

State of Assam & Ors.

Vs

Shri Kanak Chandra Dutta.

Civil Appeal No. 254 of 1964

(K. Subha Rao, R. S. Bachawat, M. Hidayatullah, Raghuvar Dayal, S. M. Sikri JJ)

03.10.1966

JUDGMENT

BACHAWAT, J.

This appeal raises the question whether a Mauzadar in the Assam Valley holds a civil post under the State of Assam, and is entitled to the protection of Art. 311(2) of the Constitution. On March 4, 1939, respondent, Kanak Chandra Dutta, was appointed Mauzadar of Mancotta Mouza in the Dibrugarh Sub-division of Lakhimpur District. His father also before his death was the Mauzadar of Mancotta Mouza for about 52 years from 1885 to 1938. Under the orders of the Deputy Commissioner, Lakhimpur, the respondent was suspended on August 22, 1949 and was dismissed from the office of the Mauzadar on July 4, 1962. It is common case that this dismissal from office was made without complying with the provisions of Art. 311(2) of the Constitution. On a writ petition filed by the respondent, the Assam High Court quashed the order of dismissal. The High Court held that the respondent held a civil post under the State of Assam, and was entitled to the protection of Art. 311(2) of the Constitution. The correctness of this finding is challenged by the State of Assam in this appeal by special leave.

Under the Mauzadari system of collecting revenue prevailing in the Assam Valley, the revenue charge of a Mouza and the responsibility for the whole revenue of it in the first instance rest with the Mauzadar. The Mauzadar is spoken of as a "revenue contractor", see Baden-Powell's Land Systems of British India, Vol. 3, p. 459. A brief description of the Mauzadari system is given at pp. 56 and 57 of the Introduction of the Assam Land Revenue Manual, 6th Edn. The executive instructions appearing in paragraphs 115 to 159 and 167(a) at pp. 203 to 215 and 217 to 222 give the method of selection, appointment and dismissal of a Mauzadar, the duties and emoluments of the office and the registers to be kept and maintained by him. The Mauzadar is generally an influential and well-to-do resident of his Mouza. He may be appointed and dismissed by the Deputy Commissioner subject to the Commissioner's approval and suspended by the Deputy Commissioner on his own authority. A Mauzadar's successor is ordinarily selected from amongst the members of his family. If a suitable heir of the deceased Mauzadar is a minor, the post may be kept open for him for a period not exceeding three years, an agent being appointed in the meantime to carry on the duties of the Mauzadar. Every Mauzadar before his appointment has to execute a written agreement (kabuliyat) in the prescribed form. He is also required to furnish security to the satisfaction of the Deputy Commissioner.

A Mauzadar is a public servant whose primary duty is to collect land revenue and other Government dues with the collection of which he is entrusted. He is responsible for the collection of poll-tax, house-tax, tauzi-bahir revenue, grazing fees and forest dues. He undertakes to pay into the treasury

the full amount of all instalments of land revenue and local rates included in the Jamabandi and of house-tax, poll-tax and grazing fees within one month of the date on which they fall due for payment. In regard to land revenue, his duties are confined to collection and he is not concerned with its assessment, the settlement of land and the checking of maps or assessment papers.

He is charged with the special duties of supervising the performance of duties by Gaonburas, to receive applications for waste lands which he is authorised to entertain and to submit them with a report to the proper revenue authority, to submit reports of cases sent to him by special order for local enquiry, to assist the district authorities in the assessment of income-tax, to report, when so directed, upon the sufficiency of the security offered by the lessees of Government or Local Board ferries, fisheries etc., to submit weekly reports upon the condition of crops, the prevalence of epidemics amongst men or cattle, the loss of life caused by wild animals and the appearance of insect pests, to compile and submit to the Civil Surgeon a monthly return of vital statistics, to check the Gaonburas' reports of births and deaths by local inspection, to effect field mutations and field partitions in uncontested cases, to assist Government in any work connected with the village organisation system, to warn persons not to allow their cattle to stray on or damage the roads, to report offenders and encroachments on roadside lands and to submit weekly returns of collections. Generally, a Mauzadar is required to act as the Deputy Commissioner's assistant in all administrative matters within his Mouza so far as he may be called upon to do so.

In order to deal properly with mutation and other work, the Mauzadar has free access to the settlement papers in the hands of mandals, and it is the duty of the mandals to attend upon him, when required, during such investigations as are conducted by him. The Mauzadar is required to keep and maintain a number of official registers, and minute details of keeping the accounts and the registers are prescribed. The criminal prosecution of a Mauzadar requires the Commissioner's sanction. In exceptional cases, the Deputy Commissioner may impose upon him an executive fine of an amount not exceeding Rs. 200/-.

The Mauzadar is permitted to address his correspondence with Government offices "service bearing", and is given a small annual allowance for the provision of stationery. He is responsible for the payment of process fee on all processes issued at his instance. His remuneration as Mauzadar is generally by a commission on the revenue, local rates and grazing dues collected by him, but he may also be paid a fixed salary.

The Mauzadar may be invested with the power of attachment and sale of movables under s. 69 of the Assam Land and Revenue Regulation 1886 (Regulation No. I of 1886). Mauzadars are appointed Revenue Officers under s. 124 of the Regulation. All Mauzadars in the Assam Valley and in the case of Mauzadars who are minors, their Sarbarahkars have been appointed ex-officio Assistant Settlement Officers and invested with the powers to effect registration under s. 53(A) in uncontested cases and to dispose of under Chap. VI of the Regulation all applications for partition of revenue-paying estates in which no objection is preferred. See footnotes to ss. 124, 133 and 137 of the Regulation at pp. 41, 44 and 45 of the Manual.

A Mauzadar may own a tea garden and other landed property and engage in trade or politics, but if any of his extraneous occupations interferes seriously with his primary duties as a Mauzadar, the Deputy Commissioner is required to consider whether he should be retained in his office.

The question is whether a Mauzadar is a person holding a civil post under the State within Art. 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 Art. 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 Art. 311. In Art. 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 services. 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 Arts. 309, 310 to 311. The heading and the sub-heading of Part XIV and Chapter I emphasise the element of service. 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 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 Arts. 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 Art. 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 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.

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 a holder of a civil post under the State.

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 whole-time 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.

In Venkata Swamy v. Superintendent of Post Offices (A.I.R. 1957 Orissa, 112.), the Orissa High Court held, on a consideration of the relevant conditions of employment, that a temporary extra-departmental branch post-master was not a person holding a civil post, but the observation in that case that a part-time employee cannot be the holder of a civil post outside the regularly constituted services is too wide and cannot be supported. In Sher Singh v. State of Rajasthan (I.L.R. [1956] 6 Raj. 335, 339-340.), the Rajasthan High Court held that a chaudhari appointed under the Land Revenue Act of Bikaner is not entitled to the protection of Art. 311. The report of the case does not disclose the functions of the chaudhari and the regulations governing his employment. In Bindu Nath v. State of Assam (A.I.R. 1959 Assam. 118.), the Court found that the applicant was never appointed to the post of a Mauzadar, and no question of the protection of Art. 311 could arise in the circumstances.

The appeal is dismissed with costs.

V.P.S.

Appeal dismissed.

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