

(1962) 02 CAL CK 0011

In the Calcutta High Court

Case No : Civil Revn. Case No. 765 (W) of 1961

Sm. Ena Ghosh

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 23-02-1962

Acts Referred:

Constitution of India, 1950 — Article 1, 12, 152, 308, 311

Citation : AIR 1962 Cal 420 : 66 CWN 931 : (1962) 5 FLR 387 : (1963) 1 LLJ 138

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : A.K. Dutt, Mahendra Kumar Ghosh and Asit Kumar Chaudhury, for the Appellant; J. Majumdar and Somendra Chandra Bose for Opposite Parties 1, 1(a), 3 and 5 and Nani Coomar Chakrabarty and Chittatosh Mukerjee for Opposite Parties 2 to 8, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—The facts in this case are shortly as follows: This application is in respect of the termination of the services of the petitioner as the Vice-Principal of Sarojini Naidu College for Women, Dum Dum, which is a Government-sponsored College. In order to appreciate the facts of this case, it would be necessary to go a little further back than her appointment as the Vice-Principal of the said college. Sometime prior to the 6th May, 1959 the petitioner applied for the post of a Principal of a Government-sponsored college. On that date, a letter was issued by the Director of Public " Instruction, West Bengal, asking her to appear before the Central Selection Committee, appointed for the purpose of selecting candidates for such posts. She was selected by the said committee for appointment as a Principal in a sponsored women's college and on the 9th July, 1959 the Director of Public Instruction West Bengal wrote to the President of the Governing Body, Vivekananda College Barisha that she may be appointed as a principal of that college. On the 14th July, 1959 a letter of appointment was issued to her by the Secretary of the said college. She was to remain on

probation for one year from the date of joining. She joined the post on the 1st September, 1959. On the 25th July 1960 she tendered her resignation. On the 26th July 1960! she was informed that her appointment as Principal was not going to be confirmed and she was given one month's notice. Perhaps these two letters crossed each other and On the 28th July, 1960 her letter of resignation was accepted. On the 17th September, 1960 the Director of Public Instruction West Bengal wrote to the Principal of Sarojini Naidu College for women, Dum Dum inter alia as follows:

"I beg to state that steps may be taken to let Sm. Ena Ghosh to join immediately on a temporary basis for a period of six months on such terms and conditions as will be fixed by Government, a communication on which will follow soon."

2. On the 23rd September, 1960 the Governing Body of Sarojini Naidu College for Women Dum Dum, instructed the Principal of the said college to allow the petitioner to join the said college as Vice-Principal on a temporary basis for six months on such terms and conditions, as will be fixed by Government as soon, as the Vice-Principal's post was vacated. On the 24th September, 1960 the petitioner wrote the following letter to the Principal of the said College:

"I have seen the letter of the Director of Public Instruction, West Bengal, No. 2952-C of the 17th September, 1960 asking you to take steps so that I may join as Vice-Principal of the Sarojini Naidu College for Women, Dum Dum immediately vice Sm. Leila Mahmood, on a temporary basis for six months on such terms and conditions as will be fixed by Government. I shall accept such terms and conditions as will be fixed by the Government. I shall be glad if you will allow me to join today, the 24th September 1960."

3. On the 24th September, 1960 she joined the said post. On the 28th February 1961, the Deputy Secretary to the Government of West Bengal in its Education Department wrote to the Director of Public Instruction, West Bengal that (the Governor had been pleased to approve of the appointment of the petitioner as Vice-Principal of Sarojini Naidu College for Women (sponsored) on the higher initial pay of Rs. 600/-P.M. in the scale of Rs. 500-25-750 plus usual dearness allowance, with effect from the date of joining the college. Before the term of service of the petitioner had expired on the 23rd March, 1961 the Governing Body at its meeting held on 9-3-1961 constituted a committee to report about the desirability or otherwise of the continuance of the services of the petitioner as the Vice-Principal. Pending the consideration by the Committee, the petitioner's services were extended upto 31st May 1961. On or about the 29th May 1961 the petitioner was informed that the Governing Body had again extended the period upto 60th June, 1961. On the 5th June 1961 the Governing Body resolved that the services of the petitioner would be terminated from the 31st July, 1961. The relevant resolutions are set out in a letter dated the 16th June 1961 written by the Secretary of the Governing Body to the petitioner, a copy whereof is annexure "L" to the petition. The relevant resolutions are as follows:

"Resolved;

2. That in view of the recommendation of the Enquiry Committee the service of Sm. Ena Ghosh as Vice-Principal of the Sarojini Naidu College should be terminated.

4. That in view of the recommendation of the Enquiry Committee Sm. Ena Ghosh's services as Vice-Principal in the college be extended till the 31st July 1961 so that she may find a suitable berth for herself.

5. That during the month of July, the Vice-Principal will only be in charge of the following duties:

(a) The daily cleanliness of the college.

(b) The supervision of the stock-registers.

(c) Such files as may be deputed to her by the Principal.

(d) She will take such classes as are apportioned to her by the Principal.

(4) At this stage the petitioner demanded inspection of certain papers stating that she was not informed of the constitution of the Enquiry Committee or the charges preferred against her and that she held a civil post under the State and was entitled to protection under Clauses (1) and (2) of Article 311 of the Constitution. She was informed by the Principal that she was only appointed to a temporary post for six months from the 24th September 1960 which period was extended from time to time upto July 1961. Accordingly her services would stand terminated as from the 31st July 1961. It is against this termination that this application directed.

5. The points taken on behalf of the petitioner are as follows:

1. That a Government-sponsored College like the Sarojini Naidu College for Women Dum Dum comes within the definition of "State" in Art. 12 of the Constitution and that a person holding the post of a Vice-Principal in such a College must be taken to hold a "civil post" and as such was entitled to the constitutional guarantees under Art. 311 of the Constitution.

2. That the order of termination of the petitioner's services as Vice-Principal of the said College was by way of penalty and the petitioner was not served with a charge-sheet or a show cause notice and as such the termination of her services was not in accordance with law.

3. That the appointing authority of the petitioner is the Director of Public Instruction, West Bengal and as such the Governing Body of the said College had no jurisdiction to terminate her services.

6. A point was sought to be taken at the hearing that there was a violation of Article 302 of the Constitution, but as no such ground has been taken in the petition, I have not allowed this point to be agitated. Before I proceed to

consider the above points, it will be necessary to consider the terms and conditions applicable to a "sponsored" college. What happened was that the Government proposed to "sponsor" four colleges to be started at Narikeldanga, Bon-Hooghly, Vaishnabghata and Dum Dum. The terms and conditions upon which the colleges were to be sponsored were approved in a General Order published by Government dated 31st October, 1956. Clause 1 of the terms lays down that no college will be taken up by the Government as a Sponsored College unless there was a specific request from the college Authorities to that effect. Clause 3 lays down that a number of selected colleges would be sponsored in order to provide a better standard of college education in those areas of the State where such facilities "did not exist. As the bulk of the capital expenditure, and also the annual deficit in the maintenance would be met from public funds. Government would have to take special care that the colleges were being run efficiently and that public funds were being properly utilised. "Under Clause 5, a Selection Committee was to be appointed consisting of the President of the Governing Body, the Principal and two nominees of the D.P.I Clause 9 provides for the constitution of the Governing Body, in which there are to be three nominees of the Government. Next we come to rules entitled "Rules for the guidance of sponsored colleges." Rule (B) deals with the powers, functions and duties of the governing Body. Clause (C) of the said rules lays down that all proposals involving financial liability should be submitted to Government first for approval. Clause .(f) is important and is set out below :-

"Powers of appointment, discharge" dismissal or reduction of pay etc., of teaching and clerical staff of the college shall vest in the Governing Body subject, in the case of teaching staff to the approval of Education Directorate."

Rule (D) relates to the appointment of teachers, conditions of their service etc. Clause (a) lays down that the teaching staff except the Principal will be appointed on the recommendation of a Selection Committee. Clause (b) lays down that the principal will be selected on the recommendation of the Central Selection Committee Clause (f) lays down that appointment letters will be issued by the appointing authority, viz. the Governing Body. Clause (k) lays down that an appointment is either permanent or temporary. A temporary appointment may be for a fixed period or without any fixed period. All temporary appointments, whether for a fixed period: or not will be liable to termination on one month's notice. Clause (n) provides that the services of a temporary teacher will ordinarily terminate on the expiry of the fixed period, unless extended by the Governing Body. Clause (r) provides that in the case of dismissal or suspension Or reduction of pay affecting any teacher, a full enquiry by the Governing Body should: be held. The teacher should be given a copy of the charges brought against him and afforded every reasonable opportunity of defending himself and justifying his conduct.

7. I now come to the scheme which was prepared and sanctioned by Government for the setting up of four sponsored colleges including the Sarojini Naidu College

for Women; Dum Dum. The scheme is contained in a letter sent by the Deputy Secretary to the Government of West Bengal in its Education Department, Education Branch, to the Director of Public Instruction West Bengal dated 24th July, 1956 which is based on the letter of the Deputy Secretary, Government of India to the Secretary to the Government of West Bengal in its Relief, Refugee and Rehabilitation Department dated 7th January, 1956. Under the said scheme the Central Government with the sanction of the President, was granting a loan of Rs. 33,24,000/- to the State Government on account of non-recurring expenditure, for setting up five new sponsored colleges including a college to be established at Dum Dum. This loan was repayable with interest within a period of 20 years. Sanction of the President was also given for payment to the State Government of a grant representing the entire recurring cost of the said five colleges less the amounts received as fees and other receipts during the first and second year of the setting up of the colleges, upto a ceiling of Rs. 66,000/- for each college for the first academic year and Rs. 1,00,000/- for the second academic year. For the third academic year, the grant was to be 75 per cent of the actual recurring expenditure of each college less the amounts received as fees and other receipts subject to a ceiling" of Rs. 90,000/- per college per year. For the fourth academic year the grant was to be 50 per cent of the actual recurring expenditure in each college less the amounts received as fees and other receipts subject to a ceiling of Rupees 50,000/- per college per year. For the fifth academic year the grant was to be 25 per cent of the actual recurring expenditure in each college less the amounts received by fees and other receipts subject to a ceiling of Rs. 30,000/- per college per year. From the sixth academic year onwards Government was to have no liability in respect of these colleges.

8. The position, therefore is that the Sarojini Naidu College for Women Dum Dum, was set up as a sponsored college for the purpose of relieving congestion in existing colleges, and providing educational facilities for refugees and displaced persons from East Pakistan. At first, the college was to be started in a provisional accommodation and thereafter was to be assisted to have its own building. For the first five years it was to obtain assistance from Government, but at the end of five years it would have to stand on its own feet. For these five years the total needs were not to be met by Government, but only a percentage thereof. In return, Government was to have a substantial degree of control. For example, the appointment and conditions of service of the Vice-Principal would be made with the approval of the Government.

9. It is in this background that we have to consider the points that have been taken in this case on behalf of the petitioner. Assuming for the moment that the petitioner was holding a civil post under Government, we find that she was holding a temporary post for a period of six months, which was extended from time to time, but she was never made permanent in the post of Vice-Principal. This position cannot be controverted in this case, because in her own letter dated the 24th September 1960 set out above, addressed to the Principal of the College, the petitioner admitted that she was joining her post as Vice-Principal on

a temporary basis for six months. As regards the extension, she was a consenting party to it, having accepted the benefits thereof. The position therefore is that the petitioner was in a temporary employment which expired on the 31st July, 1961. Upon the expiry of that period she ceased to be in employment, and there was no question of the applicability of Art. 311 of the Constitution. The position has been made clear by S.R. Das, C. J., in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, in the following words :

"The position may therefore be summarised as follows: In the absence of any special contract the substantive appointment to a permanent post gives the servant so appointed a right to hold the post until, under the rules he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years" service or the post is abolished and his service cannot be terminated except by way of punishment for misconduct, negligence inefficiency or any other disqualification round against him on proper enquiry after due notice to him. An appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of his tenure and his tenure cannot be put an end to during that period unless he is, by way of punishment dismissed or removed from the service. Except in these two cases the appointment to a post, permanent or temporary on probation or on an officiating basis or a substantive appointment to a temporary post gives to the servant so appointed no right to the post and his service may be terminated unless his service had ripened into what is, in the service rules, called a quasi-permanent service."

10. In this particular case, the service of the petitioner was for a specified temporary period which has expired. After the expiry of that period, she had no right to continue in service and therefore the provisions of Art. 311 cannot apply. In this view of the matter, the question as to who was the appointing authority is not very important. However, on the facts stated above the third point taken must be answered in the negative. The petitioner was not appointed by the Director of Public Instruction, West Bengal. It is quite clear that the appointing authority was the Governing Body of the College. In fact, as I have stated above according to the terms and conditions applicable to sponsored colleges, particularly Clause (f) of Rule (B) the power of appointment discharge dismissal etc. of the teaching staff vests in the Governing Body and according to clause (f) of Rule (D) the appointing authority is the Governing Body. According to Clause (n) of Rule (D), the service of a temporary teacher terminates on the expiry of the fixed period unless extended by the Governing Body. As I have stated above there were certain extensions and the period was finally extended upto the end of July, 1961 and upon the expiry of that period; the petitioner's service automatically terminated. A committee was set up and there is mention of the term "enquiry committee." It has however, nothing to do with any department enquiry for investigating any charge or charges against the petitioner. It was a committee set up to enquire into the desirability of extending her term of employment. Since the petitioner had no right in law to the extension of her

term, there can be no question of her having any right to be heard by the said committee.

11. In my opinion, this is sufficient to dispose of this application. Since, however an exhaustive argument has been advanced on the question as to whether the employees of a sponsored college are civil servants, entitled to protection of Article 311 of the Constitution. I shall deal with the points raised. The leading case on the subject is *Tamlin v. Hannatord*, (1950) 1 KB 18. The facts there were as follows: Premises No. 2, Buckland Street Plymouth belonged to the Great Western Ry. Co. The plaintiff was a lessee of the house and the defendant was a sub-tenant of some rooms therein, protected at the relevant time by the Rent Restriction Acts in force in England. On the nationalisation of the Railways, the house became vested in the British Transport Commission by virtue of the Transport Act, 1947. The point that arose was as to whether the defendant had lost the protection of the Rent Restriction Acts. The County Court Judge held that the house must be regarded as owned by the Crown and was, therefore, outside the scope of the Rent Restrictions Acts. It was held however that the British Transport Commission was not a servant or agent of the Crown. Its servants were not civil servants and it was as much bound by Acts of Parliament as any other subject of the King. It was a public authority and its purposes were public purposes, but it was not a Government department and its powers and functions did not fall within the province of Government. Lord Justice Denning said as follows :--

"It is the Minister who appoints the directors--the members of the Commission--and fixes their remuneration. They must give him any information he wants; and, lest they should not prove amenable to his suggestions as to the policy they should adopt, he is given power to give them directions of a general nature, in matters which appears to him to affect the national interest, as to which he is the sole judge, and they are then bound to obey. These are great powers but still we cannot regard the corporation as being his agent, any more than a company is the agent of the shareholders, or even of a sole shareholder. In the eye of the law, the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants, and its property is not Crown property. It is as much bound by Acts of Parliament as any other subject of the King. It is, of course, a public authority and its purposes no doubt, are public purposes but it is not a government department nor do its powers fall within the province of government."

12. The question as to who is the master and who is the servant, has been raised in a number of cases. Various tests have been laid down from time to time. In *Mersey Docks and Harbour Board v. Coggins and Griffith* (1946) 2 All ER 345, the House of Lords laid down several tests. We must find out as to who was the appointing authority, who was the paymaster and who could dismiss the employee. One of the many tests suggested was to ascertain as to who was

entitled to tell the employee the way in which he was to do the work upon which he was engaged. It is not enough that the task to be performed should be under his control, he must also control the method of performing it. These tests were however, not considered conclusive in *Cassidy v. Ministry of Health* (1951) 1 All ER 574. It was pointed out that although between the owner of a ship and the captain, there was undoubtedly the relationship of master and servant, yet the owner could only tell him where to go, but not how to navigate. According to this decision, the question was really a question of fact, to be decided upon all the circumstances of each case, and it was not possible to lay down any rigid test, I now come to the Indian decisions on the subject. The first case is the decision of the Supreme Court, *Shivnandan Sharma Vs. The Punjab National Bank Ltd.*, . The question there was whether the head cashier of a Bank was a person employed by it. It was held that a master is one who not only prescribes to the workman. the end of his work, but .directs or at any moment may direct the means also or as it has been put retains the power of controlling the work. A servant is a person subject to the command of his master as to the manner in which he shall do the work. Applying these tests it was held that the head cashier, although a nominee of the Treasurers was an employee of the Bank. The next case is *Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra*, . It was held there that the prima facie test for the determination of the relationship between a master and servant, was the existence of the right in the master to supervise and control the work done by the servant, not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work. The nature or extent of control which is requisite to establish the relationship of employer and employee must necessarily vary and is by its very nature incapable of precise definition. The next case is *Maulana Abdul Shakur Vs. Rikhab Chand and Another*, . In that case the appellant was working as the manager of a school run by the Durga Khwaja Sahib an endowment Regulated by a Central Act, namely the Durgah Khwaja Sahib Act (Act 23 of 1936). The question arose as to whether the Durgah Endowment being Subject to control by the Government rendered the appellant a Government servant Kapur, J. said as follows:--

"The respondent contended that because under the Act of 1955 the Committee of Management is to be appointed by the Government who also appoint the Nazim (administrator) through whom the Committee acts and because under S. 6(2) the Government has the power of removal from office of any member of the committee and because the committee can make bye-laws prescribing the duties and powers of the employees of the Durgah, the appellant was under the control and supervision of the Central Government and therefore he was holding an office of profit under the Government of India.... ..No doubt the committee of the Durgah Endowment is to be appointed by the Government of India but it is a body corporate with perpetual succession acting within the four corners of the Act. Merely because the committee or the members of the committee are removable by the Government of India or the committee can make bye-laws

prescribing the duties and powers of its employees cannot in our opinion convert the servants of the committee into holders of office of profit under the Government of India. The appellant is neither appointed by the Government of India, nor is removable by the Government of India nor is he paid out of the revenues of India. The power of the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion and payment from out of Government revenues are important factors in determining whether that person is holding an office of profit under the Government though payment from a source other than Government revenue is not always a decisive factor. But the appointment of the appellant does not come within this test."

13. It was held that the appellant was not a Government servant. On the other hand, in *M. Ramappa Vs. Sangappa and Others*, it was held that Patels and Shanbhogs were officers who were appointed to their offices by the Government, though it may be that the Government had no option in certain cases but to appoint an heir of the last holder. They held their office by reason of such appointment only, they worked under the control and supervision of the Government their remuneration was paid by the Government out of Government funds and assets, they were removable by the Government, and there was no one else under whom their office could be held. According to Sarkar, J. these facts clearly established that such persons held offices of profit under the Government. Next we come to the case of *Raja Bahadur K.C. Deo Bhanj Vs. Raghunath Misra and Others*, . In that case, a question arose as to whether a sarpanch of a Gram Panchayat constituted under the Orissa Gram Panchayats Act, 1948 was a person in the service of the Government of the State of Orissa. Under the said Act, the State Government, District Magistrate and the Sub-Divisional Magistrate have been given substantial powers of control and supervision over the Gram Panchayats and its Sarpanch, including the power of removal for negligence, inefficiency and misbehaviour. Imam, J. said as follows :

"In our opinion there is a distinction between "serving under the Government" and "in the service of the Government", because while one may serve under a Government one may not necessarily be in the service of the Government, under the latter expression, one not only serves under the Government but is in the service of the Government and it imports the relationship of master and servant. There are, according to Batt (on the Law of Master and Servant) two essentials, to this relationship: (1) The servant must be under the duty of rendering personal service to the master or to others in his behalf and (2) the master must have the right to control the servant's work either personally or by another servant or agent and according to him

"It is this right of control or interference or being entitled to tell the servant when to work (within the hours of service) and when not to work and what work to do and how to do it within the term of such service) which is the permanent characteristic in this relation and marks off the servant from an independent

contractor or from one employed merely to give to his employer the fruits or results of his labour" None of the provisions of the Orissa Act suggests that as between the State Government and the Gram Panchayat and its Sarpanch, any such relationship exists."

14. In *Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others*, a question came to be considered as to whether the office of a village Munsiff under the Madras Hereditary Village Office Act, 1895 is an office under the State. Although the office was hereditary it was held that it was an office under the State. S. K. Das, J, said as follows:--

"These provisions show, in our opinion, that the office of village Munsiff under the Act is an office under the State. The appointment is made by the Collector, emoluments are granted or continued by the State, the Collector has disciplinary powers over the village Munsiff including the power to remove, suspend or dismiss him, the qualifications for appointment can be laid down by the Board of Revenue--all these show that the office is not a private office under a, private employer but is an office under the State. The nature of the duties to be performed by the village Munsiff under different provisions of the law empowering him in that behalf also shows that he holds a public office".

15. I shall now consider certain decisions of the various High Courts. In *Nagendra Kumar Roy, Assistant Executive Engineer Vs. Commrs. for the Port of Calcutta and Others*, I held that an employee of the Port Commissioners was not a "civil servant" so as to attract the provisions of Article 311 and the mere fact that the Commissioners for the Port of Calcutta adopted the fundamental rules applicable to Government servants did not affect the question. This view has been accepted by the Appeal Court in *Patit Paban Bose Vs. The Commissioners for the Port of Calcutta*, . In *Ranjit Ghosh Vs. Damodar Valley Corporation and Others*, a question arose as to whether an employee under the D. V. Corporation was a civil servant under the Government. I held that although, the Government exercised a considerable amount of control over the D.V. Corporation constituted by the Damodar Valley Corporation Act, that did not constitute an employee of the Corporation, a "civil servant" and that Article 311 did not apply. The same conclusion was reached by Bose, J., (as he then was) in *Bibhuti Bhusan Ghosh Vs. Damodar Valley Corporation and Others*, and by Bachawat, J., in *Damodar Valley Corporation v. Provat Roy*, 60 Cal WN 1223. In *Subodh Ranjan Ghosh Vs. Sindri Fertilisers and Chemicals Ltd. and Another*, , a Division Bench of the Patna High Court came to examine the question as to whether Article 311 of the Constitution was applicable to the servants of the Sindhri Fertiliser Chemicals Ltd. The Company is completely owned by the Union of India. All the shares except one, are held by the President of India, and the remaining share is allotted to the Secretary of the Production Department. The Directors are appointed by the President, who is also authorised to remove any Director from office in his absolute discretion. The President is authorised to issue such directives as he may consider necessary in regard to the conduct of the business

of the Company, and under the Articles a duty is imposed upon a Director to give immediate effect to the directives so issued. It was held that still, in the eye of law, the company was not an agent of the Union Government, but had an independent legal entity. It was not a department of the State or its delegate or its agent. Consequently, a servant of the company was not a Government servant and could not take advantage of Article 311 of the Constitution. In *Baleshwar Prasad Vs. Agent, State Bank of India*, , it was held that an employee of the State Bank of India was not a civil servant of the Union Government. In an earlier decision of the Patna High Court, *Lachmi and Others Vs. Military Secretary to the Governor of Bihar and Another*, , an interesting point came to be considered as to whether a gardner employed at the Raj Bhavan, Patna, was a person holding a civil Post under the State or was entitled to avail himself of Art 311 of the Constitution. Das, C. J., said as follows:

"There is no doubt, however, that the petitioners are paid from the State funds which are placed at the disposal of the Governor; there is also no doubt that the authority competent to appoint or dismiss them is Military Secretary to the Governor whose services are also, I believe, placed at the disposal of the Governor. I agree with my learned brother that the true test in determining whether a person comes within Article 311 of the State funds; the true test is whether he is a member of a civil service of a State or whether he holds a civil post under a State.

I think that the expression "civil post under a State" means that the post is under the control of the State, that is, the State can abolish the post if it so desires, or the State can regulate the conditions subject to which the post is or will be held. The real test, therefore, is the immediate or ultimate control which is exercised by the State with regard to the post in question."

16. It was held that a "mali" or a gardner employed in the Raj Bhavan was not a member of the civil service of the State of Bihar, though the wages which he got, ultimately came out of State funds placed at the disposal of the Governor. In *State of Punjab v. Prem Prakash* AIR 1957 Punj 21,9, a Division Bench of the Punjab High Court considered the question whether a person appointed by Government to discharge the functions of a municipality u/s 4 of the East Punjab Local Authorities (Restriction of Function) Act (Act 9 of 1947) could be considered as a Government servant. Under that Act, in the State Government was satisfied that a local authority was incapable of performing its duties Or did not adequately perform its functions, it may suspend the authority or any of its branches or departments and appoint a person to discharge such functions. It was held that whether a particular person was a municipal servant or a Government servant was determined by the functions which he performed. If he performs functions relating to a municipal committee, he was a municipal officer; if he performed a function relating to a Government, he was a Government servant. The question as to whether a person is an employee of a municipal committee is not affected by the manner of his appointment, for a person may

be the servant of another although a third party has the power of appointing or dismissing him or has control in regard to his work or pays his wages. It was held that a person appointed u/s 4 of the said Act was not a Government servant. A similar case came to be considered by a Full Bench of the Allahabad High Court, Mohammad Ahmad Kidwai Vs. Chairman, Improvement Trust, Lucknow, . There the question was whether an employee of the Improvement Trust, Lucknow, could be said to be a Government servant. It was held that the trustee" was to determine the functions which he performed. If his duties related to activities which fell directly within the sphere of the Union or the State or if his services were under the direction and control of the Union Or the State as also his appointment was made by either the Union or the State, then he would be considered as holding a civil post under Government. But if his sphere of activity was within that of a local authority constituted under a Statute, then even though the State or the Union controlled some of his activities and gave him directions in the discharge of his functions, he could not be called a Government servant. It was held that the plaintiff did not hold a civil post under the State, but was an employee of the local authority constituted under the U. P. Town Improvement Act, 1919. A point has been taken, namely, that a sponsored college comes within the definition of the word "State" as defined in Article 12 of the Constitution. This point may at once be disposed of. I have dealt with this very point in S.K. Mukherjee Vs. Chemicals and Allied Products, Export Promotion Council, . Article 12 of the Constitution provides that 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 the Government of India. The term "local authority"" as to be understood as referring to the author mentioned in Entry 5 of List II (State List) of Schedule VII to the Constitution. The words "other authority" must be read as ejusdem generis. They would not include persons natural or juristic, who cannot be regarded as instrumentalities of the Government. See The University of Madras Vs. Shantha Bai and Another, . I have also pointed out in Ranjit Ghosh Vs. Damodar Valley Corporation and Others, that it has been made clear in Article 12 itself that the particular definition introduced therein is only for the purpose of part III of the Constitution, which deals with fundamental rights. The Constitution does not deal with the general definition of the word "State," except what is contained in Article 1, and in other parts of the Constitution, the word ""State"" has been defined for that part only, e.g., Articles 12, 36, 152 and 308. In S. Arjan Singh S. Mehar Singh Vs. State of Punjab and Another, , a Division Bench of the Punjab High Court has held that the expression "civil post under a State" in Article 311 does not include the post held by a person in the service of any local authority, within the territory of the State. In that case, the petitioner was a Building Inspector-cum-Overseer employed by the Municipal Committee, Ludhiana It was held that he was not a civil servant and Article 311 did not apply to his case. It is clear, therefore, that Article 12 has no application to the facts of this case, and does not attract the provisions of Article 311.

17. Considering the authorities mentioned above, it is clear that there does not exist any single test which may be said to be conclusive on the question as to whether a person is holding a Civil post under the Union or the State, so that the provisions of Article 311 may be attracted. The various points to be considered are as follows: Who appoints him? Who dismisses him? Who pays his wages? These tests, however, are not conclusive. In many cases, the Government has power of appointment and dismissal under specified circumstances. Nevertheless, persons so appointed are not considered to be Government servants. One of the most important tests is the question of control. In a normal case, the master controls the servant. Yet, it has repeatedly been held that this is not a conclusive test. It often happens that a person may be employed by one but controlled by another. In fact, in some statutory corporations (See the *Sindhri Fertiliser case*, *supra*) the Government may be the owner of all the shares and may, exercise complete control. Yet, it has been held that an employee of such a corporation is not a Government servant. Next, it is suggested that the master is one who tells the employee, not merely what work to do but the manner of doing it. In most cases this would seem to be a satisfactory test. Yet it has been held that this also is not a conclusive test. It has been pointed out in *Cassidy's case* (1951) 1 All ER 574 (*supra*) that in many instances this test would fail. For example, the owner of a ship can tell the Captain where to go but cannot dictate him as to how to navigate. In *Cassidy's case* (1951) 1 All ER 574 (*supra*) the learned Judges were constrained to come to the conclusion that a determination of the question as to who was the master and who the servant, was not amenable to any particular test but depended upon the facts of each case. Perhaps, the most satisfactory test is a consideration of the functions discharged by the employee and the question to be asked is as to whether they are governmental functions. The difficulty of course would be to define with certitude the expression "Governmental function." The meaning to be ascribed to the expression for our purposes would be the normal Governmental functions, namely, the day-to-day executive administration of the Union or the State as the case may be.

18. Coming now to the facts of this case, I do not think that we are confronted with much difficulty. As will appear from the facts stated above, the Government felt the difficulty of providing sufficient college accommodation for refugees or displaced persons coming from Eastern Pakistan. For that purpose, the Union Government was prepared to give a substantial grant by way of a loan repayable by the State within a number of years. A scheme has been framed based upon this offer. Four sponsored colleges were to be set up and one of them is the Sarojini Naidu College for Women, Dum Dum. This college had no building of its own to start with but was located in the premises of the Christ Church Girls' High School, Pum Dum. Later on, it was to construct its own building with Government help. Government was to give financial assistance for five years but this assistance was to diminish progressively until after the expiry of five years the college was to stand on its own feet. The terms and conditions of such grant

make it quite clear that the administration of the college was not deemed to be a governmental function. The administration, including the power of appointing and dismissing teachers, vests in the Governing Body. In fact, it was the Governing Body of the college which appointed the petitioner. On the facts as stated above, it is quite clear that the Director of Public instruction, West Bengal, was not the appointing authority. I have referred above to the relevant resolutions of the Governing Body by which the petitioner was appointed. According to the scheme under, when the college has been sponsored, Government does exercise a substantial degree of control. Although a Vice-Principal can be appointed by the Governing Body, the terms of appointment are laid down by Government and are subject to its approval. In the present case, even the scale of pay had to be approved by the Government. That, however, does not make the petitioner a civil servant. As I have stated above, even a substantial degree of control by Government would not necessarily make an employee of a sponsored college, an employee of Government. A very substantial amount of financial help rendered by Government is also not decisive in the matter. There is nothing to show that Government ever had control of the manner in which the petitioner was to carry on her duties as Vice-Principal. Her duties as Vice-Principal were under the superintendence of the Principal and were under the ultimate superintendence of the Governing Body. It does not appear that Government exercised any degree of control over the day-to-day administration of sponsored colleges. Lastly, the duties and functions carried out by the petitioner cannot by any stretch of imagination, be called governmental functions, that is to say, the functions of Government in the discharge of the executive administration of the country. That being so, it must be held that the petitioner does not hold a civil post under Government and as such is not entitled to the constitutional safeguards provided in Article 311 of the Constitution.

19. Much has been said about an "enquiry" being held by a Committee appointed by the Governing Body. In my opinion, this is based upon a misconception of facts. As stated above, the petitioner was appointed for a temporary period for six months and that period was extended by the Governing Body from time to time. The enquiry that was contemplated, by the enquiring Committee which was appointed, was not a departmental enquiry based on any charge or charges framed against the petitioner, but was an enquiry as to the desirability Or otherwise of confirming the petitioner in her service. In other words, the Governing Body wanted to have a report on the question as to whether the petitioner should continue to be employed by the college and offered a permanent post. This, in my opinion, was not an enquiry in respect of any charge or charges preferred against her. This was an enquiry, which anybody entrusted with the administration of a college, was entitled to order, and for that purpose it was not necessary to give any notice or hear the employee. Mr. Dutt has argued that the Governing Body has shifted its position. At first it proceeded by way of penal measure and now it has switched on to the defence that the termination of the petitioner's service was in term of the contract. This argument is not of

substance. The Governing Body never proceeded by way of enforcing, any penalty. Since the petitioner's appointment was for a temporary period, upon the expiry of the period, it automatically came to an end, and there was no necessity of terminating the same. The only question was whether the period of service should be extended or made permanent. The Governing Body was not bound to do either and, therefore, a Writ cannot be issued commanding it to take any action in that behalf.

20. For the reasons aforesaid, this application fails and must be dismissed. The Rule is discharged. Interim orders, if any, are vacated. There will be no order as to costs.