

LETTERS PATENT APPEAL

Before Gurdev Singh and Gopal Singh, JJ.

SHANTI LAL SIKKA,—Appellant.

versus

THE STATE OF HARYANA ETC.,—Respondents.

Letters Patent Appeal No. 499 of 1970.

January 18, 1972.

Punjab Civil Service Rules, Volume II—Rule 4.23—Whether confers power of condonation of break in service for recognition of seniority—Such power—Whether inheres in the Government—Order condoning break in service for recognition of seniority of a Government servant on merits incidentally affecting the rights of other Government servants—Such other Government servants—Whether have locus standi to get the order rescinded.

Held, that rule 4.23 of the Punjab Civil Service Rules, Volume II, provides for condonation of break for the limited purpose of grant of pensionary benefits to Government servants consequent upon their retirement and has nothing to do with power to condone the break for recognition of seniority. However, as there is no specific rule on the subject of condonation of break in service entitling a Government servant to reckon the period of that break towards his seniority and as the existing rules do not debar or inhibit the exercise of that power, there does vest this power in the Government to administratively pass orders or to issue instructions providing for condonation of break or interruption in service for such a purpose. The power inheres in the Government to condone such a break for purposes other than the purpose of pensionary benefits. The question of condonation of break in service is entirely one between the incumbent, whose break in service is to be condoned and the Head of the Department unless the order of the condonation of break is *mala fide* one. Once there is justification on merits for break in service of a Government servant of a cadre being condoned and the break so condoned incidentally and indirectly affects as a consequence of that order of condonation the rights of other Government servants in that cadre, such other Government servants have no *locus standi* to have that order rescinded. (Paras 6, 7 and 11)

Letters Patent Appeal under Clause X of the Letters Patent of the Punjab High Court against the judgment and order of Hon'ble Mr. Justice S. S. Sandhawalia, dated 4th May, 1970 passed in Civil Writ No. 2993 of 1969—Shanti Lal Sikka vs. The State of Haryana and others.

Kuldip Singh, R. S. Mongia, J. M. Sethi and Sarup Singh, Advocates, for the appellant.

Dalip Singh, Advocate, for respondent No. 3.

S. P. Jain, Advocate, for the State.

JUDGMENT

GOPAL SINGH, J.—This is letters patent appeal by Shanti Lal Sikka, against the State of Haryana and others from the judgment of a single Judge, dated May 4, 1970, dismissing the writ petition filed on behalf of the appellant.

(2) On March 5, 1941, the appellant was appointed as a Research Assistant by the Government of Punjab in the Department of Irrigation and Power. On March 1, 1950, he was promoted as Assistant Land Reclamation Officer. While working as Assistant Land Reclamation Officer, his services were terminated with effect from October 16, 1950. He represented to the Head of the Department that there was no justification for his services being terminated. On December 13, 1950, he was appointed as Land Reclamation Supervisor. Thus, there occurred break in his service from October 16, 1950 to December 13, 1950. By order, dated April 23, 1952, Annexure 'A', break of service from October 15, 1950 afternoon to December 13, 1950 afternoon was condoned. When the seniority of the appellant was fixed on April 20, 1961, this period of break in service was not reckoned. It was, however, stated in the order fixing the seniority that the seniority had been fixed subject to the regularisation of break in service with the approval of the Chief Engineer. On January 31, 1964, by letter Annexure 'C', the Secretary of the Department conveyed to the Chief Engineer the sanction of the Governor for condonation of break in service of the appellant. In that communication, it was mentioned that the condonation of break would be for the limited purpose of pensionary benefits. Being aggrieved of that order, the appellant made representations to the Government that condonation of break in service should also be extended to the benefit of seniority. By letter, dated July 16, 1965, Annexure 'E', there was conveyed to the Chief Engineer sanction of the Governor for condonation of break in service not only for the purpose of pensionary benefits, but also for the fixation of seniority of the appellant.

(3) After the reorganisation of the State of Punjab, on November 1, 1966, the appellant was allocated to the State of Haryana. Shri D. S. Chohan, holding the post of Assistant Research Officer/Assistant Land Reclamation Officer impleaded as respondent No. 3 in the appeal was also allocated to that State. He represented to the Government that condonation of break in the service of the appellant adversely affected his seniority and consequently the order of

Shanti Lal Sikka *v.* The State of Haryana, etc. (Gopal Singh, J.)

Governor of Punjab, dated July 16, 1965, deserved to be revoked. On August 21, 1969, the Minister for Irrigation and Power called upon the appellant to justify the condonation of break in his service sanctioned by the Governor of Punjab. By order, dated October 24, 1969, Annexure 'G', the State of Haryana revoked the order of the Governor, dated July 16, 1965. That order, which is the impugned order in the case, runs as follows:—

“The orders contained in Punjab Government memo. No. 5194-Irr-Estt. II-65/11526, dated July 16, 1965, condoning the break in service for the period from October 16, 1950 to December 13, 1950 for fixation of seniority, are rescinded, as the extension of benefit towards seniority conflicts with and is prohibited by paragraph 5 of the letter of the Finance Department bearing No. 9791-2FRI-63/4233, dated April 29, 1964 and as the Punjab Government Service Rules also do not provide for such condonation for purposes of seniority.”

(4) Shri Kuldip Singh, appearing on behalf of the appellant has contended that the two grounds assigned by the State of Haryana in revoking the condonation of break in the service of the appellant, namely, letter, dated April 29, 1964 and the absence of rules on the subject are inconsequential and do not entitle the Government to cancel the order of condonation of break in the service of the appellant.

(5) The letter, dated April 29, 1964 referred to in the impugned order as a communication from the Secretary to Government, Punjab, Finance Department to all Heads of Departments including the Department of Irrigation and Power. The subject of that letter is 'Condonation of break in service of temporary Government servants retrenched from one State Government Office and selected for appointment in another such office'. In paragraph 3 of that letter, it is provided that when period of break in service exceeds 30 days, the question of condoning the break either for purposes of pension or for carrying forward of leave would have to be examined under the orders issued on the subject from time to time and might be decided by the Administrative Department in consultation with the Finance Department. In its para 4, it is stated that in all cases, in which the break in service is condoned, an entry to that effect would be made in the Service Book of the person concerned quoting reference to the authority condoning the break. In para 5, it is provided that the benefit of previous service would not be allowed for

fixation of seniority in the new post even if the break in service, if any, is condoned. Considering the scope of the subject of this letter, the above referred to three paras could only apply, when break in service of a retrenched Government servant selected for appointment in another office of that Government is to be considered. It is admittedly the case of the parties that the appellant was not working as temporary Government servant nor he had been retrenched from one office and appointed later on in another office. Thus, this letter has obviously no application to the case of the appellant.

(6) It is also mentioned in the impugned order and quite rightly that there is no specific rule pertaining to condonation of break in service for the purpose of seniority. Reference was made to Rule 4.23 of the Punjab Civil Service Rules, Volume II. Chapter IV, in which that rule occurs, is headed as, 'Reckoning of Service for Pension'. The said Rule 4.23 is preceded by a sub-heading, 'D—Condonation of interruptions and deficiencies'. That Rule provides that interruptions in service in the case of an officer retiring on or after January 5, 1961, may be condoned subject to the conditions that interruption should have been caused by reasons beyond the control of the Government servant, that the service preceding the interruption should not be less than five years in duration and that the interruption or break in service should not have been of a duration exceeding one year. It is provided in relation to condition No. 2, that where there are two or more interruptions, the total service, in respect of which pensionary benefits would be lost if the interruptions are not condoned should not be less than five years. This Rule thus applies to a Government servant on retirement. When read in conjunction with the heading of the Chapter, in which it occurs it provides for condonation of break for the limited purpose of grant of pensionary benefits to Government servants consequent upon their retirement and has nothing to do with power to condone break for recognition of seniority. Thus, neither letter, dated April 29, 1964, covers the case of the appellant so as to bar his claim for condonation of break in service for determination of his seniority nor there are any rules on the subject of condonation of break in service for the period of that break being reckoned towards seniority.

(7) In the absence of any restriction or prohibition against power of condonation of break in service, the power does inhere in the Government to 'condone such a break for purposes other than the purpose of pensionary benefits as is covered by Rule 4.23 of the

said Rules. If there is no specific rule on the subject of condonation of break in service entitling a Government servant to reckon the period of that break towards his seniority and the existing rules do not debar or inhibit the exercise of that power, there does vest power in the Government to administratively pass orders or to issue instructions providing for condonation of break or interruption in service for such a purpose. It has not been contended on behalf of the respondents that any of the existing rules will be contravened, if such an administrative power to condone break in service has been exercised by the Government. The question, whether the Government is entitled to exercise such power administratively came up for consideration before the Supreme Court in *Sant Ram Sharma versus State of Rajasthan and another* (1). It was observed by their Lordships as under:—

“We proceed to consider the next contention of Mr. N. C. Chatterjee, that in the absence of any statutory rules governing promotions to selection grade posts, the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept this argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf, the Government cannot issue administrative instructions regarding the principles to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rule by administrative instructions, but if the rules are silent on any particular point, Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.”

(8) In the face of the above authoritative pronouncement by their Lordships of the Supreme Court, the counsel for the respondents conceded that such a power could be exercised administratively. Thus, the only question, which further remains to be considered is whether there was justification on merits for the order of condonation of break in service of the appellant as passed by the Governor

(1) 1967 (1) S.L.R. 906.

on July 16, 1965 and whether the revocation of that condonation as embodied in the impugned order, dated October 24, 1969 is called for.

(9) The service of the appellant was terminated with effect from October 16, 1950. On the date of termination of service, the appellant was working as Assistant Land Reclamation Officer. He had been prior to his promotion to the post of Assistant Land Reclamation Officer working since March 5, 1941 as Research Assistant and later on as a Land Reclamation Supervisor. Prior to the so-called termination of service of the appellant, there was addressed letter, dated February 25, 1964 on behalf of the Director of Land Reclamation, Irrigation and Power to the Chief Engineer, Irrigation Works, Punjab. It is Annexure 'D'. It is given in that letter that when the appellant remained without any post, there did exist vacancy of the post of Land Reclamation Supervisor and he had been appointed to that post prior to his promotion to the post of Assistant Land Reclamation Officer. According to that letter, he continued holding that post up to October 15, 1950, when his services had been dispensed with on the ground of abolition of the post of Assistant Land Reclamation Officer. It is stated in that letter that his services should not have been terminated but instead he should have been reverted to his original post of Land Reclamation Supervisor and that the order terminating his services as issued was untenable and that the order had resulted in break in his service. By that letter, a request was made to regularise the break in service and to relieve the appellant of hardship from which he would suffer without that break being condoned. As is distinctly stated in that letter, the condonation of break was solicited for apart from and in spite of the provisions of Rule 4.23 of the Punjab Civil Service Rules, Volume II. In the order of the Governor, dated July 16, 1965, Annexure 'E', which was eventually passed in pursuance of the letter, dated February 25, 1964, Annexure 'D', it is specifically mentioned that the break was being condoned for fixation of seniority of the appellant.

(10) In the Service Book of the appellant, certified copy of which has been placed on behalf of the appellant on the file, the following is the order, dated October 11, with year unspecified made on behalf of the Director of Irrigation and Power:—

“Sanctioned and availed 59 days earned leave from October 16, 1950 to December 13, 1950, under rule 8.133 of the

Shanti Lal Sikka v. The State of Haryana, etc. (Gopal Singh, J.)

Civil Service Rules, Volume I, Part I,—*vide* D.I.P.R. No. 28635/74 PF/R, dated October 7, 1965.

He would have continued as such, but for his proceeding on leave and the period shall count towards increments.”

The premises of facts and circumstances, under which the order of termination of service of the appellant as Assistant Reclamation Officer came to be passed admit of no doubt that that order on the face of it was unwarranted and had been passed for no fault of the appellant. As the letter, dated February 25, 1964, Annexure 'D' clearly points out, the order of termination was in its nature and ultimate effect one of reversion. The appellant had been working as Land Reclamation Supervisor from the year 1941. On abolition of the post of Assistant Land Reclamation Officer, which he was holding on October 16, 1950, he was to be reverted as Land Reclamation Supervisor and his services could not be terminated. It is on account of that reason that the Director, Land Reclamation, Irrigation and Power recommended to the Chief Engineer, Irrigation Works, Punjab, that in order to avoid hardship entailing to the appellant because of erroneous order of termination of service of the appellant instead of one of his reversion to be lower grade post of Land Reclamation Supervisor, break in service of the appellant be condoned for the purpose of seniority. The Governor condoned the break in service for sound and justifiable reasons as made out on behalf of the Department. According to the entry made in the Service Book of the appellant, the appropriate course of treating, under the above-said circumstances, the period of break in service of the appellant as on leave was adopted.

(11) The above discussion leads to the irresistible conclusion that there was every justification for break in service being condoned. The learned counsel for the respondents were asked to point out to any ground for justification of the impugned order of revocation of condonation of break in service of the appellant passed after more than four years. They have not pin-pointed any. The learned counsel appearing on behalf of respondent No. 3 contended that the order of condonation of break in service passed on July 16, 1965 affected his seniority and consequently there was every justification after reorganization for the impugned order being made in 1969 at the instance of respondent No. 3. The question of condonation of break in service is entirely one between the incumbent, whose break in service is to be condoned and the Head of the Department unless

the order of the condonation of break is challenged to be a *mala fide* one. No such plea has been raised on behalf of respondent No. 3. Once on merits there is justification for break in service of a Government servant of a cadre being condoned and the break so condoned incidentally and indirectly affects as a consequence of that order of condonation the rights of other Government servants in that cadre, they shall have no *locus-standi* to have that order rescinded.

(12) In the result, the appeal is allowed, the judgment of the single Judge is set aside, the impugned order, dated October 24, 1969 is quashed and order of condonation of break in the service of the appellant, dated July 16, 1965 is restored. There will, however, be no order as to costs.

GURDEV SINGH, J.—I agree.

B. S. G.

CIVIL MISCELLANEOUS.

Before R. S. Narula, J.

LEKH RAJ,—Petitioner.

versus

GENERAL MANAGER, NORTHERN RAILWAY, BARODA HOUSE, NEW DELHI, ETC.,—Respondents.

Civil Writ No. 371 of 1967.

January 19, 1972.

Indian Railway Establishment Code, Volume I—Rules 1735 and 1736—Order passed by Divisional Personnel Officer—Whether can be reconsidered suo moto by Divisional Superintendent or Chief Personnel Officer under rule 1736—Powers of revision and review conferred by the rule—Difference between—Stated—Non-mention of the relevant statutory rule in the order passed thereunder—Whether invalidates the order.

Held, that a combined reading of the rules 1735 and 1736 of Northern Railway Discipline and Appeal Rules, contained in the Indian Railway Establishment Code, Volume I, shows that much wider powers are vested in the President of India under the former rule than the limited powers which