

(1971) 09 KL CK 0006

In the High Court Of Kerala

Case No : W.A. No's. 420 of 1969 and 8 of 1970

The Inspector of Post offices and another

APPELLANT

Vs

V. Subhas Chandra Das

RESPONDENT

Date of Decision : 27-09-1971

Acts Referred:

Constitution of India, 1950 — Article 310, 310(2), 311

Citation : (1971) KLJ 815

Hon'ble Judges : T.C. Raghavan, C.J;P. Unnikrishna Kurup, J

Bench : Division Bench

Advocate : S.A. Nagendran, for the Respondent

Final Decision : Allowed

Judgement

T.C. Raghavan, C.J.—All these cases involve the same question and a decision in the first case will cover all of them. The respondent in the first case was an Extra Departmental Delivery Agent (a Postman); and his services were terminated with effect from 1st January '66 without complying with Article 311 of the Constitution. The relevant orders were Exs. P-3 and P-4; and in the writ petition these orders were challenged. And a learned Judge allowed the writ petition quashing the impugned orders. The objection raised by the appellants, the Inspector of Post Offices and the Union of India, was that the respondent was not "holding a civil post" under the Union of India as contemplated by Article 310 of the Constitution and was therefore not entitled to rely on Article 311. And it was this contention that was overruled by the Single Judge, who held that the respondent was holding a civil post under the Union of India. The decision of the Single Judge is reported as Subash Chandra Das v. The Inspector of Post Offices (I.L.R. (1967) 2 Ker. 649).

2. The conditions of service of Extra Departmental Delivery Agents and Post Masters working in Extra Departmental Post Offices are confined in the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules of 1964. And the learned Judge has summarised the relevant provisions of those Rules in

paragraph 2 of his judgment. It is admitted that that summary is substantially correct.

3. The Single Judge considered two decisions of the Supreme Court, viz., *State of Uttar Pradesh and Another Vs. Audh Narain Singh and Another*, , in which the criteria for finding out whether there was a master and servant relationship between the employer and the employee were considered, and *The State of Assam and Others Vs. Shri Kanak Chandra Dutta*, , where the question as to what constituted "holding a civil post" was considered. Before the learned Judge the decision of the Orissa High Court in *Ch. Venkata Swamy Vs. Superintendent, Post Offices and Another*, was also cited in support of the stand taken by the Union of India. In the Orissa decision, it was held that an Extra Departmental Branch Post Master was not a person holding a civil post.

4. There is not much dispute that there was the relationship of master and servant between the Union of India and the respondent: therefore, we need not consider *Anudh Narain Singh's* case any further. The only question we need consider is whether the respondent, in addition to his being a servant of the Union of India, was also holding a civil post under the Union. This question was considered by the Supreme Court in *Kanak Chandra Dutta's* case; and the decision of the Orissa High Court was also noted by Their Lordships. Their Lordships stated that the observation of the Orissa High Court that a part-time employee could not be a holder of a civil post outside the regularly constituted service was too wide and could not be supported. The Single Judge noted this observation of the Supreme Court and then came to the conclusion that the provisions of the Rules summarised by him in paragraph 2 of his judgment indicated that the respondent was holding a civil post under the Union.

5. The Supreme Court observed in *Kanak Chandra Dutta's* case

A post under the State is 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.

Their Lordships thus considered the question as to what was meant by "a post" Their Lordships also considered the distinction between a "civil post" and other types of "posts". If the respondent was holding a post, there is no dispute that the post he was holding was a civil post. In the light of the passage quoted above and in the light of the provisions contained in the relevant Rules, it cannot be disputed that the Extra Departmental Delivery Agent was holding a post under the Union of India: and the post he was holding was then a civil post.

6. Yet another decision, the Division Bench ruling of the Madras High Court in *V.*

Subbarayalu v. Superintendent of Post Offices, Tanjore Division, Nagapattinam (A. I. R. 1961 Mad. 166), was also brought to our notice. This decision does not appear to have been brought to the notice of the Single Judge, nor does it appear to have been brought to the notice of the Supreme Court when the Supreme Court decided Kanak Chandra Dutta's case. In the Supreme Court decision, the question the Supreme Court considered was whether a Mauzadar in Assam, who was paid not a fixed remuneration but a percentage commission of the collections he made, was holding a civil post. It was considering the terms and conditions of service of a Mauzadar, his remuneration, etc. that the Supreme Court held that a Mauzadar was holding a civil post. There cannot be much doubt that, if a Mauzadar was holding a civil post, an Extra Departmental Delivery Agent was also holding a civil post. The learned Judges of the Madras High Court held in Subbarayalu's case that an Extra Departmental Branch Post Master was not a civil servant of the Union or a member of an All India Service nor was he holding a civil post under the Union of India. The learned Judges were right in their conclusion that an Extra Departmental Branch Post Master was neither a civil servant nor a member of an All India Service; but, with due respect to them, we find it difficult to agree with their conclusion that such a Branch Post Master was not holding a civil post, more so, in view of the decision of the Supreme Court in Kanak Chandra Dutta's case already referred to. The learned Judges appear to have accepted the contention of the Advocate General that "it is the man that makes the post office, not that the post office calls for the appointment of an individual to be in charge of it". This observation is obviously too wide and difficult of acceptance. If the individual who "made" the post office leaves it, the post office will still remain and another Post Master will have to be appointed to the post office: the post of the Post Master and the post office itself will not cease to exist. Therefore, the case before the Madras High Court does not appear to have been rightly decided. The result is that we uphold the decision of the Single Judge. It will follow that writ appeal Nos. 420 of 1969 and 8 of 1970 have to be dismissed. (In the latter of these appeals, the respondent is an Extra Departmental Branch Post Master--not a Delivery Agent or Postman.) The writ petitions are similar; and in tune with our decision in the appeals, we have to allow the writ petitions and quash the impugned orders. And we do so. However, we do not pass any order regarding costs in any of these cases.