

PETITIONER:
SUPERINTENDENT OF POST OFFICES ETC. ETC.

Vs.

RESPONDENT:
P.K. RAJAMMA ETC. ETC.

DATE OF JUDGMENT 22/04/1977

BENCH:
GUPTA, A.C.
BENCH:
GUPTA, A.C.
BEG, M. HAMEEDULLAH (CJ)
KAILASAM, P.S.

CITATION:
1977 AIR 1677 1977 SCR (3) 678
1977 SCC (3) 94
CITATOR INFO :
RF 1981 SC 53 (15)
RF 1992 SC 573 (14,40)

ACT:

Constitution of India, Art. 311 (2)--Whether the post of extra Departmental Branch Postmasters/Sub Post-Masters/Delivery agents a "Civil Post" within the meaning of Art. 311(2)--Posts and Telegraphs Extra-Departmental Agents (Conduct and Service) Rules, 1964--Rule 2(b).

HEADNOTE:

The respondents in all these appeals are "extra departmental agents" within the meaning of Rule 2(b) of the Posts and Telegraphs Extra Departmental Agents (Conduct of Service) Rules, 1964 issued under the authority of the Government of India. They were either dismissed or removed from service during the period between January 1, 1966 and June 18, 1974, admittedly without complying with the provisions of Art. 311(2) of the Constitution. The question in each case is whether the respondent held a "civil post" as contemplated in Art. 311(2) of the Constitution. The High Court of Kerala, Andhra Pradesh & Orissa held that the respondents held a civil post under the Union of India and the orders terminating their services in violation of Art. 31.1(2) of the Constitution were invalid. Dismissing the appeals the Court,

HELD: (1) An "extra departmental agent" held a "civil post" and his dismissal or removal would be invalid, if there was non-compliance with Art. 311 (2) of the Constitution. [680 B-C. 682 E]

(2) 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 1964 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 service, there is no doubt it is a post under the State. [681 E-F]

State of Assam & Ors. v. Kanak Chandra Dutta [1967] 1 SCR 679 @ 682 applied.

(3) The 1964 rules make it clear that these extra-

departmental agents work under the direct control and supervision of the authority 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 relationship between the Postal Authorities and the extra-departmental agents are of master and servant. [662 C-E]

Venkataswamy v. Superintendent, Post Offices, AIR 1957 Orissa 112; V. Subbaravalu v. Superintendent of Post Offices, AIR 1961 Madras 166, held inapplicable.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: C. As Nos. 1172, 1354, 1355 and 1751 of 1972.

(Appeals by Special Leave from the Judgment and Order dated the 27.9.1971 of the Kerala High Court in O.P. No. 1339/70 W.A.No. 8/70, W.A. No. 420/69 and O.P. No. 862 of 1969 respectively.)

AND

Civil Appeal No. 2275 of 1972

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(Appeal by Special Leave from the Judgment and Order dated the 18.11.1971 of the Andhra Pradesh High Court in Writ Petition No. 5662/70).

AND

Civil Appeals Nos. 1015/73, 1865/74 and CA No. 506/76.

(From the Judgments and Orders dated the 7-9-72, 22-7-74, and 30-10.1975 of the Andhra Pradesh High Court in Writ Petitions Nos. 4717/71, 3914/74 and 4213/75 respectively).

AND

CA No. 1866 of 1973 and 1867/73.

(Appeals by Special Leave from the Judgment and Order dt. the 15.2.1972 of the Andhra Pradesh High Court in Writ Petition No. 2933 and 3385/71 respectively.)

AND

Civil Appeal No. 1234 of 1974.

(Appeal by Special Leave from the Judgment and Order dated the 18.10.1973 of the Andhra Pradesh High Court in S.A. No. 360 of 1972).

AND

Civil Appeal Nos. 1300 and 1393 of 1976.

(From the Judgment and Order dated the 5-12-1975 of the Kerala High Court in Writ Appeals Nos. 414 & 415 of 1975).

AND

Civil Appeal No. 1313 of 1976.

(Appeal by Special Leave from the Judgment and Order dated the 10.3.1976 of the Orissa High Court in O.J.C. No. 531/74).

Niren De, Attorney General of India in CAs 1171, 1354-1355; V.P. Raman, Addl. Sol. General in CAs 2275 and 1313 with B. Datta in CAs 1172, 1355 and 2275 and Girish Chandra, for the appellants in all the appeals.

Vepa Sarathi, N. Sudhakaran and P.K. Pillai for respondents in CA 1172/72.

Vepa Sarathi (1354) K.M.K. Nair and Mrs. B. Krishnan for respondents in CAs 1354, 1751/72 and 1300 and 1393 of 1976.

Mrs. S. Gopalakrishnan, for respondent in CA 1355.

K. Jayaram and K. Ram Kumar for respondents in CAs 1866-67, 1015/73 and 1865 of 1974 and 506/76.

Mrs. Veena Devi Khanna, for respondent in CA 2275/72. C.S. S Rao, for respondent in CA 1313/76.

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The Judgment of the Court was delivered by

GUPTA, 3.--The respondents in all these fourteen ap-

peals, some of which are on certificate and 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 and one from the Orissa High Court. These respondents were either dismissed or removed from service during the period between January 1, 1966 and June 18, 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).

The conditions of service of the respondents are governed by a body of rules called the Posts and Telegraphs Extra Departmental Agents (Conduct and 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 Postmaster's, 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.

This Court in *State of Assam and others v. Kanak Chandra Dutta*(1) 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."

(1) [1967]1 S.C.R. 679 (682).
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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.

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 this Court in Kanak Chandra Dutta's case (supra) are clearly satisfied in the case of the extra departmental agents.

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. v. The Government of Hyderabad. (1) On page 401 of the report the following lines from Halsbury's Laws of England (Hailsham edition) Volume 1, at page 193, article 345, were quoted with approval in explaining the difference:

(1) [1955] 1 S.C.R. 393.
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"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, is entirely independent of any control or interference and merely undertakes to produce a specified result, employing his own means to produce that result. 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 purposes 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 relationship 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 Venkata Swamy v. Superintendent, Post Offices(1) and the other of the Madras High Court V. Subbaravalu v. Superintendent of Post Offices.(2) The judgment 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.

The appeals are accordingly dismissed with costs: one set of hearing fee in respect of all the appeals except C.A. 1172 of 1972 C.A. 1751 of 1972 and C.A. 2275 of 1972 in which separate orders as to costs was made earlier.

S.R.

Appeals dismissed

(1) AIR 1957 Orissa 112.

(2) AIR 1961 Madras 166.

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