

war service candidates under rule 3 or some other posts, both these petitions have to be allowed. I, accordingly, accept them and award the petitioners a writ of mandamus directing the State Government of Punjab to restore the petitioners to the same position in the cadre which they were holding before the impugned order was passed and give them the benefit of their war service referred to in rule 6. In view of the fact that it is the wrong order of the Government that has compelled the petitioners to approach this Court, I would further direct that the petitioners shall have their costs to these petitions from the State of Punjab.

Sodhi, J.—I have had the privilege of going through the judgments of my brethren P. C. Pandit and Gurdev Singh, JJ. I am in agreement with the reasoning and conclusions of my brother Pandit, J.

ORDER OF THE FULL BENCH

P. C. Pandit, Gurdev Singh and H. R. Sodhi, JJ.

In view of the majority decision, these writ petitions are dismissed, but with no order as to costs.

22nd July, 1969.

R.N.M.

FULL BENCH

Before Harbans Singh, Gurdev Singh and H. R. Sodhi, JJ.

SOHAN SINGH,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ 735 of 1969

September 25, 1969

Punjab Civil Services Rules, Volume I, Part I—Rules 10.2(a) and 10.3—State Government lending services of its officer on deputation to foreign service for a specified period—Such officer—Whether can be legally recalled before the expiry of the period—Consent of the officer for such re-call—Whether necessary.

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Held, that an officer of the State Government, while on deputation to foreign service for a specified period, continues to be an employee of the State Government during his period on deputation and remains subject to the control of the Government. He is also entitled to be considered for any promotion, etc., that may become available in his parent Department. The fact that for all purposes he is to be considered to remain on the cadre in which he was included before his transfer and that he is entitled to be considered for promotion even during the specified period of his deputation indicates clearly that the period, if specified, is only tentative and may primarily be for the benefit of the foreign employer to have an idea of the period during which his services will be available. No contract comes into being between the State Government and its employee when he is sent on deputation under rule 10.2 of Punjab Civil Services Rules, Volume I, Part I. Virtually he remains under the effective control of the State Government and his legal position continues to be more one of status than of contract. He cannot be said to have any indefeasible right to insist that he should not be recalled before the expiry of specified period. Hence the State Government having lent the services of its officer on deputation to foreign service for a specified period can, before the expiry of the aforesaid period, legally recall the officer unilaterally without the consent of the officer concerned. (Paras 10, 15 and 5)

Case referred by the Hon'ble Mr. Justice H. R. Sodhi, on 21st May, 1969 to a Division Bench for decision of an important question of law involved in the case. The Division Bench consisting of the Hon'ble Mr. Justice Harbans Singh and the Hon'ble Mr. Justice H. R. Sodhi, further referred the case to the Full Bench on 12th August, 1969. The Full Bench consisting of the Hon'ble Mr. Justice Harbans Singh, the Hon'ble Mr. Justice Gurdev Singh and the Hon'ble Mr. Justice H. R. Sodhi, finally decided the case on 25th September, 1969.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of Mandamus or any other writ, order or directions be issued quashing the impugned order, dated 21st March, 1969, and directing the respondents not to implement the order by reverting the petitioner and further praying that implementation of the order, dated 21st March, 1969 be stayed during the pendency of the writ petition.

BHAGIRTH DASS, SENIOR ADVOCATE WITH B. K. JHINGAN AND S. K. HIRAJI, ADVOCATE, for the Petitioner.

B. S. DHILLON, ADVOCATE-GENERAL, PUNJAB WITH RATTAN SINGH AND SUKHDEV KHANNA, ADVOCATES, for the Respondents.

JUDGMENT OF THE FULL BENCH

HARBANS SINGH, J.—This petition under Article 226 of the Constitution of India, filed by an employee of the co-operative Department of the Punjab State, is directed against the Punjab Government challenging its order, dated the 21st of March, 1969, recalling

the petitioner from foreign service and directing his posting to his parent Department.

(2) The Punjab State Co-operative Supply and Marketing Federation Ltd., Chandigarh (hereinafter referred to as the Federation), is a society registered under the Co-operative Societies Act and consequently is a body corporate quite independent of and distinct from the Punjab State Government. By its resolution, dated the 21st of October, 1963, (Annexure 'B' to the writ petition), it requested the Punjab State Government to spare the services of the petitioner, Shri Sohan Singh, who was then working as Joint Registrar in the Co-operative Department, on deputation to the Federation. To begin with, the Punjab State Government agreed to spare the services of one Shri Rajinder Singh, Deputy Registrar of Co-operative Societies, but on the insistence of the Federation the Punjab State Government agreed to "the deputation on foreign service of Shri Sohan Singh" as Secretary of the Federation with effect from the 3rd of March, 1965. The sanction and the terms on which he was permitted to go on deputation in foreign service are incorporated in Annexure 'C' to the writ petition. The period of deputation was to be one year in the first instance and the petitioner was to get, in addition to pay as Joint Registrar, Co-operative Societies, 20 per cent deputation allowance. It is further provided in Annexure 'C' that he will be entitled to the various facilities mentioned therein, to which he was otherwise entitled, and the leave and pension contribution was to be paid by the Federation. This period of one year expired in 1966 and the period was renewed from time to time. The last renewal was conveyed by the Deputy Secretary to Government, Punjab, Co-operative Department, to the Registrar Co-operative Societies, Punjab, by its memo No. 2447-CI-68 of July, 1968 (Annexure 'D' to the writ petition), by which the period of deputation of the petitioner to the Federation was extended "for two years with effect from the 3rd of March, 1968 to the 2nd of March, 1970, on the existing terms and conditions'. Soon thereafter, that is, on the 17th of August, 1968, one post of Additional Registrar, Co-operative Societies, was created in the Scale of Rs. 1,600—50—1,800 and the petitioner Sohan Singh, who was at that time in foreign service with the Federation was appointed to officiate against the said post "in addition to his present charge on foreign service". It was specifically provided that the sanction of the post will be operative "till such time as Shri Sohan Singh holds the dual charge of the post of Additional Registrar * * * * as well as on foreign service as the Secretary" of the Federation, and secondly

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that the entire expenditure on the pay, leave salary and pension contribution of Shri Sohan Singh was to be borne by the said Federation. It was further clarified that in case, due to change in this arrangement any expenditure on State exchequer is involved, the matter will be referred to the Finance Department again. The net result of the above-mentioned order (Annexure 'E' to the writ petition) was that the petitioner started drawing pay, while on foreign service, in the higher grade of Rs. 1,600—1,800, in addition to which apparently he was entitled to the usual 20 per cent deputation allowance. The creation of the post was for the period that he was to be on deputation, so that it did not involve any expenditure to the State exchequer. This was obviously a way to benefit the petitioner and let him draw higher emoluments from the foreign employer, which was would not have been entitled to, if this higher post had not been so created and the petitioner given an officiating promotion to the same.

(3) Thus the petitioner continued on foreign service, when on the 21st of March, 1969, that is, after the petitioner had enjoyed a little more than a year of the last two years' extension granted to him, the impugned order, dated the 21st of March, 1969, (Annexure 'G' to the writ petition), was passed by the Punjab State Government, by which the services of the petitioner as, Managing Director of the Federation (as he then was) were withdrawn and he was posted as Joint Registrar, Co-operative Societies, Consumers' Stores, in the office of the Registrar, Co-operative Societies, Punjab, at Chandigarh. The petitioner was directed to "hand over the charge to his next senior in the Federation and join his new assignment immediately." This order is signed by the Secretary to Government, Punjab, Co-operative Department. It appears, however, that this order was issued on the basis of an order passed by the Chief Minister on the 10th of March, 1969, (translation Annexure 'C-1'), as elaborated by subsequent order, dated the 20th of March, 1969, (translation Annexure 'C-2'). Apparently the petitioner came to know about this order and he met respondent No. 4, Mr. R. S. Phoolka, the Principal Secretary to the Chief Minister, Punjab. According to the allegations in paragraph 15 of the writ petition, it was respondent No. 4, who had called the petitioner on telephone and it was as a result of his message that he met respondent No. 4, when the petitioner was informed by him that "the Chief Minister was annoyed with him and that it would be in petitioner's best interest that he should proceed on four months' leave." The petitioner, however, refused to proceed

on leave and immediately thereafter he met Shri S. S. Grewal, Secretary, Co-operative Department, and told him all that had transpired in the meeting with respondent No. 4.

(4) A number of grounds were taken in the writ petition challenging the impugned order. In the first instance, it was stated that the order was *mala fide* and has been passed by the Chief Minister because he and his Principal Secretary, respondent No. 4, were annoyed with him for not having accommodated their relations or friends while he was working as the Secretary or the Managing Director of the Federation. Secondly, it was stated that the petitioner had been sent on foreign service for a specified period of two years, which was to expire in March, 1970, and consequently without his consent, the Punjab Government could not recall him back from foreign service before the expiry of this period. Lastly, it was urged that the reversion to his parent Department adversely affected his emoluments and his status, inasmuch as, during the period that he was on foreign service, he was officiating as Additional Registrar and on reversion he was being posted as Joint Registrar. The plea of *mala fide* was controverted both by the Chief Minister and his Principal Secretary, respondent No. 4. As regards the remaining two points, the position taken was that the Punjab Government was within its rights to recall its employee, sent on foreign service, at any time, if his services were required by the Government and that as the petitioner was holding the post of Additional Registrar only in an officiating capacity, and this post was to last only till such time as he was on foreign service, the reversion to his substantive post of Joint Registrar did not amount to any punishment.

(5) This petition, in the first instance, came before my Lord Mr. Justice Sodhi, who asked for the assistance of another Judge in view of the importance of the question involved. The matter was argued at length before the Bench consisting of Mr. Justice Sodhi and myself and by a detailed order written by Mr. Justice Sodhi, it was held that there was no substance in the allegation of *mala fide* urged by the petitioner and the law points involved in the petitioner, urged before the Division Bench, were referred to the Full Bench for an authoritative decision. The following questions are thus for decision before us:—

- (1) Whether the State Government having lent the services of its officer on deputation to Foreign service for a specified

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period can before the expiry of the aforesaid period legally recall the officer unilaterally without the consent of the officer concerned ?

- (2) Does it make any difference if such a recall is without the consent of the borrowing employer ?
- (3) Are the provisions of Article 311 of the Constitution of India attracted in the circumstances of the present case where an officer, who has been enjoying, on his transfer to Foreign service, greater emoluments and higher status and rank, is recalled, before the expiry of the specified period, to his parent Department in lower rank with lesser emoluments without his consent or a notice to him?

(6) It was agreed by both the parties that the main question requiring determination is question No. 1, and this was the question which was mainly agitated before us.

(7) At the very outset, it may be emphasised that the present petition is by the employee, who has been recalled by his original employer. There is no petition by the foreign employer, namely, the Federation. In this petition, therefore, we are not concerned at all with the rights, if any, of the Federation *vis-a-vis* the State Government to insist either that the person sent on deputation should be allowed to work with it for the full stipulated period or that in the interest of its work a reasonable notice should be given to it before the officer sent on deputation is withdrawn. During the course of arguments, therefore, we impressed on the learned counsel that the rights of the employee and the rights of the foreign employer should be kept distinct. As we are concerned only with the question whether the employee, that is, the petitioner has an indefeasible right to remain on foreign service for the specified period for which he was sent there and can insist that he cannot be legally recalled without his consent, we will not refer to arguments relating to the question as to what is the effect of the absence of consent of the foreign employer in the petitioner being recalled.

(8) Rule 3.17(a) of the Punjab Civil Service Rules, Volume I, Part I, (hereinafter referred to as the Rules) provides as follows :—

“Government may transfer a Government servant from one post to another; Provided that except—

- (1) on account of inefficiency or misbehaviour or

(2) on his written request,

a Government servant shall not be transferred substantively to, or, except in a case covered by rule 4.22, appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien, or would hold a lien had his lien not been suspended under rule 3.14."

Rule 10-(a) of the Rules provides that "no Government servant may be transferred to foreign service against his will." According to these two rules, therefore, Government is empowered to transfer a Government servant from one post to another and the only exception is that he cannot normally be appointed to a post carrying less pay and that if he is to be transferred on foreign service, such a transfer must not be against his will. It was urged that if an employee gives his consent to his transfer to foreign service for a specified period, he cannot be continued beyond that period if he is not agreeable to the extension of such a period and it was not disputed in the present case that the last extension, which was given to the petitioner from 3rd of March, 1968, to 2nd of March, 1970, on the existing conditions can be presumed to have been given with the tacit consent of the employee. In fact, in the present case, the employee is anxious to continue on foreign service for the obvious reason that he is getting better emoluments there. The main contention of the learned counsel for the petitioner, therefore, was that when a Government employee is transferred on foreign service under rule 10.2(a) of the Rules, the consent of the employee is necessary and, therefore, there arises a contract between the Government on the one side and the employee on the other according to which the employee agrees to go on foreign service and the Government Department agrees to send him on such service. It was further urged that if no period is specified for which he is so transferred, then it must be presumed that there was an implied term in the agreement between the parties that the employee can ask for being taken back at any time and similarly the Government can recall him at any time. However, if a period is specified, then the specified period must be treated as a part of the contact between the Government and the employee and without the consent of both the parties, this period cannot be curtailed. In other words, the employee cannot be recalled by the Government, nor can the employee ask the Government to recall him before the expiry of the period. In fact, there is a third party to this so called contract, namely, the foreign employer. If the period is specified, it was urged, the same cannot be curtailed except

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with the consent of all the three parties. The learned counsel had to concede that in view of this, the employee, who is sent on foreign service, is entitled to make a nuisance of himself and even if the foreign employer wants to send him back and the Government is prepared to take him back, yet the employee can insist that he must stay there for the full specified period.

(9) On behalf of the State, however, it was urged that this argument of the learned counsel for the petitioner is based on a misconception of the real legal position. It was contended that once a person enters into Government service, his relations with the Government are not contractual and there is no question of any contract having been entered into between such an employee and the State Government when he is transferred to foreign service, though with his consent. In *Roshan Lal Tandon and others v. Union of India and another* (1), it was authoritatively laid down that "the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the Public law and not by mere agreement of the parties." In this case, the contention raised on behalf of the appellant was that the conditions of service, which existed at the time when he entered into service, could not be altered subsequently to his disadvantage. Mr. Justice Ramaswami, speaking for the Court, at page 1894 of the report observed as follows:—

"In our opinion, there is no warrant for this argument. It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government."

Their Lordships of the Supreme Court then quoted with approval Salmond and Williams on Contract, 2nd edition, and a part of that quotation may be repeated here:—

"A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has seen fit to attach to this relation compulsory

(1) A.I.R. 1967 S.C. 1889.

incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status."

It was, therefore, held by the Supreme Court that "the legal position of a Government servant is more one of status than of contract."

(10) In the present case, it was argued that the relationship of the State Government and the employee is governed by rules and all that is provided in rule 10.2 of the Rules is that a transfer by the Government of an employee outside his normal scope of service should not be against the will of the employee. In fact it was urged that there is no corresponding rule providing for an employee's consent being taken when he is recalled and transferred back to his parent department. Rule 10.3 of the Rules makes it clear that such a transfer on foreign service has to be made in public interest and not in the interest of either the foreign employer or the employee. Rule 10.3 runs as follows:—

"A transfer to foreign service is not admissible unless—

- (a) the duties to be performed after the transfer are such as should, for public reasons, be rendered by a Government servant."

Note 2 to this rule is in the following terms:—

"If in any case a proposal is made that a Government servant should be lent to a private undertaking it is necessary that the principles of clause (a) of this rule should be applied most rigorously, and in general the loan of a Government servant to a private undertaking should be regarded as a very exceptional case requiring special justification."

Thus though the employee, when transferred to foreign service, is being sent outside his cadre and his normal sphere of work and for this reason his consent is taken before he is so transferred, yet the

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transfer to foreign service is primarily in the public interest and whether in a particular case a transfer would or would not be in public interest is for the State Government to decide. Normally speaking it would also be for the State Government to say whether his continued foreign service is in the public interest or whether he should be recalled to his parent Department. In any case, it was urged and I think with considerable force, that the mere fact that the transfer to foreign service has to be with the consent of the employee would not mean that a new contract of service has come into existence as has been suggested on behalf of the petitioner. It is significant to note that other rules in Chapter X of the Rules governing the relationship of the employee and the State Government, while he is on foreign service, make it clear that for all purposes, he continues to be an employee of the State Government during his period on deputation on foreign service and he remains subject to the control of the Government and is also entitled to be considered for any promotion, etc., that may become available in his parent Department. This is so provided in rule 10.5 of the Rules, clause (i) of which runs as follows:—

“A Government servant transferred to foreign service shall remain in the cadre or cadres in which he was included in a substantive or officiating capacity immediately before his transfer, and may be given such substantive or officiating promotion in those cadres as the authority competent to order promotion may decide. In giving promotion, such authority shall also take into account the nature of the work performed in foreign service.”

It was urged that if an employee, who proceeds on foreign service, is to be treated to have entered into a new contract of service with the State Government, then such an employee will not be entitled to be considered in his parent Department till after the expiry of the stipulated period of deputation. The fact that for all purposes he is to be considered to remain on the cadre in which he was included before is transfer and that he is entitled to be considered for promotion even during the specified period of his deputation indicates clearly that the period, if specified, is only tentative and may primarily be for the benefit of the foreign employer to have an idea of the period during which his services will be available. We are not concerned with a case where the employee has changed his position for the worse on the basis of any representation made to him that he is likely to stay for a specified period on foreign deputation,

in which case a rule of estoppel may or may not apply. It is, therefore, not necessary for us to consider this aspect because here there was no suggestion that the employee has altered his position for the worse on the assumption that he was to continue till 2nd of March, 1970. Before his transfer on foreign service, he was posted at Chandigarh and he continued to be posted at Chandigarh while on foreign service. The argument addressed by the learned counsel for the petitioner that when an employee is sent on foreign service for a specified period, he may take the specified period into consideration before giving his consent to his being so sent would have no bearing in the present case.

(11) It was vehemently contended that, under the Rules, not only a Government employee transferred on foreign service continues to be in the cadre in which he was at the date before his transfer, but also the terms which are to be offered to him by the foreign employer are controlled by the State Government, as is clear from Rule 10.8 of the Rules which is as follows:—

“A Government servant in foreign service will draw pay from the foreign employer from the date on which he relinquishes charge of his post in Government service. Subject to any restrictions which the competent authority may by general order impose, the amount of his pay, the amount of joining time admissible to him and his pay during such joining time will be fixed by the authority sanctioning the transfer, in consultation with the foreign employer.”

Annexure A to the Chapter at page 239 of the Rules lays down the restrictions for regulating the amount of remuneration to be paid to the Government servant on foreign service in India. Relevant part of clause (1) and (2) runs as follows:—

“(1) No Government servant will be permitted to receive any remuneration or enjoy any concession which is not so specified, and, if the order is silent as to any particular remuneration or concession, it must be assumed that the intention is that it shall not be enjoyed.

(2) The following two general principles must be observed in sanctioning the conditions of transfer:—

(a) The terms granted to the Government servant must not be such as to impose an unnecessarily heavy burden on the foreign employer.

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- (b) The terms granted must not be so greatly in excess of the remuneration which the Government servant would receive in Government service as to render foreign service appreciably more attractive than Government service."

Again Rule 10.16 of the Rules regulates the grant of leave to a Government servant on foreign service and it provides that he "may not be granted leave otherwise than in accordance with the rules applicable to the service of which he is a member, and may not take leave or receive leave-salary from Government unless he actually quits duty and goes on leave". It is thus clear, that to all intents and purposes, he remains under the control of the parent Department except that he draws his salary from the foreign employer. It was, therefore, urged that it was anomalous to suggest that, by merely being sent on foreign service, his status is changed and he must be deemed to be working on the basis of a contract of service with the foreign employer for a specified period, if such a period is so specified.

(12) On behalf of the petitioner, reference was made to *State of Assam and others v. Padma Ram Borah* (2). In this case, a Government servant was to retire from 1st of January, 1961, but before this date, he was placed under suspension pending a departmental enquiry started against him. The relevant Service Rules of the Assam Government provided that an employee's retirement can be postponed pending a departmental enquiry started against him. Consequently, the effect of placing the employee under suspension was that he was to continue in service till the departmental enquiry against him is finished. However, this order of placing him under suspension passed on 22nd of December, 1960, was followed by another order passed by the Government on 6th of January, 1961, which was to the following effect:—

"The term of the services of Shri P. R. Borah, Superintendent (under suspension) of the Office of the Commissioner of Excise, Assam is extended for a period of 3 (three) months with effect from the 1st January, 1961 or till the disposal of the departmental proceedings, whichever is earlier."

The departmental enquiry not having been finished within the period of three months envisaged in this order, another order was

(2) A.I.R. 1965 S.C. 473.

passed on May 9, 1961, extending the term of the services "for a further period of three months with effect from 1st of April, 1961, or till the disposal of the departmental enquiry whichever is earlier". Against this order, P. R. Borah moved the High Court and the High Court held that on the facts of the case before it, the appellant had no jurisdiction to extend the period of service of the respondent. The Assam Government brought the matter to the Supreme Court and after considering the relevant rules, their Lordships of the Supreme Court came to the conclusion that the effect of the order, dated December 22, 1960, was *inter alia* "to retain the respondent in service till the departmental proceedings against him were finished and such order was valid." It was further held that the effect of the order of January 6, 1961, was that the service of the respondent would come to an end on March 31, 1961, unless the departmental proceedings were disposed of at a date earlier than March 31, 1961. Their Lordships then observed as follows:—

"It is admitted that the departmental proceedings were not concluded before March 31, 1961. The clear effect of the order of January 6, 1961, therefore, was that the service of the respondent came to an end on March 31, 1961. This was so not because retirement was automatic but because the State Government had itself fixed the date up to which the service of the respondent would be retained. The State Government made no further order before March 31, 1961, but about a month or so after passed an order on May 9, 1961, extending the service of the respondent We do not think that the State Government had any jurisdiction to pass such an order on May 9, 1961. According to the earlier order of the State Government itself, the service of the respondent had come to an end on March 31, 1961. The State Government could not by unilateral action create a fresh contract of service to take effect from April 1, 1961. If the State Government wished to continue the service of the respondent for a further period, the State Government *should have issued a notification before March 31, 1961.*"

The words underlined (In italics in this report) by me clearly bring out the fact that the notification of January 6, 1961, by itself did not create any contract between the parties. That was a decision of the Government, according to which the Government employee having already attained the age of superannuation, stood automatically retired on the date fixed by the Government. By the subsequent

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order, the Government wanted to treat him once more its servant. As was observed by their Lordships of the Supreme Court, the Government had no jurisdiction to create a new contract of service unilaterally. However, if an order had been passed before March 31, 1961, the period of service could have been extended notwithstanding the fact that the original order of the Government fixed the outside limit of retaining the employee in service is March 31, 1961. In my opinion, far from being of any assistance to the petitioner, this supports the contention of the other side that by merely fixing a period for extending the service beyond the age of superannuation, the Government would not be tied down to that period and on the same analogy, if the Government has mentioned a period for which tentatively the Government is permitting the transfer of an employee on foreign service that would not amount to a contract between the employee and the Government.

(13) The next case relied upon on behalf of the petitioner was *State of Orissa v. Sadhansu Sekhar Misra and others* (3). The Orissa Superior Judicial Service (senior branch) combined in its cadre District and Sessions Judges and Additional District and Sessions Judges, who as judicial officers were under the control of the High Court, the Registrar of the Orissa High Court, a post under the control of the Chief Justice, and the posts of the Superintendent and Legal Remembrancer, Law Department, Deputy Secretary to Government in the law Department and Member, Administrative Tribunal. These last mentioned officers were holding administrative posts and were under the control of the Government. These posts of Registrar as well as Legal Remembrancer and the Deputy Secretary, etc. were manned by officers of the Orissa Superior Judicial Service within the meaning of Article 236(b) of the Constitution. The High Court was anxious that judicial officers occupying these posts should not, in the interest of judicial work, continue in these posts for unduly long time. The Government, however, was unwilling to spare the officers actually working on these posts and did not agree to the suggestion of the High Court that they should be reported to purely judicial posts, namely, that of District and Sessions Judges and Additional District and Sessions Judges and that other members of the service should be posted on the administrative posts. After the Supreme Court rendered its decision in *State of Assam v. Ranga Mahammad and others* (4), on 21st of September, 1966, holding that the power

(3) 1968 S.L.R. 344.

(4) 1967 S.L.R. 40.

of transfer of judges presiding over courts vested with the High Court under Article 235 of the Constitution the High Court ordered the transfer of the judicial officers occupying the administrative posts and in their place posted other officers, who were doing judicial work till then. The Government, however, directed the officers, who were occupying these administrative posts, not to hand over the charge and it further refused to allow the other three persons posted by the High Court to take over charge. The petitions giving rise to the appeals before the Supreme Court were filed by some advocates seeking a writ of *mandamus* against the Government to implement the transfer orders and also a writ of *quo warranto* against the three officers, who were actually holding the administrative posts to show the authority under which they were so doing. The writs were accepted by the High Court and the Orissa Government came up in appeal before the Supreme Court. It was noticed by the Supreme Court that so far as the post of Member, Sales Tax Tribunal was concerned, it was an *ex-cadre* post and hence the services of Mr. P. C. Dey, who was occupying this post since 1962, must be assumed to have been placed by the High Court at the disposal of the Government for being so posted. Then in paragraph 8 of the judgment, it is observed as follows:—

“It is not the case of the parties that he was placed at the disposal of the Government for any definite period. As seen earlier, he was holding the post in question ever since 1962. In those circumstances, the High Court was entitled to recall him and post him as a district and sessions judge. Hence that part of the High Court’s order is unassailable.”

As regards the other posts, which were included in the cadre, it was observed as follows:—

“The cadre with which we are concerned in this case consists of three parts, i.e., (1) presiding officers of district courts, (2) the Registrar of the High Court and (3) the judicial officers working in the secretariat. No doubt all these officers belong to the judicial service of the State Hence without the consent of the High Court the government could not have posted them to administrative posts in 1962. It must be presumed that they were taken over by the Government with the consent of the High Court. While sparing the service of any judicial officer to the Government it is open to the High Court to fix the period

during which he may hold any executive post. At the end of that period, the government is bound to allow him to go back to his parent department unless the High Court agrees to spare his services for some more time. In other words, the period during which a judicial officer should serve in an executive post must be settled by agreement between the High Court and the government. If there is no such agreement it is open to the government to send him back to his parent department at any time it pleases. It is equally open to the High Court to recall him whenever it thinks fit.....

As Shri K. K. Bose and Shri B. K. Patro had not been placed at the disposal of the government for any definite period, it was open to the High Court to recall them and post them as presiding officers of district courts. Hence the High Court was within its powers in posting Shri B. K. Patro as district and sessions judge.....Shri K. K. Bose as district and sessions judge.....and Shri P. C. Dey as district and sessions judge.....though it would have been graceful, if it has effected those transfers after reasonable notice to the government.”

Their Lordships of the Supreme Court then held that it was beyond the powers of the High Court to post other judicial officers as Administrative Officers without the consent of the Government. The argument of the learned counsel for the petitioner was that the observations made by the Supreme Court make it clear that if in that case the High Court had agreed to place the services of its judicial officers at the disposal of the Government for an agreed period, then the High Court could not recall them before the expiry of that period except with the consent of the Government. This may be so but that would not help the petitioner in the present case. As already noted, in the present writ petition, we are not concerned with any dispute between the State Government on the one hand and the borrowing employer on the other. Secondly, the right of the judicial officers to insist on remaining on the administrative posts against the wishes and the orders of the High Court was not before the Supreme Court and for this reason, I feel that these observations are of no assistance to the petitioner because, as already discussed, the relationship of the employee and the State Government is altogether on a different footing and is not based on contract alone.

(14) Tuli, J. in Civil Writ No. 1440 of 1969 (*Fateh Singh Chugha v. The State of Punjab* (5)), took a similar view. The petitioner in that case was a permanent Superintendent in the Civil Secretariat and he was sent on deputation to Industries Department as Assistant Director (Administration) in terms of note (1) below rule (9) of the Punjab Industries Service (State Service Class II) Rules, 1966, which authorises the appointment by transfer on deputation from other departments, originally for a period of six months, which period was subsequently extended to four years in consultation with the Punjab Public Service Commission. During this period of four years, that is, from 1964 to 1968, petitioner's work was very much appreciated and it was observed that he has effected great improvement in the administration and has proved an asset to the Department. When a reference was made to the Public Service Commission for the appointment of the petitioner to the said post, his suitability was approved, but he was not permanently appointed to this post. His appointment was extended for a further period of four years with effect from January 2, 1968, by an order of the Governor. He continued to work in pursuance of this order till June 13, 1969, when he was reverted to his post of Superintendent in the Punjab Civil Secretariat. In as much as the petitioner was drawing higher emoluments as Assistant Director (Administration), then what he was to draw in his substantive post of Superintendent, he filed a writ petition alleging that he could not be reverted to his substantive post before the expiry of the specified period for which his appointment was extended by the order of the Government. *Inter alia*, this contention was negated by the learned Judge and relying on *Roshan Lal Tandon's case* (*supra*) (1) it was held that the legal position of the petitioner was more one of status than of contract and that even while on deputation he was subject to the rules, including rule 3.17 of the Rules and the Government could transfer him to the post on which he held a lien. It is not clear from the above, whether this case would fall under rule 10.2 of the rules of transfer on foreign service because in this case the petitioner was transferred from one service to another under the State Government itself, but all the same he was transferred from his own cadre to a different cadre and to that extent he could not be so transferred if he was not agreeable to go. Therefore, there would not be much difference between the case abovementioned and the case before us.

(5) C.W. 1440 of 1969 decided on 31st July, 1969.

Sohan Singh v. The State of Punjab, etc. (Harbans Singh, J.)

(15) In view of the above, therefore, I am of the view that no contract comes into being between the State Government and its employee when he is sent on deputation under rule 10.2 of the Rules. Virtually, he remains under the effective control of the State Government and his legal position continues to be more one of status than of contract. He cannot be said to have any indefeasible right to insist that he should not be recalled before the expiry of specified period.

(16) It was also contended on behalf of the State than even if the transfer under rule 10.2 of the Rules for a specified period amounts to a contract, the writ jurisdiction of this Court is not a proper forum for getting a redress of any alleged breach of that contract. In *Pallikoiloth Syama Prasad v. Chief Commissioner, Andaman & Nicobar Islands and others* (6) (Calcutta High Court), the petitioner was sent on deputation to Andaman & Nicobar Islands for a period of three years. Before the expiry of the period of three years, he was reverted to his substantive post in the office of Chief Inspector of Explosives in Nagpur. Repelling the argument that the Government had no power to send the petitioner back before the expiry of three years under the terms and conditions of the employment, it was observed at page 723 of the report by Sinha, J., of the Calcutta High Court, as follows:—

“Whether or not the petitioner’s service on deputation was liable to be terminated before the expiry of the stipulated period relates at best to a contractual power. So if there was breach of such a contract the petitioner might have other remedies either in specific performance of contract or of damages. For, it is well-settled that no writ will lie to compel performance or enforcement of the contract. This view finds support in one of the earlier decision of the Supreme Court *Satish Chandra v. Union of India*.” (7).

Relying on these observations in the abovementioned case, Mr. Justice Tuli in *Fateh Singh Chughha’s case* (supra) (5) also repelled the argument that the reversion of Mr. Chughha before the expiry of four years for which he was appointed amounted to a breach of contract and stated as follows:—

“..... the petitioner has no right to maintain this writ petition to compel the Government to retain him in the post of Assistant Director (Administration) in the Industries

(6) 1969 Lab. I.C. 721.

(7) A.I.R. 1953 S.C. 250.

Department in accordance with the order of the Governor dated November 13, 1967, The petitioner can seek his remedy by way of a suit for specific performance of the contract or for damages against the Government.”

In view of the above discussion, it is, therefore, clear that the answer to question No. 1 has to be returned in the affirmative.

Question No. 2, as already discussed, does not arise because we are not concerned in this case with the rights of the foreign employer *vis-vis* the State Government.

(17) As regards question No. 3, the same was not very much pressed by the learned counsel for the petitioner. There can be no manner of doubt and it was not disputed that while the petitioner was on foreign service he was in receipt of higher emoluments. By an order of the Governor, dated 17th of August, 1968, a post of Additional Registrar was created, but only for the period during which the petitioner was on foreign service and the petitioner was to hold this post while he was on foreign service. As soon as the petitioner was reverted to his parent Department, the post of Additional Registrar ceased as per orders of the Governor abovementioned. If the recall of the petitioner from foreign service is justified, as has been held above while dealing with question No. 1, he can have no grievance if by the operation of the order, the post of Additional Registrar, which was temporarily created and which he was holding in an officiating capacity, came to an end. Admittedly, the petitioner was holding substantively the post of Joint Registrar to which he was being posted on being recalled from the Federation. The fact that he, as Joint Registrar, will be drawing emoluments considerably less than what he would have drawn as an Additional Registrar or what he was drawing while on foreign service are matters beside the point. The answer to question No. 3, therefore, must be returned in the negative.

(18) The question of *mala fide* has already been decided by the Division Bench and the only points for decision were the three questions referred to the Full Bench and there is nothing further to be done in the matter now. We consequently dismiss this petition with costs.

GURDEV SINGH, J.—I agree.

H. R. SODHI, J.—I agree.

K. S. K.