

REFERENCE BY THE PRESIDENT UNDER ARTICLE 317(1) OF A
CONSTITUTION OF INDIA
IN RESPECT OF SHRI RAVINDER PAL SINGH SIDHU,
CHAIRMAN, PUNJAB PUBLIC SERVICE COMMISSION

JANUARY 13, 2003

[S. RAJENDRA BABU, ARUN KUMAR AND G.P. MATHUR, JJ.]

Constitution of India, 1950; Articles 316 and 317:

*Reference made by President of India—Suspension and removal of former C
Chairman, State Public Service Commission on the ground of grave misconduct
and malpractices—Examination of the matter—Held, since the incumbent
ceased to hold the office of the Chairman by reason of his tenure coming to
an end, question of removing him from the office would not arise—Continuance
of proceeding/Inquiry in the matter would therefore be futile—Hence Reference D
infructuous.*

**President of India made a Reference to this Court for examination
of allegation of grave misconduct and malpractices against former
Chairman of Punjab State Public Service Commission for his suspension
and removal from the Office.** E

**It was submitted by the incumbent that he had tendered his
resignation from the office of Chairman of the Commission in compliance
with the provisions under Article 316(2) of the Constitution and to that
effect an affidavit was also filed by him. Resignation became operative
and effective upon its receipt by the Governor.** F

**On behalf of Union, it was submitted that since resignation tendered
by the incumbent was not accepted by the Governor, it was not effective.**

**On behalf of State, it was submitted that since Chairman of the State
Service Commission was entitled to certain retiral benefits, the relationship
of master and servant continued, it becomes necessary to examine the
matter of his removal; and that the Presidential Reference could not be
ignored by the Supreme Court on the ground that tenure of incumbent
holding the said office was over.** G

A Disposing of the Reference, the Court

B HELD: 1.1. The object of Article 317(1) of the Constitution is to give protection to a Chairman or other Member of the Public Service Commission in the matter of removal on the ground of misbehaviour and, therefore, the function of such determination is vested in this Court so that the Public Service Commission may be immune from political pressure. [96-E]

C 1.2. The necessity to make a Reference to this Court arises by reason of Article 317 of the Constitution which provides that the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after this Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under Article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed. When an incumbent in office has ceased to hold the office, the question of removing such a person from office would not arise at all. [95-D-E]

E 1.3. In the instant case, erstwhile Chairman, Punjab Public Service Commission, was facing criminal prosecution on identical charges. Public interest will not suffer even if the present proceeding does not continue. In this proceeding on proof of his misbehaviour, President can remove him from the office of Chairman of the Public Service Commission but when he is already out of the office by reason of his tenure coming to an end, question of removing him from the said office would not arise at all. [96-F-H; 97-A]

F 1.4. Earlier, this Court in Special Reference No.1 of 1983 held that when the incumbent in office wanted certain benefits to accrue to him even after ceasing to hold the office, it became necessary to examine the question arising in the case and, then the issue was a live one. However, when tenure of an incumbent in office comes to an end and he gives up his claim to retirement benefit, the entire relationship between the State and the said incumbent in office will snap. The Reference becomes infructuous in the facts and circumstances of this case. [96-G; 97-B]

ADVISORY JURISDICTION : Reference No.1 of 2002.

H Under Article 317(I) of the Constitution of India.

K.T.S. Tulsi, Sanjay Hegde, P. Parmeswaran, Harbhagwan Singh, Advocate General for State of Punjab, R.S. Suri, Atul Nanda, Ajay Bansal, P.H. Parekh, Lalit Chauhan, Sultan Singh and Manish K. Saryal for the appearing parties. A

The Report of the Court was delivered B

This Reference has been made by the President of India to this Court under Article 317(1) of the Constitution of India seeking immediate suspension and removal of Shri Ravinder Pal Singh Sidhu, former Chairman, Punjab Public Service Commission (hereinafter referred to as 'the Commission'), by taking action against him levelling several allegations of grave misconduct and mal-practices. In the Reference, it is stated that the matter requires an examination by this Court in terms of Article 317(1) of the Constitution. In the course of the letter sent by the Governor of Punjab to the President on 29th April 2002, certain details as to the conduct of Shri Ravinder Pal Singh Sidhu while functioning as Chairman of the Commission are set out. There is also material placed before this Court in the nature of a Report sent by the Vigilance Bureau to the Chief Secretary to the Government of Punjab. It is not in dispute that criminal cases against the said Shri Ravinder Pal Singh Sidhu are pending in different courts in the State of Punjab based on the allegations referred to in these two letters of the Governor of Punjab and the Vigilance Bureau. C D E

After the Reference was received by this Court, notices were issued to the Attorney General for India, Advocate General for the State of Punjab, Shri Ravinder Pal Singh Sidhu and Secretary to the Commission, Shri Ravinder Pal Singh Sidhu was appointed as Chairman of the Commission on 9th September, 1996 for a period of six years and his term to function as Chairman of the Commission came to an end on 8th September, 2002 in terms of Article 316 (2) of the Constitution. On service of notice upon him, he took the stand that he had tendered his resignation from the office of Chairman of the Commission and an affidavit was also filed before this Court to that effect on 12th August, 2002. However, it was submitted before this Court by the then Solicitor General of India that the resignation submitted by Shri Ravinder Pal Singh Sidhu was not accepted by the Government and in this regard arguments were addressed before this Court that the resignation becomes automatically effective once the provision of the proviso to Article 316(2) is complied with, that is, by submitting resignation addressed to the Governor of the State. It is further submitted that the procedure prescribed under Article F G H

- A 316 of the Constitution provides for the manner in which the Chairman or any other member of a Public Service Commission can resign from his office by writing under his hand addressed to the Governor and thus when this action has been put into play by the appointee, the said act of resignation is complete and becomes operative for the meaning of 'resign from his office';
- B that the procedure envisaged under Article 316(2)(a) cannot be deviated so as to make any other act not prescribed in the Constitution; that the option to resign by the appointee is absolute and unilateral; that on the mere fact of resignation letter to the Governor, the resignation becomes final and is operative and effective immediately upon receipt of the same by the concerned addressee. In this regard, reliance has been placed on the decision of the
- C Court in *Union of India and Ors. v. Gopal Chandra Misra and Ors.*, [1978] 2 SCC 301.

It was also brought to our notice that this argument need not be considered by us in view of the fact that the term of the said Shri Ravinder Pal Singh Sidhu has already come to an end on 8th September, 2002.

- D At this stage, arguments were raised on behalf of the State of Punjab that under the relevant provisions the Chairman of the Public Service Commission may become entitled to certain retrial benefits and, therefore, relationship of master and servant may continue between the State of Punjab and Shri Ravinder Pal Singh Sidhu and, therefore, it becomes necessary to
- E examine the question of removal of Shri Ravinder Pal Singh Sidhu from the office of Chairman of the Commission.

- F Now, it is brought to out notice that Shri Ravinder Pal Singh Sidhu has ceased to hold the office of Chairman of the Commission on his term coming to an end and thus question of his removal from that office would not arise at all. In these circumstances, whether he would still continue to hold the office and whether he should be removed from that office does not assume any significance. In this regard, on behalf of Shri Ravinder Pal Singh Sidhu, a Memo has been filed in this Court which is in the following terms:-

- G "1. That my client, Ravinder Pal Singh Sidhu has ceased to hold the office of Chairman, Punjab Public Service Commission.
2. That on the same allegations, prosecutions are pending against him in Criminal Courts.
- H 3. That he gives up all claims to the retiral benefits including pension

for the post of Chairman, Punjab Public Service Commission. A

4. That the above statement is made without prejudice to his rights and contentions in the pending legal proceedings to contend and establish that he is innocent."

When this accept was brought to the notice of the learned Attorney General, he submitted that he would consider whether the instant Reference made to this Court could be withdrawn or not. Now, a submission is made that inasmuch as this Reference has been made at the instance of the Government of Punjab, it is primarily for the State of Punjab to make an appropriate statement in this regard. On behalf of the State of Punjab, a stand has been taken that merely because the tenure of office of Shri Ravinder Pal Singh Sidhu has come to an end does not mean that the matter should not be further examined on the Reference made to this Court. B C

The necessity to make a Reference to this Court arises by reason of Article 317 of the Constitution which provides that the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after this Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under Article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed. Therefore, the question for our consideration is whether Shri Ravinder Pal Singh Sidhu, former Chairman of the Commission ought, on the ground of misbehaviour referred to in the course of the Reference, to be removed from the office of the Chairman of the Commission. When an incumbent in office has ceased to hold the said office, the question of removing such a person from office would not arise at all. D E F

On behalf of the State of Punjab it is submitted that Reference on the question of removal of a Chairman of Public Service Commission on the ground of misconduct would not become infructuous even if tenure of office of the Chairman expires during the pendency of the Reference and, in this context, reliance has been placed on the decision of this Court in Spl. Reference No.1 of 1983, reported in [1990] 4 SCC 262, wherein it was held that considering the nature and importance of the functions discharged by a Chairman or Member of the Public Service Commission they are given special protection by the Constitution under Article 317 and, therefore, the conduct of a Member of the Public Service Commission under scrutiny of this Court G H

A in a Reference made by the President of India cannot be ignored on account of the tenure being over; that the regulations framed under Article 318 by the Governor do not and cannot deal with removal and suspension of a Member of the Public Service Commission since they are exclusively covered by Article 317 of the Constitution; that the Constitution, while dealing with the removal of a Member of the Public Service Commission, does not provide for contingencies such as extension of the tenure to complete the inquiry; that the issue, therefore, must be treated as a live one even after the expiry of a Member's tenure; that when the President of India has requested this Court to investigate into the conduct of a Member of the Public Service Commission, this Court ought to convey its conclusions rather than refuse to answer the question. In the said case, though this Court made this statement of law, it made an observation that whether in the event of this proceeding being dropped as suggested on behalf of the incumbent in office, if he is ready to give up his claim for salary for the period he was under suspension and for pension, it was submitted on behalf of the incumbent of the office that he would not give up his claim and would demand arrears of his salary and pension. It is in those circumstances that this Court proceeded to consider the issue to be a live one. In the present case, however, in terms of the Memo filed on behalf of Shri Ravinder Pal Singh Sidhu, it is made clear that he is not claiming any retiral benefit on his tenure coming to an end.

E We should not ignore that the object of Article 317(1) of the Constitution is to give protection to a Chairman or other Member of the Public Service Commission in the matter of removal on the ground of misbehaviour and, therefore, the function of such determination is vested in this Court so that the Public Service Commission may be immune from political pressure.

F In the present case, Shri Ravinder Pal Singh Sidhu is facing criminal prosecution on identical charges. Public interest will not suffer even if the proceeding does not continue. In this proceeding on proof of misbehaviour of Shri Ravinder Pal Singh Sidhu, all that can happen is that the President can remove him from the office of the Chairman of the Public Service Commission but when he is already out of the office of the Chairman by reason of his tenure coming to an end, question of removing him from the said office would not arise at all. In Special Reference No.1 of 1983 [supra], when the incumbent in office wanted certain benefits to accrue to him even after ceasing to hold the office, it became necessary to examine the question arising in the case and, therefore, the issue was a live one. When tenure of an incumbent in office comes to an end and he gives up his claim to retiral

benefit, the entire relationship between the State and the said incumbent in office will snap. In such an event, question of removal of such a person from his office would not arise at all. A

Therefore, the inquiry to be conducted by this Court in the instant Reference will be futile and in such circumstances we do not think that the Constitution or the President would expect us to undertake such a course. We treat this Reference as having become infructuous in the facts and circumstances of this case and report the same to the President accordingly. B

S.K.S.

Reference disposed of.