A

STATE OF PUNJAB

v.

KHEMI RAM

October 6, 1969

B [J. M. SHELAT, V. BHARGAVA, C. A. VAIDIALINGAM AND I. D. DUA, JJ.]

Punjab Civil Services Rules, r. 3. 26(d)—Order of suspension whether effective from date of its issue or date of receipt by concerned Government servant—Validity of proceedings ending in dismissal when order of suspension not received by Government servant before age of superannuation.

C The services of the respondent who was an Inspector Cooperative Societies in the Punjab were lent to the Himachal Pradesh Government in the capacity of Assistant Registrar. His date of superannuation was August 4, 1958. On July 16, 1958 he was granted 19 days leave preparatory to retirement by the Himachal Pradesh Government. On July 25, 1958 the Government of Punjab asked the Himachal Pradesh Government to cancel the leave granted to the respondent and to direct him to revert to the Punjab Government immediately. On July 31, the Punjab Government sent a telegram to the respondent at his home address as he had gone there immediately after grant of leave. The telegram informed him that he had been suspended from service with effect from August 2, 1958. On that very day a charge-sheet was issued to him, by letter dated August 2, 1958 the Himachal Pradesh Government informed the respondent that his leave was reduced by two days *i.e.* it would end on August 2, 1958. All these communications reached the respondent after August 4, 1958. He attended the subsequent departmental enquiry under protest. After completing formalities the Punjab Government dismissed him from service. Thereupon the respondent filed a writ petition in the High Court challenging his dismissal. It was urged that as he had already retired on August 4, 1958 the proceedings starting with the order of suspension and ending with his dismissal were void and against the terms of r. 3.26(d) of the Punjab Civil Service Rules as they then stood. The said rule provided that a Government servant under suspension for misconduct shall not be permitted to retire on his reaching the date of compulsory retirement but should be retained in service until the enquiry into the charge was completed and a final order passed passed thereon. The Single Judge allowed the respondent's petition. The Division Bench in appeal upheld the order of the Single Judge relying upon its earlier judgment in *Dr. Pratap Singh's case* which had held that an order passed under r. 3.26(d) took effect from the day it was served on the concerned Government servant. The State appealed,

G HELD : The communication of an order such as an order of suspension is only necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. Once such an order is sent out it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it. Therefore after an order is issued and sent out H to the concerned Government servant, it must be held to have been communicated to him no matter when he actually received it. [665 B-C]

The view that it is only from the date of the actual receipt by him that the order becomes effective could not be accepted for then it would

be possible for a Government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his retirement even though such an order is passed and despatched before such date. [665 D] A

Actual knowledge by the concerned Government servant of an order where it is one of dismissal may, perhaps be necessary because of the consequences which the decision in *Amar Singh's case* contemplates. But such consequences would not occur in the case of an officer who has proceeded on leave and against whom an order of suspension is passed because in his case there is no question of his doing any act or passing an order and such act or order being challenged as invalid. [665 E-F] B

In this view it must be held in the present case, that the order of suspension was validly passed and was communicated to the respondent before August 4, 1958 and therefore was effective as from July 31, 1958. Accordingly the State's appeal must be allowed. [665 G] C

Dr. Pratap Singh v. *State of Punjab*, I.L.R. [1962] 15(2) Punjab 642, *Raja Harish Chandra Raj Singh* v. *The Deputy Land Aquisition Officer*, [1962] 1 S.C.R. 676, *Bachhittar Singh* v. *The State of Punjab*, [1962] 3 Supp. S.C.R. 713, *S. Pratap Singh* v. *State of Punjab*, [1964] 4 S.C.R. 733, *State of Punjab* v. *Sodhi Sukdev Singh*, [1961] 2 S.C.R. 371 and *State of Punjab* v. *Amar Singh Harika* A.I.R. 1966 S.C. 1313, considered. D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1217 of 1966.

Appeal from the judgment and order dated May 29, 1963 of the Punjab High Court in Letters Patent Appeal No. 251 of 1962. E

V. C. Mahajan and *R. N. Sachthey*, for the appellant.

Bhagat Singh Chawla, K. L. Mehta and *S. K. Mehta*, for the respondent.

The Judgment of the Court was delivered by

Shelat, J. The question arising in this appeal under certificate granted by the High Court of Punjab is whether an order of suspension passed against a Government servant takes effect when it is made or when it is actually served on and received by him. F

The respondent was appointed as a sub-inspector, Co-operative Societies, in 1925 in the service of the State of Punjab. He was promoted to the post of Inspector and was confirmed thereon in 1939. In 1952, he was approved for promotion to the post of Assistant Registrar and officiated thereafter as such in short term vacancies from March to November 1953. While he was serving as the Inspector, he applied for the post of Assistant Registrar in Himachal Pradesh, and on a reference by that Government, his services were lent to Himachal Pradesh Government for appointment as the Assistant Registrar. While he was so serving there, he was charge-sheeted on August 9, 1955 by the Registrar, Co-operative Societies, Punjab in connection with cer- G H

A tain matters which occurred in 1950 while he was working under the Punjab Government. Those proceedings, however, were kept in abeyance as the police in the meantime started investigation in those matters.

In 1958, the Punjab Government decided to take disciplinary action against the respondent and informed the Himachal B Pradesh Government of it on July 17, 1958. On July 16, 1958, however, the Himachal Pradesh Government had granted to the respondent 19 days leave preparatory to retirement, which was to take place on August 4, 1958. On being so informed, the Punjab Government by its telegram dated July 25, 1958 informed the Himachal Pradesh Government that it had no authority to grant C such leave and requested that Government to cancel it and direct the respondent to revert to the Punjab Government immediately.

On July 31, 1958 the Punjab Government sent a telegram. Ex. P-1, to the respondent at his home address as the respondent had already left for his home town on leave being granted to him as aforesaid. The telegram informed him that he had been sus- D pended from service with effect from August 2, 1958. On that very day, *i.e.*, on July 31, 1958, the Punjab Government sent to him a charge-sheet at the address of the Registrar, Co-operative Societies, Himachal Pradesh, who re-directed it to the respondent's said home address. By its letter dated August 2, 1958 the Himachal Pradesh Government informed the respondent that his E services were reverted to the Punjab Government and that the leave granted to him had been curtailed by two days, *i.e.* upto August 2, 1958, instead of August 4, 1958 as originally granted.

On August 25, 1958 the respondent sent a representation to the Registrar, Co-operative Societies, Punjab in which he con- F tended that he had already retired from service on August 4, 1958 and that the order of suspension which he received after that date and the order for holding the enquiry against him were both invalid. On October 6, 1958 the Punjab Government replied to him rejecting his aforesaid contentions and informed him that if he did not attend the said enquiry, the same would be held *ex-* G *parte*. It appears that the respondent attended the said enquiry, but under protest. On the completion of the enquiry, the officer holding it made his report and sent it to the Punjab Government. On August 14, 1959 that Government sent him a notice to show cause why the penalty of dismissal should not be awarded against him. The respondent sent his reply to the said notice. By its order dated May 28, 1960 the Punjab Government ordered the H respondent's dismissal.

Thereupon, the respondent filed a writ petition in the High Court of Punjab challenging the order of dismissal and contend-

ing: (a) that the said enquiry was illegal as by the time it was started he had already retired from service, and (b) that the order of suspension which was sought to be served on him by the said telegram, dated July 31, 1958, was received by him after his retirement on August 4, 1958, and therefore, it could not have the effect of refusal to permit him to retire.

The writ petition was, in the first instance, heard by a learned Single Judge. He noted that it was not denied before him that the respondent on being granted leave had proceeded to his village Betahar, post office Haripur in Tehsil Kulu, that he was there when the Himachal Pradesh Government issued the notification dated August 2, 1958 curtailing his leave upto that date and that a copy of that notification with the endorsement calling upon him to report to the Punjab Government for duty on August 4, 1958 was sent to the respondent on August 6, 1958. He also noted that the telegram dated July 31, 1958 informing the respondent of his suspension with effect from August 2, 1958 did not reach him till about the middle of August 1958. On these two facts it was contended by the respondent that he had already retired from service when the order reverting his service to the Punjab Government was passed, and that therefore, the subsequent proceedings starting with the order of suspension and ending with his dismissal were void.

This contention was raised on the strength of rule 3.26(d) of the Punjab Civil Services Rules, as it then stood. That rule provided that a Government servant under suspension on a charge of misconduct shall not be permitted to retire on his reaching the date of compulsory retirement but should be retained in service until the enquiry into the charge was completed and a final order was passed thereon. The argument was that as the respondent was not served with the said order of suspension on or before August 4, 1958 and as he had retired on that day and was, therefore, no longer in service, the said enquiry and the said order of dismissal were in breach of rule 3.26(d) and were illegal. The learned Single Judge accepted the contention and allowed the writ petition with the following observations:

> "It is indubitably correct that action for dismissal against a Government servant can be taken during the tenure of the service. It is not denied that the petitioner was due to retire on the afternoon of 4th August, 1958. It has not been challenged that the petitioner had gone to his village in Kulu Tehsil after the leave preparatory to retirement was granted to him. The petitioner was entitled to treat himself as on leave preparatory to retirement till he received information to the

A contrary. No order has been proved to have been served on him before the 4th August, 1958 intimating the petitioner that he had been reverted to the Punjab State or that he had been suspended. It must, therefore, be held in the circumstances that the petitioner had actually retired from service and he cannot be bound by any B subsequent proceedings."

On the State Government filing a Letters Patent appeal against the said order, a Division Bench of that High Court followed its earlier judgment in *Dr. Pratap Singh* v. *State of Punjab*(1), which had held that an order passed under r. 3.26(d) took effect from the day it was served on the concerned Government servant, and C upheld the order of the learned Single Judge in the following terms :

"In the present case the fact remains that the respondent was not in a position to know and could not possibly have submitted to or carried out the orders D which had been made before 4th August, 1958 and that also without any fault on his part, with the result that the decision of the learned Single Judge must be upheld."

In this view, the Division Bench dismissed the State's appeal.

E It appears that the respondent had, besides the said contention, raised three more contentions summarised by the Division Bench in the penultimate paragraph of its judgment. These three contentions were left undecided in view of the Division Bench deciding the appeal on the first contention.

The question for determination thus is whether the said order F of suspension admittedly made before the date of the respondent's retirement as required by the said rule 3.26(d) did not take effect by reason only that it was received by the respondent after the said date of retirement and whether he must, therefore, be held to have retired on August 4, 1958 rendering the enquiry and the ultimate order of dismissal invalid.

G There can be no doubt that if disciplinary action is sought to be taken against a Government servant it must be done before he retires as provided by the said rule. If a disciplinary enquiry cannot be concluded before the date of such retirement, the course open to the Government is to pass an order of suspension and refuse to permit the concerned public servant to retire and retain him in service till such enquiry is completed and a final order is H passed therein. That such a course was adopted by the Punjab Government by passing the order of suspension on July 31, 1958

(1) I. L. R. [1962] 15 (2) Punjab 642.

cannot be gainsaid. That fact is clearly demonstrated by the telegram, Ex. P-1, which was in fact despatched to the respondent on July 31, 1958 by the Secretary, Co-operative Societies to the Punjab Government, informing the respondent that he was placed under suspension with effect from August 2, 1958. As the telegram shows, it was sent to his home address at village Batahar, post office Haripur, as the respondent had already by that time proceeded on leave sanctioned by the Himachal Pradesh Administration. Ex. R-1 is the memorandum, also dated July 31, 1958, by which the Punjab Government passed the said order of suspension and further ordered not to permit the respondent to retire on August 4, 1958. That exhibit shows that a copy of that memorandum was forwarded to the respondent at his said address at village Batahar, post-office Haripur. Lastly, there is annexure H to the respondent's petition which consists of an express telegram dated August 2, 1958 and a letter of the same date in confirmation thereof informing the respondent that he was placed under suspension with effect from that date. Both the telegram and the letter in confirmation were despatched at the address given by the respondent, *i.e.*, at his village Batahar, post office Haripur. These documents, therefore, clearly demonstrate that the order of suspension was passed on July 31, 1958, *i.e.*, before the date of his retirement and had passed from the hands of the Punjab Government as a result of their having been transmitted to the respondent. The position, therefore, was not as if the order passed by the Punjab Government suspending the respondent from service remained with the Government or that it could have, therefore, changed its mind about it or modified it. Since the respondent had been granted leave and had in fact proceeded on such leave, this was also not a case where, despite the order of suspension, he could have transacted any act or passed any order in his capacity as the Assistant Registrar.

A B C D E F

But the contention was that this was not enough and the order of suspension did not take effect till it was received by the respondent, which as aforesaid, was sometime in the middle of August 1958, long after the date of his retirement. In support of this contention certain authorities were cited before us which we must now examine to find out whether they lay down the proposition canvassed by counsel for the respondent.

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The first decision brought to our notice was in *Raja Harish Chandra Raj Singh* v. *The Deputy Land Acquisition Officer*(1) where the question canvassed was as to what was the date of the award for purposes of s. 18 of the Land Acquisition Act, 1894, and where it was held that such an award of the Collector is not

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(1) [1962]1 S.C.R. 676.

A a decision but an offer of compensation on behalf of the Government to the owner and is not effective until it is communicated to him. The making of the award, it was said, did not consist merely in the physical act of writing the award or signing it or filing it in the office of the Collector. It also involved its communication to the owner either actually or constructively. No B question, however, arose there whether an award can be said to have been communicated to the owner if it was despatched to him but was not actually received by him. In *Bachhittar Singh* v. *The State of Punjab*(1) a case of disciplinary action taken against a Government servant, it was said that an order would not be said to have come into effect until it was communicated, as until C then it can be reconsidered and modified, and therefore, has till then a provisional character. That was a case where the Minister concerned had made a note on a file and no order in terms of that note was drawn up in the name of the Governor as required by Art. 166(1) of the Constitution or communicated to the concerned Government servant.

As stated earlier, the High Court relied on its own judgment D in *S. Pratap Singh* v. *The State of Punjab*(2) and its observations at page 656 of the report. That decision came up before this Court in appeal and the decision therein of this Court is to be found in *S. Pratap Singh* v. *The State of Punjab*(3). The appellant there was a Civil Surgeon in the Punjab State service. In 1956, he was posted to Jullundur where he remained until he E proceeded on leave prepartory to retirement sometime in December 1960. His leave was sanctioned on December 18, 1960 and was notified in the Gazette on January 27, 1961. On June 3, 1961 the Governor passed an order of suspension with immediate effect and revoked his leave. He also passed an order under r. 3.26(d) to the effect that as he was to retire on June 16, 1961 F he should be retained in service beyond that date till the completion of the departmental enquiry against him. These orders actually reached the appellant on July 19, 1961 but were published in the Gazette Extraordinary on June 10, 1961. On the question whether the State Government could validly pass the aforesaid orders, this Court held that under r. 8.15 of the Punjab Civil Services Rules there was no restriction on the power of revoca- G tion of leave with respect to the time when it is to be exercised, that the date from which a Government servant is on leave preparatory to retirement cannot be treated as the date of his retirement from service and that an order of suspension of the Government servant during such leave is valid. Two of the learned Judges held at page 771 of the Report that an order of suspension H of the appellant when he was on leave could be effective from the moment it was issued. They distinguished the decisions in *Bach-*

(1) [1962] 3 Supp. S.C.R. 713. (2) I.L.R. [1962] 15 (?) Punj. 642.
(3) [1964] 4 S.C.R. 733.

hittar Singh v. *The State of Punjab*(1) and State of Punjab v. *Sodhi Sukhdev Singh*(2), firstly, on the ground that the first case was one of dismissal and not of mere suspension, and secondly, that in neither case a final order had been passed. We may, however, mention that the other three learned Judges did not deal with this question, and therefore, neither expressed their dissent nor agreement. Indeed, Ayyangar, J., who spoke for them, observed at page 737 of the Report that whereas they agreed with the main conclusion that the impugned orders were not beyond the Government's power they should not be taken to have accepted the interpretation which Dayal, J., had for himself and Mudholkar, J., placed on several of the rules considered by them. In view of these observations it is difficult to say whether the majority agreed or not with the view taken by Dayal, J., that a Government's order becomes effective as soon as it is issued.

The last decision cited before us was that of *State of Punjab* v. *Amar Singh Harika*(3) where one of the questions canvassed was whether an order of dismissal can be said to be effective only from the date when it is made known or communicated to the concerned public servant. The facts of the case show that though the order of dismissal was passed on June 3, 1949 and a copy thereof was sent to other 6 persons noted thereunder, no copy was sent to the concerned public servant who came to know of it only on May 28, 1951 and that too only through another officer. On these facts, the Court held, rejecting the contention that the order became effective as soon as it was issued, that the mere passing of the order of dismissal would not make it effective unless it was published and communicated to the concerned officer.

The question then is whether communicating the order means its actual receipt by the concerned Government servant. The order of suspension in question was published in the Gazette though that was after the date when the respondent was to retire. But the point is whether it was communicated to him before that date. The ordinary meaning of the word 'communicate' is to impart, confer or transmit information. (*cf. Shorter Oxford English Dictionary*, Vol. 1, p. 352). As already stated, telegrams dated July 31, and August 2, 1958 were despatched to the respondent at the address given by him where communications by Government should be despatched. Both the telegrams transmitted or imparted information to the respondent that he was suspended from service with effect from August 2, 1958. It may be that he actually received them in or about the middle of August 1958 after the date of his retirement. But how can it be said that the information about his having been suspended was not im-

(1) [1962] 3 Supp, S.C.R, 713. (2) [1961] 2 S. .C R. 371.
(3) A. I. R. 1966 S. C. 1313.

A parted or transmitted to him on July 31 and August 2, 1958, *i.e.*, before August 4, 1958 when he would have retired? It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and B actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the C concerned Government servant, it must be held to have been communicated to him, no matter when he actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. If that be the true meaning of communication, it would be possible for a Government servant to effectively thwart an order by avoiding receipt of it by one method or the D other till after the date of his retirement even though such an order is passed and despatched to him before such date. An officer against whom action is sought to be taken, thus, may go away from the address given by him for service of such orders or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. Such a E meaning of the word 'communication' ought not to be given unless the provision in question expressly so provides. Actual knowledge by him of an order where it is one of dismissal, may, perhaps, become necessary because of the consequences which the decision in *The State of Punjab* v. *Amar Singh* (1) contemplates. But such consequences would not occur in the case of F an officer who has proceeded on leave and against whom an order of suspension is passed because in his case there is no question of his doing any act or passing any order and such act or order being challenged as invalid.

In this view, we must hold that the order of suspension was validly passed and was communicated to the respondent before G August 4, 1958, and therefore, was effective as from July 31, 1958. Accordingly, we allow the State's appeal and set aside the judgment and order of the High Court. But as the High Court did not decide the aforesaid three questions raised on behalf of the respondent, we remand the case to the High Court with the direction to give its decision thereon in accordance with law. The cost of this appeal will be costs before the High Court.

H Y.P.

G.C. *Appeal allowed and case remanded.*

(1) A.I.R. 1966 S.C. 1313.