

(2007) 09 CAL CK 0083

Calcutta High Court

Case No: W.P.C.T. No. 178 of 2007

Lt. Governor and Others

APPELLANT

Vs

Prem Kumar and Others

RESPONDENT

Date of Decision: Sept. 5, 2007

Acts Referred:

- Andaman and Nicobar Islands Land Revenue and Land Reforms Regulations, 1966 - Regulation 132, 133, 134, 135, 136
- Constitution of India, 1950 - Article 226, 309, 310, 310(2), 311

Citation: (2008) 1 CALLT 400 : (2008) 1 CHN 91

Hon'ble Judges: Subhro Kamal Mukherjee, J; Kalidas Mukherjee, J

Bench: Division Bench

Advocate: Santosh Kumar Mondal, Hemraj Bahadur and Anil Kumar Chakraborty, for the Appellant; Roshan George, for the Respondent

Judgement

Subhro Kamal Mukherjee, J.

In this application under Article 226 of the Constitution of India against the judgment and order dated May 22, 2007 passed by the Central Administrative Tribunal in Original Application No. 78/ AN/2005, we are invited to decide whether the Chaudharis appointed under the Andaman & Nicobar Islands Land Revenue and Land Reforms Regulations, 1966, are holding civil posts or not?

2. The Central Administration Tribunal, by its impugned judgment and order, answered the aforementioned question in the affirmative and directed the administration to consider in detail the functional responsibilities of Chaudharis, work out the total number of full time Chaudharis, to frame necessary recruitment rules and consider the cases of the applicants before the said Tribunal for their regulation in the posts of Chaudharis.

3. The applicants before the Tribunal were, admittedly, appointed as part-time Chaudharis under the said Regulation of 1966 on consolidated pay.

4. The applicant No. 1 approached the said Tribunal, inter alia, for a direction for his regularisation; the said application was registered as O.A. No. 50/AN/ 1997. By judgment and order dated July 12, 1999, the Central Administrative Tribunal disposed of the said application with the direction upon the authorities to consider the creation of regular post of Chaudhari and to frame recruitment rules for the said post within six months from the date of communication of the said order. The Tribunal, further, directed the authorities to regularise the service of the said applicant to the said post to be created on regular basis, if he was otherwise eligible as per the rules.

5. Alleging non-implementation of the said order, the applicant No. filed an application for contempt. The said application for contempt was registered as CPC No. 8/AN/2000. The Deputy Commissioner, Andaman District, filed an affidavit-in-opposition to the said application for contempt, inter alia, undertaking to implement the said order dated July 12, 1999 and prayed for extension of time till February 20, 2001 for passing a reasoned and speaking order upon compliance of all formalities.

6. By order dated May 31, 2001 the said application for contempt was dismissed by the Tribunal by recording the undertaking of the contemnor to implement the said order of the Tribunal by passing a speaking order.

7. The said Deputy Commissioner passed his order on February 20, 2001 and turned down the claim of the applicant No. 1 for regular appointment in the post of Chaudhari. He found that the creation of regular posts of Chaudhari was not justifiable at that juncture.

8. The present applicants, in the aforementioned facts and circumstances, moved the Central Administrative Tribunal for a mandatory order directing the authorities to regularise the said applicants in the posts of Chaudharis. The said application was registered as O.A No. 78/AN/2005. In the said application the applicants highlighted that the administration appointed the private respondents in the said application, namely, Ashad and Tahir Ali, as Chaudharis, with definite pay scale plus dearness allowance and other allowances as admissible under the rules.

9. As we have noted hereinabove, the Tribunal allowed the said application directing the administration, inter alia, to frame recruitment rules and to consider the cases of the applicants for their regularisation in the post of Chaudharis.

10. Being aggrieved the administration has come up with this writ petition.

11. Mr. Santosh Kumar Mondal, learned Advocate appearing for the administration, submits that in the changed circumstances there is no necessity of appointment of Chaudharis and, in any event, there is no question of framing recruitment rules for the Chaudharis as the Chaudharis are not holding any civil posts. Mr. Mondal, however, tried to explain the orders of appointments of the private respondents by

contending that those appointments were made by mistake by the officers concerned. On the strength of the said orders of appointment, it cannot be said that the posts of Chaudharis are civil posts.

12. Mr. Roshan George, learned Advocate appearing for the applicants who are respondent Nos. 1 to 5 in this writ petition, submits that the administration is following a pick and choose policy and there is no justifiable reason in not regularising the applicants in the posts of Chaudharis when the administration did appoint the private respondents in the posts of Chaudharis treating the post as civil post. Mr. George draws our attention to the fact that the Chaudharis are to supervise the functions of the chaukidars and the administration accepts that the chaukidars are holding civil posts.

13. The Central Administrative Tribunal, in allowing the aforementioned application, relied upon the decision of the Supreme Court of India in the case of [State of Assam and Others Vs. Shri Kanak Chandra Dutta](#), . In the said case question raised for consideration was whether Mauzadars in the Assam Valley were holders of civil posts under the State and were entitled to protection under Article 311 of the Constitution of India. The State contended that the Mauzadars were not whole-time employees nor drew salaries, but commissions and, as such, they were not holding civil posts. The Supreme Court of India made the following observations:

(9) The question is whether a Mauzadar is a person holding a civil post under the State within Article 311 of the Constitution. There is no formal definition of "post" and "civil post". The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Article 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State, see marginal note to Article 311. In Article 311, a member of a civil service of the Union or an all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil service. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State, see the marginal notes to Articles 309, 310 and 311. The heading and the sub-heading of Part XIV and Chapter I emphasis the element of service. There is a relationship of master and servant between the State and a person said to be 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 relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.

In the context of Articles 309, 310 and 311, a post denotes an office. A person who holds a civil post under a State holds "office" during the pleasure of the Governor of the State, except as expressly provided by the Constitution, see Article 310. A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, 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 maybe 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.

(11) Judged in this light, a Mauzadar in the Assam Valley is the holder of a civil post under the State. The State has the power and the right to select and appoint a Mauzadar and the power to suspend and dismiss him. He is a subordinate public servant working under the supervision and control of the Deputy Commissioner. He receives by way of remuneration a commission on his collections and sometimes a salary. There is a relationship of master and servant between the State and him. He holds an office on the revenue side of the administration to which specific and onerous duties in connection with the affairs of the State are attached, an office which falls vacant on the death or removal of the incumbent and which is filled up by successive appointments. He is a responsible officer exercising delegated powers of Government. Mauzadars in the Assam Valley are appointed Revenue Officers and ex officio Assistant Settlement Officers. Originally, a Mauzadar may have been a revenue farmer and an independent contractor. But having regard to the existing system of his recruitment, employment and functions, he is a servant and holder of a civil post under the State.

(12) Counsel for the State stressed the fact that normally a Mauzadar does not draw a salary. But a post outside the regularly constituted services need not necessarily carry "a definite rate of pay". The post of a Mauzadar carries with it a remuneration by way of a commission on collections of Government dues. Counsel stressed the fact that a Mauzadar is not a wholetime employee. But a post outside the regularly constituted services may be a part-time employment. The conditions of service of a Mauzadar enable him to engage in other activities.

14. In [The Superintendent of Post Offices and Others Vs. P.K. Rajamma](#), the Apex Court was considering as to whether the P & T Extra Departmental Agents held civil posts. The Apex Court found that an extra-departmental agent held a civil post and the order terminating his service in violation of Article 311(2) of the Constitution of India was invalid. The Supreme Court of India observed that extra-departmental

agent was not a casual worker, but he held a post under the administrative control of the State and the relationship between the postal and the extra-departmental agent was that of a master and servant.

15. In [State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others](#), the Supreme Court of India was considering whether the members of the Gujarat Panchayat Service are Government servants. In the said decision Supreme Court of India observed as under:

27...We do not propose and indeed it is neither politic nor possible to lay down definitive test to determine when a person may be said to hold a civil post under the Government. Several factors may indicate the relationship of master and servant. None may be conclusive. On the other hand, no single factor may be considered absolutely essential. The presence of all or some of the factors, such as, the right to select for appointment, the right to appoint, the right to terminate the employment, the right to take other disciplinary action, the right to prescribe the conditions of service, the nature of the duties performed by the employee, the right to control the employee's manner and method of the work, the right to issue directions and the right to determine and the source from which wages or salary are paid and a host of such circumstances, may have to be considered to determine the existence of the relationship of master and servant. In each case, it is a question of fact whether a person is a servant of the State or not.

16. Considering all aspects of the matter, the Supreme Court of India held that the members of the Gujarat panchayat service were Government servants.

17. Kurk Amins are appointed on commission basis by District Magistrates/Collectors in the State of U.P. for realisation of outstanding dues of the cooperative societies. The Supreme Court of India in the case of [State of U.P. and Others Vs. Chandra Prakash Pandey and Others Etc.](#), accepted the contention of the Kurk Amins that they were Government servants and holders of civil posts.

18. In the background of the aforementioned discussions, let us now consider as to how the Chaudharis are appointed and what are their functions and responsibilities. Chapter XII of the said Regulations of 1966 deals with the Village Officers. Chapter XIIA of the said Regulations deals with the Chaudharis. The relevant provisions are Regulations 132 to 138. Factually, a Chaudhari is appointed by the Deputy Commissioner, his remuneration is fixed by the Deputy Commissioner. He is to collect and pay into the Government Treasury land revenue, cesses and other Government dues ordered to be collected by him; to furnish reports regarding the state of his village; to prevent encroachments on waste land, public paths and roadways in the villages; to prevent encroachments on waste land, public paths and roadways in the villages; to preserve such stations and boundary marks erected in his village by the surveyors in the service of Government and to report any damage caused to such station or marks; to keep the village in good sanitary condition; to

prevent unauthorised cutting of wood or unauthorised removal of any minerals or other properties belonging to the Government; to control and supervise the work of the chaukidars; to perform such other duties as may be prescribed. He can be removed subject to the rules made under Regulation of 1966 by the Deputy Commissioner.

19. Considering the provision of the said Regulation of 1966, the Central Administrative Tribunal held, on facts, that the Chaudharis appointed by the administration are Government servants and are holding civil posts. We find that the Chaudharis are performing the duties in connection with the affairs of the State. The Chaudharis are paid by the State Government out of the proceeds of tax and fees imposed by the State; such imposition of taxes or fees, in the nature of a tax, is essentially a function of the State. Therefore, the Chaudharis are paid out of the State fund while discharging essentially Governmental duties. They are responsible Government servants exercising delegated powers of the Government. They are appointed by an authority prescribed under the said Regulations of 1966 and their functions are regulated by the said Regulation of 1966 made by the Government. They can only be removed subject to the rules made under the said Regulation. They are, therefore, Government servants and holders of civil posts under the State.

20. Whether the Chaudharis are Government servants or not, is essentially a question of fact. The Central Administrative Tribunal found, upon consideration of the materials placed before it, that they are holders of civil posts. In the facts and circumstances of the case, we do not find any reason to differ from such findings of the Central Administrative Tribunal. We, also, hold, therefore, that the Chaudharis are Government servants and holders of civil posts.

In view of the scheme of the said Regulations framed by the Government, we fail to appreciate the decisions of the Deputy Commissioner that creation of regular posts of Chaudharis was not justifiable at this juncture. The Central Administrative Tribunal rightly held that there was no logic in the contention of the administration that, due to modernisation, there was no work for the Chaudharis.

21. The writ application is, therefore, rejected. The order of the Central/Administrative Tribunal is affirmed.

We make no order as to costs.

Kalidas Mukherjee, J.

I agree.