
(1955) 11 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ Case No. 256 of 1954

Sher Singh

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 18-11-1955

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : AIR 1956 Raj 110 : (1956) RLW 466

Hon'ble Judges : K.N. Wanchoo, C.J;D.S. Dave, J

Bench : Division Bench

Advocate : Chandmal, for the Appellant; Kansingh, Dy. Govt. Advocate and B.K. Acharya, for Non-Petitioner No. 2, for the Appearing Parties

Final Decision : Dismissed

Judgement

Dave, J.—This is an application by one Shersingh under Article 226 of the Constitution of India and is directed against the State of Rajasthan and indersingh.

2. Non-petitioner No. 1 has not filed any reply, though the learned Deputy Government Advocate has appeared to contest the petition. Non-petitioner No. 2 has filed a reply. The facts which have given rise to the present application are as follows:

3. One Lt. Narainsingh was Chaudhari of village 17-Z in Tehsil Ganganagar. After his death in 1947, his son Gurdat Singh, his grandson Jaswantsingh and the petitioner Shersingh were candidates for appointment as Chaudhari in place of Narainsingh. On 21-12-1950, Jaswantsingh, grandson of the deceased, was appointed Chaudhari by the A. C. Ganganagar.

The petitioner Shersingh filed an appeal before the Collector Ganganagar. That appeal was allowed on 11-6-1951 (vide Ex. 1) and the petitioner was appointed Chaudhari. It appears from Ex. 2 that Jaswantsingh challenged the petitioner's appointment on the ground of his Illiteracy and participation in criminal activities

before the Additional Commissioner, Bikaner, but he was not successful and so he approached the Board of Revenue with a revision application, but, that was also dismissed with the remark that if the villagers were dissatisfied with the petitioner on account of his illiteracy or indulgence in criminal activities, they could take necessary steps for the redress of their grievances.

It appears from Ex. P.3 that after this first round of the dispute between the petitioner and Jaswantsingh was over, certain residents of Chak No. 17-Z moved another application through Sardar Indersingh non-petitioner No. 2 for the petitioner's dismissal from Chaudhariship.

That matter went up to the Commissioner who held that Shersingh should first be given a warning and if it goes unheeded, then appropriate action about his dismissal might be taken afterwards. Indersingh was not satisfied with this and so an appeal was filed before the Board of Revenue Rajasthan.

On 17-11-1953, the learned members of the Board dismissed the appeal. Thereafter, non-petitioner No. 2 moved the Revenue Minister. The Revenue Minister directed an inquiry to be made.

It appears that the officers posted in Ganganagar District were changed by this time. The Sub-divisional Magistrate, Ganganagar made a report (Ex. B) that the petitioner was an old and Illiterate man and so he recommended his removal and appointment of Indersingh in his place.

The Commissioner also made a similar report (Ex. A) to the Revenue Secretary to the Government of Rajasthan. On 24-9-1954, the Secretary to the Government of Rajasthan in the Revenue Department wrote to the Commissioner, Bikaner, that he was

"directed to say that Shri Indersingh may be appointed as Chaudhari in Chak 17-Z. Tehsil Ganganagar in place of Shri Shersingh whose reputation has been reported to be bad, as recommended by you."

4. The petitioner has contended that the said order dated 24-9-1954 is ultra vires, void and without jurisdiction because no notice of the proposed order of removal was given to him either by the Revenue Minister or by the Revenue Secretary to the Government before passing the said order.

It is urged that according to principles of natural justice as well as the rules made for dismissal of Government servants, it was obligatory on the part of the authorities to give a hearing to the petitioner. It is further urged that according to the statement of Powers, Appendix D, Revenue Department, Item 20 issued by the former Government of Bikaner, the Revenue Commissioner could sanction dismissal of Chaudhari, that after the formation of Rajasthan, that power of dismissal could be exercised by the Commissioner and appellate powers could be exercised by the Board of Revenue.

According to him, the Revenue Minister and the Revenue Secretary had no power

to dismiss the Chaudhari and, therefore, the order was without jurisdiction and void. It is also contended that the Board of Revenue having dismissed Inder Singh's appeal on 17-11-1953, the Revenue Minister had no jurisdiction to entertain any further application, that the petitioner had no bad reputation, that he has been deprived of the right of appeal, that his dismissal is in the nature of a quasi judicial proceeding and there being no alternative, adequate or efficacious remedy, a writ of certiorari or any other appropriate writ, direction or order should be issued against the State of Rajasthan declaring the order dated 24-9-1954 void and restraining the opposite parties from enforcing that order.

5. In reply, it is urged on behalf of the non-petitioners that the appointment or dismissal of a Chaudhari was purely an executive matter, that the Revenue Minister could exercise all those powers which were enjoyed by the Commissioner or Collector regarding appointment or dismissal of Chaudharis, that the Chaudhari could be removed by the Government at its pleasure since he had no vested right to remain as Chaudhari, and the application should, therefore, be dismissed.

6. The first question that arises therefore is whether the dismissal of a Chaudhari is a purely executive act or not. The learned Deputy Government Advocate has in this connection referred to the following observations in -- "Ram Jawaya Kapur v. State of Punjab", AIR (1955)42 SC 549.

"It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away."

It is urged that, dismissal of a Chaudhari is, neither a judicial nor a legislative function, and must therefore be a purely administrative or executive function.

7. There can be no doubt that it is not a legislative function. Nor can it be said that it is a judicial function. It is urged however that it is a quasi-judicial function. We may, however, say at once that a Chaudhari is a sort of agent of the Government for the collection of land revenue, for which he gets certain remuneration. Appointments and dismissals of agents of this kind can, in our opinion, only be a purely executive function, it is true that both in appointing and in dismissing such persons, the appointing or dismissing authority has to decide about their competence or otherwise for the job.

But that alone would not make the person making the appointment or dismissal of the Chaudhari a quasi-judicial tribunal, for a judicial approach is, in our opinion, not required in a matter of this kind, and it is that approach which distinguishes judicial and quasi-judicial acts from acts which are purely executive. The action therefore taken by the State in dismissing the applicant must be held to be a purely executive act.

8. The next question, which then arises, is what is the procedure to be followed

in dismissing a person like a Chaudhari. It was faintly contended on behalf of the applicant that he was a person in the civil employ of the State, and was therefore entitled to the protection provided by Article 311 of the Constitution.

It is enough to say that there is no force in this contention, and a Chaudhari appointed, under the Land Revenue Act of Bikaner is not a person in the civil employ of the State, and is not entitled to the protection of Article 311. At the same time, a distinction must be made between appointment and dismissal of a Chaudhari on persons like that.

Where there is a question of appointment, the fitness for appointment is judged by the appointing authority, and as no person has any right to the appointment, he cannot feel aggrieved if he is not appointed, and somebody else is appointed. The provision of appeal is merely for controlling the action of subordinate officers by senior officers, for appointments are generally made by junior officers.

A person, therefore, who fails to get an appointment cannot approach us in our extraordinary jurisdiction on the ground that he should have been appointed but the case of a person dismissed stands on a different footing. He holds the appointment and unless the appointment is for a temporary period, he can claim that he should not be removed unless there is some defect in him, which has been proved.

The question then is what procedure should be followed in the matter of dismissal, and what rights a person has before he is dismissed. The contention on behalf of the applicant is that he had at least a right to be heard by the Government which ordered his dismissal, and that inasmuch as he was not heard by the Government, the order of dismissal made against him should be set aside.

9. So far as judicial and quasi-judicial acts are concerned, it is well-settled that the person passing the order must give a hearing either as provided by law or rules, or on the principles of natural justice. But we feel that the same principle cannot be applied directly in matters of purely executive or administrative nature, and a person cannot insist that the authority actually passing the order must hear him before an order against him is passed.

Administrative convenience itself would be against such a right being granted to a party. For example, there are many orders which can only be passed by Government, and it can hardly be contended that before such orders are passed, the whole Cabinet should sit together and hear a party before passing an order.

In the case therefore of an executive order, all that a person can insist upon is that where there is statute or rule providing for the manner in which the case should be dealt with, that statute or rule should be followed, but where as in this case, no statute or rule has been pointed out providing the manner in which a case of dismissal of this kind should be dealt with, it is, in our opinion, enough if at some stage a hearing in some manner is given to the person against whom the order is passed by some officer on behalf of the authority passing the order.

What happened in the present case is that after Inder Singh applied to the Revenue Minister against the applicant, the application was sent down and was enquired into by the Sub-divisional Magistrate in the presence of the applicant. The Sub-divisional Magistrate made his report which was forwarded to Government after such remarks as the Collector and the Commissioner chose to make on it, and thereafter the Government decided to dismiss the applicant. The applicant, therefore, had a hearing before he was removed, and in cases of this kind, which are purely executive, and where there is no rule or law prescribing the mode of their disposal, the minimum that was necessary, namely giving a hearing in some manner has been done. The applicant, therefore, cannot say that he has been dismissed without any hearing.

10. The next point, that is urged, is that the Government had no authority to dismiss the applicant because under the Statement of Powers, Appendix D, Item No. 20, of the former State of Bikaner, a Chaudhari can be dismissed by lower government officers. There was also provision for appeal to higher officers, and the Government could not directly dismiss a Chaudhari, thus depriving him of the right of appeal.

There is, in our opinion no force in this argument. It is usual in such cases for power of appointment and dismissal to be delegated to sub-ordinate officers of Government. But such delegation does not take away the power of Government to appoint or dismiss persons directly if it so chooses to do. We are certainly surprised that this minor matter should have been dealt with at the highest level.

But it is one thing to comment on the propriety of the action, and it is quite another to decide the legality of it. So far as the legality is concerned, we have no doubt that the Government has the power to dismiss Chaudharis directly if it has time to spend on such small matters, and cares to do so in spite of the delegation made in the statement of powers referred to above. The fact that the applicant lost the right of appeal is also immaterial, for the highest authority, to which he could have gone for redress, has dismissed him.

11. There is, therefore, no force in this application, and it is hereby dismissed with costs.