

(1958) 11 AP CK 0026
In the Andhra Pradesh High Court
Case No : Writ Petition No. 552 of 1955

M. Yugandhra Rao

APPELLANT

Vs

The Govt. of Andhra and Another

RESPONDENT

Date of Decision : 18-11-1958

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : AIR 1959 AP 506

Hon'ble Judges : P. Chandra Reddy, C.J.; Satyanarayana Raju, J

Bench : Division Bench

Advocate : T. Dhanurbhanudu, for the Appellant; 2nd Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P. Chandra Reddy, C.J.—This petition under Article 226 of the Constitution is directed against the discharge of the petitioner from service.

2. The petitioner was appointed an Executive Officer (Grade III) of the Pamidi Panchayat on 5th June 1952. While he was working as the Executive Officer of Penukonda Panchayat, it was discovered that he committed several irregularities in the discharge of his duties and also misappropriated funds, falsified accounts and manipulated the records. Pending further action against him, he was suspended. On 17th February 1954, charges were framed and served on the petitioner and he was called upon to explain.

The petitioner in reply stated that, due to inexperience, he committed the irregularities pointed out and prayed that he might be condoned and continued in service. On a consideration of the explanation offered by the petitioner, the Inspector-

General of Local Boards discharged him from service on 21st June, 1955. It is to quash this order that the jurisdiction of this court under Article 226 of the Constitution is invoked.

3. The main ground of attack against the order is that the petitioner was not afforded the second opportunity as contemplated by Article 311(2) of the Constitution. The question for consideration is whether the petitioner is one who is entitled to the benefits of Article 311. Article 311 guarantees against a member of a Civil Service of the Union or an All India Service or a Civil Service of a State from being dismissed or removed by an authority subordinate to that by which he was appointed and also without being given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him, if it was proposed to dismiss or remove or reduce in rank. The problem to be solved is whether an executive officer of a panchayat is "a member of a Civil Service of a State" falling within the purview of Article 311.

4. It is urged by Sri Dhanurbhanudu that an executive officer should be regarded as a holder of civil post for the reason that he was appointed by the Government and that rules were framed by the Government governing the conditions of his service. If a person is appointed to any post by the Government, it follows that he holds a civil post, contends Sri Dhanurbhanudu. We do not think we can give effect to this contention. It is not the factum of appointment by an agency that determines the character of the post that one holds. Though the petitioner's appointment was made by the Government, still he was in the employ of the Municipality.

It is to be noted that the salary and allowances of the executive officer of a Panchayat Board should be paid by the Panchayat Board out of its funds. His salary and allowances are not charged on the funds of the Government. That an Executive Officer of a Panchayat does not hold a civil post is clear from Section 28(5) of the Madras Village Panchayats Act, 1950 (Madras Act X of 1950). This section points out the difference between persons who were appointed for the first time as Executive Officers and those who were in the service of Government and transferred as Executive Officers.

5. Section 28(5) of the aforesaid Act is in these terms:--

(5) The Panchayat shall also make -- (a) if the executive officer is in the service of the Government such contribution towards his leave allowances, pension and provident fund as may be required by the conditions of his service under the Government to be made by him or on his behalf;

(b) if the executive officer is not in the service of the Government such contribution towards his leave allowances, pension and provident fund as may be prescribed in this behalf. Thus, every executive officer is not regarded as "a member of a civil service of a State" merely because he was appointed by the Government. He is only a servant of the Panchayat Board. u/s 30 of the Village Panchayats Act, the executive officer has to work under the Panchayat Board and carry into effect the resolutions of the panchayat. It is plain that although the Government may have supervisory jurisdiction over all the executive officers, they actually work as servants of the Panchayat Board. It is, therefore, difficult to

treat an executive officer of a Panchayat Board either as "a member of the civil service of a State" or as one "holding a civil post under the State."

6. In support of the plea that an employee of a municipality or a local board is a member of a civil service within the range and sweep of Article 311 of the Constitution, reliance is placed on Article 12 of the Constitution which reads thus:

"In this part (Part III -- Fundamental Rights) unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the Control of Government of India,"

This Article does not in any way advance the case of the petitioner any further, as it is specifically stated therein that it is only for the purpose of that Chapter (Part III-Fundamental Rights) that a local or other authority has to be regarded as "the State". This implies that a local authority cannot be described as a "State" for other purposes of the Constitution.

7. We will now turn to the definition of Article 309 in Part XIV as it stood prior to the Constitution (Seventh Amendment) Act, 1956, as that is the one which governs the present case, because the order of discharge was passed in 1955. It recites:--

"In this part, unless the context otherwise requires the expression "State" means a State specified in Part A or Part B of the First Schedule,"

It is true that by the Constitution (Seventh Amendment) Act, 1956, Article 308 was amended and after the amendment it reads:--

"In this Part, unless the context otherwise requires, the expression "State" does not include the State of Jammu and Kashmir".

So far as the definition of "State" is concerned, the amendment does not make any difference, for It was thought that Chapter XIV in which Article 308 occurs should not be made applicable to the State of Jammu and Kashmir so far as that Chapter was concerned.

8. However, we are here only concerned with the Article as it stood prior to the Constitution (Seventh Amendment) Act and it definitely stated that "State" means " a State specified in Part A or Part B of the First Schedule:" This involves the idea that Article 311 is attracted only to persons who are members of civil service of "States" as defined there or as holding civil posts under the States, which connotes the same thing, namely, that they must be in the employ of the State.

9. This view of ours is reinforced by a number of decided cases. In W. P. No. 766 of 1953 Umamaheswaram I., decided that an executive officer appointed under the provisions of the Madras Village Panchayats Act is not "a member of civil service of a State" and also does not "hold a civil post." This question also came

up for consideration before Rajagopalan J. in the Madras High Court in *Srinivasan v. President, Coimbatore District Board*, AIR 1958 Mad 211.

The learned Judge discussed this matter at some length and reached the conclusion that the petitioner therein who was an employee of the Local Board, could not invoke Article 311 of the Constitution. In *Mangal Sain Vs. The State of Punjab and Another*, a Bench of the Punjab High Court held that an employee under a Municipality did not hold a civil post under the State within the meaning of Article 311 of the Constitution, though appointed by the Government. The Calcutta High Court also expressed the same opinion in *Bibhuti Bhusan Ghosh Vs. Damodar Valley Corporation and Others*, ; and *Nagendra Kumar Roy, Assistant Executive Engineer Vs. Commrs. for the Port of Calcutta and Others*, .

A similar view was taken by the Patna High Court in *Chaturbhuj Sahai Vs. Chairman, Board of Directors, Bihar State Co-operative Bank Ltd.*, and In the matter of *In Re: Rangnath Misra*, , It follows that, an "Executive Officer" of a Panchayat does not fulfil the definition of a ""Member of a civil service of a State" or one holding a "civil post under the State" within meaning of Article 311 of the Constitution.

10. Mr. Dhanurbhanudu wanted to raise a point based on the regulations framed under the Local Boards Act, hut we do not think we could permit him to do so at this stage, having regard to the fact that this was not raised in the petition.

11. No other arguments were advanced in the case.

12. In the result, the Writ Petition fails and is dismissed with costs. Advocate"s fee is fixed at Rs. 100/-.