
desired exemption be achieved by a delegate without even going through the requisite procedure. The judgments, reference of which has been given above, have no bearing on the facts of the present case.

(20) In so far as the equity of the case is concerned, it is true that the officers of the department dealing with the matter were absolutely clear with regard to the position of law and knew it too well that it is only by deleting entry of liquor from schedule 'A' that the sales tax could be exempted. Yet the matter was proceeded with and before even the approval of the Administrator could be obtained, the announcements were made at the time of auction. *Prima facie*, there seems to be substance in the contention of Mr. Jain that it is only because of exemption of sales tax announced at the time of auction that the bids culminated on an amount of Rs. 23.60 crores when in the year immediately preceding the same was Rs. 17.62 crores, thus, evidencing an increase of 34.15 per cent. The way and the manner in which this matter has been dealt with, thus, needs to be adversely commented upon. No one really cared about the adverse effect that it might have upon successful bidders at the time of auction and the announcements with regard to exemption of sales tax were made admittedly at a time when the matter has not been approved by the Administrator. Unfortunately however, nothing can be done in the matter inasmuch as when the law is so well settled, equity takes the back seat. The petitioners may have their remedy elsewhere but in the present proceedings no relief can be given to them.

(21) For the reasons aforesaid, these petitions fail and are, thus, dismissed. There shall, however, be no order as to costs.

S.C.K.

Before Hon'ble G. S. Singhvi & M. L. Koul, JJ.

MOHINDER LAL SANDHU,—Petitioner.

versus

CHIEF SECRETARY TO GOVERNMENT PUNJAB & OTHERS,
—Respondents.

C.W.P. No. 4794 of 1993

*Constitution of India, 1950—Arts. 226/227—Extension of term—
Power of Government to extend terms of head of department*

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beyond period of five years—Notification dated 30th April 1965 restricted term of Head of department to 5 years—Rules promulgated in 1979, which do not indicate that post of Inspector General of Prisons is a tenured post.

Held, that the instructions contained in letter dated 29th/30th April, 1965 have lost their significance after the promulgation of the 1979 Rules. The post of Inspector General of Prisons is a cadre post and is required to be filled by selection under Rule 6(1)(a) of the Rules. The Rules of 1979 do not indicate that the post of Inspector General of Prisons is a tenure post of that a person, who is appointed as Inspector General of Prisons, holds the post for a fixed tenure.

(Para 17)

Further held, that where requirement to a post is regulated by statutory rules, instructions like the one contained in letter dated 29th/30th April, 1965 have no application and a person, who is substantively appointed on the post encadred in the rules, cannot be deprived of his right to hold that post in the absence of any provision in the statute fixing a tenure, except in a case where he is removed from the post after due inquiry.

(Para 17)

M. J. S. Sethi, Sr. Advocate, with Onkar Singh, Advocate, for the Petitioners.

Randhir Singh, A.A.G., Punjab, for Respondents Nos. 1 and 2.

P. S. Patwalia, Advocate, for Respondent No. 3.

JUDGMENT

G. S. Singhvi, J.

(1) The only substantial issue raised in these petitions is whether the Government of Punjab has power to extend term of the Head of the Department beyond a period of five years and whether the decision taken by the Government extending the term of respondent No. 3 as Inspector General of Prisons is vitiated by arbitrariness or *mala fides*.

(2) A few facts from the two writ petitions deserve to be referred for the purpose of proper appreciation of the dispute.

(3) Petitioner Mohinder Lal Sandhu, who has retired from the service in the year 1993, joined service as Deputy Superintendent (Jails) Grade-II, on 6th January, 1964. His last promotion was on the post of Deputy Inspector General of Prisons, Punjab, with effect from 1st January, 1987. He has challenged the orders passed by the Government on 26th July, 1991 and 5th May, 1992 giving extension of 1 year and 5 years respectively in the term of respondent No. 3 Shri B. S. Sandhu as Head of the Department. According to the petitioner while granting extension to respondent No. 3 his case was not at all considered despite his representation dated 5th July, 1991 and there were no special circumstances warranting whole-sale violation of the instructions issued by the Government,—*vide* notification dated 29th April, 1965 read with notification dated 16th January, 1962. The petitioner says that he possesses exceedingly good record of service and without considering his case the Government as arbitrarily granted extension in the term of appointment of respondent No. 3 as Inspector General of Prisons, Punjab and this action of the Government is not only contrary to the instructions contained in Annexures P4 and P5 but also the provisions of Articles 14 and 16 of the Constitution of India.

(4) Petitioner Chaman Lal Goyal joined service as Clerk in Punjab Civil Secretariat on 22nd November, 1957. While he was holding the post of Assistant, Shri Chaman Lal Goyal was selected by the Punjab Public Service Commission for appointment as Deputy Superintendent (Jails) Grade-II. On this post he joined on 1st January, 1969. He was promoted as Deputy Superintendent (Jails) Grade-I with effect from 15th March, 1980. He was then promoted to the Punjab Prisons Service (Class-I) with effect from 11th December, 1986. The petitioner says that he has outstanding record of service and as he has a legal as well as constitutional right to be promoted as D.I.G. (Prisons) and I.G. (Prisons) and also to be promoted as Head of the Department but the official respondents have arbitrarily denied him the consideration for promotion to these two posts. Shri Chaman Lal Goyal has also assailed the extension given in the term of the Head of Department of respondent No. 3 and in addition to the grounds of arbitrariness and violation of the Articles 14 and 16 of the Constitution of India, Shri Chaman Lal Goyal has challenged the impugned orders on the ground of *malafides*. He has asserted that extension was given in the tenure of respondent No. 3 as Head of the Department, due to the pressure of

the Chief Minister of Punjab, who has been patronising respondent No. 3 because of their close kinship with each other. This allegation has been made on the basis of averments made in paragraph 11 of C.W.P. No. 735 of 1994. In that paragraph the petitioner has stated that during the marriage ceremonies of two sons of respondent No. 3, which took place in the years 1989 and 1993, the Chief Minister of Punjab took part in his capacity as President of the Punjab Pradesh Congress Committee (1989) and later on as Chief Minister (1993). He has tried to demonstrate the closeness of respondent No. 3 with the Chief Minister by pleading that the Chief Minister was present in the various ceremonies and accompanied the marriage party on the first occasion and on the second occasion the ceremonies were not performed till the arrival of the Chief Minister.

(5) One ground which is common to both the writ petitions is that in a large number of cases the Government terminated the term of the Head of the Department after five years but only in the case of respondent No. 3 the deviation has been made from the long standing policy of not continuing one person as Head of Department for a period beyond four years. References have been made to the cases of Shri S. S. Bains, who replaced Dr. Sukhdev Singh on completion of five years' term, and of Shri S. K. Kapur, the then Principal Chief Conservator of Forests, who was transferred as Managing Director, Punjab State Forests Development Corporation and when he challenged this order before the Central Administrative Tribunal, Chandigarh.—*vide* OA No. 41/CH/94, the State Government defended its action by placing reliance on the policy circular dated 27th May, 1965 and the stand of the Government has been accepted by the Central Administrative Tribunal while rejecting the application filed by Shri S. K. Kapur.

(6) Both the writ petitions have been contested, Respondents Nos. 1 and 2 as well as respondent No. 3 who have filed separate replies. The case set up by the respondents is that the Government instructions contained in notifications dated 29/30th April, 1965 and 7th May, 1965 do not have the force of law and they have no application to the case of respondent No. 3, who was promoted as Inspector General of Prisons in accordance with the Punjab Prisons State Service (Class-I) Rules, 1979. The respondents have also pleaded that the notifications relied upon by the petitioners are in the nature of executive instructions and their alleged violation cannot give a right to the petitioners to challenge the orders passed by the Government extending the tenure of respondent No. 3 as Head of the

Department. Respondents Nos. 1 and 2 have also justified the extension given in the tenure of respondent No. 3 by pleading that the Government had taken the decision keeping in view the special circumstances, namely, continuing disturbed law and order situation in the State of Punjab due to terrorism, and the excellent work done by respondent No. 3 during his posting as Inspector General of Prisons. The official respondents have also pointed out that extension of respondent No. 3 as Head of the Department was considered necessary by the Government keeping in view the larger public interest. The eligibility of the petitioners to be promoted as Inspector General of Prisons has also been questioned by the respondents. The respondents have pleaded that the petitioner Shri M. L. Sandhu could not be given appointment as Inspector General of Prisons because he did not fulfil the conditions of eligibility and when extension was given in the tenure of respondent No. 3, the Government did consider his representation and did not find any merit in the same. In a separate reply respondent No. 3 has made an attempt to show that the record of the petitioner is not good and, therefore, he is not entitled to be promoted as Inspector General of Prisons but, in our opinion, the detailed reference to this record is not necessary. In regard to petitioner Chaman Lal Goyal, it has been stated that he has been promoted as Superintendent Central Jail on 2nd January, 1987 and the fact that he had held the charge of this post earlier is in consequential. It has also been pleaded that the post of Inspector General of Prisons is required to be filled on the basis of selection from amongst the officers of the Department holding posts specified in Group-II and Group-III of Appendix 'A', having seven years experience on any of the posts and as the petitioner Chaman Lal Goyal does not possess the requisite experience, he is not entitled to claim promotion on the post of Inspector General of Prisons. By way of an application dated 28th April, 1995 respondent No. 3 has produced orders Annexure A1 and A2 to show that case of Shri Chaman Lal Goyal has been considered for promotion to the post of D.I.G. Prisons in accordance with the directions given by the Supreme Court in S.L.P. No. 18536 of 1994 and the Department Selection Committee has not found him suitable and instead one Amrik Singh has been found suitable. This, according to respondent No. 3, shows that as late as 1994 Shri Chaman Lal Goyal has not been found suitable even for the post of Deputy Inspector General of Prisons, which is lower in rank than the post of Inspector General of Prisons. To this application detailed reply has been filed by Shri Chaman Lal Goyal, in which he has set out the details of the various petitions

and orders passed thereon by the High Court and the Supreme Court. He has reiterated his claim that the respondents have deprived him of his right to be promoted as Inspector General of Prisons due to extraneous reasons and ulterior motive.

(7) Before adverting to the contentions of the learned counsel for the parties we may take note of the consideration made to the case of respondent No. 3 for promotion to the post of Inspector General of Prisons and extension in his tenure as Inspector General of Prisons. From File No. 2/2/85/IG it is revealed that during the tenure of Shri Surjit Singh Barnala as Chief Minister of Punjab, Shri T. C. Katoch was holding the post of I.G. Prisons. The Government had received reports regarding unsuitability of Shri Katoch to be continued as I.G. Prisons during the days of militancy. Therefore a decision was taken to shift Shri T.C. Katoch from the post of I.G. Prisons and post him as C.S.D. Rules. This decision was taken despite the fact that Shri Katoch had completed only 3½ years as I.G. Prisons. At the same time the Government considered the issue of promotion of another officer as I.G. Prisons. At that time respondent No. 3 was holding the post of Deputy Inspector General on his promotion ordered with effect from 13th March, 1986. The Government considered the record of the petitioner, Shri D. S. Sekhon and Shri M. L. Sandhu. The Government took notice that Rule 6(1)(a) of the Punjab Prisons State Service (Class-I) Rules, 1979 (for short 'the 1979 Rules'), which speaks of promotion on the basis of selection and also of the fact that while respondent No. 3 was working as D.I.G. Prisons with effect from 7th May, 1985 and was regularly promoted on that post with effect from 13th March, 1986, other persons were holding lower posts and record of respondent No. 3 was also considered to be the best. The matter was examined by the Administrative Department, the Law Department and the Chief Secretary and after threadbare examination of the whole issue, the decision was taken to promote and appoint respondent No. 3 as I.G. Prisons. When the tenure of respondent No. 3 as Inspector General of Prisons (five years) was going to be over on 26th June, 1991, the issue was taken up by the Government for grant of extension to him. This has been dealt with in File No. 2/7/91/IG. The office note shows that for the years 1986-87 and 1987-88 he was rated as an "outstanding officer." For the year 1988-89 he was rated as a 'Very Good' officer and for the year 1990-91 he was rated as an 'Outstanding' officer. The Government noted that elections were scheduled to take place in the last week of June 1991 and the State was waging a war against the terrorism. It was also noted that

the Department of Prisons had an important role to play in the criminal justice system. The Government came to the conclusion that the case of respondent No. 3 was covered under the category of 'Special Circumstances' enshrined in the departmental instructions. Therefore it was proposed that the term of respondent No. 3 be extended for five years. The reasons set out by the Administrative Department for grant of extension to respondent No. 3 were :

(i) His outstanding record ; (ii) His performance in the improvement of jails and his correctional capability in handling the prisoners in general and terrorists in particular ; (iii) Ensuing elections in the State of Punjab ; (iv) Law and order situation in the State ; (v) There being no post equivalent to the post of Head of the Department in the Jails Department. The Joint Secretary (Home) noted that respondent No. 3 was an extremely hardworking and scrupulously honest Officers who had taken lot of pains to streamline the functioning of the Punjab Prisons Department and had provided required guidance and leadership to his Officers and staff. The Financial Commissioner (Home) also approved the proposal for extension of the term of respondent No. 3 by five years, but final decision was taken to grant extension by one year. The Personnel Department did append a note that no further extension will be asked for in the case of respondent No. 3 and during this period a decision will be taken to appoint another suitable officer as Head of the Department in place of respondent No. 3. But the competent authority did not append any such note on the issue of extension in the tenure of respondent No. 3. In April 1992 the question of extension in the tenure of respondent No. 3 was once again taken up and keeping in view the special circumstances prevalent in the State, the Government decided to give further extension of five years. This time the Department of Prisons expressed its agreement with the proposal of the Administrative Department. This file also shows that claim of the petitioner, Shri M. L. Sandhu was also considered. At one stage there was a proposal to create one post of Additional Inspector General of Prisons, but no final decision was taken on this issue. The annual confidential reports of both the petitioners as well as respondent No. 3 have also been placed before the Court. A summary of total annual confidential reports of the petitioner Mohinder Lal Sandhu shows that he has earned two 'Outstanding' reports, 16 'Very Good' reports, 8 'Good' reports, 2 'Average' reports and 2 'Satisfactory' reports. He was censured in the year 1966. Petitioner Chaman Lal Goyal has earned 2 'Outstanding' reports, 12 'Very Good' reports, 7 'Good' reports, 6 'Satisfactory' reports, 3 'Average' reports and some adverse reports which are of the years 1992-93 and 1993-94. Respondent No. 3

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Shri B. S. Sandhu earned 10 'Outstanding' reports, 10 'Very Good' reports, 8 'Good' reports and 2 'Satisfactory' reports.

(8) In the light of the above we shall consider the various contention advanced by the learned counsel for the parties.

(9) First contention urged by Shri M. J. S. Sethi, learned counsel appeared for the petitioners, is that the order extending the tenure of respondent No. 3 as Inspector General of Prisons is contrary to the administrative instructions issued by the Government,—vide notification dated 16th January, 1962 and notification dated 29th/30th April, 1965. Shri Sethi argued that the notification dated 16th January, 1962 was statutory in character because it was issued under proviso to Article 309 of the Constitution of India and tenure of the Head of Department was limited to seven years and although the second notification issued on 29th/30th April, 1965 has not been issued under proviso to Article 309 of the Constitution of India, nevertheless the directions given by the Government are binding on all concerned including the Government itself and except in the cases where the work of the Head of the Department is technical in nature or in cases of non-availability of other suitable personnel the Government cannot appoint a Head of Department for a period beyond five years. Shri Sethi submitted that in the garb of using the expression 'Special Circumstances' the Government could not have given a go-by to the basic idea underlying the notification dated 29th/30th April, 1965, namely, to restrict the tenure of Head of Department to 5 years. Shri Sethi further argued that persons like the petitioners were very much available for promotion as Inspector General of Prisons and, therefore, it was the bounden duty of the Government to have undertaken an exercise to promote the petitioners and replace respondent No. 3 instead of extending his tenure by a total period of six years. Shri Randhir Singh and Shri P. S. Patwalia argued that the notification dated 29th/30th April, 1965 merely contains executive instructions issued and breach of these instructions cannot give rise to any cause of grievance to the petitioners. Learned counsel for the respondents argued that even if there is a violation of the administrative instructions, the action of the Government in granting extension to the term of respondent No. 3 cannot be challenged in a Court of Law. Shri P. S. Patwalia placed reliance on the decision of the Supreme Court in *G. J. Fernandez v. State of Mysore* (1), *J. R. Raghupathy v. State of*

(1) A.I.R. 1967 S.C. 1753.

Andhra Pradesh (2), and two decisions of this Court in *A. R. Darshy v. State of Punjab* (3), and *Harjit Singh Sidhu, Deputy Superintendent v. State of Punjab* (4). An alternative argument advanced by the learned counsel for the respondents is that the instructions contained in the notification dated 29th/30th April, 1965 are not applicable to the cases where promotion to the highest posts in the services is made under the statutory service rules framed under proviso to Article 309 of the Constitution of India. According to the learned counsel, after the enactment of the 1979 Rules, the instructions contained in the notification dated 29th/30th April, 1965 must be treated as inoperative in so far as the Prisons Department is concerned and respondent No. 3 cannot be removed from the cadred post of Inspector General of Prisons merely on the strength of notification dated 29th/30th April, 1965.

(10) There is no controversy between the parties while notification dated 16th January, 1962 was statutory in character because it was issued under proviso to Article 309 to the Constitution of India, the subsequent notification dated 29th/30th April, 1965 contains executive instructions issued by the Government. The letter issued by the Chief Secretary makes a mention of the fact that the notification dated 16th January, 1962 has been abrogated and the Government has decided that normally the Heads of Department would be expected to continue on their posts for five years. It is thus clear that the letter of the Chief Secretary, on which learned counsel for the petitioners, has placed reliance, does not have the force of law. Nevertheless we do not find any sound reason to accept the argument of the learned counsel for the respondents that violation of the executive instructions is not actionable. It is settled law that the Government can regulate the recruitment and conditions of service either by enacting law or by framing rules and in the absence of statutory provisions by issuing administrative instructions. Such administrative instructions occupy that field in which the statutory provisions do not operate. Even where statutory rules have been framed, administrative instructions can be issued to fill in the gaps. In *Sant Sharma v. State of Rajasthan* (5), their Lordships have held that executive instructions can be issued

(2) A.I.R. 1988 S.C. 1681.

(3) 1988 (7) S.L.R. 275.

(4) 1989 (4) S.L.R. 403.

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

by the Government to supplement the statutory rules. This being the status of the executive instructions, which regulate the conditions of service of the employees, it is not possible to hold that all violations of the executive instructions would remain immune from judicial review. Rather we are of the opinion that where the service conditions regulated by executive instructions, the same are binding on all and deviation from such executive instructions cannot be made except for good and sound reasons.

(11) In *Amarjit Singh Ahluwalia v. State of Punjab* (6), their Lordships of the Supreme Court held that where seniority of the employees was regulated by executive instructions, it was not open to the Government to violate those executive instructions without good reasons and if deviation from the executive instructions is made without any reason or justification, the affected person may invoke jurisdiction of the Court by complaining violation of Articles 14 and 16 of the Constitution.

(12) In *Ramana Dayaram Shetty v. International Air Port Authority of India* (7), their Lordships of the Supreme Court held :—

“.....It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them.”

(13) The Supreme Court also with approval quoted the following observations of Mrs. Justice Frankfurter in *Vitarelli v. Seaton* (8) :—

“An executive agency must be rigorously held to the standards by which it professes its action to be judged..... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.....This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.”

(6) A.I.R. 1975 S.C. 984.

(7) A.I.R. 1979 S.C. 1628.

(8) 1959 (359) US 535.

(14) The decisions on which Shri Patwalia has placed reliance have no bearing on the issue raised in this case. In *G. J. Fernandez v. State of Mysore* (supra), violation of the Mysore Public Works Department Code, which was non-statutory, was made the basis for challenge to the award of contract. One of the grounds of challenge was that the Chief Engineer could not have taken into account some communication received from a tenderer after the expiry of seven days' period. The Court held that the action of the Chief Engineer was not contrary to Article 14 of the Constitution of India. In *J. R. Raghupathy v. State of Andhra Pradesh* (supra) their Lordships held that "mere violation of the guidelines laid down by the Government in location of Mandal headquarters did not give rise to a justification to issue a writ by the High Court. The Supreme Court held that the guidelines were merely departmental instructions meant for the Collectors and ultimate decision regarding formation of revenue mandal or location of its headquarters was with the Government and when the Government had, after inviting objections and suggestions and considering the same, the deviation from the guidelines, which too was for good reasons, was not actionable."

(15) Out of the two decisions of this Court, the first relates to violation of administrative instructions regarding the annual confidential reports. The learned Single Judge held that the guidelines were meant for the officials and did not give any right to the employees to seek a *mandamus* in the event of the violation of the guidelines. In *Harjit Singh's case* (supra) a Full Bench of this Court held that in the face of the statutory provisions contained in the P.C.S. (Executive Branch) Rules, the violation of executive instructions cannot be made a ground to issue a *mandamus* to the Commission to act in a particular manner.

(16) None of these decisions lays down that irrespective of the nature of instructions, violation thereof would not give a cause of action to the aggrieved person. In our opinion, where executive instructions deal with the rights of the individuals, violation of such instructions without any reason or justification may amount to violation of Article 14 and aggrieved party will be entitled to invoke the jurisdiction of the Court.

(17) Notwithstanding the finding as aforementioned we find merit in the contention of the learned counsel for the respondents that the instructions contained in letter dated 29th/30th April, 1965 have lost their significance after the promulgation of the 1979 Rules,

The post of Inspector General of Prisons is a cadre post and is required to be filled by selection under Rule 6(1)(a) of the Rules. The Rules of 1979 do not indicate that the post of Inspector General of Prisons is a tenure post or that a person, who is appointed as Inspector General of Prisons, holds the post for a fixed tenure. In the absence of such provision, a person who is promoted as Inspector General of Prisons on regular basis, has a right to hold that post till he attains the age of superannuation or is posted on a post outside the cadre with his consent. Otherwise his right to hold the post of Inspector General of Prisons remains unaffected. In our opinion, the Government did not properly direct its attention to the scheme of the rules and proceeded under a misconceived notion that once a person is appointed as Inspector General of Prisons and he becomes Head of the Department, his appointment is for a fixed duration of five years and there is a requirement to grant extension in the tenure of the incumbent of the post of Inspector General of Prisons. May be that such person becomes Head of the Department by virtue of his holding the post of Inspector General of Prisons, but that cannot lead to an inference that he holds a tenure post/office and he is necessarily to be shifted from that post after a particular period. In our opinion, where requirement to a post is regulated by statutory rules, instructions like the one contain in letter dated 29th/30th April, 1965 have no application and a person, who is substantively appointed on the post encadred in the rules, cannot be deprived of his right to hold that post in the absence of any provision in the statute fixing a tenure, except in a case where he is removed from the post after due inquiry.

(18) Second contention of Shri Sethi, learned counsel for the petitioners, is that the Government has acted arbitrarily and has discriminated against the petitioners by not considering their cases for promotion as Inspector General of Prisons and at the same time continued respondent No. 3 by granting him extension in violation of the instructions issued by it. Shri Sethi argued that both the petitioners were very much available to be posted as Head of the Department, and, therefore, the Government was duty-bound to consider their cases for posting as Head of the Department-cum-Inspector General of Prisons. In our opinion, this argument of Shri Sethi cannot be accepted for two reasons. In the first instance we would like to reiterate that the instructions contained in the letter dated 29th/30th March, 1965 do not have application in the case of respondent No. 3, who was promoted as Inspector General of Prison in accordance with the provisions of 1979 Rules. Secondly,

even if we were to assume that instructions dated 29th/30th April, 1965 are applicable to the case of the petitioners, we find that the instructions do not impose an absolute bar against continuance of a person as Head of the Department beyond five years. The instructions merely contemplate that normal tenure of the Head of the Department would be five years. However, the Government itself was alive to the possibilities of extension in the tenure of Head of the Department beyond five years and, therefore, it provided that extension may be given for relevant reasons like technical nature of the work, non-availability of other suitable personnel or any other special circumstances. No doubt, the work of the Inspector General of Prisons cannot be treated as technical, but we find that the Government was entitled to exercise power of extension if it found that no other suitable person was available to hold the post of Inspector General of Prisons or there were other special circumstances. Petitioner Chaman Lal Goyal was not even eligible to be promoted as Inspector General of Prisons. He was yet to be promoted as Deputy Inspector General of Prisons and as the later developments have shown, he has not been found suitable for promotion as Deputy Inspector General of Prisons. Petitioner M. L. Sandhu was due to retire in 1993 and above all the Government had taken note of the extraordinary situation prevalent in the State of Punjab at the relevant time due to terrorism. The Prisons Department was to carry out extremely important duties during that period and if the Government decided to give extension to respondent No. 3, keeping in view his outstanding performance and above all the larger public interest, the decision of the Government would fall within the expression "any other special circumstances". It could not have been possible for the Government to leave the charge of the post of Inspector General of Prisons in new hands and thereby affect the process of streamlining the working of the Department, which had been undertaken by respondent No. 3. The appreciation of the work of respondent No. 3 was not done by one but all the high officials of the home Department and the Chief Secretaries as also the Chief Minister and the Advisor to the Governor. That was one of the relevant factors, which could certainly be taken into consideration while considering the justification of continuing respondent No. 3 as Inspector General of Prisons. Above all, the element of larger public interest overweighed all other considerations. Thus the decision of the Government to grant extension in the tenure of respondent No. 3 cannot be castigated as arbitrary or unreasonable. We also do not find any substance in the plea of the petitioners that while granting extension in the year 1991 the Department of Personnel had indicated that further extension shall not be given to

respondent No. 3. In our view, nothing prevented the Department of Personnel from changing its opinion after the consideration of the prevalent circumstances.

(19) Another contention urged by Shri Sethi is that the decision to extend the term of respondent No. 3 is actuated by bias and malice of the Chief Minister. Shri Sethi reiterated that the Chief Minister was interested in respondent No. 3 and, therefore, he could pressurise the Departmental authorities to make recommendations favourable to respondent No. 3. We have carefully gone through the averments made in both the petitions on the issue of *mala fides* and bias of the Chief Minister. In C.W.P. No. 4794 of 1993 the petitioner has not alleged *mala fides* against the Chief Minister. In C.W.P. No. 735 of 1994 Shri Chaman Lal Goyal has chosen to level allegations by stating that the Chief Minister had attended the marriage of the elder son of respondent No. 3 in his capacity as President of the Punjab Pradesh Congress Committee and had taken part in *Milni*. He has also stated that after becoming Chief Minister, Shri Beant Singh had gone to attend the marriage of the younger son of respondent No. 3 and the ceremonies were held up till the arrival of the Chief Minister. No material other than these allegations has been placed on the record of the Court to show that the Chief Minister had influenced the consideration made by the departmental authorities on the issue of extension of the tenure of respondent No. 3. In our opinion, the petitioners have miserably failed to *prima facie* establish the charge of *mala fides* and bias. A cursory glance at the record produced by the learned counsel appearing on behalf of the Government shows that when respondent No. 3 was promoted as Inspector General of Prisons, Shri Surjit Singh Barnala was the Chief Minister and not only he but various other officers, who had seen the work of respondent No. 3, had rated him as a Very Good/Outstanding officer. If in this backdrop we examine the allegations of *mala fides*, it is not possible to hold that the participation of Shri Beant Singh in the marriage could give rise to an inference of *mala fides* or bias in favour of respondent No. 3. The petitioners cannot succeed in their attempt to challenge the impugned order on the ground of *mala fides* unless they discharge the heavy burden which lay upon them to prove the allegations of *mala fides*. In *E. P. Royappa v. State of Tamil Nadu* (9), a Constitution Bench of the Supreme Court held that

burden to *prima facie* establish the charge of *mala fides* is on the person who makes it and graver are the allegations on high functionaries of the Government, heavier is the burden on the petitioner and the Court cannot draw dubious inferences of *mala fides* on the basis of incomplete and vague averments. In our considered opinion, the petitioners have failed to discharge the primary burden and, therefore, the impugned order cannot be nullified on the ground of *mala fides* or bias. In fact, we find that the allegations levelled by petitioner Shri Chaman Lal Goyal are highly cryptic, vague and unwarranted. Mere attending a marriage or two cannot constitute basis for alleging *mala fides* against high public functionaries like Chief Minister.

(20) Last ground urged by Shri Sethi is that the Government has adopted a discriminatory approach in the matter of grant of extensions. By citing instances of Shri Sukhdev Singh and Shri S. K. Kapur, Shri Sethi argued that if in some cases the Government did not grant extension, there could be no reason to make a deviation in the case of respondent No. 3. This argument has been mentioned by us only to reject the same summarily. The very fact that the instructions contained in letter dated 29th/30th April, 1965 give discretion to the Government shows that in each case the Government is required to examine the matter independently and on its merits. In such like matters there cannot be any similarity in two types of cases. Much depends on the requirement of the service, the public interest and the record of the individual. Moreover from the list supplied by the Government counsel we find that in the past also a number of persons have been allowed to continue as Heads of Department between 9 to 16 years. Shri Gurmit Singh was allowed to continue as Director Hospitality for 9 years. Dr. Mahajan was allowed to continue as Director, Dairy Development Corporation and Managing Director, MILKFED for 9 years. Shri Gurdial Singh and Shri Ashwani Kumar were allowed to continue as Inspector General of Police for more than 10 years each. Shri G. I. Bakshi continued as Director Public Instruction (Colleges) for 10 years. Shri Kulbir Singh continued as Chief Engineer (Irrigation) for 11 years. Shri Gulzar Singh continued as Chief Engineer Irrigation (Drainage) for 13 years. Shri Jagjit Singh Ghuman continued as Chief Town Planner for 14 years. Shri G. S. Dhillon continued as Chief Conservator of Forests for 16 years. Thus, we hold that the plea of discrimination is without any substance.

(21) For the reasons mentioned above, the writ petitions are dismissed. Petitioner Chaman Lal Goyal is directed to pay costs of Rs. 2,000 to respondents Nos. 1 and 2 for having levelled reckless allegations of *mala fides* on the Chief Minister.

J.S.T.

Before Hon'ble Amarjeet Chaudhary & V. S. Aggarwal, JJ.

JASPAL SINGH KOHLI,—Petitioner.

versus

PUNJAB NATIONAL BANK & OTHERS,—Respondents.

C.W.P. No. 10262 of 1994.

11th October, 1995.

Constitution of India, 1950—Arts. 226/227—Reinstatement—Petitioner suspended due to investigation in criminal case—Acquitted therefrom—Suspension order not revoked—Challenge thereto—Held that it necessary to revoke suspension order once acquitted from criminal cases.

Held, that the petitioner was suspended because of the investigation in the criminal case. Once the petitioner has been acquitted in those cases, there is no ground to maintain the suspension merely because the respondents feel that they can initiate departmental action. The ratio of the decision in the case of Sunder Lal, squarely applies to the facts of the present case. Infact the petitioner was suspended in the year 1984. He was acquitted in March, 1993. After an inordinate delay charge-sheet has been served during the pendency of the present petition. The agony of the suspension in the peculiar facts in any case cannot be allowed to be perpetuated in this manner.

(Paras 10 & 11)

Naresh Prabhakar, Advocate, for the Petitioner.

S. S. Nijjar, Sr. Advocate with G. S. Bajwa, Advocate, for the Respondent.

JUDGMENT

V. S. Aggarwal, J.

(1) Petitioner Jaspal Singh Kohli was working as Cashier-cum-Godown Keeper with the Hindustan Commercial Bank Limited, Ludhiana. The assets and liabilities of the Hindustan Commercial