
(1987) 05 KAR CK 0005

In the Karnataka High Court

Case No : Writ Petition No's. 4388 to 4405 of 1987 etc.

K.V. Kundgol and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 13-05-1987

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 15
Constitution of India, 1950 — Article 14, 16, 21, 226, 309

Citation : (1987) 3 KarLJ 653 : (1988) 1 LLJ 379

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Judgement

1. All these petitions are connected as the reliefs prayed for are common. In all these petitions, the petitioners have sought for the following reliefs :

(a) Issue a writ of Certiorari or any other appropriate writ, order or direction, quashing the select list Annexure-G) in so far as it relates to the selection of respondents 14 to 167, as the selection of the said respondents is illegal, untenable and cannot be sustained, and violative of Articles 14, 16 and 21 of the Constitution of India.

(b) Issue a writ of Mandamus or any other appropriate writ, order or direction directing the respondents 1 to 13 to continue the petitioners as Mandal Panchayat Secretaries in the respective Mandal Panchayats or in any other Mandal Panchayat in their respective Districts where the petitioners have been working with all the consequential benefits which they are entitled to."

2. (1) Petitioners are Secretaries of the Village Panchayats established and constituted under the provisions of the Karnataka Village Panchayats and Local Board Act, 1959, which has been repealed by the Karnataka Act No. 20/85 (hereinafter be referred to as the Repealed Act").

(2) The respondents are common to all these petitions. Respondents 1 to 13 are represented by learned Government Pleader, Sri Devadas. Notice is not ordered

to the remaining respondents as these petitions are heard only on the question of maintainability.

3. Having regard to the contentions urged on the question of maintainability of these Writ Petitions, the points that arise for consideration are :

1) Whether the Post of a Secretary of a Village Panchayat is a civil post under the State ?

2) If so, having regard to the provisions contained in Section 15 of the Administrative Tribunals Act, 1985 (Central Act 13/85), whether it is open to the petitioners to seek relief under Article 226 of the Constitution of India ?

4. I have heard Sri K. Subbarao, learned Counsel appearing for the petitioners, and Sri N. Devadas, learned High Court Government Pleader for respondents 1 to 13.

5. (1) Point No. 1 :- The post of a Secretary of a Village Panchayat is a civil post in contrast to the posts relating to defence service and posts connected with the defence. It is a post concerning the civil administration and the affairs to the State. Therefore, there is no difficulty whatsoever in holding that the post of a Secretary of a Village Panchayat is a civil post.

(2) The next question for consideration is whether this civil post is a post under the State. In this connection, it has to be remembered that a post under the State means a post or office to which duties in connection with the affairs of the State are attached. Similarly, a person holding a post under the State means a person serving or employed under the State. A Secretary of a Village Panchayat discharges the duties in connection with the administration of a Village Panchayat, which is an institution concerned with the administration of a Village and the matters connected therewith as per the provisions of the Repealed Act. Village Administration is undoubtedly one of the affairs of the State.

(3) The post of a Secretary of a Village Panchayat is created under the Statute. Section 80 of the Repealed Act provides that every Panchayat shall have a Secretary who shall be appointed by the Commissioner in accordance with such Rules as may be prescribed. Sub-section (2) thereof further provides that subject to the provisions of Rules made under the proviso to Article 309 of the Constitution, the qualifications, powers, duties, remuneration and conditions of service including disciplinary matters of such Secretary shall be such as may be prescribed.

Sub-section (3) thereof further provides that Government may, by general or special order, entrust such other duties as it may specify the Secretary and he shall carry out those duties. On such entrustment, the expenditure on account of the salary and allowances of the Secretary shall be apportioned between the Panchayat or Panchayats and the Government in such manner as may be prescribed.

(4) It is not necessary to refer to the history relating to the post of Secretary of a Village Panchayat prior to the coming into force of the Repealed Act. Prior to it several enactments were in force. Accordingly, the posts of Village Panchayat Secretaries were governed by different Rules that were in force in different areas that have been integrated into one State i.e., State of Karnataka, as a consequence of Reorganisation of States. On the coming into force of the common enactment i.e., the Repealed Act, all the other similar Acts in force came to be repealed. For our purpose, it is sufficient if we refer to the Rules framed under the Repealed Act because as per the proviso to Rule 3 of the "1970 Rules" inserted by the Notification dated 7th November 1977 bearing No. RDC 52 VET 71, published in the Gazette of 10th November 1977, the persons who were recruited under the Bombay Village Panchayats (Panchayat Secretaries) (Conditions of Service) Rules 1948 shall be deemed to have been appointed under the 1970 Rules framed under the Repealed Act.

6. The Rules that came to be framed under the Repealed Act, for the first time in the year 1962, were known as the Mysore Local Government Service (Panchayat Secretaries Branch) (Cadre and Recruitment) Rules, 1962, (hereinafter referred to as "1962 Rules"). These Rules were framed in exercise of the powers conferred under Sections 210 and 221 of the Repealed Act by the State Government. Section 210 of the repealed Act provided for framing Rules. Section 221 of the repealed Act provided that notwithstanding anything contained in any law for the time being in force, such posts under any Panchayat or Taluka Board as might be specified by the Government, shall be filled by appointment of officers belonging to the Karnataka Local Government Service. Section 223 of the repealed Act provided for creation of Local Government Establishment Fund to meet the expenditure in respect of salaries, allowances, pensions, Provident Fund etc., required to be paid to the Panchayat Secretaries and to the Officers belonging to Karnataka Local Government Service. It was pursuant to these provisions "1962 Rules" were framed introducing the Karnataka Local Government Service. Under the "1962 Rules" the post of Secretary of a Village Panchayat was classified as belonging to Class-III Service of the State Civil Service. This Class III Service of Secretaries of Village Panchayats consisted of several grades such as Grade-I, Grade-II and Grade-III. Posting of Secretaries belonging to these grades were made according to the income of the Panchayat. Grade-I and Grade-II posts were Division-wise posts and Grade III posts were only those posts which were held by the Village Accountants as Ex-officio Panchayat Secretaries. The selection was to be made by the Screening Committee constituted for each District. The General rules of Recruitment known as Karnataka Civil Services (General Recruitment) Rules, 1957, Karnataka Government Servants' Conduct Rules, 1957 and Karnataka Civil Services Rules, 1958, were also made applicable to the services of a Secretary of a Village Panchayat. Thus, under the "1962 Rules", the post of the Panchayat Secretary was a post belonging to the Karnataka Local Government Service, which was governed by the Rules framed by the State. The selection was to be made by the

Committee and the other conditions of service were governed by the rules framed under Article 309 of the Constitution. Thus the post of a Village Panchayat Secretary was a civil post under the State.

7. The "1962 Rules" came to be repealed by the Karnataka Panchayat (Secretaries) (Cadre and Recruitment) Rules, 1970 (hereinafter referred to as "1970 rules"). No doubt the "1970 Rules" repealed the Karnataka Local Government Service (Panchayat Secretaries Branch) (Cadre and Recruitment) Rules, 1962, and abolished the Karnataka Local Government Service (Panchayat Secretaries) Branch; but nevertheless the character of the post as the one under the State continued to remain. The cadre of Panchayat Secretaries was made the district-wise cadre. The selection was to be made by the Committee consisting of Deputy Commissioner of the District, District Development Assistant to the Deputy Commissioner, district Social Welfare Officer, and Assistant Commissioner of the Revenue Sub-division. The Deputy Commissioner was the Chairman of the Committee and the District Development Assistant was the Secretary. The selection was to be approved by the Commissioner. It was on his approval, the appointment was to be made. The Karnataka State Civil Service (General Recruitment) Rules, 1957, Karnataka Government Servants' Conduct Rules, 1957 and the Karnataka Civil Services Rules, 1958 were also made applicable to the Panchayat Secretaries. The salaries and other emoluments were to be met out of the fund created u/s 223 of the Repealed Act. Thus, "1970 Rules" also did not bring any change in the character of the post of the Secretary of Village Panchayat. It continued to be the post created by the Repealed Act and the appointments were to be made as per Rules framed under the Statute and also the Rules framed under Article 309 of the Constitution. Thus the post continued to be controlled by the State Government and its officials including selection and appointment. Not only this, even the manner and method of doing the work by the Panchayat Secretary was also controlled by the State Government as provided u/s 80 of the Repealed Act. There was no relationship of master and servant between a Village Panchayat Committee and Village Panchayat Secretary. A Village Panchayat Committee had neither power of appointment nor a power of removal. The service of a Village Panchayat Secretary was transeferable. It was controlled by the State through its officials. Thus, the necessary indicia were present for holding that the post of a Secretary of Panchayat, was a post under the State.

8. In this connection, it is relevant to notice the decision of the Supreme Court in *State of Assam and Others Vs. Shri Kanak Chandra Dutta*, While dealing with the expression "Civil Post" occurring in Articles 310 and 311 of the Constitution, the Supreme Court has observed at p. 290 thus :

"A posts is a service or employment. A person holding a post under a State is a person serving or employed under the State There is relationship of master and servant between the State and a person said to be holding a post under it. The existence of this relationship is indicated by the State" is right 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 his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of those indicia in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post."

9. The decision in the aforesaid Kanak Chandra Dutta's case has been followed in State of Gujarat and Others Vs. Raman Lal Keshav Lal and Others, in which it has been held that the true test for determination of the question whether a person is holding a civil post or is a member of the Civil Service of the State is the existence of a relationship of master and servant between the State and the person holding a post under it and that the existence of such relationship is dependent 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 by it of his wages and remuneration. 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.

10. In the aforesaid Mathuradas case, the Supreme Court was considering the question as to whether the post of a Secretary of Village Panchayat under the Gujarat Panchayats Act, 1962 was a Civil Post under the State. Having regard to the provisions contained u/s 203 of the Gujarat Panchayat Act, 1962 it was held that the post of Secretary of the Panchayat was a post under the State. Section 203 of the Gujarat Panchayats Act, 1962 provided for constituting panchayat service for discharging the functions and duties of panchayats in connection with the affairs of the Panchayat, distinct from the State service. Section 203 of the Gujarat Panchayats Act also further provided for selection and appointment of the Secretary by the Rules framed under the Act by the State Government. On referring to several provisions of the Gujarat Panchayats Act, 1962, and the relevant Rules made thereunder the Supreme Court held that the post of a Panchayat Secretary under the Gujarat Panchayats Act 1962 was the post under the State Civil Service.

11. The question again came up before the Supreme Court under the very Gujarat Panchayats Act, 1962 in relation to the very same question in the case of State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, The Constitution Bench of the Supreme Court reiterated what had been stated in Mathuradas case (supra).

12. In the instant case as it is already pointed out, the post was created under the Statute by the State. The appointment to the post was made by the Commissioner on the basis of the selection made by the Committee constituted under the Rules framed by the State. The administrative control vested with the State, the Panchayat Secretary was not liable to be removed by the Panchayat Committee. He could be removed only by the Disciplinary Authority constituted

under the Karnataka Civil Services (CCA) Rules. The mode and method of work was also controlled by the State. Payment of salary was made out of the special fund created in this regard. Thus, the post of Secretary of a Panchayat under the Repealed Act was under the State and the person appointed to that post was to discharge duties, perform function in connection with the affairs of the Panchayat which were no other than the affairs connected with the affairs of the State in as much as in accordance with the mandate contained Article 40 of the Constitution, the State should take steps to organise Village Panchayats and endow them with such powers and authority as might be necessary to enable them to function as units of self-Government. Thus one of the affairs of the State was and is to establish and encourage self-Government by organising Village Panchayats throughout the State and endowing them with such powers and authority as might be necessary to enable them to function as a self-Government. It was in implementation of this Constitutional direction the Panchayats were constituted under the provisions of the Repealed Act.

13. Thus, from an point of view, it is not possible to accept the contention of the learned Government Pleader that the post of Village Panchayat Secretary is not a post under the State service and it is a post under the Panchayat Committee. Learned Government Pleader submits that there is no relationship of master and servant and the salary is not paid out of the consolidated fund of the State and the Secretary is not entitled to a pension. It is already pointed out that there exists a relationship of master and servant between the State and the person holding the post of a Secretary of Village Panchayat. No doubt the salary is paid out of the fund which is specially created u/s 223 of the Repealed Act to which the State Government also contributes and that fund is under the control of the State Government. The question as to whether the Secretary of the Panchayat is entitled to a pension or not is not relevant for the purpose of determination as to whether the post of Panchayat Secretary is civil post under the State. It is not necessary that every post belonging to, or borne on a civil service of the State or a person holding a civil post, under the State, must carry or be eligible to, a pension. As long as it is a post connected with the affairs of the State and created and controlled by the State Government and there is a relationship of master and servant between the State and the incumbent of the post, it is sufficient to hold that such a post is civil post under the State.

14. Accordingly, Point No. 1 is answered as follows : "The post of a Secretary of Village Panchayats is a civil post under the State".

15. Point No. 2. As per the provisions contained in the Administrative Tribunals Act, 1985 (Central Act No. 13 of 85), the State Administrative Tribunal has been constituted. u/s 15 of the Act, the State Administrative Tribunal is entitled to deal with all service matters pertaining to service in connection with the affairs of the State. The relevant provisions are contained in Section 15(a) and (b) of the Central Act 13 of 1985. I have already held that the post of Secretary of a Village Panchayat is a civil post under the State. Clause (b) of sub-section (1) of Section

15 of the Central Act No. 13/85 specifically provides that save as otherwise expressly provided under the Act, the Administrative Tribunal for the State shall exercise on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all Courts (except the Supreme Court) in relation to recruitment and matters concerning recruitment, to any civil service of the State or to any civil post under the State and to all service matters concerning a person not being a person referred to in clause (c) of sub section (1) of Section 15 or a member, person or civilian referred to in clause (b) of sub-section (1) of Section 14 appointed to any civil service of the State or any Civil post under the State and pertaining to the service of such person in connection with the affairs of the State or any local or any other authority under the control of the State Government or of any Corporation or Society owned or controlled by the State Government. In the instant case, the post of Secretary of Panchayat, apart from being a civil post under the State, is also connected with the affairs of the local authority namely, the Village Panchayat under the control of the State. That being so, the matters pertaining to service of a Panchayat Secretary are to be dealt with by the State Administrative Tribunal. In such an event, the jurisdiction of the High Court under Article 226 of the Constitution is excluded. Therefore, the reliefs sought for in these petitions have to be sought before the State Administrative Tribunal.

16. For the reasons stated above Point No. 2 is answered as follows : "As the post of Secretary of a Village Panchayat is a civil post under the State the matters connected with such service are required to be dealt with by the State Administrative Tribunal. The petitioners have to seek the reliefs sought for in these petitions, before the State Administrative Tribunal".

17. For the reasons stated above, these petitions are not maintainable. Accordingly, they are dismissed without going into the merits of the case. It is open to the petitioners to approach the State Administrative Tribunal for appropriate reliefs.

18. In view of the findings recorded on points Nos. 1 and 2 the contentions raised by the petitioners that they have become Mandal Panchayat Secretaries under the proviso to Section 317 of the Karnataka Act No. 20/85 is left open to be urged before the State Administrative Tribunal because that is a matter which is connected with the service conditions of a Panchayat Secretary.