(1960) 12 AHC CK 0006

In the Allahabad High Court

Case No : Special Appeal No. 204 of 1957

The State of Uttar Pradesh and Another — APPELLANT

Vs

Audh Narain Singh and Another — RESPONDENT

Date of Decision : 13-12-1960

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : AIR 1961 All 515 : (1961) 31 AWR 269 : (1961) 2 FLR 509

Hon'ble Judges : O.H. Mootham, C.J;A.P. Srivastava, J

Bench : Division Bench

Advocate : S.C. Khare, for the Respondent

Final Decision : Dismissed

Judgement

Mootham, C.J.—The State of Utter Pradesh and the Collector of Azamgarh have preferred this appeal against a decision of Mr. Justice Mehrotra dated the 3rd May, 1957, by which he allowed a petition filed by the respondent No. 1 Sri Audh Narain Singh under Article 226 of the Constitution and quashed an order removing the respondent from service and a subsequent order of Commissioner confirming the order.

2. Sri Audh Narain Singh, who shall be referred to hereinafter as the respondent, was appointed as a tahsildar in the district of Azamgarh in the year 1949. He worked in the Cash. Department of the Government Treasury of the district-According to him, though he had been employed through the Government Treasurer, Sri Dhanpat Singh Tandon, his pay and emoluments were paid by the State Government and his appointment, removal, dismissal and other conditions of service were also under the direction and control of the Collector of the district.

In April 1956 he was working as tahvildar in the Sub-Treasury at Tahsil Lalganj, district Azamgarh. The Tahsildar of that tahsil had however some personal grievances against him and suggested to the Treasury Officer that he be transferred from Lalganj. The Treasury Officer instead of directing the respondent''s transfer forwarded the report to the Collector and the latter instructed the Government Treasurer to replace the respondent. On the 20th April, 1956, therefore, the respondent was informed that he had been removed from service and he should give charge of his office to another person.

Against the order of his removal the respondent preferred an appeal to the Collector but it was rejected on the ground that no appeal lay. A further representation to the Commissioner was equally unsuccessful and the order of removal was confirmed. By the petition under Article 226 of the Constitution the respondent pray ed that the order of his removal and the subsequent order of the Commissioner confirming it be quashed by a writ of certiorari.

He also claimed a mandamus directing the Government Treasurer, the Collector and the State to treat him as a tahsildar in the sub-treasury at Lalganj. The ground on which the petition was based was that the respondent was entitled to the benefit of Article 311 of the Constitution and his removal from service was unconstitutional as he had not been given any opportunity to show cause against the order.

3. The petition was opposed mainly on the ground that the respondent was not an employee of the State and that he was really a servant of the Government Treasurer Sri Dhanpat Singh Tandon. He was therefore not entitled to the benefit of Article 311 of the Constitution at all. It was stated in the counter-affidavit filed on behalf of the appellants that there was a specific rule laying down that tahsildars were servants of the Government Treasury and not employees of the State.

It was stressed that the appointment, removal, dismissal, leave and other conditions of service of tahsildars like the respondent were determined by the Government Treasurer himself and not by the State, though the Government Treasurer was bound to follow in those matters the instructions given to him by the District Officer. Thus, though the respondent''s contention that he had not been given any opportunity of showing cause against the order of his removal was not disputed, what was urged was that the respondent had been removed by his employer the Treasurer and not by the appellants, and that as Article 311 of the Constitution did not apply no question of giving him any opportunity of showing cause against the order of removal could arise.

4. Mr. Justice Mehrotra allowed the petition as he was of opinion that Article 311 of the Constitution applied to the respondent''s case. This conclusion was based on two alternative grounds: The first was that the respondent could be considered to be a civil employee of the State as his conditions of service, appointment, removal, dismissal and leave were all under the control of the Collector and even his salary was disbursed from the State funds. The other was that even if it was held that the respondent had been employed by the Government Treasurer, on the materials that were produced in the case it could not be held that the Government Treasurer was an independent contractor and

not an employee of the State.

If therefore the Government Treasurer was an employee of the State and had authority to employ the respondent for carrying out the work of the State the respondent could also claim to be an employee of the State. In support of this second ground the learned Judge relied on certain observations made by the Supreme Court in Shivnandan Sharma Vs. The Punjab National Bank Ltd.,

5. Both, the grounds are questioned in appeal by the appellants. It is urged in respect of the first that when the respondent was admittedly appointed by the Government Treasurer and was under his direct control the mere fact that the Treasurer was himself subject to the control of the Collector could not make the respondent an employee of the State, particularly when it had been expressly provided in the Treasury Manual that a tahvildar shall not be a servant of the State. As regards the second ground it is urged that the Government Treasurer, who was the employer of the respondent, was himself not a servant of the State. His position was that of a contractor. The respondent could not therefore claim to have become the employee of the State on the ground that the Government Treasurer held a civil post under the State. Reliance was placed in this connection on the case of Balbhaddar Prasad Vs. Collector, Fatehpur,

6. It appeal''s that the work in the Cash Department of the treasury and various sub-treasuries in a district is entrusted to a Government Treasurer appointed by the Collector with the approval of the State. He is responsible for all losses incurred and has to execute before his appointment an indemnity bond to make good such losses. In every district there is a treasury at the head-quarters, and there are several sub-treasuries in the tahsils.

AS it is not possible for the Treasurer himself personally to conduct the entire work at all these places tahsildars are appointed to look after the work in the sub-treasuries. The ultimate responsibility for the loss, however, rests on the Treasurer. Prior to 1927 tahsildars were appointed directly by the Collector and were entirely under his control and not under that of the Treasurer. Difficulties however arose as the Treasurer declined to be responsible for losses caused by the tahsildars on the ground that the latter were not under his control by G.O. No. A-2620/X-252 dated the 25th July, 1927, the Government deckled :

".... that the best solution of the difficulty is to abolish the post of tahvildar, to increase the remuneration of the treasurer by an amount equal to the pay hitherto given to the tahildars and to make him responsible for carrying on the work at sub-treasuries through his own servants ....

There is, however, one reservation, namely, that the treasurer must not employ any person in the treasury or sub-treasury without the approval of the district officer and shall, when required by him, remove without delay any person so employed".

7. Thenceforward tahsildars began to be appointed by the Government Treasurer

and it was specifically provided in Paragraph 1561 of the Treasury Manual (Manual of Orders of the Government of the United Provinces in the Revenue Department), Volume 11, that

"Tahsildars at sub-treasuries are no longer Government servants. They are employed by the treasurer who receives an allowance from the Government to cover their pay and leave salary. The treasurer, however, shall not employ any person as a tahvildar without the approval of the District Officer. The treasurer shall remove a tahvildar or transfer him from one tahsil to another if required by the District Officer to do so on any ground which in the letter''s opinion justify such a step".

As a result of this arrangement an amount equal to that which was to be paid to the tahsildars as salary was paid to the Government Treasurer and he was expected to pay it to the tahsildars. It was, however, discovered that some Government Treasurers paid to the tahsildars less than they had received on their account although receipts were taken for the full amount. In order to stop this practice the Government directed, on the 9th December, 1939, that the Treasurer should submit a bill for his staff including the tahsildars but so much of the amount of the bill as was payable to the staff and was not to be paid to the Treasurer.

The tahsildars thus stopped getting their salaries through the Treasurer and received them direct from the treasury. It is thus clear that the person in overall charge of the Cash Department of the Treasury and sub-treasuries is the Treasurer. In order to ensure that the work of the department is carried on properly he engages tahsildars. He is, however, not authorised to make any appointment without the approval of the District Officer and is also bound When required by the latter to remove any person appointed by him without delay.

The bill for the salary of tahsildars is submitted through the Treasurer but the amount is paid to the tahsildars not through him but directly through the treasury. Though it was alleged by the respondent that his leave and other conditions of service were also under the control of the District Officer the allegation was denied and no material has been furnished in support of it. On these facts we find it difficult to accept the contention that the respondent was an employee of the State on the ground that there was a direct relationship of servant and master between him and the State.

8. The alternative ground taken by the respondent appears however to stand on a firmer footing. Its validity depends on whether the Government Treasurer himself is an employee of the State. On this point Mr. Justice Mehrotra took the view that as the Treasurer was under the control of the State Government and it had not been stated in the counter-affidavit that he was not an employee of the State he could be considered to be such an employee and did not hold the position of an independent contractor. In the case of Balbhaddar Prasad Vs. Collector, Fatehpur, , on the other hand, Mr. Justice Dhavan was unable, on the

materials placed before him, to hold that the Government Treasurer was an employee of the State.

9. Apparently no reference was made in either of the two cases to the relevant provisions of the Treasury Manual or to the form of Bond executed by the Treasurer on appointment. Paragraphs 1476 and 1476-A of that Manual read thus :

"1476.--Appointment to the post of treasurer of a district treasury is subject to the approval of the Finance Secretary to the Government. When a post of treasurer falls vacant, the District Officer should immediately report the fact to the Finance Secretary to the Government. He should at the same time submit through the Commissioner of the division his proposals regarding the arrangement which should be made for carrying on the treasurer''s work until a new treasurer is appointed. As little time as possible should elapse before he makes proposals for filling up the post permanently.

1476-A. On being appointed the treasurer shall enter into an engagement for the due performance of his duties, and shall finish security either personally or by sureties".

10. There is- thus a post of a Treasurer in the district Treasury. The Treasurer is appointed to that post. He is appointed by the Collector but the appointment is subject to the approval of the Finance Secretary. On being appointed the Treasurer enters into an engagement for the performance of his duties. Learned counsel for the State has furnished us with a form of the bond which the Treasurer executes- A perusal of the bond shows that the Treasurer is appointed to and holds an office subject however to the condition that the appointment

".... shall be part time, temporary and with no benefits of leave and pension and shall be liable to be terminated by the Government of the United Provinces, at any time in their discretion by giving a notice to the said .... for any period of not less than one month without assigning any reason therefore, and the said .... shall not thereupon have any right to any compensation whatsoever".

The bond further provides that the Treasurer is bound, inter alia,

" ...... from time to'' time whenever called upon to do so to show to his superior officers that the said property and every part thereof save so much thereof as he has duly accounted for is at all times intact in the places aforesaid and is also bound to attend for the purpose of discharging his duties aforesaid at such times and places as his superior officers may appoint;

"..... to keep true and faithful ac- counts of the said property and of his dealings under written orders of his superior officers therewith respectively in the form and manner that may from time to time be prescribed under the authority of Government and also to prepare and submit such returns and such accounts as he may from time to time be called upon to prepare and submit; ...... by all the conditions, rules and regulations of the Government for the time being in force and such departmental rules and orders as may from time to time be issued by authority and may be in force, and specially with reference to his relations and dealings with and the rights of his subordinates and his own subordination to his superior officers, and that it is his duty to keep himself acquainted at all times with the contents of such rules and regulations and such departmental rules and orders as aforesaid and all or any alterations made from time to time therein".

In our opinion the terms of this bond make it sufficiently clear that the relationship between the Government and the Treasurer is that of a master and servant. The Treasurer''s appointment and removal rests with the Government. He receives a salary and holds an office. His relationship with the State is not such that he is entrusted with a task which, he can perform in the way he likes. Not only the result but the manner of his working is also under the control of the State. If the tests for distinguishing an independent contractor from a servant which were approved by the Supreme Court in (S) Shivnandan Sharma Vs. The Punjab National Bank Ltd., and Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, are applied the position of a Treasurer must in our opinion be held to be that of a servant and not of an independent contractor.

11. In the former case of (S) Shivnandan Sharma Vs. The Punjab National Bank Ltd., their Lordships quoted with approval a passage from Pollock''s ''Law on Torts'' on the distinction between a servant and an independent contractor wherein the learned author had stated:

"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 his work ....

An independent contractor is one who undertakes to produce a given result but so that in the actual execution of the work he is not under the order or control of the person for whom he does it, and may use his own discretion in things not specified beforehand ...... "

12. If the Treasurer is an employee of the State and not an independent contractor the principle laid down in Shivnandan Sharma Vs. The Punjab National Bank Ltd., becomes directly applicable. It was laid down in that case that

"If a master employs a servant and authorises him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servants of the master"''.

The respondent was appointed by the Treasurer but the Treasurer had authority to employ him in order to carry out the work of the State. The respondent was as much under the control of the appellants as he was under the control of the Treasurer. Even though he was not appointed directly by the State he could in the circumstances claim to hold a civil post under the State and to have the benefit of Article 311 of the Constitution. As he was removed without the provisions of that Article being observed the order of his removal was liable to be quashed.

13. The petition of the respondent was therefore, in our opinion, rightly allowed. The appeal fails and is dismissed with costs.