
(1960) 02 KL CK 0011
In the High Court Of Kerala

Francis

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 11-02-1960

Acts Referred:

Constitution of India, 1950 — Article 311
Criminal Procedure Code, 1898 (CrPC) — Section 14

Citation : (1960) 2 LLJ 407

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Judgement

S. Velu Pillai, J.—The petitioner was appointed as a Special First, Class Honorary Magistrate u/s 14(1) of the Criminal Procedure Code for a period of two years from 20 January 1958. Before the expiry of the period, an order, Ex. P. 2, was passed by Government by which the petitioner was ordered to "cease to hold the office forthwith" and notifications were issued withdrawing the magisterial powers which had been conferred on him. The petition is to quash Ex. P. 2 as having been made in violation of the guarantee under Article 311 of the Constitution.

2. Though Ex. P. 2 does not specify the ground on which it was made, the counter-affidavit has disclosed that the action was taken, as the petitioner was reported to have indulged in political activities. The removal of the petitioner from office was therefore by way of punishment. The withdrawal of the magisterial powers was u/s 14(1) of the Criminal Procedure Code and followed as a matter of course.

3. The principal question which arises for determination is, whether the petitioner was holding a civil post within the meaning of Article 311. It is not open to doubt that a magistrate of the first, second, or third class in the regular service, exercising the powers conferred on him as such is a member of the civil service and also holds a "civil post." u/s 14(1), Criminal Procedure Code, the State Government "may confer upon any person...all or any of the powers conferred or

conferable by or under this Code on a magistrate of the first, second, or third class?" ;he is a "Special Magistrate" and has the same powers and exercises the same functions as a magistrate borne on the regular cadre and possessing similar powers and exercising similar functions; because he is not a salaried employee and holds office only for a period, he is not a member of the civil service, but for that reason alone, it cannot be supposed that the post which he holds is not a civil post using the term in contradistinction with a post connected with defence. As held in Yusuf Ali Khan v. Province of the Punjab AIR 1950 Lah. 59 the term " civil post" must be construed according to the dictionary, and means an appointment or an Office on the civil side of the administration, and even a temporary employee or a holder of a "civil post." Judged by this test, I feel no doubt whatever that a Special Magistrate like his counterpart, in the regular service, holds a "civil post." Bose, J., in Brojo Gopal Sarkar Vs. Commissioner of Police and Another, considered the case of an honorary magistrate to be an a fortiori case, while deciding that a special constable recruited temporarily under the Calcutta Suburban Police Act, 1866, can be deemed to be holding a "civil post" within the meaning of Article 311. I therefore come to the conclusion, that the petitioner was holding a "civil post."

4. The conditions for attracting Article 311 are therefore present in this case. It was not disputed that "the reasonable opportunity" prescribed by Article 311 was not afforded to the petitioner. But the learned Government Pleader contended that the term of office having expired by 20 January 1960, a writ, if issued, would be infructuous. The petitioner is not now aggrieved so much by his having to vacate office, the term of which had expired already, as by the imputation which this punishment has cast upon him. Employing the language of Bose, J., in the Calcutta case cited:

removal...from the office?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,

and I may add, any other office which he may be privileged to hold hereafter. What the petitioner now seeks is, to have this slur or imputation on his character removed, and this can be achieved only by quashing Ex. P. 2. To set aside Ex. P. 2, cannot now have the effect of restoring the petitioner to the office which he held the period of which had come to a termination. I therefore overrule this objection of the learned Government Pleader.

The result is, that Ex. P. 2 is hereby quashed. I make no order as to costs.