

PETITIONER:
H. LYNGDOH & ORS.

Vs.

RESPONDENT:
GROMLYN LYNGDOH, JUDGE

DATE OF JUDGMENT 02/03/1971

BENCH:
REDDY, P. JAGANMOHAN
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REDDY, P. JAGANMOHAN
SHELAT, J.M.

CITATION:
1971 AIR 1110 1971 SCR (3) 903
1971 SCC (1) 754

ACT:
Assam Fundamental Rules, rr. 9(22), 56-Age of Superannuation 55 years-Member of Assam Judicial Service appointed temporarily as Judge of District Council Court of the Autonomous District of United Khasijaintia Hills-Continued in service after superannuation by order of District Council and placed in regular scale-Whether becomes permanent employee within meaning of r. 9(22).

HEADNOTE:
On January 26, 1950 the Autonomous District of United Khasi-Jaintia Hills was constituted by virtue of the provisions of cl. 2 of Art. 244 and the Sixth Schedule of the Constitution of India. and the Governor of Assam was empowered to administer the said Autonomous District. Pursuant thereto the Assam Autonomous District (Constitution of District Councils) Rules, 1961 were enforced as from October 15, 1951. On June 27, 1952 a District Council and an Executive Committee was constituted for the said autonomous District. The District Council was empowered to constitute courts and appoint suitable persons as Presiding Officers. On June 7, 1954 the United Khasi-Jaintia Hills Autonomous District(Administration of Justice) Rules, 1953 were framed by the District Council. Under r. 9 a District Council Court was constituted for the Autonomous District. Judges were to be appointed by the Executive Committee with the approval of the Governor. In the absence of any rules framed by the District Council under r. 15 of the Constitution of District Council Rules, the Assam Fundamental Rules, subsidiary Rules and instructions were applicable to the officers and staff of the District Council. The respondent who was an Additional District Judge in the senior Grade of the Assam Judicial Service was appointed with effect from 7-1-1954 temporarily as a Judge of the District 'Council Court without the approval of the Governor. The Governor however appointed him also as an Additional District Judge, Lower Assam District. The scale of pay was Rs. 750-960-1000. On 16-2-1957 the respondent attained the age of superannuation on his completion of 55 years. Notwithstanding this the District Council continued him in service and by its order dated 22-4-1965 placed him in the regular scale of Rs. 1200-60 (E.B.)-60.1500 with

effect from 1-4-1965. However subsequently the Executive Committee terminated his services with effect from August 31, 1966. The respondent challenged this order by writ petition in the High Court. Thereafter by special leave the matter came up in appeal before this Court. The question for consideration was whether in view of the definition of a permanent post under Assam Fundamental Rule 9(22) as a post 'carrying a definite scale of pay, sanctioned without limit of time', the respondent was a permanent employee.

HELD : The respondent's employment was temporary and was continuing as such. Merely placing him in a scale of pay which was different to the one in which he was temporarily appointed did not make him a permanent employee. To become permanent he must be confirmed but that question could never arise because under Fundamental Rule 56 which was admittedly applicable to him the date of his compulsory retirement was the date on which he attained the age of 55 years. After this he

9 0 4

could be retained with the sanction of the Government which admittedly in his case had not been given. Even if the validity of his appointment by the District Council without the sanction of the Governor which was a necessary condition for valid appointment was overlooked, he could not complain that his termination by the very Council was without the Government's sanction. [906 E-G]

The argument that the Governor had invested the Respondent with powers for the Schedule Districts and lower Assam was unhelpful because this was done in 1954 long prior to his attaining the age of superannuation, when without a valid extension of the service he could not continue in service after that date. [906 H]

Accordingly the appeal must be allowed and the writ petition dismissed.

[Personal remarks by the Chief Justice of the High Court against another judge of that Court disapproved.]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1929 of 1967.

Appeal by special leave from the judgment and order dated September 15, 1967 of the Assam and Nagaland High Court in Civil, Rule No. 359 of 1966.

M. C. Chagla and D. N. Mukherjee, for the appellants.

Sarjoo Prasad, R. B. Datar and S. N. Prasad, for the respondent.

The Judgment of the Court was delivered by

P. Jaganmohan Reddy, J.-The short question in this Appeal which is against the Judgment of the High Court of Assam and Nagaland by Special leave is whether the Respondent's services as Judge District Council Court of the Autonomous District of United Khasi-Jaintia Hills could be terminated by the District Council. The facts relevant for the appeal are that on the 26th January 1950 the Autonomous District of United Khasi-Jaintia Hills by virtue of the Provisions of Clause 2 of Art. 244 and the Sixth Schedule to the Constitution of India was constituted and the Governor of Assam was empowered to administer the said Autonomous District Pursuant thereto the Assam Autonomous Districts (Constitution of District Councils) Rules 1951 were enforced as from the 15th October 1951. On the 27th June 1952 a District Council and an Executive Committee was constituted for the said autonomous District. The District Council was

empowered to constitute Courts and appoint suitable persons as Presiding Officers. On 7th June 1954 United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules 1953

905

were framed by the District Council with the approval of the Governor, rule 9 of which reads as follows:

"Constitution of District Council Court(1)
There shall be one District Council Court for the United Khasi-Jaintia Hills Autonomous District which shall be called, the United Khasia-Jaintia Hills District Council Court. The Court shall consist of one or more Judicial Officers to be designated as Judge or Judges appointed by the Executive Committee with the approval of the Governor. Provided that the Chief Executive Member or Member of the Executive Committee or any other members of the District Council shall not be entitled to hold office as Judicial Officer' of the District Council court."

It is admitted that no rules were made by the District Council under Rule 15 of the Constitution of District Council rules which empowered it to regulate conditions of service of Officers and staff appointed to the services and posts in connection with the affairs of the District Council. In the absence of these rules it is also admitted that the Assam Fundamental Rules subsidiary Rules and instructions were applicable to the Officers and staff of the District Council.

The Respondent who was an Additional District Judge in the senior grade of the Assam Judicial service was appointed with effect from 7-1-1954 temporarily as a Judge of the District Council without the approval of the Governor. The Governor however appointed him also as an Additional District Judge Lower Assam District for the purpose of disposal of Civil and Criminal matters under the respective codes. On 16-2-1957 the Respondent attained the age of superannuation which was on his completion of 55 years. It would however appear that notwithstanding his having reached the age of superannuation the District Council continued him in service and by its order dated 22-4-1965 placed him in the Regular scale of Rs. 1200-60(EB)-601500 with effect from 1-4-1965. Thereafter on 30-7-1956 the Executive Committee of the District Council served notice upon him that his services alongwith the services of others mentioned in the order were terminated from 31st August 1966. It is this impugned order that was challenged in a Writ Petition which the Respondents filed in the High Court. The High Court came to the conclusion that unless the contrary is shown that the Respondent was appointed by the District Council with the approval of the Governor while the termination was by the Council without

906

the approval of the Governor, though we observe that even with respect to this nothing contrary was shown that the Governor had not given his approval.

In our view a perusal of the order of appointment would show that it was issued by the Chief Executive Member District Council and it specifically states that the appointment is temporary. Immediately after the Respondent had reached the age of superannuation the High Court wrote to the Chief Executive Member on 5-3-57 enquiring whether the Respondent has been given an extension. In reply it was informed on 25-3-57 that he was appointed on the 10th February 1954 as

Judge of the District ,Council Courts on a temporary basis; "and he will as such continue- to perform his duties till further orders made by the Council". The initial temporary appointment as will be seen from the order of 10th February 1954 was on the scale of pay Rs. 75030-960-1000 but later he was placed in a regular scale of pay of Rs. 1200 to Rs. 1500 as already adverted to. It is this ,order that is being urged as having given the Respondent a permanent post, because as the learned Advocate submits, a permanent employee is one who is appointed to a permanent post which is defined under Assam Fundamental Rule 9(22) as a post carrying a definite scale of pay sanctioned without limit of time". As we have already noticed the Respondent's appointment was temporary and was continuing as such. Merely placing him in a scale of pay which is different to the one in which he was temporarily appointed does not make him a permanent employee. To become permanent he must be confirmed, but that question can never arise because under those very Fundamental Rules which it is not denied apply to him in the absence of any rules made by the District Council the date of his compulsory retirement according to Fundamental Rule 56 is the date on which he attains the age of 55 years and if he is retained after this date it can only be done with the sanction of the Government which admittedly in his case has not been given. Even if the validity of his appointment by the District Council without the sanction of the Governor which was a necessary condition for valid appointment is overlooked he cannot complain that his termination by the very Council is without the Governor's sanction. We can find no justification for his continuance nor has any rule or regulation Fundamental otherwise shown to us to continue him in service without the sanction and under some valid rule. The argument that the ,Governor had invested the Respondent with powers for the Schedule Districts and lower Assam is equally unhelpful because this was also admittedly done in 1954 long prior to his attaining the age of superannuation when without a valid extension of the service he could not continue in service after that date. Viewed

907

from any angle the respondent's plea is untenable, as such the appeal is allowed and the writ petition dismissed, but in the circumstances without costs.

Before we part with the case we were distressed to note certain personal remarks made by the learned Chief Justice against one of the Hon'ble Judges of that Court. To us these remarks do not appear to be either proper or just. By making these remarks the learned Chief Justice has let down his office as well as his Court. In the objective discharge of judicial functions there is little justification nay, none-at-all to assume any attitude other than of judicial restraint or to use a language while referring to one's colleagues other than that which has been hitherto adopted by long usage.

G.C.

Appeal allowed and petition dismissed.

908