the judgment of the learned Single Judge, the present appeal has been filed by the State of Punjab.

(3) It was contended by Mr. Sandhu, learned Additional Advocate-General, Punjab, that the respondent was not a member of the service of the Samiti; that the Samiti had only administrative control over its Executive Officer; that there is a clear distinction between the administrative control and the disciplinary control; that the respondent was essentially a Government servant and had to be

(1) 1973 P.L.J. 481.

dealt with for the purpose of taking disciplinary action under the Punjab Civil Services (Punishment and Appeal) Rules; that the judgment in *Block Samiti, Nabha's* case (supra) is distinguishable and not applicable to the facts of the case in hand; and that the order of punishment passed by the appropriate authority in the instant case was within jurisdiction and legal.

(4) We have heard the learned counsel for the parties, and find considerable force in the contention of the learned Additional Advocate-General, Punjab.

(5) The Panchayat Samiti has been constituted under the Punjab Panchayat Samitis and Zila Parishads Act, 1961. The Panchayat Samiti is a corporate body having a perpetual succession. The powers, functions and duties of the Panchayat Samitis have been enumerated specifically in section 41 of the Act, and they broadly relate to the development of agriculture; animal husbandry and fisheries; maintenance and expansion of health services and rural sanitation, control of epidemics etc., means of communications—construction, repair and maintenance of inter-village roads and culverts on such roads etc.; establishment of media for social education—community development, libraries, encouragement of physical and cultural activities; promotion of co-operation and development of cottage industries etc.

(6) Sections 21 and 35 of the Act, in so far as they are relevant for the purposes of this appeal, read as under :

"21. (1) Where a Panchayat Samiti is constituted for a block, Block Development Officer shall be the *ex-officio* Executive Officer of the Panchayat Samiti and where it is constituted for a Tehsil, there shall be a whole-time Executive Officer who shall be appointed by the Government.

(2) The Executive Officer shall be under the administrative control of the Panchayat Samiti and his conditions of service shall be those which are applicable to the class of Government servants to which he belongs.

(3)	*	*	*
(4)	*	*	*
(5)	*	*	*
(6)	*	*	*

35.

(1) The Government may by notification place at the disposal of a Panchayat Samiti such of its servants as are required

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for implementation of the schemes connected therewith and for such other duties and functions as may be assigned to them by the Panchayat Samiti from time to time.

- (2) The aforesaid servants shall thereafter be under the administrative control of the Executive Officer of the Panchayat Samiti.
- (3) The conditions of service of the aforesaid servants shall be the conditions of service applicable to the class of Government servants to which they belong and the provisions of section 34 shall not be applicable to them:

Provided that the Panchayat Samiti shall, in respect of these servants, exercise such administrative and disciplinary powers as may be delegated to it by the Government and shall also have the power to transfer them within the area of its jurisdiction in the manner prescribed."

(7) A bare perusal of section 21(1) would show that the respondent being the Block Development and Panchayat Officer had become the *ex officio* Executive Officer of the Panchayat Samiti, and by virtue of the provisions of sub-section (2), the Panchayat Samiti had administrative control over him. But the question that arises for consideration is whether the administrative control of the Panchayat Samiti over the Executive Officer would also include the disciplinary control. On consideration of the Punjab amendment of sub-section (3) of Section 35 of the Act, the answer to the aforesaid proposition has to be in favour of the appellant as under sub-section (3), it is clearly provided that the condition of service of the servants who have been placed at the disposal of the Panchayat Samiti by the Government shall be the conditions of the service applicable to the class of Government servants to which they belong. It is further provided that the provisions of Section 34 of the Act, which are in the following terms, shall not be applicable to them:

"34. *Punishment and dismissal of servants.*

- (1) Subject to the right of appeal and revision under section 116, a Panchayat Samiti may suspend, dismiss or otherwise punish its servants.

- (2) No servant of a Panchayat Samiti shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this sub-section shall not apply—

- (a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
- (b) where the Panchayat Samiti or any other authority empowered in this behalf by or under this Act is satisfied that for some reason, to be recorded by the Panchayat Samiti or the said authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause.”

(8) Under the proviso to the amended sub-section (3) of Section 35, it is specified that the Panchayat Samiti shall, in respect of these servants exercise such administrative and disciplinary powers as may be delegated to it by the Government and shall also have the power to transfer them within the area of its jurisdiction. Now, in this case, no material has been placed on record to show that any disciplinary powers had been delegated to the Panchayat Samiti by the Government. But for this amendment made in sub-section (3), the Panchayat Samiti, under sub-section (3) of Section 35, would have had the power in respect of the servants whose services had been placed at its disposal to administer minor punishment, like censure and stoppage of increments; but as earlier observed, the amendment has changed the entire complex, as a result of which, the conditions of service of such servants shall be the conditions of the service applicable to the class of the Government servants to which they belong.

(9) With this analysis of the statutory powers, there can be no gainsaying that the Panchayat Samiti has only the administrative control over the officers whose services have been placed at its disposal and that too only to that extent which may be delegated to it by the Government. In the instant case, the Panchayat Samiti has not been given any disciplinary powers over the Executive Officer whose services had been placed at its disposal,

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with the result that it was the Government alone which could take disciplinary action against him. The Block Development and Panchayat Officer remains essentially the Government servant, and merely as a result of placing his services at the disposal of the Samiti he does not become an employee of the Samiti.

(10) Further, the Punjab Panchayat Samitis and Zila Parishads Services Rules, 1965 deal with the members of the service belonging to the Samitis and Zila Parishads. A reference to the Appendix A to these rules would show that it does not include the post of the Executive Officer. The posts referred to in this Appendix are of Head Clerk, Assistant, Accountant etc. etc. There are the Punjab Panchayat Samitis and Zila Parishads Servants (Punishment and Appeal) Rules, 1964 also. These rules are applicable only to the members of the Samitis and Zila Parishads. A reference to these Service rules and the Punishment rules goes to show that the Executive Officer cannot be dealt with by the Samiti for taking some disciplinary action as he does not belong to the service. If the contention of the learned counsel for the respondent is accepted, then neither the Government, to whose service the Executive Officer belongs, can take the disciplinary action nor has the Samiti any jurisdiction to take disciplinary action, with the result, that an officer whose services are placed at the disposal of the Samiti, would go scot free for committing any irregularity or embezzlement. Such a situation is neither envisaged nor acceptable. In this view of the matter, we are constrained to hold that the learned Single Judge has erred in law in holding that the impugned order passed by the Governor inflicting minor punishment of stoppage of one increment on the respondent was without jurisdiction. The decision of *Block Samiti Nabha's* case (supra) on which reliance has been placed is clearly distinguishable as it makes reference to the administrative control of the Samiti and does not deal at all with the point in issue in the petition.

(11) No other point arises for consideration.

(12) For the reasons recorded above, we allow the appeal, set aside the judgment of the learned Single Judge and dismiss Civil Writ Petition No. 4679 of 1976, filed by the respondent, but there will be no order as to costs.