Union of India v. Bakshi Ram

Bishan Narain, J.

do not know of any provision of law under which this claim can be allowed as damages for breach of the contract. While it is not necessary for an arbitrator to give reasons for his conclusions or to give separate finding on each and every issue involved in the dispute, but I am definitely of the opinion that every party that appoints an arbitrator has a right to expect an intelligible decision which determines the rights of the parties on the various important points which are at issue. I think that if it is not done by the arbitrator, then his award should not be allowed to stand. If this test is applied to the present case, then the award cannot be made a rule of the Court and must be set aside.

It was then urged by the learned counsel for the respondents that the award may be remitted to the umpire for decision in accordance with law as laid down in section 16 of the Arbitration Act. This is, however, a discretionary matter and considering the type of objections made to the award and the nature of the allegations made against the conduct of the umpire, I do not think it fair to the parties to remit this award to the umpire.

For all these reasons I am of the opinion that this appeal succeeds and accordingly I accept it with costs throughout, set aside the order of the trial Court and dismiss the claimants' application under section 17 of the Arbitration Act.

## LETTERS PATENT APPEAL

*Before Bhandari, C.J. and Mehar Singh, J.*

THE STATE OF PUNJAB,—*Appellant*

*versus*

S. SUKHBANS SINGH,—*Respondent*

**Letters Patent Appeal No. 70 of 1954.**

1957

Feb. 12th

*Constitution of India—Article 226—Proceedings under—Whether Court will determine disputed questions of fact—Writ of* mandamus—*Object of—Article 311—Intention of the Legislature in enacting it—Construction of—*

*Person holding higher post in officiating capacity—Whether entitled to privileges conferred by Article 311—Court of law—Whether competent to interfere—Grounds for invoking the intervention of the Court stated—Fundamental Rule 15—Protection afforded by, to whom available and to whom not available—Fundamental Rule 12A—Lien on the post—Meaning of and rights created by—Punjab Civil Service (Executive Branch) Rules, 1930—Rules 17 and 22—Failure of Government to designate petitioner's appointment as for a probationary term—Whether affects the nature of his tenure—Probationer, whether deemed to be confirmed in substantive post on expiry of probationary period—Intention of Legislature—How ascertained.*

*Held*, that doubtful and disputed questions of fact cannot be determined in proceedings under Article 226 of the Constitution of India. The object to be accomplished by a writ of *mandamus* is not to determine controversies, it is simply to enforce a clear and specific legal right when such right depends solely on questions of law.

*Held*, that the framers of the Constitution, while enacting Article 311, appear to have had no intention of overturning departmental rules and procedures which had for long regulated the relationship between the State and its employees. They had no desire to confer any greater rights or privileges on Government servants than had been conferred on them by the rules by which their conditions of service were regulated. They appear to have intended that the rules regulating the conditions of service should be strictly adhered to, that the expression 'member of a civil service' appearing in Article 311 should mean a permanent member of a civil service, that the expression 'holds a civil post' appearing in the same Article should mean holds in a substantive capacity, that the expressions 'dismissal', 'removal' and 'reduction in rank' should have the same meaning when used in Article 311 as they have when used in the service rules, that a Government servant should be removed or reduced in rank without charges or hearing if the rules so require, and indeed that Article 311 should confer no greater rights or privileges in the matter of reinstatement than have been conferred by the corresponding provisions in the service rules. They were anxious only to provide that the procedural guarantees secured by the rules in such essential matters as dismissal, removal

and reduction in rank should be converted into constitutional guarantees, that persons aggrieved by the high-handedness of their official superiors should be at liberty to seek redress at the hands of Courts of law and that Courts of law should have power to require the performance of duties set out in Article 311. They endeavoured merely to place beyond the reach of hostile legislation the method of dismissing, removing or reducing members of civil services and holders of civil posts. In other words they appear to have intended that a Government servant who has been dismissed, removed or reduced in rank without charges or hearing should be entitled to reinstatement or restoration only if he has a clear and specific legal right to reinstatement or restoration under the rules by which his conditions of service are regulated and only if he is within the protection of a statute or statutory rule forbidding such removal or reduction. It is thus clear that Article 311 should be read as if it were subject to the implied proviso that nothing contained in the said Article shall be deemed to limit or abridge the power of a competent authority to order the removal or reduction in rank of any Government servant without notice or hearing if the rules by which his conditions of service are regulated authorise the competent authority so to do.

*Held*, that the words in Article 311 should not be given their usual or natural meaning as thereby the true intention of the law makers will be completely defeated. The duty of the Courts is not to defeat but to effectuate the intention of the Legislature. It is of the utmost importance therefore that the language of the Article should be limited, restrained and restricted by constitutional construction, for a person who considers merely the letter of an instrument goes but skin deep into its meaning.

*Held*, that a person who seeks the intervention of this Court on the ground that he has been unlawfully removed or reduced in rank must establish to the satisfaction of the Court.—

(a) that prior to his removal or reduction he had a clear and specific legal right to hold the office in question, that is, a right guananteed him by a statute or statutory rule;

(b) that he is within the protection of a statute or a statutory rule forbidding such removal or reduction;

(c) that his case is not covered by a rule which empowers the competent authority to order the removal or reduction without notice or hearing; and

(d) that he has a clear and indisputable right to reoccupy the said office.

*Held*, that if a Government servant holds his office in an officiating capacity and no statutory rule protects him against reduction, the Courts will not be able to restore him to his place, however unjustly or arbitrarily his reduction was ordered. He may be transferred from a higher post to a lower post without cause assigned either in the ordinary course, or on grounds of misconduct, or on grounds of ill-health, or on any other ground, without interference by Courts of law. The Courts have no more right to examine the grounds on which a transfer has been ordered than to examine the reasons for transferring a person from one station to another. It is well established that when a competent authority has a discretion as to the circumstances in which it will exercise its official function, this discretion cannot be controlled by Courts of law.

*Held*, that Fundamental Rule 15 enunciates the broad general proposition that although Government have full power to transfer a Government servant from a higher to a lower post or from a lower to a higher post or from a higher post in one grade to an equivalent post in the same grade, it has no power to transfer a person who is holding a post in a substantive capacity to a post which is carrying less pay than the pay of the permanent post on which he holds a lien. It appears to draw a distinction between an officer who is holding a permanent post in a substantive capacity and an officer who is holding a permanent post in an officiating or some other capacity. An officer of the first category cannot be transferred from a higher to a lower post without charges or hearing, for he has a clear legal right to hold substantively the post to which he has been appointed substantively, and he is within the protection of a statutory rule which forbids his reduction in rank. Any such transfer in his case must therefore be regarded as a reduction in rank which cannot be effected without complying with the constitutional formalities. If therefore, it is intended to demote any such officer without his consent it is essential that he should be afforded a reasonable

opportunity of defending himself and this essential formality must be complied with whatever may be the reasons which actuate Government in contemplating this action. He can no more be denied the opportunity of being heard when it is proposed to order his reduction on grounds of ill-health than when it is proposed to order his reduction on grounds of misconduct or on any other grounds.

*Held*, that the protection afforded by Fundamental Rule 15 is not available to a person who is employed on probation or to a person who is merely officiating in a permanent post. He has no legal hold on his office, he has no clear and specific right or title to hold the post in question and he is not within the protection of a statute or statutory rule forbidding his removal from the said post. A transfer from a higher post to a lower post must in his case be regarded merely as a transfer and not as a demotion. The power to transfer carries with it the power to transfer at any time, or for any reason, or to any post or in any manner deemed best with or without notice.

*Held*, that the words "lien on the post" in Fundamental Rule 12A mean the title to hold substantively the permanent post to which he has been appointed substantively. The acquisition of a lien creates an indissoluble tie between the post and the holder of the post—a tie which can be severed only in circumstances clearly envisaged by the rules.

*Held*, that the failure of the Punjab Government to designate the petitioner's appointment as for a probationary term could have no effect on the nature of the petitioner's tenure, for the rules provide quite clearly that all appointments in the service are probationary. The Governor of the Punjab had no discretion in the matter and had no power even if he had desired, to appoint the petitioner except as a probationer. It seems, therefore, that in the present case the probationary condition is implied as a matter of law.

*Held*, that in the absence of any rule it cannot be said that the probationary period ripens into a permanent appointment by efflux of time. It is also not correct to say that as soon as the petitioner became qualified for substantive appointment he must be deemed to have been automatically

confirmed. The petitioner could not acquire the status of a permanent member of the service automatically; he could have acquired this status only if the competent authority had chosen to perform a positive or affirmative act.

*Held*, that in order to ascertain the intention of the Legislature, the Court may look to the subject-matter of the enactment and the purpose for which it was enacted; it may examine the historical background and the attending conditions or circumstances at the time of the adoption of the law; it may consider the policy which induced its enactment or which was designed to be promoted thereby; it may examine the results which flow from one construction or another and accept a construction which produces convenient results and discard one which produces inconvenient results. The court should endeavour to construe words in the sense in which they were understood at the time when the statute was enacted and should resolve any ambiguity in the language in favour of an equitable operation of law and to avoid results which are manifestly absurd or ridiculous. When a statute is capable of two constructions, one of which is in harmony with the pre-existing body of law and the other not, that construction should be adopted which will preserve the existing law.

*Letters Patent Appeal under Clause 10 of the Letters Patent against the Judgment of the Hon'ble Mr. Justice Kapur, passed in Civil Writ No. 98 of 1954—S. Sukhbans Singh* v. *The State of Punjab, dated the 18th August, 1954.*

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

R. P. KHOSLA, H. S. GUJRAL and K. S. THAPAR, for Respondent.

JUDGMENT.

Bhandari, C. J.

BHANDARI, C.J.—This appeal raises the question whether it was within the competence of the State Government to order the reversion of the petitioner to his substantive rank of Tahsildar upon charges which he has had no opportunity to hear or defend.

The State of Punjab
*v.*
S. Sukhbans Singh
———
Bhandari, C. J.

The petitioner in this case is one S. Sukhbans Singh, who is holding the rank of a Tahsildar in a substantive permanent capacity. He was appointed to the Provincial Civil Service on the 31st May, 1945, and was reverted to the post of Tahsildar on the 20th May, 1952. He presented a petition under Article 226 of the Constitution in which he complained that his attempted reduction to the post of Tahsildar was unlawful as it was effected without notice or hearing. The learned Single Judge before whom the petition came up for consideration granted a direction that the State should forbear from putting into execution the order complained of without complying with the provisions of Article 311 of the Constitution. The State is dissatisfied with the order of the learned Single Judge and has preferred an appeal under clause 10 of the Letters Patent.

The petitioner was promoted to the Provincial Civil Service under the provisions of the Punjab Civil Service (Executive Branch) Rules, 1930. These rules empower the Governor of the Punjab to appoint members of the service from time to time as required from among accepted candidates whose names have been duly entered in one or other of the registers of accepted candidates to be maintained under these rules (Rule 5). All such appointments are in the first instance either officiating or substantive provisional (Rule 17). Candidates appointed from Register A-I or Register A-II are to remain on probation for a period of 18 months, but the Governor is at liberty, if he thinks fit, to extend the period of probation of any candidate (Rule 22). On completion of the period of probation prescribed or extended a member of the service becomes qualified for substantive permanent appointment. These rules clearly provide for a probationary period that must be served before the person appointed to the service becomes a regular or permanent member thereof.

The State of Punjab *v.* S. Sukhbans Singh

Bhandari, C. J.

The notification of the 5th June, 1945, by which the petitioner was appointed to the Provincial Civil Service is in the following terms:—

"The Governor of the Punjab is pleased to make the following appointments and transfers with effect from the dates mentioned:—

| Name | Rank | Appointed | Transferred/ posted to | REMARKS |
|---|---|---|---|---|
| * | * | * | * | * |
| Sukhbans Singh. | Tahsildar, Phillaur | Extra Assistant Commissioner- | Ferozepur with effect from 31st May, 1945 | On first appointment to the Provincial Civil Service. |
| * | * | * | * | |

It is contended on behalf of the petitioner that he was appointed to the Provincial Civil Service in a substantive permanent capacity as the expression 'Extra Assistant Commissioner' appearing in column 3 of the above notification is not qualified by the words 'on probation' or 'officiating' and as certain other officers who were appointed to this service previously were gazetted as having been appointed on probation. This contention cannot, in my opinion, bear a moment's scrutiny. The learned Advocate-General has stated at the bar that the practice of gazetting officers as on probation has been discontinued and that all officers who are appointed to the service are placed as probationers in the first instance and are later confirmed if their work in the probationary period is found to be satisfactory. I am satisfied with this explanation. In any case the failure of the Punjab Government to designate the petitioner's appointment as for a probationary term could have no effect on the nature of

The State of Punjab *v.* S. Sukhbans Singh

Bhandari, C. J.

the petitioner's tenure, for the rules provide quite clearly that all appointments in the service are probationary. The Governor of the Punjab had no discretion in the matter and had no power even if he had desired, to appoint the petitioner except as a probationer. It seems to me, therefore, that in the present case the probationary condition is implied as a matter of law.

Again, it is contended that as the petitioner was not removed from the service immediately on the completion of the probationary period of 18 months and as he was allowed to continue in his appointment for several years thereafter without an express order extending the period of probation, it must be assumed that he was appointed substantively to the Provincial Civil Service on the conclusion of the period of probation. This contention is sought to be supported by the rule which provides that on completion of the period of probation a person of the service becomes qualified for appointment in a substantive permanent capacity. I regret I am unable to concur in this contention. I am aware of no rule by which the petitioner's conditions of service are regulated which would enable us to hold that the probationary period had ripened into a permanent appointment by efflux of time. Nor am I in a position to subscribe to the proposition that as soon as the petitioner became qualified for substantive appointment he must be deemed to have been automatically confirmed. The petitioner could not acquire the status of a permanent member of the service automatically; he could have acquired this status only if the competent authority had chosen to perform a positive or affirmative act.

It was submitted in the course of arguments that the petitioner's original appointment to the service was in a substantive provisional capacity, but this allegation did not appear in the petition itself and the

The State of Punjab *v.* S. Sukhbans Singh

Bhandari, C. J.

petitioner never alleged as a fact that he had been appointed substantive provisionally. The question whether he was appointed to the service in a substantive provisional capacity or in some other capacity is a doubtful and disputed question of fact which cannot be determined in these proceedings. The object to be accomplished by a writ of *mandamus* is not to determine controversies: it is simply to enforce a clear and specific legal right when such right depends solely on questions of law.

The question now arises whether the petitioner who was holding the higher post in an officiating capacity was entitled to the privileges conferred by Article 311 of the Constitution. This Article is in the following terms:—

> "311(1) No person who is a member of a civil service of the Union or an All-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.
>
> (2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him".

The language which the framers of the Constitution have chosen to employ is of such wide generality that it comprehended in its terms the whole class of Government servants, including Government servants, who are holding their posts temporarily or on probation or in an officiating capacity or in accordance with the terms of their respective contracts. If the Courts were to confine themselves to the literal and strict meaning of the constitutional terminology it would be impossible to order the removal of any Government servant without notice or hearing even

32853

The State of Punjab v. S. Sukhbans Singh

Bhandari, C. J.

after he has attained the age of superannuation, or after he has completed 25 years' service, or after the expiration of the probationary period, or after the expiration of the term for which he was appointed under the terms of his contract. The framers of the Constitution could not have contemplated such a situation, and it seems to me, therefore, that if the words were given their usual or natural meaning the true intention of the law-makers would be completely defeated. The duty of the Courts is not to defeat but to effectuate the intention of the Legislature. It is of the utmost importance, therefore, that the language of the Article should be limited, restrained and restricted by constitutional construction, for a person who considers merely the letter of an instrument goes but skin deep into its meaning.

Many and various are the rules which have been framed by the Courts for ascertaining the intention of the Legislature, for as pointed out by Chief Justice Marshall "where the mind labours to discover the design of the Legislature, it seizes everything from which aid can be derived." The Court may look to the subject-matter of the enactment and the purpose for which it was enacted, ; it may examine the historical background and the attending conditions or circumstances at the time of the adoption of the law; it may consider the policy which induced its enactment or which was designed to be promoted thereby; it may examine the results which flow from one construction or another and accept a construction which produces convenient results and discard one which produces inconvenient results. The Court should endeavour to construe words in the sense in which they were understood at the time when the statute was enacted and should resolve any ambiguity in the language in favour of an equitable operation of law and to avoid results which are manifestly absured or ridicioulous. When a statute is capable of two constructions, one of which is in harmony with the pre-

The State of Punjab v. S. Sukhbans Singh

Bhandari, C. J.

existing body of law and the other not, that construction should be adopted which will preserve the existing law.

Let us now examine the circumstances in which Article 311 came to be enacted. Prior to the year 1919 the conditions of service of a Government servant were regulated by an infinite variety of executive instructions, several of which were framed by the Secretary of State in Council and most of which were embodied in the compilation known as the Civil Service Regulations. These provisions did not afford sufficient protection to the legitimate rights and interests of the civil services, for rules could be changed and modified at the sweet will and pleasure of the rule-making power and the protection afforded by them completely withdrawn. The British Parliament which was about to transfer a large measure of control to Indian hands by the enactment of the Government of India Act, 1919, was anxious to secure to the members of the public services all rights provided for them by the pre-existing rules and to safeguard their legitimate interests. They accordingly declared in section 96-B that—

(1) subject to the provisions of the Act of 1919 and all the rules made thereunder, every person in the civil service of the Crown holds office during His Majesty's pleasure;

(2) that no such person shall be dismissed by any authority subordinate to the authority by whom he was appointed;

(3) that the Secretary of State in Council shall be at liberty to make rules for regulating his conditions of service; and

(4) that the rules in operation at the time of the passing of the Act of 1919 shall be vested with statutory authority.

The State of Punjab *v.* S. Sukhbans Singh

Bhandari, C. J.

A statutory rule provided that no member of public service shall be dismissed or reduced without being given formal notice of any charge made against him and an opportunity of defending himself.

These provisions do not appear to have achieved the object which the law-makers had in view for they broke down completely on the very first occasion on which their efficiency was tested in a Court of law. Their Lordships of the Privy Council were constrained to hold that the statute of 1919 conferred no right of action to enforce the rules made thereunder (*Rangachari's case* (1), for it contained only a statutory and solemn assurance that the tenure of office though at pleasure would not be subject to capricious and arbitrary action but would be regulated by rules. They added, however, with the object doubtless of softening the blow which had been inflicted on the public services, that "supreme care should be taken that this assurance should be carried out in the letter and the spirit" and "that the rules should be strictly adhered to." (*Venkata Rao's case* (2).

If the rules containing guarantees and safeguards in such essential matters as arbitrary dismissal and removal could not be enforced in a Court of law and if a Government servant was to be left completely at the mercy of the appointing power, the protection afforded by section 96-B of the Government of India Act was wholly meaningless and the policy of safeguarding the vital interests of public services was foredoomed to failure. This state of affairs could not be tolerated for long and when the new Government of India Act was enacted in the year 1935, it was expressly declared in the body of the statute that no Government servant shall be dismissed or reduced in rank unless he has been afforded a reasonable opportunity of showing cause against the action which is

(1) A. I.R. 1937 P.C. 37.
(2) A.I.R. 1937 P.C. 31.

The State of Punjab *v.* S. Sukhbans Singh

Bhandari, C. J.

proposed to be taken in regard to him. Provisions on the same lines find a place in the new Constitution. Indeed, the Constitution of India has gone a step further by enacting that this protection would be available not only to persons who are dismissed or reduced in rank but also to persons, who are removed from service. This provision enables the Courts to intervene and to compel the performance, when refused, of the duty imposed by Article 311.

The history of this legislation makes it quite clear that the framers of the Constitution had no intention of overturning departmental rules and procedures which had for long regulated the relationship between the State and its employees. They had no desire to confer any greater rights or privileges on Government servants than had been conferred on them by the rules by which their conditions of service were regulated. They appear to have intended that the rules regulating the conditions of service should be strictly adhered to, that the expression 'member of a civil service' appearing in Article 311 should mean a permanant member of a civil service, that the expression 'holds a civil post' appearing in the same Article should mean holds in a substantive capacity, that the expressions 'dismissal', 'removal' and 'reduction in rank' should have the same meaning when used in Article 311 as they have when used in the service rules, that a Government servant should not be removed or reduced in rank without charges or hearing, if the rules so require, and indeed that Article 311 should confer no greater rights or privileges in the matter of re-instatement than have been conferred by the corresponding provisions in the service rules. They were anxious only to provide that the procedural guarantees secured by the rules in such essential matters as dismissal, removal and reduction in rank should be converted into constitutional guarantees, that persons aggrieved by the highhandedness of their official superiors should

The State of Punjab v. S. Sukhbans Singh

Bhandari, C. J.

be at liberty to seek redress at the hands of Courts of law and that Courts of law should have power to require the performance of duties set out in Article 311. They endeavoured merely to place beyond the reach of hostile legislation the method of dismissing, removing or reducing members of civil services and holders of civil posts. In other words they appear to have intended that a Government servant, who has been dismissed, removed or reduced in rank without charges or hearing should be entitled to re-instatement or restoration only, if he has a clear and specific legal right to re-instatement or restoration under the rules by which his conditions of service are regulated and only if he is within the protection of a statute or statutory rule forbidding such removal or reduction. It seems to me, therefore, that Article 311 should be read as if it were subject to the implied proviso that nothing contained in the said Article shall be deemed to limit or abridge the power of a competent authority to order the removal or reduction in rank of any Government servant without notice or hearing, if the rules by which his conditions of service are regulated authorise the competent authority so to do.

The Fundamental Rules and the Civil Services (Classification, Control and Appeal) Rules were made by the Secretary of State under section 96-B of the Government of India Act and were continued in force by section 276 of the Government of India Act, 1935, and Article 372 of the Constitution of India. One set of rules specifies the circumstances in which a person may acquire a clear legal right to hold a permanent post. Fundamental Rule 12-A, for example, provides that unless in any case it be otherwise provided by these rules, a Government servant on substantive appointment to any permanent post acquires a lien on that post, that is a title to hold substantively the permanent post to which he has been appointed substantively. The acquisition of a lien creates an indissoluble

The State of Punjab v. S. Sukhbans Singh

Bhandari, C. J.

tie between the post and the holder of the post, a tie which can be served only in circumstances clearly envisaged by the rules. Another set of rules protects a Government servant from removal or reduction in rank. They declare that save in special circumstances a permanent Government servant shall not be removed or reduced in rank. F.R. 14-A, for example, provides that except as provided in clause (c) of that Rule and Rule 97 a Government servant's lien on a post may in no circumstances be terminated, even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post. F.R. 15 provides that a Government servant holding a permanent post in a substantive capacity shall not be transferred to a post carrying less pay than the pay of the said permanent post.

A third set of rules empowers the competent authority to impose certain punishments including the punishment of dismissal, removal and reduction in rank (rule 49 of the Civil Services (Classification, Control and Appeal) Rules), but declares that no order of dismissal, removal or reduction in rank shall be passed on a Government servant unless he has been informed in writing of the grounds on which it is proposed to take action and unless he has been afforded an opportunity of defending himself (rule 55 of the Civil Services (Classification, Control and Appeal) Rules). Rule 55 of the Civil Services (Classification, Control and Appeal) Rules and Article 311 of the Constitution contain a general prohibition against a person being dismissed or removed or reduced in rank without notice or hearing.

On the other hand there are certain other rules which empower a competent authority to order the removal of a Government servant without notice or hearing. Thus a person may be removed without charges or hearing on his attaining the age of superannuation, or on the

The State of Punjab
*v.*
S. Sukhbans Singh

Bhandari, C. J.

expiry of the term for which he was appointed under a contract, or on the expiry of the period of probation, or on the completion of 25 years' service. In none of these cases can the order of removal be deemed to be unlawful for the rules themselves empower the appropriate authority to make an order of removal without affording the person concerned an opportunity of defending himself. These rules are in the nature of special provisions and they must be read as exceptions to the general provisions embodied in rule 55 of the Civil Services (Classification, Control and Appeal) Rules and to the constitutional provisions contained in Article 311, for it is a well-known rule of construction, that where there is in the same statute a general prohibition of a thing, and a special permissive recognition of the existence of the same thing under regulation, the particular specified intent on the part of the Legislature over-rides the general intent incompatible with the specific one (*State* v. *Clarke* (1)). The provisions of Article 311 and rule 55 are attracted only if the removal or reduction is ordered in violation of a statutory rule applicable to the person concerned at the time of his removal and only if the illegality of his removal is clearly and indisputably established.

If a competent superior officer proposes to order, without notice or hearing, the removal or reduction of a permanent Government servant from a post to which the said Government servant has been appointed substantively, he must find his authority in some positive provision of a statutory rule. Conversely, a person who seeks the intervention of this Court on the ground that he has been unlawfully removed or reduced in rank must establish to the satisfaction of the Court—

(a) that prior to his removal or reduction he had a clear and specific legal right to hold

(1) 14 American Reports 471.

the office in question, that is a right guaranteed him by a statute or a statutory rule;

(b) that he is within the protection of a statute or a statutory rule forbidding such removal or reduction;

(c) that his case is not covered by a rule which empowers the competent authority to order the removal or reduction without notice or hearing; and

(d) that he has a clear and indisputable right to re-occupy the said office.

The rule which protects a Government servant from reduction in rank is embodied in clause (a) of F. R. 15, which is in the following terms:—

"F.R. 15 (a) The Governor-General in Council 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 49, 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 14."

This rule enunciates the broad general proposition that although Government have full power to transfer a Government servant from a higher to a lower post or from a lower to a higher post or from a higher post in one grade to an equivalent post in the same grade, it has

The State of Punjab *v.* S. Sukhbans Singh

Bhandari, C. J.

no power to transfer a person who is holding a post in a substantive capacity to a post which is carrying less pay than the pay of the permanent post on which he holds a lien. It appears to draw a distinction between an officer, who is holding a permanent post in a substantive capacity and an officer, who is holding a permanent post in an officiating or some other capacity. An officer of the first category cannot be transferred from a higher to a lower post without charges or hearing, for he has a clear legal right to hold substantively the post to which he has been appointed substantively, and he is within the protection of a statutory rule which forbids his reduction in rank. Any such transfer in his case must, therefore, be regarded as a reduction in rank which cannot be effected without complying with the constitutional formalities. If, therefore, it is intended to demote any such officer without his consent it is essential that he should be afforded a reasonable opportunity of defending himself and this essential formality must be complied with whatever may be the reasons which actuate Government in contemplating this action. He can no more be denied the opportunity of being heard when it is proposed to order his reduction on grounds of ill-health than when it is proposed to order his reduction on grounds of misconduct or on any other grounds.

The protection afforded by Fundamental Rule 15, is not available to a person who is employed on probation or to a person who is merely officiating in a permanent post. He has no legal hold on his office, he has no clear and specific right or title to hold the post in question and he is not within the protection of a statute or statutory rule forbidding his removal from the said post. On the contrary, Fundamental Rule 15, itself provides that he may be transferred from a higher post to a lower post without cause assigned. A transfer from a higher post to a lower post must in his case be regarded merely as a transfer and not as a demotion. The power to transfer carries with it the

The State of Punjab *v.* S. Sukhbans Singh

Bhandari, C. J.

power to transfer at any time, or for any reason, or to any post or in any manner deemed best with or without notice. When a competent authority has a discretion as to the circumstances in which it will exercise its official function, this discretion cannot be controlled by Courts of law. It follows as a corollary that if a Government servant holds his office in an officiating capacity and no statutory rule protects him against reduction, the Courts will not be able to restore him to his place, however unjustify or arbitrarily his reduction was ordered. He may be transferred from a higher post to a lower post without cause assigned either in the ordinary course, or on grounds of misconduct, or on grounds of ill-health, or on any other ground, without interference by Courts of law. The Courts have no more right to examine the grounds on which a transfer has been ordered than to examine the reasons for transferring a person from one station to another.

I am not unaware of the authorities in which a contrary view has been taken, but those authorities do not appear to take notice of F.R. 15, which invests Government with a discretionary power to transfer a person who is holding office in an officiating capacity from a higher to a lower post, whenever, in the exercise of its judgment, Government considers it necessary to do so. So far as I can judge the power is unlimited and the discretion unfettered and even if it be exercised with manifest injustice the Courts are incompetent to interfere.

As the petitioner in the present case was reverted to a substantive post under the provisions of a rule corresponding to Fundamental Rule 15, it was not necessary to consult the Public Service Commission, No penalty was imposed upon him, for he was transferred by Government in exercise of the power conferred upon it by a statutory rule. He was only transferred from one post to another, and a transfer, if it is authorised by the rules, cannot be regarded as

The State of Punjab *v.* S. Sukhbans Singh

Bhandari, C. J.

a penalty. In any case the provisions of Article 320 of the Constitution are directory and not mandatory.

For these reasons I would allow the appeal and set aside the order of the learned Single Judge. The parties will bear their own costs.

Mehar Singh, J.

MEHAR SINGH, J.—I agree with my Lord the Chief Justice, for reasons given by him, that respondent Sukhbans Singh was officiating in the cadre of Extra Assistant Commissioners, while he was a permanent Tehsildar, and that the State Government had the power, having regard to his conditions of service in officiating capacity, to put him back to his permanent position. I would rest my judgment upon these considerations alone. I, therefore, agree that the appeal be allowed and the order of the learned Single Judge be set aside.

APPELLATE CIVIL

*Before Bishan Narain, J.*

UNION OF INDIA,—*Appellant*

*versus*

M/s AMERICAN STORES,—*Respondent*

**F.A.O. No. 64-D of 1954.**

1957

Feb. 12th

*Arbitration Act (X of 1940)—Section 14—Whether a document forms part of an award or not—Whether a question of fact or law—Arbitrator, whether sole Judge of facts and law—Exceptions to the rule—Award by an Umpire giving no reasons for his conclusions—Contemporaneously with the award the Umpire writing a letter to one of the parties enclosing therewith his detailed reasons for his conclusions with a view to enable that party to take action against its officials—Whether the document containing reasons forms part of the award and whether can be looked into for holding that there is an error of law apparent on the face of the award.*

*Held*, that whether a document is actually incorporated into the award and forms part of it is a question of fact and