

ground that these were inconsistent with the provisions of the Code as amended by Civil Procedure Code (Amendment) Act, 1976. The validity of the rules was upheld by a Full Bench of this Court in *Smt. Chand Kaur v. Jang Singh and others* (1), and it was held thus :—

“For the aforesaid reasons, sub-rule (3) to R. 4 of O. 22 of the Code substituted by this Court on March 25, 1975, is not inconsistent with the provisions of the Code as amended by the Amendment Act and consequently does not stand repealed. Therefore, the application has no merit and is liable to be dismissed. I order accordingly. The matter may now be listed before the learned Single Judge for deciding regular appeal.”

It is too late for the applicants to urge that the appeal stood abated. Moreover, this objection is no more tenable in view of the amendment made by this Court. In view of the substitution and addition made by this Court as referred to above, the application is dismissed. The application have succeeded in thwarting the attempt of the decree-holders to obtain possession of the disputed land for more than 18 years after the death of their father. Because of the close relation between the parties. I am not awarding costs of the application to the respondents. Otherwise, the conduct of the applicants for raising false and frivolous objections, deserves to be deprecated and heavy costs ought to be awarded against them.

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S.C.K.

Before : M. R. Agnihotri & N. K. Sodhi, JJ.

DARSHAN SINGH MOHI,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 12317 of 1991

4th December, 1991.

*Punjab Civil Service (Executive Branch) Rules, 1930* RI 10.—  
*Constitution of India, 1950—Arts. 226 & 356—Nominations to P.C.S.*

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*(Executive Branch) from amongst Class II & III ministerial staff—Rules allowing Financial Commissioners to nominate one candidate each for consideration by Public Service Commission—Petitioner working in the office of Financial Commissioner Excise and Taxation—Nomination made by Presiding Officer, Sales Tax Tribunal is bad—P.O. of S.T.T. though in the rank of F.C. is performing independent quasi-judicial function—Petitioner cannot be said to be working under a Financial Commissioner and, therefore, has no right to have his name forwarded to the P.P.S.C.*

*Held, that the petitioner is working in the Excise and Taxation Branch of the Financial Commissioner's Secretariat which is under the control of the Financial Commissioner, Taxation and Secretary to the Government of Punjab, Department of Excise and Taxation, and not the Presiding Officer, Sales Tax Tribunal. The recommendations made by Shri Hari Ram, I.A.S., in respect of the petitioner are not according to the provisions of the rule *ibid* and, as such, his recommendations cannot be accepted and forwarded to the Punjab Public Service Commission for consideration. Since in the present case, Mr. Hari Ram, I.A.S., who has been holding and discharging the duties of the office of Financial Commissioner in the past, is now holding the office of Presiding Officer, Sales Tax Tribunal, he is no more in charge of the office or Secretariat of the Financial Commissioner. He is holding the office of Presiding Officer of an independent *quasi-judicial* Tribunal created by the statute, that is S. 3-A of the Punjab General Sales Tax Act, 1948. Therefore, it would be wrong to say that the petitioner in working in the office of the Presiding Officer, Sales Tax Tribunal, or in any office subordinate to it, as the Financial Commissioners' Secretariat is in no way an office subordinate to the office of Sales Tax Tribunal, Punjab.*

(Paras 3 & 4)

*Civil Writ petition under Articles 226/227 of the Constitution of India praying that the complete record of the case may kindly be ordered to be summoned and on its perusal this Hon'ble Court may be pleased to issue:—*

- (i) *a writ in the nature of mandamus directing respondents No. 1 to forward the name of the petitioner to respondent No. 2 for being considered and appointed to the Punjab Civil Services (Executive Branch) as per the provisions of the 1976 Rules;*
- (ii) *in the peculiar circumstances of this case this Hon'ble Court may be pleased to issue any other appropriate writ, order or directions that it deems fit;*
- (iii) *that during the pendency of the writ petition, respondent No. 2 be restrained from finalising the list of candidates declared suitable for appointment to the Punjab Civil Services (Executive Branch) from Register A-II or in the alternative one post be reserved for the petitioner;*

- (iv) *issuance of advance notices to the respondents under the High Court Rules and orders may kindly be dispensed with;*
- (v) *filing of certified copies of Annexures may kindly be dispensed with;*
- (vi) *costs of the petition may kindly be awarded to the petitioner.*

P. S. Patwalia, Advocate, for the petitioner.

Mrs. S. K. Bhatia, Deputy Advocate General, Punjab. for the Respondent.

#### JUDGMENT

M. R. Agnihotri, J.

The petitioner is a permanent member of Class III Service in the Financial Commissioners' Secretariat and is at present a temporary member of Class II Service in the rank of Superintendent in the office of the Financial Commissioners, Punjab. On that basis, he is eligible for being nominated to the Punjab Civil Services (Executive Branch) a Class-I Service of the State, governed by the Punjab Civil Services (Executive Branch) Class I Rules, 1976. Under these Rules, various modes of recruitment to the service have been provided, by bringing the names of the candidates on various Registers, e.g., Register A-I for promotion from amongst the Tehsildars and Naib-Tehsildars; Register A-II : by nomination of permanent members of Class III service and serving temporarily as members of Class II holding ministerial appointments Register A-III; for promotion from amongst Excise and Taxation Officers, Block Development and Panchayat Officers and District Development and Panchayat Officers; Register-B : by direct recruitment by holding open competition; and Register-C : by accepting candidates from amongst officials/officers serving in connection with the affairs of the State, who are otherwise not covered by the aforesaid categories. So far as the nomination of official members of Class III service temporarily holding Class II Service, is concerned, provision has been made in Rule 10 of the statutory Rules, which is reproduced hereunder :—

“10(1) Each of the authorities specified in the first column of the table below may submit to the Government in Form I attached to these rules the nomination rolls of such number of persons as is specified in each case in the second column

of the said table from amongst the temporary members of Class II services and member of Class III services, holding ministerial appointments and working in its office or in the offices subordinate to it :—

TABLE

| <i>Nominating Authority</i>                                  | <i>Number of nominations</i> |
|--|------------------------------|
| 1  | 2                            |
| 1. Chief Minister  | 2                            |
| 2. Speaker, Punjab Vidhan Sabha                              | 1                            |
| 3. Chief Justice of the High Court of Punjab and Haryana     | 2                            |
| 4. Ministers and Ministers of State                          | 1 (each)                     |
| 5. Deputy Ministers :  | 1 (each)                     |
| 6. Chief Parliamentary Secretary and Parliamentary Secretary | 1 (each)                     |
| 7. Chief Secretary   | 5                            |
| 8. Financial Commissioners                                   | 1 (each)                     |

Provided that during the operation of a proclamation issued under Clause (1) of Article 356 of the Constitution of India in the State, the Governor may nominate two persons from amongst the temporary members of—

“Class II Service, and members of Class III services holding ministerial appointments and working in his office or in the offices subordinate to him.

- (2) Nomination roll in respect of a person shall not be submitted under the provisions of sub-rule (1) unless such person—
  - (a) is a confirmed hand and has completed 10 years continuous service under the Government;
  - (b) was under the age of forty-five years on the first day of November immediately proceeding the date of submission of names by the nominating authorities; and
  - (c) is a graduate of recognised University;
- (3) The nomination rolls submitted under sub-rule (1) along with the service record of the candidates shall be forwarded to the Commission which shall consider the merits of each such candidate and recommended such of the candidates as are considered suitable for appointment to the service.
- (4) The names of persons recommended by the Commission under sub-rule (3) shall be entered in Register A-II in the order in which they are recommended by the Commission."

Since the petitioner has completed ten years' service and is now 45 years of age and a graduate, his name has been nominated for appointment to P.C.S. (Executive Branch) from Register A-II by Shri Hari Ram, Presiding Officer, Sales-Tax Tribunal, Punjab. However, the Chief Secretary to Government, Punjab, has not forwarded the name of the petitioner to the Punjab Public Service Commission for interview etc. as it was considered that Mr. Hari Ram was not competent to nominate the name of the petitioner who was not working in the office of Sales Tax Tribunal nor was he working in any office subordinate thereto. Aggrieved by this decision of the Chief Secretary to Government, Punjab, the petitioner has approached this Court for the issuance of a writ of *mandamus*.

(2) We have heard the learned counsel at length but do not find any merit in his contention. The contention of the petitioner is two-fold : firstly, that Mr. Hari Ram, Presiding Officer, Sales Tax Tribunal, Punjab, is an I.A.S. Officer and before joining as the Presiding Officer of the Tribunal, he was a Financial Commissioner in the State Government; even today, he holds the rank of a Financial Commissioner, though he is not discharging the duties of a Financial Commissioner any more, and is the Presiding Officer of the Sales Tax Tribunal;

therefore, he is competent to make the necessary nomination; and secondly, that since the petitioner is working in the Financial Commissioners' Secretariat, he very frequently is supposed to handle papers of the Excise and Taxation Branch and, as such, he can certainly be treated as working in an office subordinate to the Sales Tax Tribunal.

(3) Both the pleas of the petitioner are without any legal basis. The correct position is that the petitioner is working in the Excise and Taxation Branch of the Financial Commissioners' Secretariat which is under the control of the Financial Commissioner Taxation and Secretary to the Government of Punjab, Department of Excise and Taxation, and not the Presiding Officer, Sales Tax Tribunal. The recommendations made by Shri Hari Ram, I.A.S., in respect of the petitioner are not according to the provisions of the rule *ibid* and, as such, his recommendations cannot be accepted and forwarded to the Punjab Public Service Commission for consideration.

(4) A closer look at the statutory Service Rules, which though are of the year 1976, but are almost the reproduction of the Punjab Civil Service (Executive Branch) Rules, 1930—since repealed, would show that in addition to the usual mode of recruitment to the service, the Rules had conferred upon the Financial Commissioner a special power to nominate one member of their ministerial establishment to the service. The object was obviously to enable the Financial Commissioners, depending on their wisdom and experience, to select one of their subordinates for such nomination whom they consider fit for such appointment. Since in the present case, Mr. Hari Ram I.A.S., who has been holding and discharging the duties of the office of Financial Commissioner in the past, is now holding the office of Presiding Officer, Sales Tax Tribunal, he is no more in charge of the office or Secretariat of the Financial Commissioner. He is holding the office of Presiding Officer of an independent *quasi judicial* Tribunal created by the statute, that is section 3-A of the Punjab General Sales Tax Act, 1948. Therefore it would be wrong to say that the petitioner is working in the office of the Presiding Officer, Sales Tax Tribunal, or in any office subordinate to it, as the Financial Commissioners' Secretariat is in no way in office subordinate to the office of Sales Tax Tribunal, Punjab.

(5) Consequently, we do not find any merit in the writ petition and dismiss the same with no order as to costs.

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**R.N.R.**