
(1981) 02 CAL CK 0030
In the Calcutta High Court
Case No : C.R. No. 13222 (W) of 1976

Id. Mofizuddin Molla

APPELLANT

Vs

Unior Land Reforms Officer Magrahat and Others

RESPONDENT

Date of Decision : 06-02-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 309, 310, 311, 311(2)
Penal Code, 1860 (IPC) — Section 409
West Bengal Land Reforms Act, 1955 — Section 23(B)

Citation : 85 CWN 461

Hon'ble Judges : M.N. Roy, J

Bench : Single Bench

Advocate : M.C. Bhattacharjee and Md. Joynal Abedin, for the Appellant; N.N. Gooptu and Prodipta Roy and N.C. Chakraborty, Amicus curiae, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Roy, J.—The main and important point involved in this case being whether a Tahsildar holds a civil post, in spite of assistance received from the learned Advocate for the Respondents I had requested Mr. N. C. Chakraborty, a senior learned Advocate of this Court to act as an Amicus curiae, to help and assist the Court for determining the issue. The petitioner was admittedly appointed in terms of an agreement as Tahasildar in 1961, at Kakdip Circle, Block No. 6. His appointment was in terms of an agreement, a copy whereof is annexed as Annexure "A" to this petition. The said agreement was dated 1st September 1973 and was renewable from year to year. The agreement, thus was due to lapse or expire on and from 31st August 1974. In fact, the 1st September 1973 agreement as mentioned hereinbefore, was the last agreement, which was executed in the instant case. In terms of his agreement, the petitioner was entitled to a remuneration at the rate of Rs. 57.50 paise per month and was also to receive commission at the rate as stipulated.

2. It appears that in or about 1965, the petitioner was transferred from Kakdwip to Magrahat Circle, under Block No. 42 and it is his case that on or about 24th February 1973, he was entrusted to carry on collection works in respect of Block No. 1 and Block No. 21. He has further stated that in May 1973, the Junior Land Reforms Officer, Magrahat-II, Respondent No. 1, asked him to furnish an estimate of collection under or in terms of section 23(B) of the Land Reforms Act, 1955 and thereafter the petitioner was surprised to receive a letter dated 16th October 1973, whereby the officer as mentioned above, directed him to make over the entire charge of Block No. 2, to one Serajul Haque Molla, who is Respondent No. 9 in this proceeding and against whom, the Rule has been discharged from non compliance with the Court's order dated 1st June 1978. Such action, the petitioner has claimed to be bad and void, as he was not given reasonable opportunities to show-cause. In fact, the petitioner has claimed the termination of the concerned agreement, to be void and irregular.

3. Against such action, a Civil Rule, being Civil Rules No. 4262 (W) of 1973, was obtained on 24th October 1973 and in the said Rule an order was made restraining the Respondents from giving effect to the said order. The said Rule was disposed of on 6th May 1976 by Sabyasachi Mukherji, J. with the following directions :

The petitioner will hand over the charge in respect of Block No. 2 and the respondents will permit the petitioner to work in block No. 1. This order is without prejudice to the rights and contentions of the parties. This order of the respondents to take such steps and appropriate proceedings against the petitioner as they are entitled under the law.

4. After the disposal of the said Rule, the petitioner applied to the Junior Land Reforms officer concerned, on 10th May 1976, for his immediate appointment as Tahasilder of Block No. 2 and he made another representation on 14th May 1976, to the Sub-divisional Officer, Diamond Harbour, for allowing him to work in the concerned Block No. 1. It has been stated that thereafter, by an order dated 13th July 1976, the Junior Land Reforms officer, intimated the petitioner to join as Tahasildar Block No. 1 and in fact, he joined in the said Block, on 15th July 1976. He has further stated that in terms of the directions as quoted hereinbefore, he handed over the charge of the other Block, to the appropriate authorities. It has been alleged that even after such and due compliance by the petitioner, the Junior Land Reforms officer concerned did not allow him and in fact by such action, he refused to carry out the order as made by this Court and that too by directing Respondent No. 9, who had been working as Tahasildar in Block No. 1, since 28th December 1973, to hand over the charge in favour of the petitioner in respect of Block No. 1.

5. Thereafter, it has been stated that by a letter of 28th August 1976, the petitioner was directed by the Junior Land Reforms Officer concerned, to meet him forthwith and to execute the agreement as per the order of the Sub-divisional Officer, dated 18th August 1976. It is the case of the petitioner that

pursuant to such order, he had been to the office of the Junior Land Reforms officer on 24th August 1976 and asked for order of the Sub-divisional Officer, on the basis of which, he was directed to execute the concerned agreement but such copy was not made available to him and it has also been alleged that the Junior Land Reforms officer concerned had asked the petitioner to execute an agreement on the representation, that the renewal of the agreement would be effected as usual on 1st September 1976 and the execution of the agreement, prior to that date would be in consonance with the order as made by this Court and such agreement would not stand on the way of renewal of the agreement to be executed on 1st September 1976. It is the case of the petitioner that he acted bonafide and on such representation by the officer concerned, in the matter of execution of the agreement on 24th August 1976, confirming the period of his service up to 31st August 1976 i. e. only a period of seven days. He has further stated that although the agreement for such a short period was executed. The petitioner was entitled be handed over charge in respect of Block No. 1 as per the order of this Court, which was not done.

6. It is also the allegations of the petitioner that on or about 1st September 1976, the petitioner had gone to the office of the Junior Land Reforms Officer, Respondent No. 1 and approached him for executing the renewal of the agreement and thus to enable him to work as Tahasildar in Block No. 1, but he was told that as per the terms of the agreement, executed on 24th August 1976, his period of service having expired, he was no longer in service and as such, the question of renewal of the agreement would be redundant. It has also been alleged by the petitioner that after receipt of the letter dated 20th August 1976, issued by the Junior Land Reforms Officer as mentioned above, directing him to meet forthwith and to execute the document, the petitioner had no other alternative but to execute the same on 24th August 1976, and the execution of the agreement for such a short period as mentioned above, was not a voluntary one. Allegations have been made by the petitioner that the Respondent No. 1 as mentioned above, at material times had no intention or desire to carry on the directions as given by this Court and he has flouted and violated the directions as given, wilfully. He has also claimed that such in action of the officer concerned, not to give him the advantage or benefits of the order as made by this Court was not bonafide and the grounds on which such privilege was refused to him were false, frivolous and baseless. He has further claimed that the agreement dated 24th August 1976, by which he was given the service of the Tahasildar in Block No. 1, for a period of one week was a faked one, in as much as the period of the service on the terms of the concerned agreement was quite inconsistent with and contrary to the other terms and conditions, as stipulated. He has further stated that the agreement dated 24th August 1976, was completed not only for the purpose of circumventing the earlier order of this Court as mentioned above, but the same was also executed with the sinister motive of terminating his services, without due process of law. That apart, the petitioner has also claimed that the purported action to be violative or principles of natural justice and has claimed

the action as motivated, mala fide and taken in colourable exercise of power.

7. By a supplementary affidavit dated 18th November 1980, the petitioner has disclosed a letter dated 16th September 1976, which incidentally is the letter discharging him from his duties as Tahasildar. He has stated to have received the said order, after obtaining the present Rule on 12th September 1976. In fact, it is his case that he received the communication on 29th October 1976. The said letter shows that for violation of clauses 7 and 10 of the Articles of Agreement, the petitioner's service was discharged by the Sub-divisional officer concerned. The said letter also shows that the same was issued, pursuant to the verbal order passed by the Additional District Magistrate (L. R.), 24 Parganas. On the basis of such state of affairs, the petitioner has stated that the agreement in the instant case and with him was executed by the Junior Land Reforms Officer on 24th August 1976 on the assurance that the services of the petitioner would be continued in terms of the order as made by this Court, after 31st August 1976 and such agreement would be renewed on 1st September 1976, as usual.

8. After opportunities, the opposition in the Rule, which is dated 23rd December 1980, was filed through Shri Gautam Chakraborty, who is at present, the Junior Land Reforms Officer, Magrahat Circle-II. The deponent of this affidavit has stated that the present proceedings would not be maintainable as at all material times, the petitioner had no and still he has no right to the post of Tahasildar, after the expiry of the contract period on 31st August 1976. It has also been stated that in the instant case, no legal right of the petitioner having been infringed, the proceedings also not maintainable. It has further been stated that the petitioner has no legal right to compel the State Government, to renew the contract of service. Such statement has been made, as apart from other prayers, the petitioner has asked for the issue of a writ of in the nature of Mandamus, commanding the Respondents to execute the order as in the Memo dated 23rd August 1976 and an agreement or renewal thereof with the petitioner, for his service of Tahasildar in Block No. 1 in Magrahat Circle-II from 1st September 1976, in terms of the order dated 6th May 1976, passed in Civil Rule No. 4262 (W) of 1963. That apart, it has also been claimed that the action as taken, not being one of dismissal or of removal or reduction in rank, the present proceedings would not also be maintainable. The deponent has stated that the period of contract, having come to an end on 31st August 1976 and the appointing authority, in consideration of the petitioner's service records and performance, having decided not to renew the contract of service, the proceedings as obtained or initiated would not also be maintainable. It has been stated that the Respondents concerned, had the discretion and still they have so or the authority to decide whether at the service contract, as in this case, would be renewed and nobody can complain against such decision. Apart from this, it has also been claimed, that provision of Article 311(2) of the Constitution of India have no application in the instant case. The deponent have further stated that a Tahasildar do not hold any civil post and is not a member of the State Civil Services. It has also been claimed that assuming but not

admitting that a Tahasildar holds a civil post, still, Article 311(2) would not be attracted in the facts of this case. After setting out the duties of a Tahasildar, the deponent has stated that agreement of service of a Tahasildar, being an annual one i. e. valid for one year and with the stipulation to be renewed from year to year, provided the services of the Tahasildar are found satisfactory, this Court should not exercise his discretion in favour of a Tahasildar, i.e. the petitioner, whose service contract has not been renewed, for reasons as mentioned hereinbefore. It is the categorical case of the deponent that the petitioner was appointed as a Tahasildar in Mograhat Block No. 2 in 1965, under an agreement of service valid for one year from 1st September to 31st August of the next year. This agreement has been admitted to have renewed from year to year and it has also been agreed that the agreement of such service, was renewed for on year from 1st September 1973 to 31st August 1974 and at that time, both the Block as mentioned hereinbefore, were given under the charge of the petitioner, as the Tahasildar of Block 1 had retired. It has further been stated by the deponent that afterwards, Respondent No. 9, Sirajul Haque was appointed as Tahasildar for Block No. 2 and accordingly, the petitioner was required to hand-over charge of the said Block to the said Shri Haque. The fact that the petitioner obtained the Rule as mentioned above, is not in dispute, but it has been stated by the deponent that on 14th January 1974, Anil Kumar Sen, J., refused to extend the interim order in that case. It has also been stated that during the pendency of the earlier writ proceeding, as it was found that the petitioner had committed various irregularities and illegalities and was guilty of defalcation a sum of Rs. 1239,30 paise, after process and proceeding, a Criminal Case being M|Hat|P.S. Case No. 7(1) 74, u/s 409 of the Indian Penal Code was started in the Court of the Sub-divisional Judicial Magistrate and in the proceeding, a warrant of arrest had to be issued by the learned third Special Court at Alipore, where the case was transferred, as the petitioner was absconding. It appears from the submission as made at the Bar that the petitioner had a conviction in the said Criminal proceeding, and thereafter, on appeal has been taken to this Court, which is pending.

9. The order as made in Civil Rule No. 4262 (W) of 1972 and as quoted hereinbefore, has been accepted by the deponent to have been made and passed. He has stated that since the agreement of the petitioner's service was from 1st September to 31st August next, in pursuance of the order as made by this Court, the petitioner made an application for allowing him to join his duties and in fact, he resumed his duties on 15th July 1976 and then executed an agreement for the unexpired period i.e. upto 31st August 1976. The deponent has further stated that such agreement of service has not further been renewed and has been ended on 31st August 1976. It is the case of the deponent that after considering the service records, performance of the petitioner and since it was found that there were violations committed by him, it was decided, not to renew the concerned agreement of service any further and such renewal was not made, as the service of the petitioner was found to be unsatisfactory. The

deponent has also stated that by an order 16th September 1976, the Sub-divisional officer, merely communicated the decision, not to renew the petitioner's contract of service, which expired on 31st August 1976. It is the case of the answering Respondents that as the petitioner was not in service after 31st August 1976, so, no question of his discharge would appear and the concerned Memo did not and could not mean discharging the petitioner from service, as in fact, he was not in service at that time. The deponent has further given the reasons why Respondent No. 9, Shri Haque was appointed Tahasildar of Block No. 2 in the instant case. It has also been stated that if the facts of the proceeding, in which the order as quoted hereinbefore, was made, are considered, it would appear that it was never the intention of the learned Judge, who made the said order, to have an agreement executed after expiry of the period of agreement. It has also been stated that there was or has been no failure or any neglect on the part of the authorities concerned in the matter of carrying on the order as made by this Court earlier. The allegations on the basis of which the petitioner's service was found to be unsatisfactory and it was opined that he was not discharging his duties duly, have also been mentioned in the answer to the Rule and it has been stated that the petitioner duly executed the subsequent agreement knowing fully well that the same would be valid upto 31st August 1976. The other allegations of the action against the petitioner have been taken with motive and not bonafide, have been denied. It has also been stated that nobody ever gave the petitioner any assurance that his contract of service would be renewed after 31st August 1976. It has also been stated that a Tahasildar, being in charge of collection of Government revenue and the petitioner having been found guilty by competent authority, for defalcation of Government money as collected by him, no interference should also be made by this Court in this jurisdiction.

10. In his reply dated 9th January 1981, the petitioner has categorically denied the material allegations and assertions as made in the affidavit-in-opposition and has claimed that the instant proceeding, to be maintainable as he has a right to the post of a Tahasildar, which according to him is a civil post, even after the period of contract, which expired on 31st August 1976 and that too, in terms of the assurance by the Respondent No. 1. The petitioner has of course stated that the Criminal case, in which he has been initially found to be guilty, to be not a bonafide one, but a proceeding which is concocted and fabricated. I think, I should not say or attempt to say anything on such proceedings as the same is still subjudice in this Court and I have it on record that these determination should not have any bearing or application to such pending Criminal proceeding, the petitioner has further stated that all the acts and actions taken against him, were and are motivated and the facts leading to such motivated actions have been mentioned in paragraph 6(a) of the concerned reply.

11. Mr. Nani Coomar Chakraborty appearing as Amicus curiae, contended that a Tahasildar holds a civil post. In support of such submissions, he referred to the agreement which is in Appendix-IV under Rule 15 and as appearing in the West

Bengal Land Management Manual, 1977. This Manual, would hereinafter be referred to as the said Manual. The said Manual deals with the principles, policy and procedure for management of lands and sairati interests, viz hats, ferries and fisheries and the replaces the West Bengal Government Estates Manual, 1953. Chapter-II of the said Manual, deals with the organization and Rule 15 thereunder, deals with the manner, method and procedure for recruitment of Tahasildars. The said Rule 15 is to the following effect :

15. Tahsildars are part time Government servants and they are appointed by the Sub-divisional Officers. Selection of Tahasildars should be made from amongst those possessing a pass certificate in the School Final or Higher Secondary Examination of the West Bengal Board of Secondary Education or any other equivalent examination. The candidate should not be less than 18 years, and not more than 30 years of age on the 1st day of October of the year in which the appointment is made. The upper age limit is relaxable for Schedule Caste and Schedule Tribe candidates up to the age of 35.

In order to ensure appointment of suitable candidates to the post of Tahsildar there is a Selection Board in each Sub-division with the following members :--

- (i) Sub-divisional Officer,
- (ii) Sub-divisional Land Reforms Officer, and
- (iii) three non-officials.

The Sub-divisional Officer acts as a Chairman of the Selection Board and a Sub-divisional Board and a Sub-divisional Land Reforms Officer as a Convener secretary. The three non-official members of the Selection Board are nominated by the State Government. Three members of the Selection Board will form the quorum for the purpose of the meeting of the Selection Board.

Fifteen per cent of the vacancies should be kept reserved for candidates belonging to the Schedule Castes and 5 per cent for those belonging to the Schedule Tribes.

An agreement is made with the Tahsildar at the time of appointment. The terms and conditions of service are given in the agreement. It is renewed year to year provided his services are found satisfactory. The prescribed form of agreement is given in Appendix IV.

Mr. Chakraborty, in his fairness admitted that it has consistently been observed by this Court that West Bengal Estates Manual has no statutory force. He made such submissions with regard to the determinations in the cases of Bidyadhari Spill Matsyajibi Samabaya Samity Vs. State and Others, , Lalgola Padma Fisherman's Co-operative Society Ltd. Vs. The State of West Bengal and Others, and Paha Port.....Fishermen's Co-operative Society Ltd. -Vs- Additional District Magistrate (E.A.), 24-Parganas, 79 CWN 366. Those determinations lay down that West Bengal Government Estates Manual deals with principles, policy

and procedure for khas management of "Government Estates". It has also been observed in those determinations that the term "Government Estates" in said manual, has been used to mean a Estate under the direct management of Government whether these are the properties of Government or are the estates of the private individuals, brought under the direct management of the Government. It has also been observed by the latter determinations, which incidentally was a Division Bench determination, that the concerned Manual contains only orders made by the Government in support of the administration and as such, order made or steps taken thereunder, are not justifiable under Article 226 of the Constitution of India. It has further been observed in that case that Government can own property and deal with it in any manner which is permissible under law. Such determinations were made on consideration of the determination of the Supreme Court in the case of Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., , A.K. Kraipak and Others Vs. Union of India (UOI) and Others, Benimadhab Saw Vs. State of West Bengal, AIR 1973 SC 2454, Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, , Minto Bhakta Vs. State of West Bengal. AIR 1972 SC 205. Mr. Chakraborty, contended that so far as instructions on the basis of which the agreement in the instant case, was or has been executed, the determinations of the Supreme Court in the case of Sant Ram Sharma Vs. State of Rajasthan and Another, , will have to be considered and in fact instructions for filling of the gap, in the absence of Rules which were indicated in the case as cited above, have really been appropriately dealt with and defined in the subsequent cases, following which, it can now be deduced that instructions can also be looked into or considered in the light, whether they have been appropriately followed or not. In the said case as reiterated in AIR 1967 Supreme Court 1910 (Supra) it has been observed that it cannot be said that salary statutory Rules, governing promotion of Selection Grade post are framed. Government cannot issue administrative instruction regarding principles to be followed. Mr. Chakraborty referred to the following clauses of the concerned agreement :--

(1) That the Government shall employ the Employee and the Employee shall be employed by the Government temporarily as Tahasildar in respect of the area mentioned and described in the Schedule "A" hereunder written for collection on behalf of the Government rent, cesses and other Government dues with effect from.....till the 19,

(3) That during the period of the employment of the employee, the employee shall faithfully, honestly and efficiently serve the Government in the discharge of his duties under, these presents.

(4).... ..

(b) That during the period, the Employee shall be paid a remuneration by way of allowance at the rate of Rs. (Rupees only) per mensem and shall also receive commission at the rate mentioned in the Schedule "B" hereunder written on all

collections made by the Employee and duly accounted for and deposited by the Employee to and with the Government in such manner and in such form as the Government may from time to time prescribe.

(c) That during the period the Employee shall be entitled to leave as laid down in rule 317 of the West Bengal Service Rules, Part 1 and for this purpose he shall be treated as Class III Government Servant.

(d) That during the period the Employee shall draw travelling allowance as in Appendix 1 of the West Bengal Service Rules, Part 1 and for this purpose he shall be treated as third grade Government Servant.

(e) Save and except the provision in clause 4(a) here of the Employee shall during the period of his Employment under these presents as a Tahasildar be governed by the Government Servant's Conduct Rules and he shall also be governed by the West Bengal Services (Classification, Control and Appeal) Rules, 1971.

6. That the Employee shall maintain all registers and collection papers as required by the rules for the time being in force and keep the same upto date and shall carry out such directions as may from time to time be given to him by the Government or any officer authorised by the Government in that behalf.

7. That the Employee shall duly and punctually collect rents and cesses and other amounts due and payable to the Government in respect of the area mentioned and described in the Schedule "A" hereunder written and shall deposit the entire amount of the total collections made by him during the course of the week at the end of such week in the appropriate Treasury/Sub-Treasury/Estate Treasury in the manner as the Employee may be directed by the Government to do and in no case shall the Employee retain in his hands any sum exceeding Rs. 500.

In the Slack season when a Tahasildar collects during the course of a week not even an amount exceeding Re. 1 shall small weekly remittance by money order will not be economical and as such it has been decided by Government that during the slack season the Tahasildar may be allowed to retain in their hands a sum up to Rs. 10 (Rupees ten) only, subject to the maximum period of One Month in relaxation of the terms of clause 7 of the Agreement.

10. (a) That the Employee shall whenever so required to do by the Government or any officer authorised in that behalf produce for inspection all collection papers and registers and documents at such times and places as may be required by the Government or any officer authorised in that behalf.

(b) That the employee shall be bound to do such work in addition to his normal duties as may from time to time be required of him by the Government or his superior officers for which the employee may be paid such additional remuneration as may from time to time be fixed by the Government.

11. That the Government shall have the right and be entitled to discharge the

employee or terminate this Agreement without any previous notice if the employee commits any breach of any of the terms and conditions herein contained or he is found to be otherwise negligent or inefficient of his work is found to be otherwise unsatisfactory and the decision of the Government in that respect shall be final and binding. On the basis of the above contentions commission, he submitted that since directions, control and supervision over a Tahsildar on of his appointment, was and still is with the Government, so in all fairness, such appointees must have the character of a person holding a civil post.

12. Mr. Chakraborty then made a reference to a Bench determinations of this Court, in the case of State of West Bengal Vs. Manikgopal Mondel, 1979 (1) CHN 120. In that case, it was initially, observed, considering the terms of service and conditions of employment and so also the incidence like that directions, control and supervision over such employment, that an Anchal Panchayat Secretary holds a civil post under the State Government. Such determination was set-aside by the Bench determination as referred to hereinbefore. Mr. Chakraborty claimed that such setting-aside of the initial judgement by this Court has not actually been approved by the Supreme Court in view of Determinating in the case of Mathuradas Mohanlal Kedia -Vs- S. D. Munshow AIR 1981 SC 53. That was a case under the Gujarat Panchayat Act and the point arose, as to whether panchayat service constituted under that Act, is a civil service of the state. In fact, considering the incidence of service and after determining, on whom the ultimate directions, control and supervision of the service lay, it has been observed that Panchayat service constituted under the Panchayat Act is a civil service of the State of Gujarat. In view of the said determinations, Mr. Chakraborty claimed that the Bench determinations of this Court as mentioned in the case of State of West Bengal -Vs- Manik Gopal Mondal, (Supra), have virtually been over ruled. The Supreme Court has observed that true test for determinations of the question is whether a person is holding a civil post or is a member of civil service, is the existence of a relationship of master and servant between the State and the person holding a civil post under it and that the existence of such relationship was depended upon the right of the State to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control, the manner and method of its doing the work and the payment of his wages and remuneration. It has also been observed that the relationship of master and servant may be established by the presence of all or some of the factors referred to above in conjunction with other circumstances. The above determinations have been made after following the earlier determinations of the Supreme Court in the case of State of Assam and Others Vs. Shri Kanak Chandra Dutta, , to which case and the determinations, Mr. Chakraborty also relied. The case as mentioned above, related to Mauzadar in Assam Valley and the point involved was whether they were holding civil post under State and as such, were entitled to protection under Article 311 (2) and it has been observed, following the incidence of appointment of such Mauzadars, they are holders the civil post under the same and as such entitled to necessary protection under Article 311(2).

13. The next case on which Mr. Chakraborty placed reliance, was that of Kalipada Ghosh Vs. Sub-Divisional Officer, Vishnupur and Others, . In this case, the question of appointment or the character of a Tahasildar was in issue. The petitioner, who was a Tahasildar in that case, was appointed by an agreement as in the present one and he was discharged with effect from 31st January 1962, for mis-appropriating Government money and tempering with official records. The point which was urged at the hearing was that the impugned action was bad, because of contravention of Article 311 (2) of the Constitution of India, as well as the provisions of the Bengal Subordinate Services (Discipline and Appeal) Rules, which were attracted by Clause 4(e) of the agreement, which incidentally, has also been reproduced hereinbefore. In that case, neither any opportunity was admittedly given to the petitioner to show-cause before the impugned order was made nor any notice was given to him. The agreement in that case, like the one before us, was for the period from year to year and it was the case of both the parties that such agreement was renewed till the date of the impugned order as involved in the case and that the question at issue was decided on the terms of the agreement. The learned Judge dealing with the case, has observed that for the breach of service agreement with Government, remedy lies under the general law and no writ can go. But the petitioner in that case, sought to avoid such contingency, by invoking Clause 4(e) of the concerned agreement. It has been observed that the agreement in that case was one of an appointment for a specified term, on the condition that it was terminable earlier, by one month's notice on either side. The incidence of the agreement and the purport and import thereof has been discussed by the learned Judge, while dealing with the case and on a reference to Clause 11 of that agreement, which is also the same as in this case, and on which Mr. Chakraborty relied, it has been observed by the learned Judge that it was rightly argued that Clause 11 of the agreement was not attracted to the facts of the case inasmuch as that clause referred to negligence or inefficiency in the execution of the employee's duties and not a serious misconduct such as misappropriation or tempering with official records. It was further observed by the learned Judge on application of the principles as enunciated in the case of State of Uttar Pradesh and Another Vs. Sri C.S. Sharma, that if the constructions as laid down therein, are correct, the only conclusion that was possible, was that the validity of the impugned order was to be tested by the provisions of Article 311 (2) of the Constitution of India and Rule 10, of the Bengal Subordinate Service Rules. The learned Judge further observed that he was satisfied that the case before him, falls under Article 311(2), which applies equally to permanent and temporary employees and once it is established that the impugned order was not covered by Clause 11 of the agreement, the provisions of Article 311 (2) would be attracted, provided the order constitutes removal or dismissal. He has also observed and that too, following the verdicts of the Supreme Court that in such cases, the form of the order of the language employed therein e.g. the use of the word "dismissal", as in the instant case, was not conclusive, on the question whether the same constituted "removal" or "dismissal", so as to attract Article 311(2). It has also

been observed by the learned Judge that if the order entails penal consequences in addition to termination of the service, it would obviously be a case of dismissal, according to the determinations as laid down in the case of Purshotam Lal Dhingra 1958 SC, 36. It has also been observed by the learned Judge, that such conclusion must also be arrived at if the order of discharge adds a stigma e. g. that the employee has been found "to be undesirable to be retained in Government service". On the basis of the order as was involved in that case, the learned Judge further observed that reading the same, by any way, in a reasonable way, would naturally conclude that the employees was found to be undesirable and that must necessarily import an element of punishment which was the basis of the order and was its integral part. The learned Judge has further observed that the test should be in such cases, as to whether the order creates any aspersion or attach stigma to the officer when the same purports to discharge him. He has further observed that if the answer to such question was in the affirmative, then notwithstanding the form of the order the termination of service must be held in substance to amount to dismissal.

14. Mr. Ambika Bhattacharjee, who made submissions prior to the request made by the Court to Mr. Chakrabarty act as Amicus curiae, on being asked, subsequent to the arguments of Mr. Chakraborty, stated that he had no further arguments to be made and in fact, he adopted the argument as was advanced by Mr. Chakraborty.

15. Mr. N. R. Gooptu, the learned Government pleader, being assisted by Shri Prodipta Roy, also relied on the terms of the agreement as disclosed in Annexure "A" and contended that such agreement, being an annual one and the same not having been renewed, on due consideration of relevant facts, this Court should not take such steps by which it would have to take the responsibility of having an agreement renewed. In fact on the prayers of the petitioner as mentioned above, it was contended by Mr. Gooptu, that the petitioner's tenure of service admittedly and on his own having expired on 31st August 1976, this Court has no power, jurisdiction, authority competency to make an order, which would virtually require the Government to give an extension of such agreement which is not a statutory one. The fact that the agreement in the instant case was from year to year and the same was not renewed after 31st August 1976 cannot be doubted or in dispute. It was also submitted by him that in this jurisdiction, an agreement cannot be directed to be executed, which in fact is the prayer of the petitioner. On a reference to Clause 7 and 10 of the concerned agreement, which clauses have also been reproduced hereinbefore, Mr. Gooptu suggested that those clauses, in no uncertain terms requires or lay down the duties and responsibilities of a Tahasildar like the petitioner and when for admitted non-compliance of those terms or the failure of the employee concerned to carry out the terms or to act on the basis thereof, his tenure of service agreement has not been renewed or extended no steps should also be taken by this Court, to help him to have the agreement in question renewed in this circuitous method of a writ.

16. The facts that the petitioner was appointed in terms of an agreement which was executed by him of his own, which of course, he has sought to be denied, and the said agreement had automatically lapsed on the date of the issue of the Rule, are not in dispute. It is also an admitted fact that a Criminal case against the petitioner is still pending and the petitioner has, in effect asked for a mandate to have a fresh agreement executed.

In fact, it was contended initially by Mr. Pradipta Roy and thereafter, by Mr. Gooptu, that the order of Sabayasachi Mukharji J, as quoted hereinbefore, has not mentioned or made any provision for execution of such agreement on the expiry of the then existing one and the order, as made, has been duly complied with. The agreement, has, in short been contended, to have been terminated automatically or had an automatic and due lapse.

17. On the question or the submissions on existence of legal right, being the basis of interference by this Court in this Jurisdiction, and not otherwise, as have been submitted by the Respondents Mr. Gooptu relied on the determinations in the case of Mani Subrat Jain and Others Vs. State of Haryana and Others, , wherein it has been laid down that, it is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something. While on the point, Mr. Gooptu also relied on the determination in the case of Ramesh Prasad Singh Vs. State of Bihar and Others, . The observations in the case of Mani Subrat Jain vs. State of Haryana & Ors (Supra), as mentioned hereinbefore, have also been restated in this case.

18. On the question of his arguments on Article 311(2) and more particularly, they were not applicable in the facts of this case, Mr. Gooptu firstly, relied on the determinations in the case of Pallikeileth Shayama Prasad v. Chief Commissioner, Andaman and Nicobar Islands & Ors., 1970 S.H.R. 161 In that case the petitioner was sent on deputation for a period of 3 years but was revert back to his parent office before the expiry of the period of deputation, for taking part in agitation of non Gazetted Staff and in such facts a point arose as to whether reversion from deputation before the expiry of the period, would come under the terms removal, dismissal or reduction in rank as in Article 311 and the answer was in the negative. In that case, a further point was in issue viz when the employment of a Civil Servant was under a contract, if Article 311 would be attracted, in case his employment was terminated, even if the notice was to punish him and it has been observed that if a Civil Servant's employment under a contract is terminated on the basis of purported exercise of a contractual right that by itself will not constitute dismissal, removal or reduction in rank within the meaning of Art. 311(2) of the Constitution. Even though it may be, the motive behind such termination, was to punish a Civil Servant for misconduct, negligence or

inefficiency. Thereafter, and secondly, reliance was placed by Mr. Gooptu in the case of Parshotam Lal Dhingra Vs. Union of India (UOI), . For the proposition that in this case Article 311 gives a two-fold protection to persons who come within the Article, namely, (1) against dismissal or removal by an authority subordinate to that by which they were appointed and (2) against dismissal or removal or reduction in rank without giving them a reasonable opportunity of showing cause against the action proposed to be taken in regard to them. In the absence of any special contract the substantive appointment to a permanent post gives the servant, so appointed a right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years" service or the post is abolished and his service cannot be terminated except by way of punishment for misconduct, negligence, inefficiency or any other disqualification found against him on proper enquiry after due notice to him. An appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of his tenure and his tenure cannot be put an end to during that period unless he is, by way of punishment, dismissed or removed from the service. Except in these two cases the appointment to a post, permanent or temporary, on probation or on an officiating basis or a substantive appointment to a temporary post gives to the servant so appointed no right to the post and his service may be terminated unless his service had ripened into what is in the service rules, called a quasipermanent service.

Just as Art. 310, in terms makes no distinction between permanent and temporary members of the services or between persons holding permanent or temporary post in the matter of their tenure being dependent upon the pleasure of the President or the Governor, so does Art. 311, makes no distinction between the two classes, both of which are, therefore, within its protections. To limit the protection of Art. 311, only to persons who are permanent members of the services or who hold permanent civil posts will be to add qualifying words to the Article which would be contrary to sound principles of interpretation of a Constitution or a statute. And also for establishing as observed in that case that it is only in these cases where the Government intends to inflict these three forms of punishments that the Government servant must be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. It follows, therefore, that if the termination of service is sought to be brought about otherwise than by way of punishment, then the Government servant whose service is so terminated cannot claim the protection of Art. 311(2). On the basis of the determinations as referred hereinbefore, and more particularly when the said Manual had or has no statutory force and the agreement, admittedly had a due lapse. Mr. Guptoo contended that no interference by this Court in this jurisdiction should be made. It was also contended by Mr. Guptu that since on the date, when the present Rule was obtained, the employee concerned had no right to the post so also, he has no right to maintain this application and as such also, it cannot be held that any

provisions of Article 311(2) of the Constitution of India was violated. In support of such submissions, reliance was placed by Mr. Gooptu, to the case of Champaklal Chimanlal Shah vs. The Union of India, AIR 1964 S.C. 1855, wherein it has been observed that temporary servants are also entitled to the protection of Art. 311(2) in the same manner as permanent government servants, if the government takes action against them by making out one of the three punishment i. e. dismissal, removal or reduction in rank. But this protection is only available where discharge, removal or reduction in rank is sought to be inflicted by way of punishment and not otherwise. The mere use of expressions like "terminate" or "discharge" is not conclusive and in spite of the use of such innocuous expressions the court has to apply the two tests mentioned namely -- (1) whether the servant had a right to the post or rank or (3) whether he has been vested with civil consequences; and if either of the tests are satisfied, it must be held that the servant had been punished. Further even though misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless if right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is wholly irrelevant.

19. This apart Mr. Gooptu also relied on the determinations in the case of State of Uttar Pradesh Vs. Bhoop Singh Verma, and on a reference to the determinations therein, he contended that since the action as taken in the instant case was not a punitive one so the provisions of Article 311(2) had no application also.

On the question whether a Tahasildar holds a civil post or his services are governed by the provisions of Article 311(2) as such, it was specifically argued by Mr. Gooptu that Tahasildar like the petitioner in this case whose services were governed by a set of agreement, which are not statutory, are neither Government servants nor servant holding civil post either under the Union of India or the State, and as such, any infringement of their right, would not be amenable to the writ jurisdiction of this Court, Mr. Gooptu placed reliance firstly, to the case of Sher Singh Vs. State of Rajasthan and Another, . There the service of a Chaudhari were dismissed and it has been observed that the dismissal of such Chaudhari was not a Legislative function, nor can it be said that the same was Judicial function. A Chaudhari in Rajasthan, is a sort of agent of Government, for the collection of land revenue, as the case here according to Mr. Gooptu, for which he gets certain remuneration. The High Court as observed in the facts of that case, that appointment and dismissals of agents of such kind as Chaudharis, would only be a purely Executive function and it has also been observed that such chaudhuri appointed under the Land Revenue Act of Bikanir, were and are not person in the civil employment of the State, and were and are not entitled to the protection of Article 311 of the Constitution of India as such, Chaudharis, who fails to get an appointment, as in this case, cannot approach the High Court in its extra-ordinary jurisdiction on the ground that he should

have been appointed. The Rajasthan High Court has further observed, but the case of person dismissed stand on different footing. He holds the appointment and unless the appointment is for a temporary period, he can claim that he should not be removed, unless there is some defect in him, which has been proved. It has also and further been observed that in the case of an Executive order all that a person can insist upon, is that where there is statute or Rule providing for the manner in which the case should be dealt with, that statute or Rule should be followed. It has also been observed that where no statute or Rule has been pointed out, providing the manner in which a case of dismissal of the kind, which was before the Rajasthan High Court should be dealt with, it is enough if at some state a hearing in same manner, is given to the person against whom the order is passed by some officers on behalf of the authority passing the order. The said High Court has also laid down that it cannot be said that the Government had no authority to dismiss a Chaudhari, because under the State of Powers, a Chaudhari can be dismissed by lower Government officers and it is usual that in such cases, power of appointment and dismissal, to be delegated to Subordinate officers of the Government. Mr. Gooptu secondly, referred to the determinations in the case of *Laiserax Tanubi Singh v. L. Gopal Singh* AIR 1971 Mani 32 in that case, it has been observed that payment of remuneration for the work done is not decisive factor in determining whether the person concerned holds a civil post. The case was one of a village Chawkidar in Manipur territory and it has been observed that such village Chawkidar do not hold a civil post within the meaning of Article 311 of the Constitution of India.

20. On being asked, about the effect of the determinations in the Calcutta case of *Kalipada Ghosh vs. Sub-divisional officer, Visnupur* (supra), as mentioned above, Mr. Gooptu just stated that the determinations in that case are distinguishable on facts. He of course, could not extinguish on facts, the determinations in the case of *State of Assam and others -vs- Kanak Chandra Dutta* (supra), which incidentally was a case of *Mauzadars* in Assam who are also employed in terms of agreement as in this case.

Apart from the cases as mentioned above, on the basis of the incidence of service, terms of employment directions, control and supervisions it has been observed in the case of AIR 1955 175 (Nagpur) that a Home Guard holds a civil post and expressions "civil post" means an appointment or office on the civil side of the administration as distinguished from the military side. In the case of *Jagannath Prasad Sharma Vs. State of Uttar Pradesh and Others*, , members of the police force have also been found to be holding civil post. The officer appointed by the High Court in the case of *Pradyat Kumar Bose Vs. The Hon'ble The Chief Justice of Calcutta High Court*, , have also been held to be holding civil post. A special constable, in the case of *Brojo Gopal Sarkar Vs. Commissioner of Police and Another*, , has been found to be holding a civil post. A *Tahasildar* appointed under the U. P. Government in the case of *State of Uttar Pradesh and Another Vs. Audh Narain Singh and Another*, , has been found and observed to be entitled to the protection under Article 311 (2) of the Constitution of India.

This apart an Extra Departmental Agent, connected with the postal department whose conditions of service are governed by Post and Telegraph Extra Departmental Agent (Conduct & Service) Rules, have been found to be holding civil post under the Union of India, as contemplated by Article 311 of the Constitution of India. Such Extra Departmental Agents have been found not to be casual workers, but holding post under the administrative control of the State. It should be pointed out, that I have earlier, on the basis of the test as mentioned hereinbefore, observed and found that a Secretary of a Panchayat, appointed under the Panchayat Act, by the concerned Panchayat, holds a civil post and as such, would also be entitled to the protection of Article 311 (2) of the Constitution of India. Such determination was made in the case of Manik Gopal Mondal -vs- State of West Bengal and the said determination was set-aside on appeal, in the case of State of West Bengal -vs- Manik Gopal Mondal, (Supra). As submitted by Mr. Chakraborty, the determination which was made by me earlier and set-aside by the learned Appeal Court has perhaps been up-held by the Supreme Court in the case of Mathura Das Mohanlal Kedia & Others -vs- S.D. Munshaw and Others (Supra), and above being the position, we shall have to test the incidence of service of Tahasildar in the instant case or on when lay the ultimate directions, control and supervision of such Tahasildar's appointment for the purpose of finding out whether the petitioner, a Tahasildar in the instant case, holds a civil post.

21. To have an answer to the above other memos, as issued by the Government of West Bengal or their authorities, to which Mr. Bhattacharjee, made specific references and which are reproduced hereunder in extenso and in seriatim, should be looked into.

(A) Government of West Bengal Office of the Board of Revenue, West Bengal

Section -- A, Tdr, Branch.

No. 14481 (15) ? Tdr/19/74

dated Calcutta, the 2nd July. 1974.

To

The Additional Collector (L. R.), Howrah Sub : Prompt payment of dues to Tahasildars or to the families of deceased Tahasildars.

Ref : This office Memo No. 7157 (15) Tdr dated 16.4.74./19/74

The undersigned is directed to invite his kind attention to Board's memo No. 3291 - Tdr./240/63 dated 28th February, 1964 (a copy of which was recently re-circulated under the memo referred to above), whereunder it was envisaged that the monthly fixed allowance of Tahasildars amounting to Rs. 27/- the then prevailing should be treated as pay for the purpose of the said order, Subsequently, under Finance Department's Memo No. 4155 F dated 29th June, 1972 (copy enclosed), Government decided to allow the financial relief in the

shape of funeral expenses to the family of a Government servant, who died while in service, at the uniform rate of Rs. 75/- irrespective of the pay drawn by the deceased Government servant. Thus in terms of the monthly allowance of the Tahasildars of the Board's Memo No. 3291 Tdr/240/63 dated 28th February, 1964 stood modified and the families of the deceased Tahasildars, who died while in service, also become entitled to the benefit of the Finance Department circular above-mentioned.

Sd/- G. Banerjee Assistant Secretary Board of Revenue, West Bengal.

(B) Government of West Bengal

Board of Revenue, West Bengal Section -- A, Tdr Branch. No. 9160/240/63-Tdr. Calcutta, the 6th June, 1964.

To

The Addl. Collector (E. A.)

Hooghly.

Sub : Sanction of funeral expenses to the family of the Tahasildar who meets with death while in service.

In continuation of this memo No. 3291 - Tdr/240/63 dated 28.2.64 on the above subject, the undersigned is directed by order of the Governor to say that the Governor has been pleased to allow the extension of the benefits with effect from 1.2.64.

2. The Accountant General, West Bengal is being informed.

Sd/- J. Chatterjee Assistant Secretary

Board of Revenue, West Bengal & (ex-officio) Asstt. Secretary, to the Govt. of West Bengal, Land & Land Revenue Deptt.

(C) Government of West Bengal Office of the Board of Revenue, West Bengal

Section -- "D" D. E. Branch,

Memo No. 21492 (21) -- D. E. Calcutta, the 12th October, 1966.

From : Shri K. Sen, I. C. S.,

Member,

Board of Revenue,

West Bengal

To

1. The Commissioner of Divisions.

2. The Collectors.

3. The Deputy Commissioners.
4. The Director of Land Records & Surveys, West Bengal.
5. The Collector of Stamp, Calcutta
6. The Rent Controller, Calcutta.

Sub : Compassionate Gratuity

At its meeting to day the Committee for the Compassionate Gratuity Fund accepted the recommendation for a grant being made to the family of a deceased Revenue Tahasildar, even though he was a part-time employee of the Government. In appropriate cases therefore, recommendation may be made for a grant from the compassionate gratuity fund to the family of a Revenue Tahasildar or of a Tahsil Peon but not in the case of a Tahsil Mohorur whose employment is only seasonal.

Sd/- K. Sen Member Board of Revenue, West Bengal.

(D) Government of West Bengal Office of the Board of Revenue, West Bengal

Group--A. Khas Mahal Branch.

Memo. No. 9721-G.E./416

Calcutta, the 6th July 1956.

To

The Collector of West Dinajpur, Balurghat.

Sub: Payment of subsistence grant during the period of suspension to Tahsildars employed under the Estates Acquisition Scheme.

Ref : Collector's memo No. 921 (2) -- EA dt. 19.5.56.

It has been decided that Tahsildars employed for collection of rent on fixed monthly allowance under the Estates Acquisitions Scheme, may be allowed to draw subsistence grant under rule 71 of the West Bengal Service Rules, Part-1 during the period of suspension the "allowance" being classified as "pay" for the purpose of such subsistence grant.

Sd/- Deyashi, 10.7.56 Assistant Secretary, Board of Revenue, West Bengal.

(E) Government of West Bengal

Office of the Board of Revenue, West Bengal, Section-A, Tdr. Branch.

No. 7157 (15) Tdr./19/74 Calcutta, the 16th April, 1974.

To

1. The Addl. Collector (L. R.),-----

2. The Addl. Deputy Commissioner,--

Sub : Prompt payment of dues/arrear dues to Tahasildars or to the families of deceased Tahsildars.

It has of late been found that numerous appeals from the helpless family members of deceased Tahsildars pour in containing allegations regarding nonreceipt of arrear dues, funeral expenses, compassionate gratuity etc. Even after several years of demise of the Tahsildar concerned. Instances are also not rare where Tahsildars are reported to have not been paid their dues for a long time or they have been kept deprived of subsistence grant during their period of suspension.

In this context, the Board strongly feels that the cases of these poor employees should be pursued meticulously and should not in any event be allowed to go in default. The attention of all concerned may please be drawn to the marginally noted circulars for strict compliance therewith.

Board's Memoranda Nos.

1. 21557 (14) IRC dt. 10. 12. 57

2. 329-Tdr. dt. 28. 2. 64

3. 9160-Tdr. dt. 6. 6. 64

4. 9721-G. E. dt.6. 7. 56

5. 21492(21)-DE. dt. 12. 10. 66

The Divisional Commissioners and SLR Os, are being kept informed.

G. Banerjee Assistant Secretary, Board of Revenue, West Bengal

(F) Government of West Bengal Office Of the Board Of Revenue, West Bengal, Section-A, "V" Tdr Branch.

No. 15187 (17) Tdr. Dated Calcutta, 150/78 the 25th August, 1978

To The Addl. District Magistrate (L. R.), Addl. Deputy Commissioner (L R.)

Sub : Ex-gratia grant to Tahsildars and Tahsil Peons.

The undersigned is directed by order of the Governor to say that in order to provide some relief to the Tahsildars and Tahsil Peons during the ensuing festivals, the Governor is pleased to sanction an ex-gratia grant of Rs. 50/- (Rupees fifty) and Rs. 32/- (Rupees thirty two) per head respectively to the Tahsildars and Tahsil Peons under the Board of Revenue.

2. The charge will be debitable to the head "Ex-gratia Grant" subordinate to the head "Salaries" under respective major-minor. Subhead etc. etc. in the State Budget from which the persons concerned draw their allowance, necessary fund under the head being provided by re-appropriation or otherwise in due course.

3. This order issues with the concurrence of the Finance Deptt. vide their Un-official No. Gr. D/11 1841 dated 25.8.78.

J. R. Sah 28.8.78 Secretary,

Board of Revenue, West Bengal & (ex-officio) Dy. Secy. to the Govt. of West Bengal, Land Utilisation & Reforms and Land Revenue Department.

(G) Government of West Bengal Officer of the Board of Revenue, West Bengal, Section "AV" Tdr. Branch. No. 16649 (17) Tdr./150/78 Cal. the 18th Sept. 1978.

To

The Additional District Magistrate (LR), Howrah.

Sub : Ex-gratia grant to the Tahasil personnel under the Board of Revenue, West Bengal.

In continuation of the Board's memo No. 15187 (17) Tdr. dt. 15th August, 1978 the undersigned is directed by order of the Governor to say that the Governor has been pleased to sanction exgratia grant of Rs. 50/- (Rupees Fifty) each as well to the Tahsil Mohurrirs who have put in work at least for 120 days during the period from September, 1977 to August 1978.

This issue with the concurrence of the Finance Department vide their U/O No. Gr. D/11 1898, dt. 14. 9. 78.

Sd/- Illegible, Secy. Board of Revenue West Bengal.

(H) Government of West Bengal Board of Revenue, West Bengal Section--A. Tdr. Branch.

Memo No. 14721 (16)Tdr./139/75 Calcutta, the 3rd Aug, 1976

To

The Addl. Collector (L.R.) Howrah.

Sub : Payment of conveyance hire charge to Tahsildars.

The undersigned is directed to enclose a copy of the memo No. 6140 L.R., dated 26th Nov 75 of the Addl. Collector (L.R.) Hooghly addressed to the Commissioner Burdwan Division for favour of submission of his views thereon through the Divisional Commissioner at an early date.

Sd/- G. Banerjee Asst. Secy. Board of Revenue, W.B.

Copy of memo No. 6140 L.R. dated. Chinsurah, 26.11.75 from Addl. Dist. Magistrate (L.R.) Hooghly to the Commissioner, Burdwan Division Chinsurah.

Sub : Payment of conveyance hire chage to Tahsildars.

Sir,

I am to state that rule 3 of appendix-II of the West Bengal financial Rules, Vol-2 provides conveyance charge to a non-gazetted or inferior Govt. Servant when he is deputed on a duty places at some distance from his office or when he is summoned to his office by a special order of the officer outside the ordinary hours of duty. Tahsildars do not conform with this category.

But in the matter of allowing T. A. Tahsildars are treated as class III staff.

In the circumstances, I would request you kindly to make the Board of Revenue to that the Tahsildars as class-III staff in the matter of allowing conveyance hire charge to them on fulfilment of terms and conditions as laid down in the Rules.

Yours faithfully, Sd/- Illegible for Addl. Dist. Magistrate (L. R.) Hooghly.

22. Apart from the above, Mr. Bhattacharjee also referred to Notification No. 1776L Ref-22nd March 1977, which shows that in exercise of powers conferred by the proviso to Article 309 of the Constitution of India, the Governor has been pleased to make a Rule known as Contributory Provident Fund (Tahsildar and Tahsil Peons) Rules (hereinafter referred to as the said Rules), and has also directed that those Rules should be deemed to have come into force on the 1st day of April. It has been laid down therein that the Contributory Provident Fund Rules (West Bengal) with amendments and orders relating to those set of Rules, as may be issued from time to time, shall apply to the Tahsildars and Tahsil Peons, engaged in collection of revenue, cess, loans etc, on allowance-cum-commission basis in the different districts, under the Board of Revenue, West Bengal, subject to amongst Others, the modifications viz Sub-rule (1) of rule 8 of the Contributory Provident Fund Rules (West Bengal) shall not apply to a Tahsildars and Tahsil Peons but the rate of their subscriptions to the Fund shall be 6 1/4 per cent of the fixed remuneration sanctioned to them. Apart from the above, reliance was also placed on the memorandums, as reproduced hereunder :--

(a) Government of West Bengal Board of Revenue, West Bengal

Section-A, (III) Tdr. Branch.

No. 6017(10)--Tdr. Dated Calcutta, the 1st April, 76.

To

Shri D. K. Roy. W. B. C. S.

Sub-Divisional Officer

Howrah (Sadar) Dist. Howrah.

Sub : Extension of the benefit of Contributory Provident Fund to the Tahsildars and Tahsil Peons.

A reference is invited to Boards Memo. No. 7203(113). Tdr. dated 15.5.75 on the subject mentioned above.

It appears that most of the S. D. O. have started submitting the application/nomination of the Tahsildars and Tahsil Peons to the Accountant General, West Bengal and the latter in turn has also started allotting account numbers of the Contributory Provident Fund to the applicant Tahsildars and Tahsil Peons.

In the circumstances it has been decided by the Board that deductions as subscription to the Contributory Provident Fund may start as and when the account numbers in respect of the applicant Tahsildars and Tahsil Peons are available to them.

As regards the arrears since 1-4-74 one months arrear along with the current months subscription may be realised simultaneously.

Sd/- Illegible Assistant Secretary Board of Revenue, West Bengal.

(b) Government of West Bengal Office of the Board of Revenue, West Bengal

Section-A, Tdr. Branch No. 121149(17)-Tdr./87/77 Dated, Calcutta, the 13th October 1977.

To

The addl. Dist. Magistrate (L. R.)/Addl. Dy. Commissioner (L. R.),

Sub : Principle for re-employment of Tahsildars beyond the age of superannuation.

Ref: Board's memo. No. 17118(15)

Tdr. dated 1st Aug. 1974.

It has been brought to the notice of the Board that in some districts the Tahsildars are not being given reemployment upto the age of 60 years on their superannuation.

It was impressed upon all concerned in the memo, under reference that though the normal age of superannuation of the Tahsildars is fixed at 58 years they should ordinarily be retained in services beyond the age of 58 years and liberally granted re-employment upto the age of 60 years.

As the Tahsildars have been enjoying the benefit of re-employment for quite sometime past and since they are not entitled to any pensionary benefit etc. as enjoyed by Government employees, it has been decided that the Tahsildars should continue to enjoy the benefit of re-employment on superannuation upto the age of 60 years provided they fulfil, the conditions laid down in Board's memo. No. 17118(15) Tdr. dated 1st August, 1974,

Sd/- J. R. Sah Secretary, 17-10-77 Board of Revenue, West Bengal.

(c) Government of West Bengal Office of the Board of Revenue, West Bengal,

Section--"A" Tdr. Branch. No. 15711(15)-Tdr./86/73 Dated, Calcutta, the 8th

September, 1973.

To

The Additional Dist. Magistrate (L. R.)/Addl. Dy. Commissioner (L R.)

Sub : Declaration of age at the time of entry into Government service by the Tahsildars.

At the time of their Superannuation representations are submitted by some Tahsildars for correction on the basis of horoscopes or solemnly affirmed affidavit, of their date of birth which was noted in the records of the office of the Junior Land Reforms Officer when they entered into Government service as Tahsildars. Such prayers for correction of age are not allowed and the date of birth as recorded in the Junior Land Reforms Officer's office is only acceptable.

It has however been decided that henceforth all new recruits in the post of Tahsildar will be required to file a declaration of age supported by documentary evidence as prescribed in Rule 9 of the W. B. S. R., Part-I. It is accordingly requested that the procedure laid down in Rule 9 of the W. B. S. R. Part-I in the case of appointment of all new Tahsildars may be followed and proper verification of the declaration of age insisted upon by the appointing authorities.

Sd/- J. N. Mukherjee Secretary Board of Revenue, West Bengal

d) Government of West Bengal Office of the Board of Revenue, West Bengal, Section-A, Tdr. Branch No. 13171 (15) Tdr. Dated, Calcutta, the 30th July, 1975

To

The Additional District Magistrate (L. R.).....

The Additional Deputy Commissioner (L. R.).....

Sub : Recruitment of Tahsildars-Principles to be followed.

Ref : Board's Memo. Nos. 3742 (15)-Tdr. dated 13.3.73 and 15736 (15) Tdr. dated 9.7.74.

The question of giving some relief to the families of deceased or retired Tahsildars by way of employment of their dependent as Tahsildars has been under consideration of the Board for some time past.

It has since been decided that in the matter of selection of candidates for the posts of Tahsildars, preference should be given to the dependents of deceased or retired Tahsildars subject to their having requisite qualifications as laid down in Board's Memo dated the 9th July, 1974, referred to above.

It has also been decided that the benefit of such preference should be extended to any one of the dependent of a deceased or retired Tahsildar who died in harness or retired on or after 1.4.72 provided the said Tahsildar had an unblemished service record from the point of honesty and integrity.

Sd. Illegible Dy. Secretary, Board of Revenue, West Bengal

(e) Government of West Bengal Board of Revenue, West Bengal Section-E Branch.

No. 9297 (1) DE dated 5.5.73

To

The Collector, Hooghly.

Sub: Promotion of Muharris and Tahsildars to the Post of L. D. Clerk.

The question of promotion of Muhurirs and Tahsildars of the post of L.D. Clerk had been under consideration of this Govt. for some time past. It had since been decided in consultation with the Finance Department of this Govt. that not more than 20% of the vacancies in the posts of L.D. Clerk (revised scale of pay Rs. 230-425) in offices under the administration control of the Board of Revenue and the L.U. & R and Land & Land Revenue Department where recruit item is not made through the P. S. C. shall be filled up by promotion of Muhurirs and Tahsildars (revised scale of pay Rs. 180-350/-) provided.

They possess pass certificate of School Final Examination or its equivalent. They have rendered at least ten years of satisfactory service and preference should be given to those who know typing.

This supersedes all previous orders issued by the Board of Revenue, West Bengal in this respect.

This order issues with the concurrence of the Finance Department vide their U.O. No. VI 1353 dated 13.7.72,

Sd/- Illegible Secretary, Board of Revenue, Spl. Secretary L.U. & R. & L. L. L. R. Deptt. Govt. of West Bengal.

f) Government of West Bengal Finance Department Audit Branch, No. 6329-F Dated, Calcutta, the 6th June, 1978

MEMORANDUM

Sub : Grant of Interim Relief to whole time employees of the Government on fixed remuneration of less than Rs. 100/- per month, Dafadars/Chowkidars, Tahsildars/Tahasil Peon on fixed remuneration.

After careful consideration of the Interim recommendations of the pay Commission on Dearness allowances submitted on 25th May, 1978 the Governor is pleased to decide that, with effect from 1.4.78 and until further orders, all whole time employees of Government on fixed remuneration of less than Rs. 100/- per month, Dafadars/Chowkidars, Tahsildars/Tahsil Peons on fixed remuneration shall be given an interim relief @ Rs. 10/- per month.

Sd/- M. G. Kutty Secretary, Finance Department Government of West Bengal.

23. In view of the directions as contained in the memorandums, read along with the terms of the agreement, it can be observed that ultimate direction, control and supervision, over the employment or non-employment of a Tahsildar, rests with the Government and they determine the terms of Service and Conditions of employment of Tahsildars. As such, they would be entitled as holders of Civil Posts to protections under Article 311 (2) of the Constitution of India, if they are dismissed or removed or reduced in rank, during the pendency of the agreement, as and by way of penalty. I further find and held as above and more particularly in respect of holding of a Civil Post by a Tahsildar, as for all practical purposes, he is appointed by the State Government and payment to him is also made through or by the State Government or at their instance and his terms of service and conditions of employment in some respects are governed by the West Bengal Service Rules, Part-I, and in the agreement itself, it has also been prescribed that for many purposes, he would be treated as Class III Government Servant. The memorandums, as referred to hereinbefore, also in my view, do establish that a Tahsildar, under the State of West Bengal, although appointed under an agreement, could be entitled to several and many benefits available and admissible to a Government Servant. There is also no doubt that a Tahsildar is paid out of the State fund and that in my view, also supports the view, which I have taken. I also find as above, since the power of appointment, the power of taking disciplinary action and the power to specify the other conditions of Service of Tahsildar, are vested in the State. The State Government, in the case of a Tahsildar is really the master, and that also inspires me to hold as above, following my other reasonings in *Manik Gopal -Vs- State of West Bengal* (Supra). In view of the above and the attending circumstances as disclosed from the pleadings and the other memorandums as mentioned hereinbefore, so also the terms of the concerned agreement, I hold that a Tahsildar holds a Civil Post, and he would ordinarily be entitled to the necessary protections of Article 311 (2).

24. Apart from the above, I also agree with and follow the determinations in *Kalipada Ghose -Vs- Sub-Divisional Officer, Vishnupur & Ors.* (Supra), that the contractual clause does not cover a case and Article 311 (2) would come into play and operation, when removal from service would be on charges of misconduct, which includes amongst others misappropriation and tampering of records. The above determinations, in my view would be effective, if steps or actions as mentioned above are taken during the pendency or subsistence of the agreement, but not when the agreement in question has an automatic or due lapse, which appropriately is the case in this proceeding. I am further of the view that in view of such lapse of the agreement, this Court would not be entitled to direct the issue of a writ of or a writ in the nature of *Mandamus*, asking the Respondents concerned, to have a fresh agreement executed with the petitioner.

25. For the reasons as above, I hold that Tahsildars hold Civil Post under the State and in appropriate cases, they would be entitled to protections under Article 311(2) of the Constitution and more particularly when steps and actions are taken and the Rule is obtained during the pendency or subsistence of the

tenure of service or the agreement. Since the test as mentioned hereinbefore, are not satisfied in this case, even in spite of my findings as above, I have no other alternative, but to dismiss the application and as such I discharge the Rule. There will be no order as to costs. As mentioned hereinbefore, I should restate that nothing in this order will affect the pending criminal proceeding against the petitioner.