

RAM SARUP

v.

STATE OF HARYANA & ORS.

May 3, 1984

[Y.V. CHANDRACHUD C.J., D.P. MADON, AND RANGA NATH MISRA, JJ.]

Panchayat Samitis, and Zilla Parishads Act, 1961 as amended by Haryana Amendment Act of 1973 deleting Section 33, Effect of Whether any appointment made after the deletion of Section 33 valid effective.

Section 33 of the Punjab Panchayat Samitis and Zilla Parishads Act, 1961 provided that subject to rules made by the Government, a Panchayat Samiti may employ such servants as it may consider necessary for the efficient performance of the duties imposed upon it by the Act, rules or bye-laws made thereunder or by any other law for the time being in force. The Punjab Panchayat Samitis and Zilla Parishads (Haryana Amendment Act, 1973 which came into force from June, 13, 1973, introduced extensive amendments. Section 33 of the Act was deleted by Section 13 of the Amending Act, Sub section (4) of Section 14 the Amending Act, provided that persons employed by a Panchayat Samiti before April 4, 1973 and who were in service at the commencement of the Amending Act, "shall continue to serve on the same terms and conditions on which they were employed by the Panchayat Samiti" until they are absorbed in the Government Service or retire in such manner as may be prescribed. Section 35(1) of the Act empowers the State Government to place at the disposal of a Panchayat Samiti such of its servants as are required for the implementation of the schemes annexed therewith and for such other duties and functions as may be assigned to them by the Panchayat Samitis from time to time.

The appellant was appointed as a clerk on June 1, 1963 by the Panchayat Samiti, Loharu. He was confirmed in that post in course of time. On January 21, 1974, he was promoted as a Head Clerk on an *ad hoc* basis. On March, 14 1975 a resolution was passed by the Samiti regularising the post of Head Clerk. On April 1, 1975, the appellant was appointed as a Head Clerk. Acting in pursuance of the provision of Section 14(4) of the the Amending Act, the Government of Haryana notified the absorption of the appellant as a clerk, though he was working as a Head Clerk since January 21, 1974. Being aggrieved the appellant filed a Writ Petition and prayed for a direction to absorb him as a Head Clerk. The Writ Petition having been dismissed by the High Court, the appellant has filed this appeal by special leave.

Dismissing the appeal, the Court,

HELD : 1.1. The Panchayat Samiti had no right to appoint the appellant to the post of Head Clerk on the date on which it purported to do so. As a result of the deletion of Section 33 of the Act by the Amending Act of 1973, the

Panchayat Samiti lost its power to make appointment to the Panchayat. It could not therefore have appointed the appellant as a Head Clerk, as it purported to do so, in January, 1974 on an *ad hoc* basis or in April 1965 on a regular basis. [737D]

1.2. Though the right to be considered for promotion is a term and condition of service, in the instant case, the appointment of the appellant to the post of a Head Clerk being without the authority of law, the Government was not bound to absorb him in the post of a Head Clerk; He was appointed lawfully to the post of a clerk and that is the post in which the Government has absorbed him. [737C ; E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1433 of 1977

Appeal by Special leave from the Judgment and Order dated the 16th February, 1977 of the Punjab and Haryana High Court in Civil Writ Petition No. 752 of 1977.

J.D. Jain & Mrs. Kawaljit Kocher for the Appellant.

Harbans Lal, I.S. Goel & R.N. Poddar for the Respondent.

The Judgment of the Court was delivered by

CHANDRACHUD, CJ. Section 33 of the Punjab Panchayat Samitis and Zilla Parishads Act, 1961 ("The Act") provided in so far as relevant, that subject to rules made by the Government, a Panchayat Samiti may employ such servants as it may consider necessary for the efficient performance of the duties imposed upon it by the Act, rules or bye-laws made thereunder or by any other law for the time being in force. In pursuance of this power, the appellant was appointed as a clerk on June 1, 1963 by the Panchayat Samiti, Loharu, which is respondent 3 in this appeal. He was confirmed in that post in course of time. On January 21, 1974 he was promoted as a Head Clerk on an *ad hoc* basis. On March 14, 1975 a resolution was passed by respondent 3 regularising the post of Head Clerk. On April 1, 1975, the appellant was appointed as a Head Clerk.

The Punjab Panchayat Samitis, Zilla Parishads (Haryana Amendment) Act, 1973 introduced extensive amendments in the Act of 1961. Section 13 of the Amending Act deleted section 33 of the Act. A plain consequence of this deletion was that the Panchayat Samitis were divested of their power to make appointments to the Panchayats. The Amending Act received the assent of the Governor

A on April 25, 1973 and was published in the Haryana Gazette on June 13, 1973:

B Sections 35(1) of the Act empowers the State Government to place at the disposal of a Panchayat Samiti such of its servants as are required for the implementation of the schemes connected therewith and for such other duties and functions as may be assigned to them by the Panchayat Samiti from time to time. Section 35(3) which dealt with the conditions of service of the Government servants allotted to the Panchayat Samitis, was amended by section 14 of the Amending Act of 1973. Sub-section (4) of section 14 of the Amending Act provides that persons employed by a Panchayat Samiti before April 1, 1973 and who were in service at the commencement of the Amending Act, "shall continue to service on the same terms and conditions on which they were employed by the Panchayat Samiti", until they are absorbed in the Government service or retire in such manner as may be prescribed.

D Acting in pursuance of the provision of section 14(4) of the Amending Act, the Government of Haryana notified the absorption of the appellant as a clerk though, as stated earlier, he was working as a Head Clerk in the Loharu Panchayat Samiti. Being aggrieved by his absorption on a lower post, he filed a writ petition in the High Court of Punjab and Haryana, asking that he should be absorbed as a Head Clerk. The writ petition having been dismissed by the High Court, the appellant has filed this appeal by special leave.

F The appellant was appointed as a clerk by the Loharu Panchayat Samiti in 1963, long before the Amending Act came into force on June 13, 1973. He was, therefore, entitled to be absorbed in Government service as a clerk in any event. But, as a result of the deletion of section 33 of the Act by the Amending Act of 1973, the Panchayat Samiti lost its power to make appointments to the Panchayat. The fact that the appellant was promoted as a Head Clerk on an *ad hoc* basis in January 1974, or the further fact that he was appointed as a Head Clerk on April 1, 1975, cannot improve his position for the simple reason that these appointments were made after June 13, 1973, being the date on which the Panchayat Samiti lost its power to make appointments to the Panchayat.

H

It is urged by Shri Jain who appears on behalf of the appellant that by reason of section 14(4) of the Amending Act, the appellant was entitled to continue in the service of the Panchayat on the same terms and conditions on which he was employed by the Panchayat Samiti until he was absorbed in Government service. Since the appellant, according to the terms and conditions of his service with the Panchayat, was entitled to be considered for promotion to the post of a Head Clerk, his appointment as a Head Clerk prior to his absorption in Government service had to be recognised and protected, despite the fact that such appointment was made after June 13, 1973 when the Amending Act came into force. There is no substance in this contention. Even assuming for the purposes of argument that the right to be considered for promotion is a term and condition of service, what is relevant for our purpose is not whether the appellant was entitled to be considered for promotion but, whether the Panchayat Samiti had the right to appoint him to the post of Head Clerk on the date on which it purported to do so. Clearly, it had forfeited that right on June 13, 1973. It could not, therefore, have appointed the appellant as a Head Clerk, as it purported to do, in January 1974 on an *ad hoc* basis or in April 1975 on a regular basis. The appointment of the appellant to the post of a Head Clerk being without the authority of law, the Government was not bound to absorb him in the post of a Head Clerk. He was appointed lawfully to the post of a Clerk and that is the post in which the Government has absorbed him.

For these reasons, the appeal fails and is dismissed. There will be no order as to costs.

S.R

Appeal dismissed.