

I would, therefore, hold that section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, No. L of 1948, and Punjab Act I of 1954 are *intra vires* the Constitution. The order of the Consolidation Officer whereby he reserved 11 acres of proprietary land for the use of *non-biswedars* was necessary in order to give effect to the provisions of Act L of 1948. This order does not amount to appropriation and is, therefore, valid in every respect.

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through Chief
Secretary and
others
—
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For these reasons I would dismiss this petition but in the circumstances of the case make no orders as to costs.

There are some other petitions in which the same point arises although the facts are not identical. These petitions must also fail on the same grounds on which Civil Writ Application No. 84 of 1955, is being dismissed. These petitions are Nos. 48, 51, 71, 75, 102, 103 and 106 of 1955. These petitions will also be dismissed but there will be no orders as to costs.

BHANDARI, C.J. I agree.

Bhandari, C. J.

CIVIL WRIT

Before Bhandari, C. J. and Khosla, J.

S. AKHTYAR SINGH,—*Petitioner.*

versus

THE INSPECTOR-GENERAL OF POLICE, PUNJAB,—
Respondent.

Civil Writ No. 33 of 1955

Constitution of India, Article 226—Constitution whether retrospective—Cause of action accruing before Constitution came into force—Petition under Article 226, whether maintainable—Inordinate delay in moving under Article 226—Effect of—Whether disentitles a person to a remedy under Article 226.

1955

Sept., 5th

Held, that the provisions of Article 226 cannot be invoked in respect of orders passed before the Constitution. The Constitution is not retroactive and is not applicable to a case where the cause of action arose before the coming into force of the Constitution.

Held further, that a petition under Article 226 of the Constitution is liable to be dismissed if the High Court is moved after inordinate delay. No relief will be granted in the extraordinary discretion of the High Court under Article 226 when an aggrieved party comes after long delay, even if the departmental orders called for interference.

Mehta Sita Ram v. Union of India (1), *Sohan Lal Dhol and others v. Sm. Gur Devi and others* (2), and *Naresh Chandra Sanyal v. The Union of India and others* (3), relied upon; *Kundan, etc. v. The State of Punjab* (4), *Gandhinagar Motor Transport Society v. State of Bombay* (5), and *Sayeed Mohd. Khan v. State of Bhopal* (6), referred to.

Petition under Article 226 of the Constitution of India, praying that an appropriate writ, direction or order be issued to the respondent to re-instate the petitioner to the rank of an Officiating Inspector, Police with retrospective effect.

B. S. CHAWLA, for Petitioner.

S. M. SIKRI, Advocate-General, for Respondent.

ORDER

Khosla, J. KHOSLA, J. This is a petition under Article 226 of the Constitution by an officer of the Police who is aggrieved by an order reducing him in rank.

Objection was taken by the learned Advocate-General that this petition could not be entertained on the short ground that the order challenged

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- (1) 1955 P.L.R. 54
 - (2) A.I.R. 1951 Punjab 310
 - (3) A.I.R. 1952 Cal. 757
 - (4) Civil Writ No. 252 of 1954
 - (5) A.I.R. 1954 Bom. 202
 - (6) A.I.R. 1954 Bhopal 1

was passed before the coming into force of the Constitution. The order which the petitioner seeks to challenge was admittedly passed in July, 1949. Indeed, there are two orders which affect the petitioner's rank. The first of these is dated the 16th of April, 1948, and the second was passed in July, 1949.

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The facts briefly are that the petitioner was recruited in the Police Force in April, 1937, as an Assistant Sub-Inspector of Police. He was confirmed in this post in 1940, and in 1941, he was promoted to the rank of officiating Sub-Inspector. He was confirmed as Sub-Inspector in 1944, and two years later in 1946, he was promoted to the rank of Selection Grade Sub-Inspector. This was his substantive rank. In 1947, he was promoted as Officiating Inspector and in the same year five criminal cases were instituted against him and an order of suspension was passed by the Department. While these cases were pending an order was passed on the 16th of April, 1948, reverting him to the post of Selection Grade Sub-Inspector. The Criminal cases against the petitioner failed and he was acquitted in 1949. After this order he was appointed as Sub-Inspector of Police in July, 1949. This was the last order passed against the petitioner which affected him adversely and this is the order which he now seeks to challenge. This order was made before the 26th of January, 1950, i.e., before the Constitution came into force and therefore, no application under Article 226 of the Constitution lies to challenge the order.

The petitioner's case is that he was pursuing the remedy of a departmental appeal and after the dismissal of the appeal he sent up a representation or a memorial, and since his failure to get redress from the Department became final after the 26th of January, 1950, he is competent to maintain the present petition.

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—
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Now, when a person files a petition under Article 226 of the Constitution he seeks to challenge the original order which affects him and it is this order which furnishes him with a cause for moving this Court. The order on appeal is not the order which he seeks to challenge. The rule which applies to civil appeals does not apply to applications for writs and in an application for writ is clearly understood that it is the original order which is being challenged because it is that order which affects the petitioner adversely and it is that order which is either without jurisdiction or manifestly unjust. A Division Bench of this Court held in *Mehta Sita Ram v. Union of India* (1), that the Constitution is not retroactive and is not applicable to a case where the cause of action arose before the coming into force of the Constitution. The Court was considering the case of a Railway servant who was removed from service without complying with the provisions of Article 311 of the Constitution. The Court held that since the order of removal was passed before the Constitution came into force non-compliance with the provisions of Article 311 of the Constitution did not furnish a cause of action to the Railway servant. In *Sohan Lal Dhol and others v. Sm. Gur Devi and others* (2), Kapur J. held that a petition under Article 226 of the Constitution questioning the validity of an order passed before the 26th of January, 1950 did not lie to the High Court. A reference may also be made to *Mahabir Parshad v. The Commissioner of Income-tax* (3), which is a case dealing with the Income-Tax Act.

Naresh Chandra Sanyal v. The Union of India and others (4), is a case almost on all fours with

(1) 1955 P.L.R. 54
(2) A.I.R. 1951 Punjab 310
(3) A.I.R. 1953 Punjab 16
(4) A.I.R. 1952 Cal. 757

the present one. The petitioner in that case, Naresh Chandra Sanyal, was employed in the Railway Department. He was reverted to an inferior rank by an order passed on the 1st of September, 1949. He preferred an appeal and while the appeal was pending the Constitution came into force. The appeal was subsequently dismissed. The Railway employee moved the High Court under Article 226 of the Constitution. Bose J. dismissed the application and held that since the order by which the petitioner was affected adversely was passed before the coming into force of the Constitution no application for writ lay. Bose, J. observed—

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“Mr. Santosh Kumar Basu on the other hand has pointed out that the order of the appellate authority was passed on 1st December, 1950 and as the petitioner also challenges that order and asks for relief in respect of that appellate order which was passed after the Constitution, this application is maintainable at least so far as the relief with regard to the appellate order is concerned. It may be pointed out, however, that the petitioner cannot get complete relief by merely getting rid of the appellate order. He has also to get rid of the original order of reduction which was passed on 19th August, 1949. Unless it can be shown that the order of 19th August 1949 was an *ultra vires* order, this Court will not have any jurisdiction to interfere with that order.”

It seems to me that the petitioner cannot invoke the provisions of Article 226 of the Constitution in respect of the orders passed in 1948 and 1949.

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—
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There is one other ground on which this petition is liable to be dismissed, namely, the inordinate delay in moving this Court under Article 226 of the Constitution. The case of the petitioner was finally disposed of by the Department in 1951 and after that nothing whatever remained to be done. The fact that the petitioner sent up a memorial does not excuse the delay. He moved this Court as late as February, 1955 and this Court will not grant any relief in the extraordinary discretion conferred by Article 226 of the Constitution when an aggrieved party comes after such long delay. We considered this matter only a few days ago in *Kundan etc. v. The State of Punjab* (1), and approved of the principle laid down in *Gandhinagar Motor Transport Society v. State of Bombay* (2), and *Sayeed Mohammed Khan v. State of Bhopal* (3). The Bombay case related to the case of a Government servant who spent some time in filing a memorial which he need not have filed under the rules and the Bombay High Court refused to grant the relief on this ground. In the present case there has been much greater delay and I would not be prepared to interfere with the departmental orders even if the orders had been passed after the coming into force of the Constitution.

The result is that I would dismiss this petition but make no orders as to costs.

Bhandari, C. J. BHANDARI, C.J.—I agree.

(1) C.W. No. 252 of 1954

(2) A.I.R. 1954 Bom. 202

(3) A.I.R. 1954 Bhopal 1