

(1977) 04 SC CK 0030

In the Supreme Court Of India

Case No : ?Appeal Civil 1172 of 1972

The Superintendent of Post Offices and Others

APPELLANT

Vs

P.K. Rajamma

RESPONDENT

Date of Decision : 22-04-1977

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : AIR 1977 SC 1677 : (1977) 43 CLT 653 : (1977) 35 FLR 1 : (1977) LabIC 908 : (1977) 3 SCC 94 : (1977) 3 SCR 678 : (1977) 9 UJ 417

Hon'ble Judges : M. Hameedullah Beg, C.J.; P. S. Kailasam, J.; A. C. Gupta, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

A.C. Gupta, J.—The respondents in all these fourteen appeals some of which are on certificate & some by special leave are extra departmental agents connected with the postal department. Six of these appeals are from the Kerala High Court. seven from the Andhra Pradesh High Court & one from the Orissa High Court. These respondents were either dismissed or removed from service during the period between January 1, 1966 and June 19, 1974, and admittedly the order of dismissal or removal was passed without complying with the provisions of Article 311(2) of the Constitution. The question in each case is, whether the respondent held a civil post as contemplated in Article 311 of the Constitution; if he did the dismissal or removal, as the case may be, would be unquestionably invalid for non compliance with Article 311(2).

2. The conditions of service of the respondents are governed by a body of rules called the posts and Telegraphs Extra Departmental Agents (Conduct & Service Rules, 1964 (hereinafter called the rules) issued under the authority of the Government of India. Rule 2(b) of the rules defining "Extra Departmental Agent" includes within the category among others, extra Departmental sub Post-masters, Extra Departmental Branch Postmasters, Extra Departmental Delivery Agents, and several sections of class IV employees. Eleven of the respondents are extra

departmental branch postmasters. One is an extra departmental delivery agent, and two are class IV Extra departmental employees. In all these cases the High Courts have found that the respondents held civil posts under the Union of India and the orders terminating their services in violation of Article 311(2) of the Constitution were invalid.

3. This Court in *State of Assam and Others Vs. Shri Kanak Chandra Dutta*, has explained what a civil post is. In that case the respondent who was a Mauzadar in the Assam Valley was dismissed from service in disregard of the provisions of Article 311(2). It was held that "having regard to the existing system of his recruitment, employment and functions", he was "a servant and a holder of a civil post under the state", and therefore entitled to the protection of Article 311(2). This Court observed:

...a civil post means a post not connected with defence and outside the regular civil services. A post is a service or employment. 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 post, it was explained, exists 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. Turning now to the rules by which the respondents were admittedly governed. It appears that they contain elaborate provisions controlling the appointment, leave, termination of services Nature of penalties, procedure for imposing penalties and other matters relating to the conduct and service of these extra departmental agents. There is a schedule annexed to the rules naming the appointing authorities in respect of each category of employees. Rule 5 states that the employees governed by these rules shall be entitled to such leave as may be determined by the Government from time to time and provides that if an employee fails to resume duty on the expiry of the maximum period of leave admissible and granted to him or if an employee who is granted leave is absent from duty for any period exceeding the limit upto which he could have been granted leave, he shall be removed from the service unless the Government decides otherwise in the exceptional circumstances of any particular case. The services of employees who had not put in more than three years' continuous service are liable to be terminated at any time Under Rule 6 for unsatisfactory work or for any administrative reason. The rules also indicate the nature of penalties which may be imposed on an employee and the procedure for imposing them. A right of appeal is provided against an order imposing any of the penalties on the

employee. Various other conditions of service are also provided in these rules.

4. It is thus clear that an extra departmental agent is not a casual worker but he holds a post under the administrative control of the State. It is apparent from the rules that the employment of an extra departmental agent is in a post which exists "apart from" the person who happens to fill it at any particular time. Though such a post is outside the regular civil services, there is no doubt it is a post under the State. The tests of a civil post laid down by Court in Manak Chandra Dutta's case (*supra*) are clearly satisfied in the case of the extra departmental agents.

5. For the appellants it is contended that the relationship between the postal authorities and the extra departmental agents is not of master and servant, but really of principal and agent. The difference between the relations of master and servant and principal and agent, was pointed out by this Court in *Lakshminarayan Ram Gopal and Son Ltd. Vs. The Government of Hyderabad*,) of the report the following lines from Halsbury's Laws of England (Heilshem Edition) volume 1, at page 193, Article 345, were quoted with approval in explaining the difference.

An agent is to be distinguished on the one hand from a servant, and on the other from an independent contractor. A servant acts under the direct control and supervision of his master, and is bound to conform to all reasonable orders given him in the course of his work, an independent contractor, on the other hand, as entirely independent of any control or interference and merely undertakes to produce that result to produce a specified result. Employing his own means. An Agent, though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal, is not subject in its exercise to the direct control or supervision of the principal. An agent, as such is not a servant, but a servant is generally for some purpose his master's implied agent, the extent of the agency depending upon the duties or position of the servant.

The rules make it clear that these extra departmental agents work under the direct control and supervision of the authorities who obviously have the right to control the manner in which they must carry out their duties. There can be no doubt therefore that the relation ship between the postal authorities and the extra departmental agents is one of master and servant. Reliance was placed on behalf of the appellants on two decisions, one of the Orissa High Court *Ch. Venkata Swamy Vs. Superintendent, Post Offices and Another*, . and the other of the Madras High Court *V. Subbarayalu Vs. Superintendent of Post Offices, Tanjore Division, Nagapattinam and Another*, . The judgments in these cases were rendered before the elaborate rules governing the conduct and service of these extra departmental agents were brought into operation in 1964. We do not therefore think an examination of these two decisions will be relevant or useful for disposing of the appeals before us.

6. The appeals are accordingly dismissed with costs. One set of hearing fees in respect of all the appeals receipt C.A. 1172 of 1972, C.A. 1751 of 1972 and C.A. 2275 of 1975 in which report order or to costs were made earlier.