
(1999) 02 OHC CK 0034
In the Orissa High Court
Case No : O.J.C. No. 6320 of 1998

Sarat Chandra Mohanta

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 10-02-1999

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15(2)
Constitution of India, 1950 — Article 309, 310, 310(2), 311

Citation : (1999) 87 CLT 616

Hon'ble Judges : Pradipta Ray, J;A. Pasayat, J

Bench : Division Bench

Advocate : S.N. Sinha, Sujata Dash, L.N. Mishra and M. Basu, for the Appellant;

Judgement

A. Pasayat, J.—A brief reference to the factual aspects would suffice. Petitioner was appointed on consolidated pay of Rs. 1000/- per month by the President of District Consumer Forum, Mayurbhanj by order dated 26-11-1996. Subsequently, by order dated 1-1-1997 said order dated 26-11-1996 was partially modified and it was observed that on review of his work Petitioner was found suitable for continuance in the said post on a salary of Rs. 750/- with usual D.A. and other allowances. But by order dated 30-3-1998 (Annexure-4) appointment of Petitioner was treated to be irregular being inconsistent with the guide-lines framed by the State. Reference was made to a letter dated 16-2-1998 of the Director, Food, Supplies and Consumer Welfare Department. As his appointment was treated to be irregular, Petitioner was directed to draw consolidated salary of Rs. 750/-per month till his service was regularised. Letter of the Director, Consumer Affairs-cum-Joint Secretary to Government to which reference was made in Annexure-4 is stated to be Annexure-5 to the writ application, Petitioner moved the State Administrative Tribunal (in short, the "Tribunal") in O.A. No. 972 (C)/98. It was observed by the Tribunal in order dated 13-4-1998 that maintainability of the application was to be decided. It was observed that the Consumer Redressal Forum is, prima facie, an autonomous body and no notification of the Government has been issued u/s 15 (2) of the Administrative

Tribunals Act, 1985 (in short, the Act") for bringing it within the jurisdiction of the Tribunal. Therefore, it was held to be not maintainable. It was, however, noted that the matter had come up before a Division Bench at Berhampur in 1995 and the question of jurisdiction in identical case has been "referred to a larger Bench and is pending.

2. Learned Counsel for State accepted that concerned post was created by Food, Supplies and Consumer Welfare Department. Learned Counsel for Petitioner has filed before us the guidelines, dated 3-9-1996 to which reference has been made by the Director, Consumer Affairs-cum-Joint Secretary to Government vide Annexure-5. A bare reading thereof leaves no manner of doubt that post to be filled up is a civil post. Therefore, matter was clearly entertainable by the Tribunal.

3. The Consumer Protection Act, 1996 (in, short, "Consumer Act") made provisions for establishment of different Consumer Disputes Redressal Forums in a State. But there is no provision in the said Consumer Act conferring any power on those forums or agencies to create any post for necessary staff or to appoint anybody. The power and authority for providing necessary staff, creation of posts and appointments to those post have been kept with the respective State Government. Salaries are paid by the Civil Supplies Department. The conditions of service of such staff are also regulated by the State Government. The State Government has the power and has in fact issued administrative circulars/ guidelines prescribing the procedure for selection and appointment of staff in those consumer forums. Circular No. 26465 dated September 3, 1996 confirms the said position. It is clear from the said circular that the State Government is the appointing authority of all the staff of the Consumer Forum, but it has delegated to the President of the respective District Forum its power to appoint Class IV employees in the District Forums in accordance with the procedure prescribed by the State. So far as Class III and other posts are concerned, there is no delegation and Commissioner-cum-Secretary to Government, Food, Supplies and Consumer Welfare Department is the appointing authority for such posts. The procedure for appointment has also been laid down by the aforesaid circular.

4. The Consumer Redressal Forums are independent statutory bodies in respect of their judicial power, but requirement of staff, creation or abolition of post, payment of salary appointment and dismissal of staff, Regulation of service conditions are all in the hands of the State Government. These Forums are not independent statutory Corporations or bodies in relation to their staff. Accordingly, there is no question of issuing any notification u/s 15(2) of the Act for bringing those staff within the purview of the State Administrative Tribunal.

5. In one of the earliest cases in *Prafulla Kumar Sen v. Calcutta State Transport Corporation* and *Ors.* A.I. Rule 1963 Calcutta 116 certain tests have been laid down for determination whether a post is a civil post or not. It has been laid down therein that if the State or the Union controls a post in such a manner that it can create or abolish a post or can regulate the conditions subject to which the

post is or will be held and if the Union or State pays the holder of the post out of its own funds, then a post even under a statutory Corporation will be a civil post under the State or the Union.

In the present case, all the relevant tests are satisfied and there is no doubt that the posts in the Consumer Redressal Forums are civil posts under the State Government.

6. 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, 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 in 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 Subheading 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 indicate, 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.

7. In the context of Articles 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.

8. *State of Gujarat v. Raman Lal Keshav Lal Sons*: (1983)2 S.C. C. 38: A.I. Rule 1984 S.C. 162) is another Constitution Bench decision of the Apex Court which

requires mention. There, the question for consideration was whether members of Gujarat Panchayat Service under the Gujarat Panchayat 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 fact whether a person is a servant of the State or not.

The position was dealt with in detail by one of us (Pasayat, J.) in a Full Bench decision of this Court in *Sri Adwait Chandra Jena. v. Khandahata Grama Panchayat and Ors.* 1998(II) O.L. Rule 410.

9. We direct Petitioner to appear before the Tribunal on 23-2-1999 without any further notice. It was stated that because the matter was pending here. Original Application was treated as withdrawn. The application shall be restored to file and taken up as directed by us. On the date fixed the Tribunal shall fix up a date for hearing and try to dispose of the application early as on a technical ground of jurisdiction the application was kept pending. It would be appropriate if the Tribuna) takes up the matter for early disposal.

10. The writ application is disposed of accordingly.

Pradipta Ray, J.

11. I agree.

Writ application disposed of.