

PETITIONER:
STATE OF HARYANA

Vs.

RESPONDENT:
S.M. SHARMA AND ORS.

DATE OF JUDGMENT 20/04/1993

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
YOGESHWAR DAYAL (J)

CITATION:
1993 AIR 2273 1993 SCR (3) 280
1993 SCC Supl. (3) 252 JT 1993 (3) 740
1993 SCALE (2) 583

ACT:
Punjab Agricultural Produce Markets Act, 1961: Section 3(17) (ii) read with Rule 4(2) of the Punjab Agricultural Produce Market (General) Rules, 1961 and Rule 13 of the Haryana State Agricultural Marketing Board Service Rules, 1974-Chief Administrator's order dated 6.1.1992 withdrawing the current duty charge of the Executive Engineer-Legality of Constitution of India, 1950: Article 226-Writ by an employee, entrusted the current duty charge of the Executive Engineer, challenging order withdrawing such charge under Rule 4(2) of the Punjab Agricultural Produce Market (General) Rules, 1961 and Rule 13 of the Haryana State Agricultural Marketing Board service Rules, 1974-justification of.

HEADNOTE:
The respondent No.1 was Sub- Divisional Officer in the service of the Haryana State Agricultural Marketing Board. He was entrusted with the current duty charge of the post of Executive Engineer by the order dated. June 13, 1991 of the Chief Administrator and later on by order dated January 6, 1992 withdrawing the current duty, charge from the respondent No.1, he was transferred. The respondent No.1 challenged the order before the High Court in a writ petition. The High Court quashing the Board's order allowed the writ petition, against which the Board riled the present appeal b% special leave. Allowing the appeal, this Court,
HELD : 1.1 The (order dated January 6, 1992 is only, a posting order in respect of two officers. With the posting of one Ram Niwas as Executive Engineer, the respondent No.1 was automatically re-

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lieved of the current duty charge of the post of Executive Engineer. The respondent No.1 was neither appointed/promoted/posted as Executive Engineer nor was he ever reverted from the said post. He was only holding current duty charge of the post of Executive Engineer, and as such the question of his reversion from the said post did not arise. (285-C-D)

1.02The High Court fell into patent error in reading the order dated June 13.1991 as the order promoting the respondent No.1 to the post of Executive Engineer. (284-G)

2.The High Court extended its extra-ordinary jurisdiction under Article 226 of the Constitution of India to a frivolity. No one has a right to ask for or stick to a current duty charge. The impugned order did not cause any financial loss or prejudice of an-\$' kind to respondent No. 1. He had no cause or action whatsoever to invoke the writ Jurisdiction of the High Court. It was a patent misuse of the process (if the Court. (285-G)

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1952 of 1993.

From the Judgment and order dated 20.8.1992 of the Punjab and Haryana High Court in C.W.P. No. 482 of' 1992.

G.L.Sanghi, M.R. Sharma, K.B. Rohtagi. Ms. Aprna Rohtagi and M.K. puri for the Appellant.

V. C. Mahajan. V. K. Sharma and P.N. Puri for the Respondents.

The Judgment of the Court was delivered by:

KULDIP SINGH Special leave granted.

S.M. Sharma is employed as Sub Divisional Officer in the Service of the Haryana State Agricultural Marketing, Board (the Board). The Chief Administrator of the Board by the order dated June 13. 1991 entrusted sharma with the current duty charge of the post of

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Executive Engineer. Later on by the order dated January 6, 1992 the Chief Administrator withdraw the Said Current duty charge from Sharma and transferred him to Bhiwani. Sharma challenged tile order before the High Court by way of a writ petition under Article 226 of' the Constitution of India. The High Court by its judgment dated August 20. 1992 allowed the writ petition and quashed the order dated January 6.1992. This appeal by the State of Haryana is against the judgment of the High Court.

The Constitution and the functioning of the Board is governed by the Punjab Agricultural Produce Markets Act. 1961C the Act) as applicable it) the State of Haryana and by the Rules framed thereunder. Section 3(17)(ii) of tile Act empowers the Board to delegate any of its powers to its Chairman. Chief Administrator. Secretary or any of its officers. The Punjab Agricultural Produce Market (General Rules. 1961 (the General Rules) and the Haryana State Agricultural Marketing Board Services Rules. 1974 (the Service Rules) have been framed under the Act. Rule 4(2) of the General Rules which lays down the functions and powers of the Chief Administrator is as under:

"4(2) The Chief Administrator shall.

(a) be responsible for the administration of the Act and shall subject to any other provision contained in these rules, exercise general control over the employees of the Board and those of Committees:

(b)enjoy the powers of the Head of the Department as are being enjoyed by the Director of Agriculture Department;

(c) be the competent authority for approving the budget of the Committees and

(d) he responsible for the preparation of

the annual budget of the Board."
Rule of the Service Rules which is relevant is reproduced hereunder:

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" 13. A member of the Service shall be liable to serve in any place, whether within or without the state of Haryana, on being ordered so to do by the Chief Administrator."

Section 20 of the Act read with Rule 6 of the General Rules gives the power of appointment to the post of Executive Engineer to the Board. It is not disputed that the board by its resolution dated November 18, 1986 delegated its powers to appoint Class A Officers, including the Executive Engineers, and to inflict major punishment in respect of such officers, to the Chief Administrator of the Board. Thereafter the Board by its resolution dated December 26, 1991 superseded the earlier resolution dated November 18, 1986 and further resolved to delegate the said powers to its Chairman. The appellant, State Government, claims that there solution dated December 26, 1991, having been passed in the absence of the Chief Administrator, was not valid. We do not wish to go into the question of the validity of the said resolution. The High Court proceeded on the assumption that the resolution dated December 26, 1991 was valid and as such the Chief Administrator was left with no power to appoint a person to the post of Executive Engineer and to remove him therefrom.

On the above facts the High Court reached the following findings:

(i.) Under the Act and the Service Rules it is the Board which is competent to make an appointment to the post of Executive Engineer.

ii.) The delegation of powers in favour of the Chief Administrator was withdrawn by the Board by its resolution dated December 26, 1991 and instead the said powers were delegated to the Chairman. It was, thus, only the Chairman who could appoint a person to the post of Executive Engineer and also to remove him therefrom.

iii.) After the above said resolution dated December 26, 1991 the Chief Administrator was no longer competent to exercise the powers with regard to appointment, removal etc. in respect of the post of Executive Engineer.

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On the above quoted findings the High Court concluded that the order of the Chief Administrator dated January 6, 1992 withdrawing the current duty charge of the post of Executive Engineer from Sharma was illegal. The High Court thus, allowed the writ petition and quashed the said order. We do not agree with the High Court. Even if the findings reached by the High Court are taken to be correct, there is no justification to quash the order of the Chief Administrator dated January 6, 1992.

Sharma was given the current duty charge by the order dated June 13, 1991 which is reproduced hereunder:

"OFFICE ORDER.

Sh. Surinder Mohan Sharma, SDO. HSAM, Board, Naraingarh is entrusted current duties charge of the post of Executive Engineer, Kaithal in his own pay, scale till further order, These order shall take immediate effect.

Sd/-

Raj Kumar

Chief Administrator"

Sharma was no(promoted to the post of Executive Engineer, he was only entrusted with the current duty-charge of the

said post in his own pay scale till further orders. There is no order promoting Sharma to the post of Executive Engineer. The High Court fell into patent error in reading the order dated June 13, 1991 as the order promoting Sharma to the post of Executive Engineer. We may also notice the impugned order dated January 6, 1992 which is as under:-

"OFFICE ORDER

Sh. Ram Niwas, XEN, from PWD(B&R) is hereby posted as XEN, in HSAM Board in Panchkula as XEN, (Design).

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Sh. Surinder Mohan Sharma, SDO, who was holding current duty charge of the post of XEN in his own pay scale is hereby transferred from Panchkula and posted as SDO in Bhiwani,

These orders shall take immediate effect.

Manik Sonawane,

Chief Administrator."

It is only a posting order in respect of two officers. With the posting of Ram Niwas as Executive Engineer Sharma was automatically relieved of the current duty charge (if the post of Executive Engineer. Sharma was neither appointed/promoted/posted as Executive Engineer nor was he ever reverted from the said post. He was only holding current duty charge of the post of Executive Engineer. The Chief Administrator never promoted Sharma to the post of Executive Engineer and as such the question of his reversion from the said post did not arise. Under the circumstances the controversy whether the powers of the Board to appoint/promote a person to the post of an Executive Engineer were delegated to the chairman or to the chief Administrator. is wholly irrelevant.

Sharma was given the current duty charge of the post of Executive Engineer under the orders of the Chief Administrator and the said charge was also withdrawn by the same authority. We have already reproduced above Rule 4(2) of the General Rules and Rule 13 of the Service Rules. We are of the view that the Chief Administrator, in the facts and circumstances of this case, was within his powers to issue the two orders dated June 13, 1991 and January 6, 1992.

We are constrained to say that the High Court extended its extraordinary jurisdiction under Article 2216 of the Constitution of India to a frivolity. No one has a right to ask for or stick to a current duty charge. The impugned order did not cause any financial loss or prejudice of any kind to Sharma. He had no cause of action whatsoever to invoke the writ jurisdiction of the High Court. It was a patient misuse of the process of the Court.

We therefore allow the appeal set aside the impugned judgment

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of the High court dated August 20, 1992 and dismiss the writ petition filed by sharma before the High court with costs.

We quantify the costs as Rs. 10,000/-

V. P. R.

Appeal allowed.

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