
(1960) 01 CAL CK 0014
In the Calcutta High Court

Jagadish Chandra Bhadra

APPELLANT

Vs

Budge Budge Municipality

RESPONDENT

Date of Decision : 05-01-1960

Acts Referred:

Constitution of India, 1950 — Article 310, 311

Citation : (1962) 2 LLJ 549

Hon'ble Judges : D.N. Sinha, J

Bench : Single Bench

Judgement

D.N. Sinha, J.—The facts of this case are shortly as follows. The petitioner was appointed by the commissioners of Budge Badge Municipality, as secretary to the said municipality. His scale of pay was in excess of Rs. 200 per month and the appointment was duly confirmed by the Government of West Bengal, under the provisions of Section 66(2), proviso (ii), of the Bengal Municipal Act, 1932 (hereinafter referred to as the "Act"). The appointment was made in December 1950 on a probation for six months. After the expiry of the probationary period, the commissioners at a special meeting held on 17 August 1951 purported not to confirm the petitioner, and further purported to dispense with his service, with effect from 20 August 1951 on the ground that his service was considered as unsatisfactory. The matter then went up to Government which gave a ruling that the proceedings held on 17 August 1951 was contrary to law and the resolution was annulled and the commissioners were directed to reinstate the petitioner with further instruction that if the municipality desires to discharge him, it should be done in accordance with the law. The petitioner was accordingly reinstated. The municipality was superseded by a governmental order, on and from 28 July 1952 and remained under an administrator or administrators up till 30 April 1955. It appears that, in between this period, sometime in December 1952, the administrator confirmed the petitioner in his service. At a special requisition meeting of the commissioners of the said municipality held on 23 November 1957, which was attended by eight out of the twelve commissioners, a resolution was passed dismissing the petitioner from service. What had happened was that

certain incidents happened in January 1957, and a chargesheet was issued against the petitioner, a copy whereof is annexed at pp. 36 and 37 of the annexures to the petition. The charges consisted of insubordination, misconduct, incompetence and lack of manner. The petitioner did give an explanation which was forwarded to the commissioners. The position, therefore, is that the commissioners in their meeting held on 23 November 1957 had the explanation to the chargesheet before them, but there was no farther inquiry or opportunity for hearing given to the petitioner. The resolution dismissing the petitioner from service was passed unanimously by the commissioners, who constituted more than two-thirds of the total number of members. Section 66(2)(ii) lays down that no appointment carrying a monthly salary of more than Rs. 200 should be created without the sanction of the State Government and every dismissal from such a post shall be subject to the confirmation by the State Government. As I have already said, the petitioner was drawing a salary of more than Rs. 200 per month. Accordingly the resolution was sent to Government for confirmation. In the meantime, the commissioners, being apprehensive that the resolution dated 23 November 1957 may not be in order, passed another resolution dated 8 April 1958 at a special meeting held on that date. This was also forwarded for confirmation. Government, after considering the two resolutions, came to the conclusion that the resolution of 23 November was quite in order, and the second resolution was not competent. By its communication dated 22 September 1958 Government confirmed and gave its consent to the resolution dated the 23 November 1957 whereby the petitioner was dismissed. I might mention here also that the District Magistrate had tried to settle the dispute by asking the petitioner to express his regret and apologize, but it appears that the petitioner had not apologized in time, and, therefore, the commissioners were not agreeable to accept the same. So far as the District Magistrate was concerned, his opinion was that the dismissal should not have been made. The Government, however, did not accept his views. It is upon these facts that this application has been made challenging the order of dismissal.

2. It has been argued that the petitioner, being employed by the municipal corporation, must be treated as to be a civil servant, that is to say, a servant employed by Government, and consequently, the provisions of Article 311 of the Constitution are attracted, and no order of dismissal could be made without proper departmental inquiry, or in any event without giving the petitioner an opportunity of being heard in his defence. If, of course, the petitioner is a civil servant, governed by Article 311 of the Constitution, then it is not disputed that no inquiry was held, nor any opportunity was given to the petitioner to be heard, so far as the commissioners are concerned. It appears, however, that the matter was considered at the ministerial level and the petitioner was given an opportunity of being heard and the governmental order was made after hearing him.

3. The point to be determined is as to whether the petitioner can be called a "civil servant" in terms of the expression as used under Article 311(2) of the

Constitution. Mr. Chakraborty, appearing on behalf of the petitioner, has cited to me a Divisional Bench judgment of the Allahabad High Court in Prabhu Lal Upadhyaya Vs. Dist. Board and Another . In that case, Harries, J., stated that in his view, officers of district boards were public officials and were "in a sense Government servants." The learned Judge held that the officers of district boards were part of the machinery of Self-Government, as provided under the Local Self Government Act, in this case, the U.P. District Boards Act, 1922. it was only from this point of view that the learned Judge held that officers of a district board were "in a sense Government servants" or "something akin to such servants," and that no valid distinction could be made between Government servants in the true sense of the word, and persons in the position of the plain tiff in that case, serving a local body created by statute for the purpose of Local Self-Government. A similar view was expressed by Bhide J., in Malik Narain Das v. District Board, Jhang AIR 1940 Lah. 71. It was also a base of an officer of a district board. In both these cases, the point at issue was whether the official concerned held his office "at the pleasure" of his employer. From this, Mr. Chakraborty argues that an employee of the municipal corporation is in a sense a public Servant and must also be considered as a civil servant under Article 311 of the Constitution. While these cases dealt with the legal position in respect of officers employed in aid of Local Self-Government, we have a case, S.D. Mathur Vs. Municipal Board, Agra and Another, , where it has been held that the principle embodied under Article 310 of the Constitution cannot be made applicable to statutory bodies, as for instance, a municipal board or to an administrator, who are the creation of an Act. It has been pointed out that a statutory body has to act in accordance with the terms of the statute of its incorporation. In matters of appointment, dismissal or termination of service, it is to act in accordance with the provisions of the statute, and unless there is a provision in the statute which directs that something should be done in respect of such actions, it cannot be claimed as a matter of right. In my opinion, this decision comes much nearer to the facts of this case. I think, however, that the point is now completely covered by a decision of this Court by Bose, J., in Bibhuti Bhusan Ghosh Vs. Damodar Valley Corporation and Others, ; it was held that the Damodar Valley Corporation, having been incorporated under the Damodar Valley Corporation Act, must be governed by its provisions. It was further held that there was nothing in the Damodar Valley Corporation Act which made it incumbent on the corporation to make regulations imposing a duty on the corporation to hold a judicial or a quasi-judicial inquiry into the charges of misconduct of its officers. There was, therefore, no duty either express or implied, to act in accordance with the provisions of Article 311 in matters of dismissal of its employees and a writ could not issue. A similar view has been expressed by the Supreme Court in Maulana Abdul Shakur Vs. Rikhab Chand and Another, . This case related to an election. A certain person who was appointed under an Act relating to the Madrasa Durga Khwaja Sahib Akbari of Ajmer, stood at an election and was elected. His election was challenged on the ground that he held an office of profit under Government. It was held that he did not, because he was an officer created under a statute. It

was pointed out by Kapur, J., that the test is whether the person concerned was appointed by the Government or was removable by Government or was paid out of the revenues of Government. The mere fact that the Government has certain incidental powers of control did not affect the question. This principle was affirmed in *Raja Bahadur K.C. Deo Bhanj Vs. Raghunath Misra and Others*, . It is unnecessary to multiply authorities, because it seems to me firmly established now that an employee appointed under the provisions of a statute, by a statutory body, cannot be called a Government servant or a civil servant governed by Article 311(2) of the Constitution. The test to be applied is as to whether the person was appointed by Government, whether he was removable by Government or whether his pay and emoluments came out of the Government exchequer or out of the revenues of the State.

4. Coming to the facts of this case, it appears that none of these tests can be satisfied. The commissioners of the municipality are a body corporate, formed under the provisions of the Act. The appointment is made by the commissioners or by the Chairman, as authorized by the commissioners, in terms of Section 66(1) of the said Act. The appointment in the cadre of the petitioner, drawing a salary of more than Rs. 200 per month, requires the sanction of the State Government and a dismissal is subject to confirmation by the State Government. This does not make Government, either the appointing or the dismissing authority. It might be said to be the sanctioning or confirming authority. The logical conclusion is that the petitioner must be held to be an employee of a statutory corporation and, solely governed by the statute of its incorporation, or the rules made thereunder. As he is not a civil servant, that is to say, a Government servant, he cannot claim the protection of Article 311(2) of the Constitution. Coming now to the provisions of the Act, the situation is met by the provision of Section 66(2)(ii). All that is required is that the dismissal shall be made by the commissioners, Subject to confirmation by the State Government. In this case the order of dismissal was confirmed by the State Government. The provision of Section 66(2)(iii) may also be said to have been satisfied, because the resolution was passed at a special meeting and had the consent of the State Government. Indeed the requisite number of commissioners were present, who voted for the resolution, by which the petitioner was dismissed. As Mr. Majumdar has argued, all that we are concerned with in the case of a statutory corporation, is to be satisfied that the order of dismissal has been done in accordance with the provisions of the statute or any rules made thereunder. It appears to me that the provisions of the statute in this particular case have been satisfied. So far as the rules are concerned, it appears that even prior to the coming into operation of the Municipal Act, 1932, the model rules had been adopted. Under the model rules in vogue under 1932 Act, all that is necessary is to call for an explanation from the employee and to consider the explanation. There is no provision for granting a hearing. It is, however, not dear from the materials before me whether the model rules under the 1932 Act were adopted in this particular municipality, consequently, it is not necessary to consider the rules at all. Of

course, if the model rules are in operation, the provisions are satisfied, inasmuch as an explanation had been called for and considered. The result is that the commissioners have complied with the law in the matter of the dismissal of the petitioner, and I find no reason for interference.

5. The result is that this application must fail. The rule is discharged. Interim order, if any, is vacated. There will be no order as to costs.