
(1966) 07 AHC CK 0005
In the Allahabad High Court

Lakhan Lal

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 27-07-1966

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1968) 1 LLJ 43

Hon'ble Judges : D.D. Seth, J;B. Dayal, J

Bench : Division Bench

Judgement

B. Dayal, J.—This is a second appeal by the plaintiff whose services were terminated by the Collector and he filed a suit which has given rise to this appeal for a declaration that the order of the Collector dated 33 October 1958 terminating his services was void, ineffective and was not binding upon the plaintiff.

2. The facts of the case are not in dispute, that the plaintiff had been employed several times by the collector of Fatehpur as an extra typist according to the needs at the time and was paid out of contingency funds. In 1958 several charges were framed against the plaintiff and they were enquired into. The collector came to the conclusion that all the charges were proved against him and before coming to that conclusion a full opportunity was given to the plaintiff. After coming to the conclusion that the charges had been proved, the collector observed as follows:

As discussed above I find that all the charges except charges 3 and 7 are proved against Lakhan Lal. He is found guilty of failure to discharge his duty properly. He is a temporary hand and an outsider and is not an approved candidate even for paid apprenticeship. In view of the above observations it would not be desirable in the interest of Government work to retain his services any longer. His services are, therefore, terminated with effect from 1 November 1958....

3. On behalf of the defendant the main contention was that the plaintiff was not

a civil servant and was not entitled to the benefits of Article 311 of the Constitution. The reason for this contention was that he had been employed by the collector according to his discretion to be paid out of contingency fund. The plaintiff was not employed on any Government post and was not under the control of the Government either for appointment or dismissal. He was therefore, not a Government servant at all and Article 311 had no application to his case. Both the Courts below have accepted that defence and have dismissed the plaintiff's suit against which the present second appeal has been filed.

4. The learned single Judge who first heard the appeal was doubtful about this matter and hence referred it to a Division Bench. We have gone through the relevant papers and we find that the Courts below were right in coming to the conclusion that the plaintiff was not a Government servant holding a civil post. In *Lachmi and Others Vs. Military Secretary to the Governor of Bihar and Another*, , Chief Justice Das and Justice Imam held:

The expression "civil post under a State" means that the post is under the control of the State, that is, the State can abolish the post if it so desires, or the State can regulate the conditions subject to which the post is or will be held. The real test, therefore, is the immediate or ultimate control which is exercised by the State with regard to the post in question.

We respectfully agree with that observation and in the present case, as observed by the collector, the plaintiff was not even an approved apprentice and could not possibly have been employed in any post by the Government. His assistance was taken by the collector, according to his own personal discretion, who paid him as remuneration what he considered proper out of contingency fund. We, therefore, agree with the Courts below that the plaintiff was not entitled to the protection of Article 311 of the Constitution.

5. The learned Counsel for the appellant contended that since he worked according to the instructions of the Collector and did the work of the Government and was paid out of funds belonging to the Government, he must be deemed to be a civil servant within the meaning of Article 311 of the Constitution. He relied upon *Mohammad Matteen Qidwai Vs. The Governor-General in Council*, . That was a case of a railway servant and the only question decided in the case was that the word "civil" under Article 311 was used as opposed to "military." That was not a case in which temporary assistance was taken by an officer without appointing the person to any post under the rules of the Government.

6. Reliance was also placed upon *State of Uttar Pradesh v. A.N. Singh* AIR 1985 S.C. 360. That was a case of tahsildars appointed by the treasurers. These tahsildars were appointed under rules framed by the Government and they had to be paid according to the rules framed by the Government. Determination of their services was also under the control of the collector according to the rules. We do not think that the principle laid down in this case has any application to the present case. In the present case the appellant was not governed by any

rules framed by the Government. The Collector merely took his assistance as a typist whenever he found it necessary and paid him what he considered proper. He was not governed by any rules framed by the State Government and it cannot be said that he was appointed to any civil post by the Collector.

7. We, therefore, see no force in this appeal and dismiss the same but in view of all the circumstances we think parties should bear their own costs in all the Courts.