

The State of Punjab and another v. Mewa Singh Sonar
(S. S. Sandhawalia, C.J.)

(13) Now applying the principles of section 6(1) of the Act to the present case, as also the requirement of notification Annexure P1, five Panches had to be elected. From the result taken note of earlier, the petitioner was an elected Panch straightaway. Now, out of those five, one had to be a Scheduled Caste. Inder Ram was a Scheduled Caste and he being there, the election of the first five, including the petitioner, was in order, in accordance with sub-section (4-B) of section 6 of the Act. Since it was a case of having one Scheduled Caste candidate, the question of Smt. Mayo being there as a Scheduled Caste candidate under sub-section (4-B) did not arise. All the same, since Smt. Mayo could not become a Panch on account of being a Scheduled Caste, she remained one of the two unsuccessful women-candidates under sub-section (4) of section 6 of the Act. That sub-section requires that two lady Panches can be held deemingly elected and if the unsuccessful contesting women candidates or two or more, than one woman or two women, as the case may be, securing the highest number of valid votes from amongst unsuccessful women-candidates shall be deemed to have been elected as Panches. Smt. Mayo could well be accommodated here, along with the other female Smt. Shela already accommodated under the said sub-section. The deemed election of these two lady Panches has, thus, to be now made in order, which is hereby done.

(14) As is plain, the exercise has been to reshuffle the cards. As a result, the petitioner is declared and placed as a Panch in the Gram Panchayat, but without disturbing the office of Panch or any of the other members of the Panchayat, respondents Nos. 5 to 10. Consequently, this petition is allowed to this limited extent that the election result stands modified/clarified that the petitioner, too, is an elected Panch of Gram Panchayat Udanwal. On other points, the petition fails. In the circumstances of the case, there would be no order as to costs.

N.K.S.

Before S. S. Sandhawalia, C.J. and D. S. Tewatia, J.
THE STATE OF PUNJAB and another,—Appellants
versus
MEWA SINGH SONAR,—Respondent.
Letters Patent Appeal No. 31 of 1979.
March 3, 1982.

Punjab Civil Service Rules, Volume I, Part II—Rule 4(5)—Rules providing for suspension of a Government employee—No time limit

fixed therein regarding duration of such suspension—Instructions issued fixing a maximum period of suspension—Such instructions whether have a statutory force—Suspension—Whether comes to an end on the expiry of the prescribed period—Government employee—Whether entitled to reinstatement thereafter.

Held, that sub-rule (5) of rule 4 of the Punjab Civil Service Rules, Volume I, Part II, envisages that once an order of suspension has been validly made or deemed to be so, then it will continue to remain in force until it is modified or revoked by the competent authority. Clause (c) of sub-rule (5) empowers the competent authority to modify or revoke the suspension at any time in its discretion. Neither in sub-rule (5) nor in the body of the whole of the exhaustive rule 4 there is either any express or implied statutory limit of time with regard to the period of suspension. A close perusal of the instructions would, however, show that it first emphasizes the desirability of suspending an official only where it is absolutely necessary. Further, it is specified that barring exceptions suspension should follow after the service of a proper charge-sheet and after the receipt of the explanation of the employee. In the alternative it is provided that the charge-sheet should be served within a period of three months. What is, however, significant in this context is that on a failure to do so, the instructions do not state that the suspension would be revoked, but only that such an employee would be eligible to be reinstated. In particular the desirability of completing the disciplinary proceedings within a period of one year is mentioned but all that is specified in this context also is that the concerned employee should be eligible for reinstatement. It bears repetition that even the instructions do not confer any right of reinstatement but merely an eligibility to be considered for the said purpose. This has to be viewed in the light of the statutory rule which empowers the competent authority at any time to modify or revoke an order of suspension. The remaining provisions of the instructions further visualise the period of suspension beyond one year where the delay is occasioned by the dilatory tactics of the employees. In cases where the matter is *sub judice*, suspension is expressly allowed to continue, but in cases of an inordinate and avoidable delay, a request to the Registrar of the High Court for expediting the matter is envisaged. Lastly, the Minister-in-Charge is now the authority for extension and the earlier direction for a Cabinet approval, has been done away with. The instructions are motivated by a laudable desire that enquiries against the Government employees should be expedited which is obviously in the larger administrative interest. On an overall view of these instructions, their language, their content, the import and purpose to which they seem to be directed, it is clear that these were neither intended to have statutory force nor to supplement the statutory rules in a manner

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that any infraction of the same would *ipso facto* render the suspension void and *non est* thereafter. These instructions are merely policy guidelines not having the force of law.

(Paras 6, 8-A, 10 and 12).

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice A. S. Bains, passed in Civil Writ No. 4197 of 1978 on the 8th February, 1979.

Mohinderjit Singh Sethi, Advocate, for the Appellants.

B. R. Premi, Advocate, for the Respondents.

JUDGMENT

S. S. Sandhawalía, C.J.

1. Whether the instructions issued by the Government of Punjab (dated May 16, 1978), pertaining to the suspension of its employees, have statutory force — is the meaningful issue which has come to the fore in this appeal under Clause X of the Letters Patent.

2. The facts which call for notice in the context of the aforesaid issue lie in a narrow compass. Mewa Singh Sonar, respondent who at the material time, was working as a Chief Agricultural Officer, Jullundur, was placed under suspension with immediate effect on account of being absent from duty without leave,—*vide* annexure P/7 to the writ petition. He challenged the aforesaid order of suspension by way of a writ petition on a variety of grounds including allegations of *mala fides* against the Director of Agriculture, Punjab, Chandigarh. However, these allegations were specifically controverted in the written statement and were not pressed before the learned Single Judge. The two contentions raised on behalf of the respondent writ petitioner were, firstly; that at the time of his suspension, no enquiry was as yet pending or contemplated against him and secondly, that his suspension could not continue beyond the period specified in governmental instructions because there had been no extension thereof by the State Cabinet.

3. The learned Single Judge rejected the first contention on behalf of the writ petitioner holding that the suspension of the petitioner was valid because at the material time disciplinary proceedings against him were fully contemplated. However, the second

contention found favour with the learned Single Judge on the assumption that the latest instructions of the government dated May 16, 1978 (annexure P/15 to the writ petition) were statutory in nature. Consequently, he held that para No. 10 thereof was void and further that the suspension of the respondent-writ petitioner beyond the period of one year was illegal. The State of Punjab appeals against the order of the learned Single Judge and the respondent-writ petitioner has preferred the Cross Objections No. 15 of 1980 thereto.

4. Now the meaningful though solitary contention raised by Mr. Mohinderjit Singh Sethi, the learned Additional Advocate-General, Punjab, on behalf of the appellant-State is that the relevant instructions (annexure P/15) are merely administrative guidelines to implement the general governmental policy of expediting the disciplinary departmental proceedings against its employees and their suspension during the same. The firm stand pressed on behalf of the respondent-State is that these instructions did not have the force of law. In the alternative, it has been argued that these cannot be construed to override or run counter to the statutory rules on the point. The corner stone for the above submission is rested on rule 4 sub-rule (5) of the Punjab Civil Service Rules, Volume I, Part II.

5. Inevitably the controversy revolves around the aforesaid statutory provision and in order to appreciate the rival contentions, it is apt to read the relevant parts thereof:—

“(1) The appointing authority or any other authority to which it is subordinate or the punishing authority or any other authority empowered in that behalf by the Governor by general or special order, may place a Government employee under suspension—

(a) where a disciplinary proceeding against him is contemplated or is pending, or

* * * * *

(5) (a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a Government employee is suspended or is deemed to have been suspended whether in connection with any

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disciplinary proceeding or otherwise, and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing direct that the Government employee shall continue to be under suspension until the termination of all or any of such proceedings.

“(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or removed by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.”

6. Now a bare look at sub-rule (5) makes it manifest that this envisages that once an order of suspension has been validly made or deemed to be so, then, it will continue to remain in force until it is modified or revoked by the competent authority. Clause (c) of sub-rule (5) empowers the competent authority to modify or revoke suspension at any time in its discretion. Neither in sub-rule (5) nor in the body of the whole of the exhaustive rule 4 of the Punjab Civil Service Rules (hereinafter called ‘the Rules’), there is either any express or implied statutory limit of time with regard to the period of suspension. Learned counsel for the appellant is thus on firm ground that the statutory rule prescribes that a valid suspension once made would continue until revoked or modified by the competent authority though wide discretion has been given to the latter to do so.

7. It is in the aforesaid context that one must now turn to the government instructions which is the primary matter of consideration. These are in the following terms:—

“No. 1270-2PP-78/15809

GOVERNMENT OF PUNJAB

(Department of Personnel and Administrative Reforms)

To

1. All Heads of Departments, Commissioners of Divisions, Registrar of Punjab & Haryana High Court and Deputy Commissioners in the State.

2. All Administrative Secretaries to Government, Punjab.
Dated, Chandigarh, the 16th May, 1978.

Subject: Suspension of Government Employees—Review of the General Policy.

Sirs,

The Government has recently reviewed the Policy regarding the suspension of Government employees and decided to issue the instructions indicated below. These instructions supersede all the earlier instructions on the subject.

2. Every proposal for suspension of a Government employee should be carefully considered and suspension ordered only if circumstances fully justify it. Suspension should not be ordered unless the allegations are of such a serious nature that, on the basis of available material, a *prima facie* case for dismissal or removal of the employee concerned is made out, or his continuance in service is likely to cause embarrassment, and hamper the investigation process. Ordinarily, it should be sufficient to transfer the employee concerned to prevent him from having an opportunity to interfere with witnesses or tamper with the evidence.

3. Except in cases of rare urgency, an employee should not be suspended until a proper charge-sheet has been served upon him and his explanation obtained and found unsatisfactory. When an employee henceforth placed under suspension, the charge-sheet in any case, be served on him within a period of three months. In case the charge-sheet is not served within three months, he should be eligible to be reinstated.

4. The entire process of serving the chargesheet holding the enquiry and taking of decision with regard to the final action to be taken in the case should be completed within a period of one year, the concerned employee should be eligible for reinstatement.

5. In cases where the decision making process is delayed because of the dilatory tactics adopted by the delinquent employee, the period of suspension may exceed one year. Of course he should be afforded full opportunity to defend himself and should not be denied consultation of necessary record etc.

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6. In all cases the Minister-in-charge would be competent to issue orders with regard to any extension of the period of suspension of the employees.

7. In cases which are sub-judice, it will not be necessary to obtain the approval of the Minister-in-charge for the continued suspension of the employee concerned, so long as the matter remains sub-judice.

8. The Administrative Departments shall obtain monthly reports from the Heads of Departments regarding the progress of investigation/inquiry in suspension cases, scrutinise them, and bring the delay if any, to the notice of the Minister-in-charge.

9. Where cases of suspended employees have been referred to a court of law and there is an avoidable delay in the trial court, the matter shall be brought to the notice of the Registrar, High Court through a confidential communication for taking suitable action. In such cases, the employee under suspension shall not be eligible for reinstatement after one year if the proceedings in the court are not completed.

10. The policy contained in this circular shall apply to those employees who are placed under suspension on or after the date of issue of this circular. In the case of those who are already under suspension, this policy may be applied treating them as if they are suspended on the date of issue of this circular.

11. The above instructions may be brought to the notice of all concerned for strict compliance.

Yours faithfully,

(Sd.)

Chief Secretary to Govt., Punjab."

8. Even a broad and plain look at the language and contents of annexure P/15 indicates that they were not intended to have the force of law or even to supplement the statutory rules on the point. The words in which the instructions are couched would show that it is no more than a guideline issued in the context of the suspension

of the government employees to further the general policy of quick disposal of disciplinary proceedings against them. Viewed in a correct historical perspective, it appears that certain earlier guidelines in this context were issued way back in Punjab Government letter No. 3624-GS-61/14507, dated April 21, 1961, whereby the departments were apprised of the procedure to be followed in order to expedite the cases of disciplinary proceedings against government employees including those who were placed under suspension. Taking some note of the working thereof, the government then issued a further guideline,—*vide* annexure P/10 dated January 9, 1976. The object and purpose thereof is apparent from its heading itself:—

“Speedy disposal of cases of disciplinary proceedings against Government employees. Approval of the council of Ministers to continue the proceedings beyond a period of nine months—Institution regarding.”

This would itself indicate that the larger purpose to which these instructions were directed, was the speedy disposal of the cases of disciplinary proceedings against the government employees. The period suggested in the earlier instructions was apparently six months and,—*vide* annexure P/10 the Minister-in-Charge could extend it for another period of three months and it was desired that if an extension beyond this period was necessary, a case with full facts and justification should be made out for the approval of the Cabinet. The history of these instructions previous to annexure P/15 is indicative of the import of these communications which far from being statutory, or intended to be so, were more in the nature of uniform guidelines to all the departments in the context of departmental proceedings.

8-A. Now the very heading of annexure P/15 quoted above, clearly labels it as a review of the general policy. That it is in terms so, is evident from the opening part of the instructions which state that the government has recently reviewed the earlier policy and is, therefore, issuing these instructions in supersession of the earlier ones. A close perusal of the instructions would show that it first emphasises the desirability of suspending an official only where it is absolutely necessary. Further, it is specified that barring exceptions, suspension should only follow after the service of a proper charge-sheet and after the receipt of his explanation. In the

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alternative, it is provided that the charge-sheet should be served within a period of three months. What is, however, significant in this context is that on a failure to do so, the instructions do not state that the suspension would be revoked, but only that such an employee would be eligible to be reinstated. In particular, the desirability of completing the disciplinary proceedings within a period of year is mentioned, but all that is specified in this context also is that the concerned employee should be eligible for the reinstatement. It bears repetition that even the instructions do not confer any right of reinstatement but merely an eligibility to be considered for the said purpose. This has to be viewed in the light of the statutory rule which empowers the competent authority at any time to modify or revoke an order of suspension. The remaining provisions of the instructions further visualise the period of suspension beyond one year where the delay is occasioned by the dilatory tactics of the employee. In cases where the matter is *sub judice*, suspension is expressly allowed to continue, but in cases of an inordinate and avoidable delay, a request to the Registrar of the High Court for expediting the matter is envisaged. Lastly, the Minister-in-Charge is now the authority for extension and the earlier direction for a Cabinet approval, has been done away with.

5. As I view the instructions, it indicate that without attempting to lay down any inflexible limit on suspensions, it is motivated by a laudable desire that enquiries against the government employees should be expedited which is obviously in the larger administrative interest. Equally, the spirit underlying the same is to avoid harassment to employees which is inevitable in the undue prolongation of the departmental enquiry. The intent of the instructions seem to be to keep the departments on tip-toe to expedite the enquiries by providing a norm within which departmental proceedings are to be completed and consequently suspension to be continued. Para No. 8 of the instructions directing monthly reports from the Heads of Department, etc., is intended to compel the authorities below to bring to the knoweldge of the higher authorities where enquiries are being inordinately delayed. These guidelines would further enable administrative action against those who are deviating from the general policy spelt out in these directions.

10. On an overall view of these instructions, their language, their content, the import and purpose to which they seem to be

directed, it is clear that these were neither intended to have statutory force nor to supplement the statutory rules in a manner that any infraction of the same would *ipso facto* render the suspension void and *non est* thereafter.

11. The issue deserves examination from another angle as well. As already noticed, rule 4(5) in terms envisages the continuation of an order of suspension until, it is revoked or modified by the competent authority. The exhaustive provision of rule 4 neither imposes nor suggests any limit of time whether one year or more nor a mandate of any Ministerial or Cabinet sanction thereafter. It is thus plain that the rule contemplates the continuance of suspension till revoked, whilst the instructions seek to impose a time-limit irrespective of any subsequent revocation or modification of the same. Now to give statutory force to the instructions would obviously bring about conflict with the existing rule in force itself. This seems to be patent in the specific case of the facts in the judgment under appeal. Thereby the suspension beyond the period of one year has been held illegal and void and was, therefore set aside, despite the rule providing for the contrary. It is settled law that a mere instruction. It is settled law that a mere instruction cannot possibly run contrary to the statutory rules. Consequently clothing these instructions with the force of law in effect would be overroding the statutory rules on the point. It is a well-settled canon of construction that, if possible, an interpretation has to be avoided which leads to the provision becoming unconstitutional, or *ultra vires*. Therefore for this reason also it is necessary to construe these government instructions contained in annexure P. 15 as broad guidelines of policy within the parameter of the statutory rule 4.

12. To conclude on this aspect the answer to the question posed at the outset is rendered in the negative and it is held that the relevant governmental instructions are merely policy guidelines not having the force of law.

13. Once it is held as above, the finding of the learned Single Judge that the suspension of the respondent beyond one year was illegal has to be set aside.

14. Repelled on the main point learned counsel for the respondent faintly attempted to sustain the judgment on the ground that the suspension was invalid *ab initio*. In this context we are unreservedly in agreement with the view taken by the learned Single Judge

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in rejecting this contention. It would be wasteful to traverse the same ground over again and affirming the reasoning on this point we reject the alternative stand of the learned counsel for the respondent.

15. Apart from the affirmance of the view of the learned Single Judge, even otherwise the argument raised in the aforesaid context appears to be wholly devoid of merit. It is manifest on the record that not only was an enquiry contemplated at the time of the respondent's suspension but subsequently it was actually initiated. A charge-sheet, annexure P. 8 was served on the petitioner, to which he duly replied. It was stated at the bar by the learned counsel for the respondent himself that in these disciplinary proceedings the respondent was subsequently exonerated of the charge. In view of the fact that the respondent after exoneration had been reinstated and would thus become entitled to emoluments during the suspension period, the dispute ceases to have any meaningful significance.

16. In the light of the foregoing discussion, this appeal is allowed and the judgment of the learned Single Judge is set aside and the writ petition dismissed. There will, however, be no order as to costs.

D. S. Tewatia, J.—I agree.

N.K.S.

Before M. M. Punchhi, J.

HEM RAJ GOEL,—*Petitioner.*

versus

THE PUNJAB STATE AGRICULTURAL MARKETING BOARD
and another,—*Respondents.*

Civil Writ Petition No. 2324 of 1973

March 15, 1982

*Punjab Agricultural Produce Markets Act (XXIII of 1961)—
Sections 33(4) (i) and 42—Market Committee passing resolution
directing reinstatement of a suspended employee—Such resolution
annulled by the Board under section 33(4) (i)—Committee given a*