are, therefore, of the opinion that the view taken by the Appellate Tribunal in the matter was correct. The answer to the question referred would be in the negative.

In view of the nature of the point involved the parties are left to bear their own costs.

S. K. KAPUR, J.—I agree. Kapur, J.

K. S. K.

CIVIL MISCELLANEOUS

*Before Shamsher Bahadur and Gurdev Singh, JJ.*

KARTA RAM,—*Petitioner.*

*versus*

THE STATE OF PUNJAB, AND OTHETS,—*Respondents.*

**Civil Writ No. 2046 of 1964.**

1965

May, 17th

*Punjab Gram Panchayat Act,* 1952 (*IV of* 1953)—*S.* 6(5) (*f*) *and* (1)—*"Notified as disqualified for appointment in public service"—Meaning of—Mere dismissal from Government service—Whether sufficient—Person obtaining lease of land in auction under Gram Sabha and paying lease money but not taking possession of the land—Whether lessee under Gram Sabha and thus disqualified under S.* 6(5)(1).

*Held,* that the disabling and disqualifying provisions in statutes, more particularly in laws relating to elections, have to be strictly construed and the Legislature must be intended to have confined the disqualification or disablement strictly within the ambit of its terms. What is sought to disable a person from standing as a Panch or to continue in this office as such under clause (f) of sub-section (5) of section 6 of the Punjab Gram Panchayat Act, 1952, is disqualification for appointment in public service and it is also important to observe that such a disqualification has to be "notified". The sole exception is the disqualification for such appointment on medical grounds. Mere dismissal from Government service is not sufficient as every dismissal from service of the State does not entail disqualification for future employment. The language employed in clause (f) of subsection 5 of section 6 of the Act plainly requires the disqualification to be notified in some manner. A mere information of an order of dismissal or removal, would not be sufficient to warrant the conclusion that the disqualification, if intended, has been notified as well.

The appropriate authority of the Government has always to reach a decision about the consequences which flow from an order of dismissal particularly whether or not a person so dismissed has to be disqualified from service. That decision when reached, some sort of notification has also to be made before the disabling provision could disentitle a person from standing for election, or to continue, as a Panch.

*Held*, that even a lease which is yet to come into force is not a contract of an executory nature but is a completed agreement. The mere fact that the petitioner in the present case had postponed taking possession of the land for which he had agreed to become a lessee and had actually paid the lease money would bring him within the mischief of clause (1) of sub-section (5) of section 6 of the Punjab Gram Panchayat Act.

*Held*, (per Gurdev Singh, J.)—That once it is found that a person is disqualified from employment in public service, the mere fact that the disqualification in question had not been published in the Official Gazette will not prevent it from being taken into consideration under clause (f) of sub-section (5) of section 6 of the Act. The disqualification may be made known in various manners, including adoption of the procedure prescribed under note 2, clause 4, of the Punjab Civil Services (Punishment and Appeal) Rules published as Appendix 24 in the Punjab Civil Services Rules, Volume I. Even a general rule, if made by competent authority, stating in what cases dismissal or removal from Government service would disqualify a person for appointment in public service would amount to notification, if the disqualification relied upon is the one that is mentioned in such a rule.

*Case referred by the Hon'ble Mr Justice Shamsher Bahadur on 18th Februany, 1965, to a larger Bench for decision of an important question of law involved in the case...The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Shamsher Bahadur and the Hon'ble Mr. Justice Gurdev Singh on 17th May, 1965.*

*Petition under Article 226 of the Constitution of India praying that a writ in the nature of* Certiorari, *or any other appropriate writ, order or direction be issued quashing the order passed by respondent No. 2, dated the 20th August, 1964, and further praying that the election of the Panch in place of the petitioner be stayed, till the final disposal of the writ petition.*

BABU RAM AGGARWAL AND INDER SINGH KARWAL, ADVOCATES, for the Petitioner.

SRI CHAND GOYAL AND P. N. AGGARWAL, ADVOCATES, for the Respondents.

Shamsher Pahadur, J.

SHAMSHER BAHADUR, J.—Karta Ram petitioner was elected a Panch of Gram Sabha, Bhadal Thua, on 4th of January, 1964. On a petition filed by the third respondent Prem Chand, this election was set aside by the Ilaqa Magistrate, Nabha, as Prescribed Authority on 20th of August, 1964, on two grounds. It was found by the Prescribed Authority that the petitioner became a tenant of the Gram Panchayat by virtue of its resolution, Exhibit P.B. of 17th of November, 1963, and had actually paid the lease money of Rs. 900 in two instalments of Rs. 600 and Rs. 300 on 17th of November, and 19th of December, 1963, respectively. It was further found by the Prescribed Authority that the petitioner had been dismissed from the post of Patwari on 13th of July, 1932, and for the second time his services were terminated from the Consolidation Department by an order passed by the Settlement Officer (Consolidation) on 4th of May, 1954. In the view of the Prescribed Authority, the petitioner being a tenant of the Gram Panchayat and having been dismissed from Government service had disentitled himself to stand for election as or to continue a Panch; his nomination papers having therefore been wrongfully accepted, the election has been set aside. The relevant provisions of law are contained in sub-section (5) of section 6 of the Punjab Gram Panchayat Act, 1952, which provides that :—

"6. (5) No person who is not a member of the Sabha and who—

(a) * * * *

(b) * * * *

(c) * * * *

(d) * * * *

(e) * * * *

(f) has been notified as disqualified for appointment in public service, except on medical grounds; or

(g) * * * *

(h) * * * *

(i) * * * *

(j) * * * *

(k) * * * *

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(1) is a tenant or lessee holding a tenancy or lease under the Gram Sabha or is in arrears of rent of any lease or tenancy held under the Gram Sabha, or is a contractor of the Gram Sabha;

shall be entitled to stand for election as, or continue to be a Sarpanch or Panch."

The order of the Prescribed Authority has been challenged in this petition under Article 226 of the Constitution of India by Karta Ram and the matter was placed before me in the first instance as a single Judge, on 18th of February, 1965. It was contended before me by Mr. Babu Ram Aggarwal, on basis of a decision given by me in *Balak Ram* v. *The State of Punjab* (1), that dismissal *per se* did not entail the disqualification under clause (f) of sub-section (5) of section 6. Mr. Goyal, for the respondent, on the other hand sought the support of a decision of Chief Justice Bhandari in *Gulab Singh* v. *Pritam Singh* (2), in which the learned Judge in construing a similar provision in the unamended Gram Panchayat Act took the view that the disqualification could be spelled out from an order of dismissal and the person concerned would be deemed to be notified of it on receiving information of the order of dismissal. Being of the view that the matter in issue was of importance and called for decision of a larger Bench, I did not consider it necessary to decide the other matter on which the Prescribed Authority had given a finding adverse to the petitioner's case. The whole matter had now been placed for disposal before this Bench and I will first take up the question on which there is a seeming difference in the view taken by Chief Justice Bhandari in *Gulab Singh's* case and my own in *Balak Ram's* case.

It cannot be denied that the disabling and disqualifying provisions in statutes, more particularly in laws relating to elections, have to be strictly construed and the Legislature must be intended to have confined the disqualification or disablement strictly within the ambit of its terms. What is sought to disable a person from standing

(1) 1965 P.L.R. 213.
(2) 1956 P.L.R. 234.

as a Panch or to continue in this office as such under clause (f) is disqualification for appointment in public service and it is also important to observe that such a disqualification has to be "notified". The sole exception is the disqualification for such appointment on medical grounds. Mr. Goyal has placed strong reliance upon the order passed by Khan Bahadur Sheikh Siraj-ud-Din, Revenue Member, Council of Regency, Nabha State, by which the petitioner was dismissed from service in 1932 for being a corrupt official. It is true that the conduct of the petitioner was stigmatised in the strongest possible terms and it was mentioned that it would not be an act of wisdom to permit such a man to continue in a post in which he has to deal with simple-minded Zamindars. However strongly it was indicative of the Revenue Member's aversion to the petitioner's proclivities, it is impossible to spell his intention from this order that the petitioner should not be employed in Government service in future. It would not be irrelevant in this context to mention the penalties which are prescribed under the Punjab Civil Services (Punishment and Appeal) Rules published as Appendix 24 in the Punjab Civil Services Rules, Volume I. Under clause 4, amongst the penalties which may for good and sufficient reason be imposed upon members of the services are:—

> "(vi) Removal from the Civil Services of the Government, which does not disqualify from future employment;
>
> (vii) Dismissal from the Civil Service of the Government which ordinarily disqualifies from future employment."

Note (1) to this clause mentions that punishing authorities have full discretion to publish in the *Punjab Government Gazette* reason for dismissal where such publication is considered desirable in the public interest, and under Note (2) it is stated that:—

> "In order to guard against the inadvertent re-employment of persons dismissed from Government service, the authority passing an order of dismissal shall intimate to the Deputy Inspector-General of Police, Punjab Criminal Investigation

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Department, Deputy Commissioner, and the Superintendent of Police of the district of which the person concerned is a permanent resident, the name of such a person and any other particulars required for purposes of identification, unless the dismissal has been notified in the *Punjab Government Gazette*.....".

It would be clear from a perusal of clause 4 that every dismissal from service of the State does not entail disqualification for future employment. There is no authority from which guidance could be obtained as to the criterion or rule which results in disqualification for future employment 'ordinarily'. Note (2) is also suggestive of the reason why notification of dismissal is necessary. It is intended to prevent any inadvertent re-employment of undesirable persons who have been dismissed from service. The line of distinction between removal which does not disqualify for future employment and dismissal which does, has not been crystalised in the form of any rule and presumably the matter is left to the discretion of the authorities concerned. No evidence has been led in the present case to show that acts of corruption for which the petitioner was dismissed by the Revenue Member were of a nature which could be said to entail in the ordinary course of nature the disqualification for future employment. It would be impossible to infer such a disqualification from an order of dismissal especially when the disabling clause which we have to construe says that the person has to be "notified as disqualified for appointment in public service."

Mr. Goyal also relies on the disqualifying provision contained in the Representation of the People Act, 1951, in support of his contention that dismissal on ground of corruption ordinarily implies disqualification for future employment in public service. Under clause (f) of section 7 of this Act, it is provided that:—

> "(7) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State—
>
> (f) if, having held any office under the Government of India, or the Government of any State...he

has, whether before or after the commencement of the Constitution, been dismissed for corruption or disloyalty to the State, unless a period of five years has elapsed since his dismissal."

Even assuming that we can project this provision in the Punjab Gram Panchayat Act which we have to construe, it would be readily observed that the dismissal on ground of corruption will result in an automatic disqualification only for a period of 5 years. The petitioner was dismissed from the post of Patwari on ground of corruption on 13th of July, 1932, and at most the disqualification could only operate for a period of five years. In 1954 his services were terminated on the ground that he had concealed his previous dismissal from service. This second order by itself would in no circumstances lead to an automatic disqualification from future employment.

In my view, however, the disqualifying provision has to be construed strictly and has to be kept within its statutory bounds. Clause (f) of sub-section (5) of section 6 requires that a person should have been disqualified for appointment in public service and such a disqualification should have been notified in some manner. This is the plain meaning of the statute and we are not entitled to incorporate in it anything more than is actually there. The task of the Court is not that of legislation but of administration of the law as it is.

Looked in this perspective, the decision of Chief Justice Bhandari in *Gulab Singh* v. *Pritam Singh* (2), may be examined. Gulab Singh, petitioner, who had been elected to the office of a Panch was found to have been a dismissed constable and in the view of the learned Judge he debarred himself by reason of his dismissal from standing for election as a Panch under the provisons of section 5(4)(c) of the Gram Panchayat Act which is analogous to clause (f) of sub-section (5) of section 6 of the Punjab Gram Panchayat Act, 1952. In that case evidence appears to have been recorded and the conclusion drawn was that the petitioner had been dismissed from the service of the Crown in the year 1936 and that he had become disqualified for appointment as a Government servant by reason of his dismissal. It seems that a finding had been reached by the appropriate

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Tribunal that the disqualification followed as a result of his dismissal. No evidence has been led in the present instance to justify such a conclusion and in my view the authority of *Gulab Singh's* case is clearly distinguishable. In any event, the language employed in clause (f) of sub-section (5) of section 6 plainly requires the disqualification to be notified in some manner. A mere information of an order of dismissal or removal, in my opinion, would not be sufficient to warrant the conclusion that the disqualification, if intended, has been notified as well. The appropriate authority of the Government has always to reach a decision about the consequences which flow from an order of dismissal particularly whether or not a person so dismissed has to be disqualified from service. That decision when reached, some sort of notification has also to be made before the disabling provision could disentitle a person from standing for election, or to continue, as a Panch. In the instant case the question of notification hardly arises as the disqualification itself for appointment cannot follow as a corollary from the order of dismissal passed in 1932.

Having answered the question of law in favour of the petitioner, I may now advert to the other ground on which his election has been set aside. It has been found by the Prescribed Authority that the petitioner had, become a lessee under the Gram Panchayat and had incurred the disqualification imposed by clause (1) of sub-section (5) of section 6 not only to stand for election but even to continue as a Panch. The existence of Resolution No. 60 of 17th of November, 1963, cannot be denied. In pursuance of this resolution, the petitioner paid two sums of Rs. 600 and Rs. 300 before the election as lease money. Mr. Babu Ram Aggarwal has argued that the petitioner not having taken possession of the land had not actually become a lessee. It is further pointed out by him that in the resolution Exhibit P.B., there are interpolations and some name appears to have been cut out and that of Karta Ram, petitioner, substituted. It is suggested that the interpolation has been done with the deliberate object of disqualifying the petitioner. Mr. Aggarwal has suggested that the petitioner had intended not to enforce the lease if he had actually succeeded in the election as a Panch and he would have taken over the land as a lessee only if he had failed to get elected. The petitioner's case must fail on the broad general ground that the Prescribed Authority after a

consideration of the evidence has reached a finding on a question of fact which is not to be disturbed in *certiorari* proceedings by this Court. The Prescribed Authority, according to the evidence adduced before it, has reached the conclusion that the receipts were executed by the petitioner and he is a tenant as laid down in clause (1) of sub-section (5) of section 6. What has been suggested by Mr. Aggarwal lends colour to the impression that the petitioner was trying to take advantage of both the worlds and for all intents and purposes he had become a lessee under the Gram Panchayat. It has been laid down by their Lordships of the Supreme Court in *Syed Yakoob* v. *K. S. Radhakrishnan and others* (3), that the High Court in the exercise of its supervisory jurisdiction to issue a writ of *certiorari* "is not entitled to act as an appellate Court" and this limitation necessarily means that "findings of fact reached by the inferior court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings". In order that interference may be justified an error law must be apparent on the face of the record and it must not be a mere error of fact however grave it may appear to be. There is abundance of authority for the proposition that even a lease which is yet to come into force is not a contract of an executory nature but is a completed agreement. In a Bench of the Punjab Chief Court of Shah Din and Chevis, JJ., in *Mihan Khan* v. *Muhammad Bakhsh and others* (4), it was said that "a completed contract of lease is an executed contract and not merely an executory contract, although the commencement of the lease has been postponed to a future date". The mere fact that the petitioner in the present case had postponed taking possession of the land for which he had agreed to become a lessee and had actually paid the lease money would bring him within the mischief of clause (1) of sub-section (5) of section 6. Page J., in *Ramjoo Mahomed* v. *Haridas Mullick and others* (5), similarly held that although the term of a lease is to commence at a future date or a formal document is to be executed, it does not necessarily follow that the agreement will not operate as a present demise of the premises. In a Full Bench decision

(3) A.I.R. 1964 S.C. 477.
(4) 97 P.L.R. 1913.
(5) A.I.R. 1925 Cal. 1087.

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of the Travancore-Cochin High Court in *Sanku Krishnan* v. *Hari Prabhu* (6), it was said that:

> "Neither is it necessary that actual possession of the property should be given to the lessee by the lessor himself. For transfer of possession of immovable property, the transferee need not be put in physical possession of the property by the person who executes the deed of transfer. Transfer of the right to be in possession amounts to transfer of possession."

These observations made by the Full Bench in construing the concept of 'lease' in the Transfer of Property Act are fully applicable to the present case where the petitioner had made a bid in open auction and had succeeded in obtaining the lease for the ensuing year. It matters not that the petitioner had yet to take possession of the land so taken on lease. It is worth observing that according to the language of clause (1) the petitioner is also disabled to continue as a Panch if he becomes a lessee of the Gram Panchayat. The disqualification would be lost of all meaning and content if the petitioner is allowed to sit on the fence and await his chance of getting elected before giving up the lease. The petitioner's case becomes divested of any merit because of this attitude and the order of the Prescribed Authority must, therefore, be upheld on this score as well.

In the result, this petition fails and is dismissed with costs.

GURDEV SINGH, J.—I agree with my learned brother that this petition has no merit and must be dismissed with costs. The finding of the Prescribed Authority (which we endorse) that the petitioner had become a lessee under the Gram Panchayat alone is enough to justify the order setting aside his election.

I also agree that the second ground on which the Prescribed Authority has held that the petitioner was ineligible for election as *Panch*, is not sustainable. The

(6) A.I.R. 1952 Tran. Coch. 333.

Prescribed Authority has found that the petitioner was debarred from contesting election because in the year 1932 he had been dismissed from the post of a Patwari by the order of the Revenue Member, Council of Regency, Nabha State, on charges of corruption and later in the year 1954 when he entered the service of the Patiala and East Punjab States Union in the Consolidation Department, he was removed from his post for suppressing the fact that he was a dismissed Patwari. Reliance in this connection was placed on clause (f) of sub-section (5) of section 6 of the Punjab Gram Panchayat Act, 1952, (hereinafter called the Act), which reads as under:—

> "No person who is not a member of the Sabha and who—
>
> (f) has been notified as disqualified for appointment in public service, except on medical grounds, shall be entitled to stand for election as, or continue to be a Sarpanch or Panch."

The contention of the petitioner's learned counsel that a person cannot be debarred from contesting election as Panch or Sarpanch merely because he was previously dismissed from Government service has considerable force. Had the Legislature intended that no person, who has been dismissed from Government service should be permitted to contest election as Panch or Sarpanch, this clause would have been differently worded so as to provide : "No person, who has been dismissed from Government service or otherwise disqualified from appointment in public service, except on medical grounds, shall stand for election or continue as Panch or Sarpanch". Clause (f) of sub-section (5) of section 6, as it stands, refers to the persons who have been notified as disqualified for appointment in public service. A person may be disqualified not merely because of his dismissal or removal from public service but on other grounds as well. For instance, a person may be debarred from holding a public office because of his having been declared an insolvent or convicted of offences against the security of the State or involving moral turpitude or engaging in disloyal activities. Dismissal from public service may be one of the grounds on which a person may be disqualified from holding a public office but we have not

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been referred to any provision of law, rule, or regulation under which dismissal from public service, for whatever reason it may be, entails disqualification for future appointment in public service, though ordinarily it may not be desirable to consider a dismissed Government employee for future employment. Thus, I have no hesitation in agreeing with my learned brother that before a dismissed Government employee can be debarred from contesting election as Panch or Sarpanch it has to be further proved that his dismissal disqualifies him for appointment in public service.

The decision of Bhandari, C.J., in *Gulab Singh* v. *Pritam Singh and others* (2), on which reliance is placed by the respondents' learned counsel is clearly distinguishable on facts and is no authority for the proposition that dismissal or removal from Government service *per se* disqualifies a person from contesting election as Panch or Sarpanch. In the case with which the learned Chief Justice was dealing, the Prescribed Authority had come to the specific finding not only that the person seeking election had been previously dismissed from Government service but also found that because of his dismissal he had become disqualified for appointment in public service. It was in view of these findings of fact that the learned Chief Justice held that clause (c) of sub-section (4) of section 5 of the Act, which is in the same terms, applied. In the case before us there is nothing to show that because of the petitioner's dismissal from the post of Patwari or his removal from the Consolidation Department, he was disqualified from entering public service.

It has been argued that the disqualification for appointment in public service, which is relied upon must have been published in the Official Gazette and unless that was done, it would not debar the person concerned from seeking election as a Panch or Sarpanch. Emphasis in this connection is placed on the word "notified" occurring in the relevant clause. The Act does not say what the word "notified" means, but in *Gulab Singh* v. *Pritam Singh and others* (supra) Bhandari, C.J., relying upon its meaning as given in the Shorter Oxford Dictionary observed:—

> "I am of the opinion that to 'notify' one of a fact is "to make it known to him" or "to inform him by words or notice". It is not necessary that

this fact should be made known only by means of a notification in the official gazette".

In Volume 28 of the Words and Phrases (Permanent Edition), the meaning of the word "notify" is stated thus:—

"'Notify' in its primary and literal meaning, means to make known, and, according to Worcester, its secondary meaning is to give notice to, to inform by words or writing, in person or by message, or by any signs which are understood.

There is a clear distinction between the terms "notify" and "service of notice". Generally, the word "notify" means to give notice to; to inform by words or writing, in person or by message, or by any signs which are understood; to make known; to "notify" one of a fact is to make it known to him; to inform him by notice".

In the context in which the word "notified" occurs in the clause under consideration, it, in my opinion, is used in the sense "made known" or "declared". If the Legislature intended that the disqualification would be considered as a bar to seeking election as a Panch or Sarpanch only if it is published in the Official Gazette, nothing could have been easier for it than to insert the expression "in the Official Gazette" between the words "notified" and "as disqualified for appointment".

In my opinion, once it is found that a person is disqualified from employment in public service the mere fact that the disqualification in question had not been published in the Official Gazette will not thus prevent it from being taken into consideration under clause (f) of sub-section (5) of section 6 of the Act. The disqualification may be made known in various manners, including adoption of the procedure prescribed under note 2, clause 4, of the Punjab Civil Services (Punishment and Appeal) Rules published as Appendix 24 in the Punjab Civil Services Rules, Volume I, to which reference has been made by my learned brother. Even a general rule, if made by competent authority stating in what cases dismissal or removal from Government service would disqualify a person for appointment in public service would, in my opinion, amount to notification if the disqualification relied upon is the one that is mentioned in such a rule.

*B.R.T.*