
(1995) 05 SC CK 0017
In the Supreme Court Of India
Case No : Civil Appeal No. 718 of 1993

R.N.A. Britto

APPELLANT

Vs

Chief Executive Officer and others

RESPONDENT

Date of Decision : 01-05-1995

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15(1)
Constitution of India, 1950 — Article 309, 310, 311
Karnataka Panchayats (Secretaries) (Cadre and Recruitment) Rules, 1970 — Rule 2, 4, 5, 6, 8
Karnataka Stat

Citation : AIR 1995 SC 1636 : (1995) 4 JT 582 : (1995) 3 SCALE 166 : (1995) 4 SCC 8 : (1995) 3 SCR 932 : (1995) 2 SLJ 222

Hon'ble Judges : N. Venkatachala, J;Kuldip Singh Singh, J

Bench : Division Bench

Advocate : S.N. Bhat, for the Appellant; M. Veerappa, for the Respondent

Final Decision : Allowed

Judgement

N. Venkatachala, J.—R.N.A. Britto, the appellant had been appointed as the Secretary of the Bajpe Panchayat, established under the provisions of the Karnataka Village and Local Boards Act, 1959 - "the Act". The Chief Executive Officer of Mangalore Taluk Development Board, Respondent-1 issued a 'Memo' dated November 4, 1986 to the appellant stating therein that his service as Secretary of the Bajpe Panchayat, had stood terminated. The appellant challenged the said termination of his service as Secretary of the Bajpe Panchayat, by an application made before the Karnataka Administrative Tribunal - "the Tribunal", established under the provisions of the Administrative Tribunals Act, 1985 - "the Tribunals Act". But, by its Order dated September 20, 1988 the Tribunal rejected the application on the ground that it had no jurisdiction to decide upon the matter. However, the appellant made an application before the Tribunal seeking review of its earlier order. That review application of the appellant was also rejected by the Tribunal by its order dated January 22, 1992,

reiterating its earlier view that it had no jurisdiction to decide on the matter of termination of the appellant's service as Secretary of a Panchayat, in that, he was not in the civil service of the State or in a civil post under the State which would have given it the jurisdiction to decide upon the matter under Clause (b) of Sub-section (1) of Section 15 of the Tribunals Act. It is the said order of the Tribunal which has been impugned by the appellant in this appeal by special leave.

2. The learned Counsel for the appellant contended that the appellant being a Secretary of a Panchayat established under the Act serving in connection with the affairs of the local authority was a State Government servant and hence the Tribunal had jurisdiction under Clause (b) of Sub-section (i) of Section 15 of the Tribunals Act to decide upon the matter relating to termination of his service as Secretary of the Panchayat. On the contrary, it was contended for the State and other respondents, that the appellant who was the Secretary of a Panchayat established under the Act was not a State Government servant and hence the Tribunal was justified in rejecting the appellant's application on its view that it had no jurisdiction to decide upon the matter of termination of his service as Secretary of Bajpe Panchayat established under the Act.

3. If regard is had to the above rival contentions urged in this appeal, the short question which needs our consideration in deciding the appeal would be the following :

Is a Secretary of a Panchayat established under the Act, a State Government servant entitled to invoke the jurisdiction of the Tribunal to decide upon the matter of termination of his service under Clause (b) of Sub-section (1) of Section 15 of the Tribunals Act?

4. All matters of a person appointed to any civil service of a State or any post under the State pertaining to his service in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation or society owned or controlled by the State Government are matters with respect to which the Tribunal could exercise its jurisdiction under Clause (b) of Sub-section (1) of Section 15 of the Tribunals Act, is not in dispute. The appellant was a Secretary of a Panchayat established under the Act and as such Secretary was serving in connection with the affairs of that Panchayat, a local authority under the control of the State Government, is also not in dispute. For, such a Secretary to invoke the jurisdiction of the Tribunal under Clause (b) of Sub-section (1) of Section 15 of the Tribunals Act for redressal of his grievance pertaining to his service in connection with the affairs of a Panchayat under the control of the State Government, must have been in the civil service of the State or in a civil post under the State, is against not in dispute. Therefore, the short question which requires our consideration is whether the appellant who was the Secretary of Bajpe Panchayat was a person appointed in civil service of the State or in the civil post under the State, as would enable him to invoke the jurisdiction of the Tribunal under Clause (b) of

Sub-section (1) of Section 15 of the Tribunals Act, for redressal of his grievance respecting termination of his service as such Secretary.

5. The view of the Tribunal, as becomes clear from its Order under appeal, is that there existed no relationship of master and servant between the State Government and the appellant even though he had been appointed as Secretary of the Bajpe Panchayat established under the Act and hence, the appellant cannot be regarded as a person appointed in the civil service of the State or in a civil post under the State, as would entitle him to invoke the jurisdiction of the Tribunal under Clause (b) of Sub-section (1) of Section 15 of the Tribunals Act for redressal of his grievance in the matter of termination of his service as Secretary of the Panchayat. It is true that a person cannot claim to be a State Government servant if he is not in the civil service of the State or in a civil post under the State envisaged in Clause (b) of Sub-section (1) of Section 15 of the Tribunals Act. Therefore, for accepting the appellant's claim that he was a State Government servant, being the Secretary of Bajpe Panchayat, we must be able to hold that every person becoming a Secretary of a Panchayat established under the Act has to be regarded as a State Govt. servant, i.e., a person in the service of the State or in the civil post under the State envisaged in Sub-section (1) of Section 15 of the Tribunals Act.

6. A member (person) in the civil service of the State or in the civil post under the State means a Government servant of the State, is the well-settled position in law ever since it was ruled by a Constitution Bench of this Court in *State of Assam and Others Vs. Shri Kanak Chandra Dutta*, , that a member in civil service of the State or in civil post under the State envisaged in Article 311 of our Constitution, was a Government servant. Indeed, there, the Constitution Bench in reaching the conclusion that *Mauzadar of Assam Valley* was in the civil service of the State or in the civil post under the State and hence was a Government servant, has adverted to the criteria or factors, which could form the basis for finding that there existed the relationship of master and servant between the Government and the person concerned, so as to make the latter a Government servant, thus :

The question is whether a *Mauzadar* is a person holding a civil post under the State within Article 311 of the Constitution. There is no formal definition of "post" and "civil post". The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Article 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State. See marginal note to Article 311. In Article 311, a member of a civil service of the Union or an all India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State. See the marginal notes to Articles

309, 310 and 311. The heading and the sub-heading of Part XIV and Chapter I emphasises the element of service. There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.

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 a 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.

Judged in this light, a Mauzadar in the Assam Valley is the holder of a civil post under the State. The State has the power and the right to select and appoint a Mauzadar and the power to suspend and dismiss him. He is a subordinate public servant working under the supervision and control of the Deputy Commissioner. He receives by way of remuneration a commission on his collections and sometimes a salary. There is a relationship of master and servant between the State and him. He holds an office on the revenue side of the administration to which specific and onerous duties in connection with the affairs of the State are attached, an office which falls vacant on the death or removal of the incumbent and which is filled up by successive appointments. He is a responsible officer exercising delegated powers of Government. Mauzadars in the Assam Valley are appointed Revenue Officers an ex-officio Assistant Settlement Officers. Originally, A Mauzadar may have been a revenue farmer and an independent contractor. But having regard to the existing system of his recruitment, employment and functions, he is a servant and a holder of a civil post under the State.

7. State of Gujarat and Anr. v. Roman Lal Keshav Lal Soni and Ors. : 1983CriLJ846 , is another Constitution Bench decision of this Court which requires mention. There, the question for consideration was whether members of Gujarat Panchayat Service under the Gujarat Panchayats Act, 1961 were

Government servants. In the context of examining that question, it has been stated thus :

We do not propose and indeed it is neither politic nor possible to lay down any definite test to determine when a person may be said to hold a civil post under the Government. Several factors may indicate the relationship of master and servant. None may be conclusive. On the other hand, no single factor may be considered absolutely essential. The presence of all or some of the factors, such as, the right to select for appointment, the right to appointment, the right to terminate the employment, the right to take other disciplinary action, the right to prescribe the conditions of service, the nature of the duties performed by the employee, the right to control the employee's manner and method of the work, the right to issue directions and the right to determine and the source from which wages or salary are paid and a host of such circumstances, may have to be considered to determine the existence of the relationship of master and servant. In each case, it is a question of a fact whether a person is a servant of the State or not.

8. The above excerpts reproduced from the judgments of two Constitution Benches of this Court since furnish the relevant criteria or factors which should form the basis for deciding the question as to when a person in the service of the State or in the civil post under the State, could be regarded a servant of the State (a Government servant) as envisaged in Article 311 of the Constitution, we shall regard that criteria or factors, as ought to be done, to be a proper basis to determine whether the appellant appointed as Secretary of a Panchayat is a person in service of the State or in civil post under the State envisaged under Clause (b) of Sub-section (1) of Section 15 of the Tribunals Act, a Government servant (servant of Karnataka State) and proceed accordingly.

9. As the provisions of the Act and the Rules made thereunder, which could supply the relevant criteria or factors needed in determination of the question whether a Secretary of a Panchayat under the Act could be held as Government servant, it would be necessary to advert to them.

10. Panchayats are established u/s 5 of the Act. Panchayats so established are, subject to control of Government under a duty, so far as Panchayat funds at their disposal allow, to make reasonable provision within the village in regard to various matters referred to therein, such as, construction, repair and maintenance of village roads, ponds, drains bunds, maintenance of public buildings, grazing lands and forest lands vesting in or under the control of the Panchayat and functions as may be entrusted to the Panchayats by the Government from time to time, such duty having been imposed by Section 42 of the Act. The property of the Taluk Board vested in the Panchayat becomes the property of the Panchayat and every work constructed by a Panchayat out of the Panchayat fund shall vest in the Panchayat as declared u/s 69 of the Act. Coming to the Panchayat fund, among others, the following form part of such fund :

- (a) the amount which may be allotted to the Panchayat fund by the Government under the provisions of the Act or any other Act;
- (b) the proceeds of any tax imposed by the Panchayat;
- (c) sums contributed to the Panchayat fund by the Government or a Taluk Board;
- (d) the income or proceeds of any property vesting in the Panchayat etc.

11. The Commissioner shall subject to the control and orders of the Government, be the chief controlling authority in respect of all matters relating to the administration of the Act, as envisaged by Section 196 of the Act.

12. What we have stated, being the general scheme of the Act as to the establishment of Panchayat, properties, the administrative control of the Government over the Panchayat, Sub-section (1) of Section 80 of the Act requires that every Panchayat shall have a Secretary who shall be appointed by the Commissioner in accordance with such rules as may be prescribed. Karnataka Panchayats (Secretaries) (Cadre and Recruitment) Rules, 1970 - "the Rules" are those Rules prescribed by Sub-section (1) of Section 210 of the Act. Rule 2 of the Rules states that the Panchayat Secretaries Cadre shall be districtwise cadre and the scale of pay of the Panchayat Secretaries shall be such as the Government may, from time to time, by order, specify. Sub-rule (1) of Rule 5 of the Rules provides for selection for appointment as Panchayat Secretaries by a committee consisting of the Deputy Commissioner of the District, the District Development Assistant to the Deputy Commissioner, the District Social Welfare Officer, and the Assistant Commissioner of the Revenue Sub-division concerned. Sub-rule (2) thereof states that the Deputy Commissioner shall be the Chairman of the Committee. Sub-rule (3) thereof provides for calling for applications from persons eligible under Rule 4 for appointment as Panchayat Secretaries and the Committee shall select persons found suitable for appointment and prepare a list of selected candidates and forward it to the Commissioner. Sub-rule (4) provides that the Commissioner shall, if he approves the list, publish it in the official Gazette and make appointment from the list so published in the order in which the names of persons selected are arranged. Rule 6 provides that every person appointed under Rule 5 as Panchayat Secretary shall be on probation for a period of two years and during the period of probation he should pass such tests and should successfully undergo such training envisaged thereunder. Rule 8 says that a person appointed under these Rules to any Panchayat shall be liable to be transferred to any other Panchayat in the district. Then comes Rule 9 which says except in respect of matters for which provision is made in these Rules, the provisions of the Karnataka State Civil Services (General Recruitment) Rules, 1957 shall be applicable for purposes of these Rules. Again Rule 10 says that the Karnataka Civil Services Rules, the Karnataka Civil Services (Conduct) Rules, 1966 and other rules for the time being in force regulating the conditions of service of Government servants made under the proviso to Article 309 of the

Constitution in so far as they are not inconsistent with the provisions of these Rules shall be applicable to persons to who these Rules shall apply.

13. Another significant provision is Sub-section (2) of Section 80 of the Act which says that subject to the provisions of Rules made under the proviso to Article 309 of the Constitution, the qualifications, powers, duties, remuneration and conditions of service including disciplinary matters of such Secretary shall be such as may be prescribed.

14. The provisions in the Act to which we have adverted, clearly show that several functions which were required to be performed by the State are entrusted to the Panchayats. They also show that the properties vested in the Panchayats and the funds of the Panchayat are that of the Government and those collected by way of tax or fee by exercising the power of taxation vested in the Panchayat by the Government. Above all, provisions of the Act make it abundantly clear that the Panchayats have to function under the ultimate control of the State Government. When it comes to the Secretaries of the Panchayats appointed under the Act, their selection for appointment, their termination from service, their liability for transfer and all other conditions of their services are as provided for under the Rules made under the Act or other rules made under Article 309 of the Constitution in respect of services of the State Government servants. When Sub-section (2) of Section 80 of the Act to which we have adverted states that subject to the provisions of Rules made under the proviso of Article 309 of the Constitution, the qualifications, powers, duties, remuneration and conditions of service including disciplinary matters of such Secretary shall be such as may be prescribed, it leaves no room for doubt that the Secretaries of the Panchayats are Government servants, like other Government servants, who are subjected to the Rules to be made under the proviso to Article 309 of the Constitution as regards their service conditions.

15. Thus, the provisions of the Act and the Rules, to which we have adverted to, leaves no option for us except to hold that Panchayat Secretaries under the Act are the State Government servants. If that be so, they are persons who are appointed in the civil service of the State or civil post under the State within the meaning of Clause (b) of Sub-section (1) of Section 15 of the Tribunals Act, as would enable them to invoke the jurisdiction of the Tribunal for redressal of their grievances in relation to any service matter concerning them. Hence, the Tribunal, we hold, fell into a patent error in rejecting the review application of the appellant filed before it on the ground that it had no jurisdiction to deal with the matter relating to the termination of his service as the Panchayat Secretary.

16. In the result, we allow this Civil Appeal, set aside the Order of the Tribunal under appeal, remit the case to the Karnataka Administrative Tribunal, for deciding the review application of the appellant on merits and in accordance with law. No costs.