

(1970) 12 GAU CK 0002

In the Gauhati High Court

Case No : Civil Writ Application Case No. 13 of 1968

Laisram Tombi Singh

APPELLANT

Vs

L. Gopal Singh and another

RESPONDENT

Date of Decision : 11-12-1970

Acts Referred:

Constitution of India, 1950 — Article 226, 309, 310, 310(2), 311
Government of India Act, 1935 — Section 240(1)

Citation : (1970) 12 GAU CK 0002

Hon'ble Judges : R.S. Bindra, J.C.

Bench : Single Bench

Advocate : S. Somorendra Singh, for the Appellant; N. Ibotombi Singh, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Bindra, J.C.

1. This is a petition under Article 226 of the Constitution by L. Tombi Singh praying that the order dated 24-7-1968 by which the Superintendent of Police, Manipur, respondent No. 1 herein, terminated his services as Chowkidar of village Khangabok should be quashed by a writ of certiorari.

2. According to the allegations made by the petitioner, his father L. Tomal Singh was the Chowkidar of Khangabok until the middle of 1967 when he (Tomal Singh) was taken ill and he happened to officiate as Chowkidar vice his father. Even after the death of Tomal Singh in September, 1967, the petitioner, it is pleaded, continued to officiate as Chowkidar until 20th of May, 1968. By a public notice dated 2-3-1968 the officer in charge of the Police Station, Thoubal, called upon the residents of the village Khangabok to elect a new Chowkidar and he fixed 20th of March 1968 as the date for the purpose. As a result of the election held, the petitioner was appointed Chowkidar with effect from 21-5-1968 by the Superintendent of Police. Almost about two months thereafter, to be precise on 24-7-1968, the Superintendent of Police passed an order terminating the

services of the petitioner with effect from 1-8-1968. It was for the reason, as stated in the writ petition, that the dismissal of the petitioner from his earlier post of a Police constable in Manipur was upheld in the Writ Petition To. 3 of 1961 filed by him in the Court of the Judicial Commissioner. The order dated 24-7-1968, it is claimed, is illegal, without jurisdiction and in violation of the constitutional provisions.

3. The respondents, who are the Superintendent of Police, Manipur, and the Union of India, denied in the counter affidavit filed on their behalf that the removal of the petitioner as Chowkidar violates any provision of the Constitution or it suffers from any other legal infirmity. It was however admitted that the petitioner officiated as Chowkidar before the election was held consequent on the death of his father, the previous Chowkidar, and that on the basis of that election the petitioner was appointed as the new Chowkidar, though, it was added, he had scored second position in the election. The petitioner, according to respondents, had secured 404 votes as against 526 secured by one N. Tombi Singh. Despite his second position in the poll, it was alleged, the petitioner was appointed temporarily as Chowkidar as he "was likely to serve better than Shri N. Tombi Singh." However, the respondents stated further, subsequently it was learnt that the petitioner was a dismissed constable and on that account his services were terminated and vice him N. Tombi Singh, who had secured the highest votes in the poll, was appointed as Chowkidar. It was alleged that the office" of Chowkidar is a part time job carrying remuneration of Rs. 15/- per mensem and that the incumbent of the office is not a Government servant. It was alleged further that though it is a long standing practice that Chowkidars are appointed by the Superintendent of Police on the basis of elections by the residents of the villages concerned, but there are no prescribed rules governing such appointments. In Para. 7 of the counter affidavit the respondents stated that a village Chowkidar usually renders assistance to the Police in maintaining law and order within his jurisdiction under the direct control and supervision of the Police Department and that since the petitioner was found to be a dismissed Police constable it was considered undesirable to retain him in office. It was further stated that at the time of his appointment as Chowkidar, the petitioner had suppressed the fact about his dismissal as Police Constable.

4. The petitioner alleged in his rejoinder that he had been informed by his counsel that the village Chowkidar in the Union Territory of Manipur holds a civil post and as such the impugned order is hit by Article 311 of the Constitution.

5. Shri Somorendra Singh, representing the petitioner, and Shri N. Ibotombi Singh, appearing on behalf of the respondents, were agreed at the time of arguments that the fate of the writ petition hangs by reply to the question whether or not the Chowkidar holds a civil post within the meaning of that expression as used in Art. 311 of the Constitution. If it is a civil post then the removal of the petitioner from the office would violate Article 311, for admittedly no compliance with the provisions thereof had been made before the impugned

order was passed.

6. The expression "civil post" is not defined in the Constitution or anywhere else though its exact connotation has been the subject of discussion in a large number of authorities including those of the Supreme Court. The latest judgment of the Supreme Court on the subject is reported in *State of Assam and Others Vs. Shri Kanak Chandra Dutta*, . The relevant passage of the judgment reads as under :--

(1) In the context of Articles 309, 310 and 311, a post denotes an office. A person who holds a civil post under a State holds "office", during the pleasure of the Governor of the State, except as expressly provided by the Constitution, see Article 310. A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position, to which a person is appointed and which may exist apart from and independently of the holder of the post. Article 310 (2) contemplates that a post may be abolished and a person holding a post may be required to vacate the post, and it emphasises the idea of a post existing apart from the holder of the post. A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual labourer is not the holder of the post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed to the post.

The most important words in this excerpt are that a post may exist apart from and independently of the holder of the post," and that Article 310 (2) "emphasises the idea of a post existing apart from the holder of the post." Another equally important sentence in the excerpt is: "A post is an employment but every employment is not a post." The burden of establishing that the petitioner was incumbent of a civil post rested squarely on him, and if he fails to convince this Court that he was holding a civil post the writ petition will fail ipso facto. All that his counsel could urge to support the contention that a Chowkidar holds a post was that the office of Chowkidar in the villages of Manipur has been in existence since the year 1891 and that some monthly emoluments are attached to the office. However, Shri Somorendra Singh very fairly conceded that the appointments of Chowkidars are made not in terms of any law but on the authority of certain executive instructions. The payment of some remuneration by the Government to a person for the services rendered to it by him is certainly not the test for declaring him as the holder of a civil post. The Supreme Court has very unambiguously observed in the case of the *State of Assam and Others Vs. Shri Kanak Chandra Dutta*, , that a casual labourer is not the holder of a post. AIR 1955 Pepsu 25, *Kartar Singh v. State of Pepsu*, is an authority for the proposition that Article 311 does not apply to the contingency staff since they are employed not in regular service and they are paid for the period for which they actually work. To the same effect is the authority reported in AIR 1959 Tri 21, *Mahendralal v. Union Territory of Tripura*. Therefore, payment of remuneration for

the work done is not a decisive factor in determining whether the person concerned holds a post.

7. Apart from the two facts that office of Chowkidar is elective and that the incumbent is paid some remuneration for the help that he renders to the Police Department, Shri Somorendra Singh was unable to contend, much less prove, that the Government has created any posts of Chowkidars in the Territory or that Chowkidars are entitled to privileges and are subject to discipline usually associated with the Government servant in the regular employment of the Government. It was admitted by him, as stated above, that institution of Chowkidars came into being in the year 1891 on the basis of certain executive instructions issued by the Police Department. It is therefore fantastic to suggest that Chowkidar holds a civil post in Manipur when it is manifest that he has not to attend any office regularly, nor has he to render any work on each day the offices of the Government remain open during the year, nor, again, he is to take leave if he moves out of the village or falls ill. There is not a little of material on the record to establish that Chowkidars are entitled to any pension or gratuity or are governed by Fundamental Rules to which the Government employees are subject. Therefore, on the present record it is not possible to agree with Shri Somorendra Singh that the petitioner held any civil post when his services as a Chowkidar were terminated by respondent No. 1. I may emphasise that the Supreme Court held in the case cited above that a post under the State means a post under the administrative control of the State. Since, however, there is no data to show that the Chowkidars are subject to such control, the contention of the petitioner must fail.

7A. Posts in a State, speaking generally, are created on the authority of some statutory law or rule, or by the Head of State, or some Head of the Department or some other State official to whom necessary authority may be delegated by the Head of the State. Employment of an individual on behalf of a State does not necessarily mean that he is employed against a post or he is holding a post. Hence, no anomaly is involved in the statement that one is in the employment of the State without holding a post under the State. Before an individual can lay claim of holding a post, he has to prove that there is a post in existence and that he is the incumbent thereof. Judged by these tests the petitioner Tombi Singh has miserably failed in establishing that there is any post of Chowkidar in village Khangabok.

8. In fairness to Shri Somorendra Singh a passing reference must be made to the two authorities cited by him at the bar. The first one is reported in *Brojo Gopal Sarkar Vs. Commissioner of Police and Another*, . There it was held that a person holding the office of a Special Constable, appointed u/s 12 of the Calcutta Suburban Police Act, 1866, by the Commissioner of Police, Calcutta, holds a "civil post" under the State within the meaning of Article 311 of the Constitution, despite the fact that such a constable does not enjoy any remuneration and has to arrange uniform at his own cost. The decision in the case rested on Section 13

of the Act of 1866, which provides that every special police officer appointed u/s 12 of the Act shall have the same powers, privileges and protection and shall be liable to perform the same duties, and shall be amenable to the same penalties and be subordinate to the same authorities as the ordinary officers of Police. The High Court observed that Section 13 makes it clear that the status of a special constable appointed u/s 12 of the Act is for all practical purposes the same as that of an ordinary officer of the police force excepting that he renders his services without remuneration and he pays for his own uniform. It was stated further that Section 13 confers on the special constable the same powers, privileges and protection which are available to an ordinary police officer, and that since an ordinary officer of the regular police force, is entitled to the protection of Article 311 of the Constitution that protection is available to the special police constable as well. The Calcutta case is clearly distinguishable on facts. The appointment of the special constable is made under the provisions of an Act and his privileges and obligations are specifically stated statutorily to be the same as those of the regular police personnel in the State.

9. The second authority cited by Shri Somendra Singh is Mohammad Matteen Qidwai Vs. The Governor-General in Council, . In that case it was held that the word "civil" used before the word "post" in Section 240 (1) of the Government of India Act 1935, which corresponds with Article 311 of the Constitution, is clearly meant to distinguish posts in the Defence Forces, and that the words "civil post" cannot be confined merely to posts which are borne on the cadre of any regularly constituted service. All posts held by public servants, the High Court observed further, if the posts do not belong to the Military Department or the Defence Forces, must be deemed to be civil posts under the Crown. These observations are clearly unexceptionable, but at the same time they furnish no solution to the point that has arisen for determination in the case in hand. That question is whether a Chowkidar in the Union Territory of Manipur holds a civil post. The Supreme Court held in the case of State of Assam (supra) that it is a question of fact in each case whether there is a relationship of master and servant between the State and the alleged holder of a post. The data on the present record is altogether insufficient to establish such a relationship between the petitioner and the State and so it can be stated without demur that the petitioner has failed to prove that he was a holder of any civil post.

10. In the result, the writ petition fails and so is dismissed. However, I make no order as to costs.