
(1962) 12 CAL CK 0022
In the Calcutta High Court
Case No : A.F.O.O. No. 270 of 1957

Lokenath Bhattacharjee

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-12-1962

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : AIR 1963 Cal 481

Hon'ble Judges : H.K. Bose, C.J;G.K. Mitter, J

Bench : Division Bench

Advocate : Arun Prokash Chatterjee, for the Appellant; N.C. Chakraborty and Nirmal Chakraborty for Respondents Nos. 2 to 4 and Amiya Kumar Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Mitter, J.—This is an appeal from the dismissal of a writ petition under Article 226 of the Constitution asking for the issue of a Rule on the Union of India, the State of West Bengal and others to show cause why the respondents should not forbear from changing the conditions of service of the petitioner which prevailed during his employment in the State of Cooch Bihar in respect of pay and continuity.

2. The appellant's case is as follows: He was a permanent clerk in the Cooch Bihar Military Department from 1944. After the merger of the said State with the State of West Bengal in the year 1950 he was absorbed in the Rehabilitation Department of Cooch Bihar on May 9, 1950. In or about April 1952 he was chosen by a Selection Committee for absorption of surplus clerks in the Co-operative Department of the Government of West Bengal and has since then been functioning as such. He received a letter of appointment bearing date April 7, 1954 to the effect that his appointment would be treated as a new one and the Government of West Bengal would not have any pensionary liability for his past services. His complaint is that this was unauthorised and illegal.

3. The petitioner refers to the agreement between the Governor General of India and the Maharaja of Cooch Bihar dated August 28, 1949 according to Article VIII of which the Government of India guaranteed either the continuance in service of the permanent members of the Public Services of Cooch Bihar on conditions which would be not less advantageous than those on which they were serving before the date on which the administration of Cooch Bihar was made over to the Government of India or the payment of reasonable compensation. According to the petitioner in pursuance of the said agreement the Government of India had directed its Army Headquarters to make arrangements to absorb as many Officers and other ranks of the Cooch Bihar State Force as possible into the Indian Army and such persons as were not found suitable for or were not willing to join the Indian Army were either to be absorbed in the Police Force or given other suitable employment or discharged in accordance with the existing State Force Rules for mustering out. The petitioner refers to an order No. I-F of the Government of West Bengal, Finance Department dated January 1, 1950 which provided inter alia that (a) all posts existing in Cooch Bihar immediately before the merger with the State of West Bengal would continue after the merger until further orders, (b) all persons who immediately before the merger were holding posts sanctioned by a competent authority in Cooch Bihar would continue to hold the same posts until further orders on the same pay and on the same terms and (c) all such persons would, subject to selection by a suitable agency appointed in that behalf and also subject to the requirements of the administration, be absorbed in the service of the Government of West Bengal on the terms and conditions prevailing under the said Government. The petitioner was not discharged in accordance with the existing State Force Rules for mustering out but was absorbed in the Rehabilitation Department of Cooch Bihar on May 9, 1950. The sheet anchor of the petitioner's case is a memorandum of the Government of West Bengal dated June 10, 1953, a copy whereof forms annexure "F" to the petition. It is necessary to set out a portion of the same in order to examine the contention of the appellant that it contains a Rule framed by the Governor of West Bengal under Article 309 of the Constitution of India. The relevant portion is as follows:

"A question has arisen as to how the services rendered under the Cooch Bihar State Government of those personnel who have since been brought under a permanent pensionable service under the Government of West Bengal shall be treated for the purpose of pension. In keeping with the terms of the agreement made between the Maharaja of Cooch Bihar and the Government of India and of this Department Order No. I-F dated 1-1-1950, the Governor has been pleased to direct that an employee of the late Cooch Bihar State Government who has been permanently absorbed into any service or post under the Government of West Bengal will have all the permanent and/or temporary service rendered under the State prior to merger treated as permanent and/or temporary service, rendered under the Government of West Bengal."

4. The petitioner complains that the order of appointment issued to him in April

1954 was

"in flagrant disrespect and illegal contradiction to solemn agreement between the Maharaja of Cooch Bihar and the Government of India".

Having failed to get redress by representations to the authorities he was compelled to move a petition before this Court. The first ground taken in the petition but abandoned before the Court of Appeal is that the respondents had violated and contravened the solemn agreement between the Maharaja of Cooch Bihar and the Government of India by failing to maintain the continuity of the petitioner's service. The ground pressed before us is that the terms of the letter of appointment contradict the provisions of annexure "F" to the petition.

5. An affidavit-in-opposition on behalf of respondents Nos. 2, 3 and 4 was affirmed by one Narendra Krishna Pal, the Special Officer and Ex-Officio Assistant Secretary, Home (Transfer) Department of the Government of West Bengal at the relevant time. According to this deponent the petitioner was at all material times a member of the Cooch Bihar State Force and as such the Order I-F dated January 1, 1950 had no application to his case. Reference is made to a memorandum dated May 17, 1992 from the Deputy Commissioner of Cooch Bihar to the deponent giving a list of surplus personnel of the Cooch Bihar State Force. There the petitioner is known as a jamadar head clerk, Cooch Bihar State Force Training Centre in the I. S. F. Central Section of Administration fit for absorption as a lower division clerk. The deponent states that the responsibility with regard to members of the Cooch Bihar State Force which came under the Central Sector of the Administration was that of the Defence Department of the Government of India and as such the Government of West Bengal had no responsibility either to provide the petitioner who was in Indian State Force personnel with a post under it or to give him suitable compensation in lieu thereof. With regard to annexure "F" to the petition the deponent's case is that it applied only to those persons to whom the order I-F dated January 1, 1950 applied and the petitioner was not one of such persons.

6. So far as the rights based on the agreement between the Maharaja of Cooch Bihar and the Government of India are concerned Sinha, J. held that these were not justiciable in a municipal Court and the learned Advocate for the appellant conceded before us that this is so. The learned Judge further referred to a communication dated April 17, 1950 from the Head quarters of the Cooch Bihar State Force to the Administrator of Cooch Bihar giving a list of persons who were unwilling to join the Indian Army and the petitioner was one of them. According to the learned Judge even assuming that by the treaty mentioned above the appellant was entitled to continue in the position he enjoyed before the merger of the Cooch Bihar neither the Indian Union nor the State of West Bengal had any responsibility for finding employment for the petitioner on his expressing unwillingness to join the Indian Army. Before us the learned Advocate for the appellant contended that the Cooch Bihar State Force was divided into two parts, namely, Indian State Force and the Non-Indian State Force and that the

appellant was a member of the latter force. As such it was argued that the appellant's unwillingness to join the Indian Army was not material and that in reality he held a civil post to which the orders of January 1, 1950 and June 10, 1953 applied.

7. On the materials before us it is not possible to say that the learned Judge came to wrong conclusion. Even assuming that the appellant held a civil post to which the orders of January I, 1950 and June 10, 1953 applied the appellant has no cause for complaint. The order of January 1, 1950 only provided for the continuance of the posts when existing in the Cooch Bihar State immediately before the merger in the post-merger period. The employees of the State were to hold the same posts on the same pay and on the same terms until further orders and their absorption in the service of the Government of West Bengal was to be subject to the requirement of the administration as well as selection by a suitable agency on the terms and conditions prevailing under the Government of West Bengal. Under this order a person formerly employed in the Cooch Bihar State Force and later absorbed in the service of the Government of West Bengal could not insist on the continuity of his service with regard to pension and other amenities as sought for by the appellant. The memorandum of June 10, 1953 only suggests that persons who had a "ready been absorbed in any service or post under the Government of West Bengal would be entitled to have all the service rendered to the State of Cooch Bihar prior to merger, whether permanent or temporary, as service to the Government of West Bengal specially in regard to pension. The appellant who had not been absorbed in the service of the GOV-I eminent of West Bengal before June 10, 1953 could not rely on the memorandum of the said date as giving him the right to continuity in service. On the face of it the memorandum relates only to persons who had been permanently absorbed in posts under the Government of West Bengal before that date.

8. It was argued before us that the memorandum should be considered as declaratory of the rights of persons who had formerly been employed by the State of Cooch Bihar and absorbed in any permanent post in West Bengal after merger of the said State with the State of West Bengal irrespective of the date of absorption. In other words the memorandum declared the policy of the Government of West Bengal with regard to the said class of persons.

9. I find myself unable to accept this interpretation of the memorandum. There is no reason why it should be held to be declaratory of the rights of all persons at one time employed by the State of Cooch Bihar and later absorbed in the service of the Government of West Bengal.

10. I am also unable to accept the argument that Annexure "F" contains a Rule regulating the recruitment and the conditions of service of persons appointed within the meaning of Article 309 of the Constitution. No doubt Annexure "F" purports to show that it was brought into existence by order of the Governor and signed by the Secretary to the Government of West Bengal but it is a far-cry to

say that any direction which concerns the conditions of service of some persons in the employ of a State by order of the Governor must be considered as a Rule within the meaning of Article 309. Some argument was advanced as to whether the rule making power of the Governor is an executive power or legislative power, But, in my opinion, it is not necessary to examine that question on the facts of this case. Some degree of formality is always observed whenever Rules are framed under Article 309 and Rules so made always patently show that such rule making power was being exercised. One cannot ignore how Annexure "F" came into existence. The very opening sentence of the document shows that it was made to resolve the doubt which had been felt by the Finance Department of the State of West Bengal with regard to persons who had been brought under permanent pensionable service of the State and had prior thereto served the Coach Bihar State Government. In my opinion, Annexure "F" contains merely an administrative direction and cannot be equated with a Rule framed under Article 309 of the Constitution.

11. In the case before us the appellant is governed by the letter of appointment dated April 7, 1954 which clearly shows that his past services were not to be reckoned for the purpose of pension.

12. The appeal, therefore, fails and must be dismissed.

13. There will be no order as to costs.

Bose, C.J.

14. I agree.