
(1960) 05 GAU CK 0005
In the Gauhati High Court

Abdul Motaleb

APPELLANT

Vs

Garo Hills District Council and Another

RESPONDENT

Date of Decision : 02-05-1960

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Government of India Act, 1935 — Section 240

Citation : AIR 1962 Guw 69 : (1963) 2 LLJ 1

Hon'ble Judges : H. Deka, J;G. Mehrotra, J

Bench : Division Bench

Judgement

H. Deka, J.—This rule was obtained by the petitioner Abdul Motaleb on an application under Article 226 of the Constitution of India for a writ of an appropriate nature quashing the order of his dismissal from service, served on him by the Secretary, Executive Committee of line Garo Hills District Council.

2. The petitioner was appointed temporarily as a mandal (village surveyor) with effect from the date of joining under the Garo Hills District Council in the scale of pay of Rs. 40 rising up to Rs. 55 per month with other allowances as admissible under the rules and was placed in charge of lot No. VIII-2 under the management and control of the district council, On 10 April 1958 the petitioner was served with a notice terminating his appointment with effect from 11 May 1958. It is against this order that the petitioner has come up to this Court and has challenged the validity thereof under Article 311 of the Constitution.

3. The important point in this case to be decided is whether the petitioner could at all avail of the provisions of Article 311 of the Constitution. The said article relates to the dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. Therefore we have to ascertain first whether the petitioner could be said to be an employee of the State, there being no contention that he is a member of the Civil Service of the Union.

4. The learned advocate for the petitioner contends that since the district council is formed under Schedule VI of the Constitution of India, the employees thereof

also would come under the category of persons holding civil posts under the State of Assam, since Schedule VI applies to the State of Assam. We find no reason in support of this argument.

5. Sub-paragraph (3) of Para. 2 of Schedule VI itself says that

Each district council and each regional council shall be a body corporate by the name respectively of the district council of (name of district) and the regional council of (name of region), shall have perpetual succession and a common seal and shall by the said name sue and be sued.

It does not disclose, apart from what is stated, that it forms a part of the State machinery or that it could be considered to be an adjunct of the same.

6. This point, namely, as to who can be said to be civil servants of the State for the purpose of Article 311, came up for consideration before various High Courts and I might refer to one of the latest decisions of the Allahabad High Court, Mohammad Ahmad Kidwai Vs. Chairman, Improvement Trust, Lucknow, where several authorities were considered and the opinion held by that Court may be appropriately quoted which would answer the point at issue in the present case:

On an examination of all the authorities cited before us we have come to the conclusion that the true test to determine whether a person held a civil post under the Crown as contemplated by Section 240 of the Government of India Act or was a member of a civil service of the Union or the State or held a civil post under the Union or the State had primarily to be determined in relation to the functions which he performed.

If his duties relate to activities which fell directly within the sphere of the Union or the State and his services were under the direction and control, as also his appointment was by either the Union or the State, then he could fall under those services which were contemplated by either Section 240 of the Government of India Act or by Article 311 of the Constitution of India, but if the sphere of activity of the employee fell within the sphere of activity of a local authority constituted under some statute having a separate legal existence, then the position of that employee, even though the State or the Union controlled some of his activity and gave him direction in the discharge of his functions, fell outside the scope of either Section 240 of the Government of India Act or Article 311 of the Constitution of India.

7. In this matter the petitioner does not contend that the State Government had anything to do either with the appointment or dismissal or had any control over the duties and activities of the person concerned. Therefore, in our opinion Article 311 of the Constitution has no application and he could not invoke the aid thereof. Apart from what is stated above, we find nothing in the facts stated in the petition that there has been any violation of the principles of natural justice. The petitioner was an employee of the district council and was asked to serve on a temporary basis. It is not contended either on his behalf that the post became

either permanent or quasi-permanent and therefore the notice terminating his appointment could not be said to be invalid in the eye of law. The petition accordingly falls and is dismissed but without costs.

G. Mehrotra, J.

8. I agree.