
(1957) 06 CAL CK 0025
In the Calcutta High Court
Case No : Civil Revn. No. 4081 of 1954

Lokenath Bhattacharjee

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-06-1957

Acts Referred:

Constitution of India, 1950 — Article 226, 363
Evidence Act, 1872 — Section 115

Citation : AIR 1957 Cal 576

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Arun Prokash Chatterjee, for the Appellant; Binayak Nath Banerjee, for No. 1 and J. Majumdar, for Nos. 2 to 4, for the Respondent

Judgement

Sinha, J.—The petitioner, Lokenath Battacharjee, was a permanent clerk in the Cooch Behar State Forces. He entered service sometime in June 1944. It is admitted that he was employed in the Military Department of the State of Cooch Behar and as a matter of fact his name is duly entered in the Sheet Roll for Combatants, which shows him as a member of the Cooch Behar State Forces, his regimental No. being 1221. His rank is shown as "Head Clerk". In August 1949, there was a treaty between the Maharaja of Cooch Behar and the Governor Genera] of India, representing thp Government of India by the treaty, the Government of India, inter alia, guaranteed either the continuance in service of the permanent members of the public servant of Cooch Behar on condition which will not be less advantageous than those on which they were serving before the date on which the administration of Cooch Bihar is made over to thp Government of India, or the payment of reasonable compensation. The Government of India further guaranteed the continuance of pensions and leave salaries to State servants who had already retired or proceeded on leave preparatory to retirement. On or about the 1st January, 1950 the State of Cooch Behar merged with the State of West Bengal. On or about the same time, an order was issued by the Government of West Bengal in its Finance Department (Audit) being No. 1-

F dated the 1st January, 1950, in which it was, inter alia, laid down that all posts existing in Cooch Behar immediately before the merger will continue after the merger until further orders were made regarding the continuance, abolition; etc.. of such posts, it was further stated that all incumbents of such posts would, subject to selection by a suitable agency appointed in this behalf and subject to the requirement of the administration, be absorbed in the service of the Government of West Bengal on terms and conditions prevailing under the Government of West Bengal. The entire order was further subject to the concluding clause which stated that the order applied to posts and personnel and to pensions and leave salaries concerning that sector of the administration which will be taken over by the Provincial Government, being in connection with the affairs of the province, it has been, argued before me that the petitioner is entitled to take advantage of the treaty and the order mentioned above, and that he is entitled to the benefits provided therein. So far as the treaty is concerned, that is not justiciable in a Municipal Court. This is an aspect of the Question which I shall deal with presently. So far as the provincial order is concerned, it is extremely doubtful whether it applies to members of the Cooch Behar Army. In any event, there is no "express mention therein of members of the Cooch Behar State Forces, and as to how they should be dealt with. As was to be expected, there has arisen a conflict of views on the subject, and in fact there is a dispute between the Indian Union and the State of West Bengal as to upon whom and in what manner devolved the duty of making provisions for absorbing the clerical staff of the Cooch Behar State Forces. From the documents before me, it appears that the dispute has not yet been resolved". We find however that there has been from time to time correspondence passing between the Indian Union and the State Government, and it appears that the State Government has made a sincere effort to do what it can to absorb members of the clerical staff of the Cooch Behar State Forces, such as have been approved by a committee of selection which has been appointed for that purpose. Naturally Mr. Chatterjee on behalf of the petitioner has relied on some of the correspondence which is in his client's favour. For example, he refers to the letter dated the 17th September, 1949, written by the Deputy Secretary of the Government of India to the Chief Commissioner of Cooch Behar. In this letter, the Chief Commissioner has been informed that consequent upon the Cooch Behar administration being, taken over by the Government of India, Army Head Quarters of India has been asked to make arrangement to absorb as many officers of other ranks of the Cooch Behar State Forces, into the Indian Army. It was further stated that such personnel as are not found suitable for absorption, or are not willing to join the Indian Army, will either be absorbed into the Police Force or other suitable employment or discharged in accordance with the "existing State Forces Rules, in my opinion, this request for absorption into the Police or other forces, or some other suitable employment is merely a request. But be that as it may, the important thing is that the Cooch Behar Authorities seem to have asked such employees to express their opinion as to whether they were willing to join the Indian Army. The Head Quarters of the Cooch Behar State

Forces sent a communication dated the 17th April, 1950, to the Administrator of Cooch Behar, giving a list of persons who were unwilling to join the Indian Army, and the petitioner's name appeared in the list. In my opinion, this is a very important document for the purposes of this application. Assuming that by the treaty or by the order, the petitioner was entitled to be continued in the position that he enjoyed before the merger, it is clear that at this stage he expressed his unwillingness to continue as such. In my opinion, neither the Indian Union, nor the State of West Bengal, had any responsibility for the petitioner after this blunt refusal to continue in the Indian Army. By some process of reasoning which is obscure to me, the petitioner thinks that he has a right to project his army career into the civil department of the West Bengal Government. "That is not supported by anything that has been placed before me. To continue the history of this case, I might state that the West Bengal Government, although unwilling to accept the position that it had any legal liability to absorb the surplus personnel of the State Forces of Cooch Behar. did make an attempt to do so to the extent, that at was possible. As I have stated above, a committee was appointed and the petitioner appeared before the committee and was appointed as a lower division clerk in the Relief and Rehabilitation Department under the Deputy Commissioner. Cooch Behar, on or about the 8th May, 1950. There is a dispute as to whether this appointment was temporary or permanent. Regard being had to the extent, it clearly appears to be a temporary appointment, until some permanent solution could be achieved with regard to this very difficult problem of absorption of surplus personnel, as mentioned above.

2. It appears that sometime in March 1953 the petitioner was finally appointed as a lower division clerk in the office of the Assistant Registrar, Co-operative Society, Darjeeling-Jalpaiguri. Although he was appointed as long as March 1953. he never joined the post, and has not done so yet. In or about 15th May, 1952, there was a Home Department Notification which laid down that appointments which have been made to provide for surplus personnel out of the State Forces of Cooch Behar would be on a particular footing. The incumbents must come in at the lowest grade and will be treated as outsiders, that is to say. as new appointees and their services during the Cooch Behar regime will not be counted for the purposes of pension, etc. This, in fact is the grievance of the petitioner in this application. Although he has not joined the appointment which has been made in March 1953, it is said that he is willing to join provided that his service, during the Cooch Behar regime is counted for the purpose of pension, etc. This the "respondents are not willing to do. There have been subsequent notifications and there has been slight improvement in the position of persons placed in the position of the petitioner. Although they are to start in the lowest grade, some provision has been made for making up the scale of pay, the Balance being treated as personal pay. We are not however directly concerned with this question. The only question that we are concerned with, being, whether or not the petitioner is entitled as a matter of right to compel the respondents to treat" his services during the Cooch Behar regime as services for the purpose of

pension, etc. Mr. Chatterjee has drawn my attention to several letters including one which is annexure "F". dated the 10th June, 1953, and ha has argued that the position is that the petitioner must be considered as being in the pay and service of the West Bengal Government right from the beginning of his service, for the purpose of calculating pension, etc. He says that any other course would be detrimental to the interests of the petitioner inasmuch as he would be Placed in a position worse than he would have been if there was no merger.

3. In my opinion, the petitioner's case is untenable. Apart from any other reason, the principal reason for which this application must fail is that the petitioner expressed his unwillingness to continue in the Indian Army, and therefore there is no question of his being placed in the same position as he was before the merger. However we interpret the documents, circulars or orders concerned, none of them establish that it is possible for, the personnel in, the Army or Military Services to be continued in the civil service, or for the army Career to be tacked on to the career in a civil post. That being so, the very foundation of this application fails. Apart from, this, there are other objections. The first objection is that no citizen is entitled to enforce a treaty between the high contracting parties. That is laid down ^n Article 363 of the Constitution, and also in the Supreme Court decision, Maharaj Umeg Singh and Others Vs. The State of Bombay and Others, (A), and in the earlier case, State of Seraikella Vs. Union of India (UOI) and Another, (B). Mr. Chatterjee has drawn my attention to the Supreme Court decision Virendra Singh and Others Vs. The State of Uttar Pradesh, (C), where it has been laid down that it is possible for a party to a treaty to waive its rights, and in that case certain rights under a treaty may be justiciable. Assuming that this is the correct principle, it is not applicable to the facts of this case, in this case, there has been no waiver, to bring the rights under the treaty within the jurisdiction of the Municipal Courts. All that happened was that a series of correspondence has passed between the Centre and the State, and as I have mentioned above the dispute is not settled yet. Mere request or expression of opinion cannot amount to waiver on the part of the high contracting parties, in derogation of its rights under the treaty. In any event, I do not find in any of the documents placed before me anything that would amount to a statutory rule or a provision of law which confers rights upon the petitioner in aid of the prayers made in this petition. Some are circular orders of the State Government in its Finance Department, and others are requests by one authority to another. In my opinion, none of this amounts to any statutory provision. As I have mentioned above, even if the treaty or the so-called order of the 1st January, 1950, can be treated as conferring certain rights upon the petitioner, he has forfeited his rights to claim benefit thereunder, because of his unwillingness to continue in the Army service of India. After such expression of unwillingness, neither the Indian Union, nor the State, has any further responsibility in respect of the petitioner. In my view, the State Government has really gone out of its way to confer certain benefits on the petitioner, but it is certainly out of the question to issue a Writ of Mandamus or any high prerogative Writ at all, upon

the respondents to compel them to grant certain benefits upon the petitioner, to which he is not legally entitled.

4. The result is that this application fails and the Rule must be discharged. I make no order as to costs.