

(1955) 03 CAL CK 0030
In the Calcutta High Court
Case No : Civil Rule No. 2782 of 1952

Brojo Gopal Sarkar

APPELLANT

Vs

Commissioner of Police and Another

RESPONDENT

Date of Decision : 10-03-1955

Acts Referred:

Calcutta Suburban Police Act, 1866 — Section 12, 13
Civil Procedure Code, 1908 (CPC) — Section 2(17)
Constitution of India, 1950 — Article 311, 311(1)

Citation : AIR 1955 Cal 556 : 59 CWN 628

Hon'ble Judges : Bose, J

Bench : Single Bench

Advocate : Anil Kumar Das Gupta, for the Appellant; Smriti Kumar Rai Choudhury and Hemendra Kumar Das, for the Respondent

Final Decision : Allowed

Judgement

Bose, J.—This is an application under Article 226 of the Constitution of India for a writ in the nature of Certiorari for quashing of an order of discharge dated 30-7-1952 passed by the Deputy Commissioner of Police, Calcutta, and an order dated 18-8-1952 passed by the Commissioner of Police, Calcutta. On 31-3-1950 the petitioner was appointed a Special Constable of the Calcutta police by the Commissioner of Police, Calcutta u/s 12, Suburban Police Act, 1860 and he was vested with the powers, functions and privileges of a Police officer.

Thereafter he was made a section Leader of South Group (I), Alipore Section Special Constabulary with effect from 7-10-1950. It appears that shortly after the appointment of the petitioner as a Special Constable a representation was made by some people of the locality on 19-5-1950 characterising the petitioner as an anti-social element and praying for an enquiry against him.

But subsequently on 27-5-1950 a letter was Written to the Deputy Commissioner of Police by several other members of the locality recommending the petitioner to be a popular and influential man of the locality. No action was however taken

upon the representations by the Police Authorities. It is alleged that towards the second week of June 1952 the petitioner was sent for by the Deputy Commandant of the Calcutta Special Constabulary and the petitioner was asked to tender his resignation on the ground that some representation had been received against the petitioner from certain persons of the locality.

The petitioner however did not tender his resignation. On or about 30-7-1952 the petitioner received an order made by the Deputy Commissioner of Police, Calcutta, discharging the petitioner from the Calcutta Police Constabulary with effect from date, on the ground that he was not likely to become an efficient member of the Force. A copy of this order is annexed to the petition and marked B.

On 5-8-1952 the petitioner sent a representation to the Commissioner of Police, Calcutta praying for an opportunity to show cause against the action taken against him and for reconsideration of the order of discharge. It was further pointed out in this representation that in making the order of discharge the principles of natural justice had been violated. The said representation was however rejected by the Commissioner of Police by his order dated 18-8-1952. A copy of this order is annexed to the petition and marked D.

2. The petitioner challenges the validity of the order of discharge dated 30-7-1952 on the ground that it contravenes the provisions of Article 311, Clauses (1) and (2) of the Constitution. Mr. Anil Kumar Das Gupta the learned Advocate for the petitioner has submitted that the order of discharge is an illegal order as it was made by an authority subordinate to that by which the petitioner was appointed and inasmuch as the said order was passed without giving the petitioner a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

According to Mr. Das Gupta the petitioner while holding the office of a Special Constable was holding a Civil post under the State of West Bengal within the meaning of Article 311 of the Constitution and consequently the petitioner is entitled to the benefit or protection afforded by Article 311, Clauses (1) and (2) of the Constitution.

3. Mr. Smriti Kumar Roy Choudhuri the learned Advocate for the respondents has on the other hand submitted that Article 311 has no application to the case of the petitioner. It is pointed out by Mr. Roy Choudhuri with reference to the counter-affidavit affirmed by the Deputy Commissioner of Police, that the Calcutta Police Special Constabulary is purely a voluntary, non-communal and non-political organisation which has been formed with the object of checking rowdyism and lawless activities by assisting the regular Calcutta Police Force in the maintenance of law and order in the city and its suburbs, and the members do not receive any remuneration whatsoever from the Police Administration, and they are required to purchase their uniforms at their own costs, as the organization is a voluntary one.

Consequently the petitioner cannot be regarded as a person who is a member of a civil service of the State of West Bengal or as holding a civil post under the State of West Bengal.

4. It appears to me that the contention of Mr. Das Gupta is correct. Section 12, Calcutta Suburban Police Act (Bengal Act 2 of 1866) is as follows:

"The Commissioner of Police may of his own authority appoint special police officers to assist on any temporary emergency."

5. Section 13 of the Act is as follows : "Every special police officer so appointed shall have the same powers, privileges and protection and shall be liable to perform the same duties, and shall be amenable to the same penalties and be subordinate to the same authorities as the ordinary officers of police."

6. It is therefore clear that the status of a special constable appointed u/s 12 of the Act is for all practical purposes the same as that of an ordinary officer of the police force excepting that he renders his services without remuneration and he pays for his own uniform, Section 13 confers on the petitioner the same powers, privileges and the protection which are available to an ordinary police officer. There is no doubt that an ordinary officer of the regular police force is entitled to the privileges and protection granted by Article 311 of the Constitution.

That the members of the regular police force of Calcutta are members of a civil service under the State of West Bengal or are persons who hold civil posts under the State, admits of no doubt. The words "civil service" and "civil post" are used in contradistinction to service in or post under the "defence forces" of the Government of India. It is true that the petitioner does not belong to the cadre of any regularly constituted service.

His office of a special constable continues so long as the temporary emergency within the meaning of Section 12, Calcutta Police Suburban Act continues. But he is nevertheless holder of a civil post. A discussion of the meaning of the expression "civil post" is to be found in the case of -- Mohammad Matteen Qidwai Vs. The Governor-General in Council, .

7. Mr. Roy Choudhuri has however drawn my attention to the cases reported in -- Mangal Sain Vs. The State of Punjab and Another, and -- "Kumaran v. State of Travancore-Cochin", AIR 1952 Trav-C 264 (C) but I do not think that the cases are of any assistance to him. It appears from Phillip's Constitutional Law (of Great Britain and Commonwealth) (1952 Edn.) p. 246 that the following definition of the "Civil Service" has been suggested for general purposes:

"the body of officials in the service of the Crown, who discharged duties belonging to the . exercise of the King's Executive powers but not being members of His Majesty's naval, military or air forces and not being the holders of political offices" (Mustoe, Law and Organisation of the British Civil Service p. 26).

In the case of -- "Kartar Singh v. State of Patiala and East Punjab States Union, (S) AIR 1955 Pepsu 25 (D), it has been held that an employee on the Contingency staff is not a person in whose case the provisions of Article 311 of the Constitution will apply. But the position or status of the petitioner differs materially from an employee on the contingency staff and hence this decision also is of no assistance to the petitioner.

8. It has also been submitted by Mr. Smriti Kumar Roy Chaudhuri, that a person not entitled to any pay or remuneration for services rendered by him cannot be said to be holding "a civil post" within the meaning of Article 311 pf the Constitution. I am unable to accede to this contention. As pointed out by Mr. Anil Kumar Das Gupta, the following passage in Phillips's Book on Constitutional Law (1952 Edn.) p. 245 has a material bearing on the point at issue:

"There is no formal definition of "Crown Servant" though we may say that generally he is appointed by or on behalf of the Crown to perform public duties which are ascribable to the Crown; usually, but not necessarily, he is paid by the Crown put of the Consolidated Fund or out of monies voted by Parliament. He may serve without pay and modification must be made for servants of the Crown in Dominions and Colonies." So the mere fact that the holder of an office under the Government does not get any remuneration, does not make him any the less a holder of a "Civil Post" under the Government.

9. The definition of the expression "Public officer" as given in Section 2, Clause (17), Sub-clause (h), Civil P. C., 1908, shows that payment by the Crown or Government of salary or remuneration or commission for the performance of any public duty is no doubt a test for determining whether the officer is a Public Officer or not but it is not the sole test. The various Sub-clauses (a) to (g) of Clause (17) of Section 2 of the Code indicate that a person will be regarded as a Public Officer if he answers the description given in those various clauses, no matter whether he receives any pay or not.

Thus an officer of the Crown or Government whose duty it is as such officer, to prevent offences, to give information of offences to bring offenders to justice or to protect the public health, safety or convenience (sub-cl. (f) of Clause 17 of Section 2, Civil P. C.) will be regarded as a public officer, even if he does not receive any pay or remuneration for the performance of his duties.

In my view this contention of Mr. Roy Choudhury has no substance. If this contention is accepted as correct even then an Honorary Magistrate cannot be regarded as a person holding a civil post under the State.

10. It will be a curious position indeed, if a Special Police Officer appointed u/s 12, Calcutta Suburban Police Act remains subject to all the penalties or punishment which can be inflicted on ordinary police officers for remissness or neglect of duty but he is deprived of the ordinary privileges and protection which are available to an ordinary police officer including the privileges or protection afforded under Article 311 of the Constitution.

11. A removal or dismissal from the office of a Special Constable may have the effect of casting a slur on the character of the officer concerned or may affect him materially in respect of any other office which he may be holding under the Government or any other employer. It is therefore only reasonable and proper that he should have an opportunity of showing cause against the action proposed to be taken against him.

Now what sort of opportunity is to be given to a civil servant is clear from the decision of the Privy Council in -- AIR 1948 121 (Privy Council) which has been approved of and followed by the Supreme Court of India in the case of -- P. Joseph John Vs. The State of Travancore-Cochin, . It is not disputed by the learned Advocate for the respondents that no such opportunity was given to the petitioner in the present case.

12. It has been held that the word "discharge" has the same connotation as "removal" and should be construed so as to be included within the term "dismissal." -- Ramesh Chandra Vs. State of West Bengal, . It is conceded that the petitioner has been discharged by an Authority subordinate to that by which he was appointed. This was clearly contrary to the provisions of Art, 311(1) of the Constitution, (See -- The State of Bihar Vs. Abdul Majid, , para 6 of the judgment (H). In my view this petition must succeed. The Rule is accordingly made absolute and the orders dated 30-7-1952 and 18-8-1952 are quashed. In the circumstances of this case I direct that each party will bear its own costs of this application.