

the assessee, and the Tribunal erred in applying it to decide the matter in favour of the assessee. Similar is the position of other two cases referred to by the Tribunal. The facts of those cases are entirely different and it was shown that there was a real dispute between the parties which was settled.

(9) For the reasons recorded above, we hold that on the facts and circumstances of the case, the Tribunal was not right in holding that the payment of Rs. 62,060 made by the assessee to the various parties during the assessment year 1969-70 was not a speculative transaction within the meaning of Section 43(5) of the Act and it further erred in deleting the said amount.

(10) In view of what we have said above, both the questions are answered in the negative that is, in favour of the Department and against the assessee. The Department will have its costs. Counsel fee being Rs. 300.

N.K.S.

Before : J. V. Gupta, J.

STATE OF PUNJAB,—Appellant.

*versus*

MUKHTIAR SINGH,—Respondent.

Regular Second Appeal No. 456 of 1985.

November 14, 1985.

*Constitution of India, 1950—Article 311—Punjab Civil Service Rules (Vol. I), Part I—Rules 2.14 and 2.26—Peon working in a non-gazetted establishment—Government declaring Sub-Divisional Officers as head of office in respect of such establishment—Deputy-Commissioner being the appointing authority initiating disciplinary proceedings against the peon and terminating his services—Order of termination—Whether valid—Disciplinary proceedings—Whether could be initiated by the authority higher than the Sub-Divisional Officer.*

*Held*, that under Article 311 of the Constitution of India, 1950, it has been provided that no person, who is a member of the civil

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service of the union or a civil service of a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. Admittedly, there is no violation of this Article. The Deputy Commissioner was the appointing authority of the employee and the order of his removed from service has been passed by him. Of course, the Sub Divisional Officer could initiate action against the employee but that in no way debarred the Deputy Commissioner who was higher in rank to initiate action and who was admittedly the appointing authority also. Just as the order of dismissal passed by a higher authority cannot be found fault with, similarly the initiation of enquiry proceedings by a higher authority who also happens to be the appointing authority cannot be held to be illegal on this score alone.

(Para 5).

*Regular Second Appeal from the decree of the Court of the Additional District Judge, Bhatinda, dated the 18th day of October, 1984, affirming that of the Senior Sub Judge, Bhatinda, dated the 13th day of September, 1983, decreeing the suit of the plaintiff for declaration to the effect that order No. 3/EB dated 6th January, 1982 (removing the plaintiff from service) passed by Deputy Commissioner, Bhatinda, is null and void, without competence, against the principles of natural justice and notwithstanding, he still continues to be in service as Peon in Tehsil Office, Talwandi Sabo, enjoying all the benefits of pay and allowances but without costs and further observing that the defendants shall be at liberty to convert the period of absence of the plaintiff upto date into the leave of the kind due.*

*Claim in Appeal : For reversal of the order of both the Courts below.*

Cross-Objections No. 8-C of 1985.

*Cross-Objections under Order XLI Rule 22 of Civil Procedure Code praying that the cross-objections may be accepted and the regular/Second Appeal filed by the Panjab State may be dismissed with costs and the cross-objections may be allowed and the finding of treating the period of absence as leave of the kind due may be set aside.*

D. S. Brar, A.A.G. (Punjab), for the Appellant.

Jasmer Singh Randhawa, Advocate and A. S. Randhawa, Advocate,  
for the Respondent.

## JUDGMENT

J. V. Gupta, J.

(1) This is defendants second appeal against whom suit for declaration has been decreed by both the Courts below.

(2) The plaintiff filed a suit for declaration that the order of his removal from service dated 6th January, 1982, passed by the Deputy Commissioner, Bhatinda, was null and void. It was alleged that he was appointed as a Peon in the office of the Sub Divisional Officer (Civil), Talwandi Sabo. The impugned order of his removal from service issued on 6th January, 1982 by the Deputy Commissioner was illegal on the ground that while under the relevant rules known as Punjab State Class IV Service Rules, 1963, as amended in 1972, it was only the Sub Divisional Officer (Civil) Talwandi Sabo, who was the disciplinary authority and the only competent person who could have initiated any action against him. The impugned orders passed by the Deputy Commissioner is, therefore, totally bad in law and that the enquiry which was conducted into the allegations levelled against him was not held in accordance with the procedure prescribed by law. The suit was contested on behalf of the State of Punjab *inter-alia* on the grounds that the entire proceedings, i.e. holding the enquiry etc. were gone through perfectly in accordance with law and that no fault could be found therewith. According to the written statement, the Deputy Commissioner, was the appointing authority of the plaintiff and was, therefore, competent to pass the termination orders. The trial Court found that the Deputy Commissioner could not have initiated any action against the plaintiff and, therefore, the entire proceedings which ensued therefrom (the enquiry), and including the impugned order are to be taken as wholly illegal and without jurisdiction. In view of that finding the plaintiff's suit was decreed. In appeal the learned Additional District Judge affirmed the said findings of the trial Court and thus maintained the decree passed in favour of the plaintiff. Dissatisfied with the same the State of Punjab has filed this second appeal in this Court, whereas cross-objections have been filed on behalf of the plaintiff in which it has been prayed that the finding of the courts below treating the period of absence as leave of the kind due be set aside.

(3) Learned counsel for the appellant submitted that admittedly the Deputy Commissioner was the appointing authority of the

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plaintiff and that being so he was competent to pass the termination order as well as for initiating the enquiry against him. According to the learned counsel the view taken by the Courts below was wrong and misconceived. In support of his contention he referred to *Gurmukh Singh s/o Gulab Singh, Delhi v. Union of India, New Delhi*, (1) and *State of Haryana and another v. Baldev Krishan Sharma and others*, (2).

(4) On the other hand learned counsel for the plaintiff-respondent contended that,—*vide* letter Exhibit P-6, dated September, 1972, in respect of non-gazetted establishment the Government had declared the Sub Divisional Officers (Civil) in the State of Punjab as head of office under Rule 2.26 of Punjab Civil Service Rules, Volume I, Part I, within their respective Sub-Divisions and, therefore, in view of that letter only the Sub Divisional Officer (Civil) was competent to initiate the enquiry proceedings, if any, against the plaintiff. The initiation of the enquiry by the Deputy Commissioner, according to the learned counsel, though he was the appointing authority, was illegal and without jurisdiction. According to the learned counsel it was the competent authority as contemplated under Rule 2.14 of the Punjab C.S.R. Volume I, Part I (hereinafter called 'the Rules'), who could initiate any proceedings against the plaintiff. In support of his contention he referred to *Baldev Singh v. The Secretary to Government Punjab, Rehabilitation Department and others*, (3) and *Pothula Suba Rao v. The Post Master General, Andhra Circle, Hyderabad and another* (4).

(5) I have heard the learned counsel for the parties and have also gone through the case law cited at the Bar. It is under Article 311 of the Constitution of India, wherein it has been provided that no person, who is a member of the civil service, of the Union or a civil service of a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. Admittedly there is no violation of the said Article. The Deputy Commissioner was the appointing authority of the plaintiff and the order of his removal from service has been passed by him. Faced with this situation the argument raised on behalf of the plaintiff-respondent was that it was only the Sub Divisional Officer (Civil) who was the disciplinary authority and only he was competent person to

(1) A.I.R. 1963 Punjab 370.

(2) 1970 P.L.R. 635.

(3) 1969 S.L.R. 689.

(4) 1980(3) S.L.R. 183.

have initiated any action against the plaintiff. There is no warrant for this proposition. Of course the Sub-Divisional Officer (Civil) could initiate action against the plaintiff but that is no way debarred the Deputy Commissioner, who was higher in rank, to initiate action against the plaintiff, and who was admittedly his appointing authority also. In the authority *Pothula Suba Rao* (supra) no such proposition was laid down. Therein the higher authority i.e. the P.M.G. was found to be not the appointing authority. Such is not the position as regards the facts of the present case. Here admittedly the Deputy Commissioner was the appointing authority of the plaintiff and the removal order had been passed by him. Similarly *Baldev Singh's case* (supra) also does not help the plaintiff in any manner. There the Enquiry Officer was not appointed by the Secretary i.e. the punishing authority but by the Deputy Secretary and, therefore, it was held that an enquiry could only be ordered by an authority competent to take disciplinary action. Rather the judgment of this Court reported in *Baldev Krishan Sharma's case* (supra) and *Gurmukh Singh's case* (supra) relied upon by the learned counsel for the State have relevance to the facts of the present case. It was held in the former authority that where the competent punishing authority was the Chief Engineer, but the order of dismissal was passed by the Governor of Haryana, who was authority higher than the Chief Engineer, there was no question of violation of any Rule, because the relevant service rules do not state that the penalty of dismissal would not be inflicted on an employee of Irrigation Department by authority higher than the one named in the Rules. Thus, when an order of dismissal passed by a higher authority cannot be found fault with, similarly the initiation of the enquiry proceedings by the higher authority who in this case is also the appointing authority cannot be held to be illegal on this score alone. In this view of the matter the approach of the Courts below was wholly wrong and misconceived. The termination order of the plaintiff was validly passed by the Deputy Commissioner, being his appointing authority. No other point has been urged on behalf of the respondent except the prayer in the cross-objections. Consequently, the appeal succeeds, judgments and decrees of the Courts below are set aside and the suit of the plaintiff is dismissed with no order as to costs.

(6) In view of the dismissal of the suit the cross-objections automatically stand dismissed.

N.K.S.