

H. Lyngdoh and Others

Vs

Cromlyn Lyngdoh, Judge

Civil Appeal No. 1929 to 1967

(CJI S. M. Sikri, P. Jagmohan Reddy, G. K. Mitter, A. N. Grover, K. S. Hegde, V. Bhargava, I. D. Dua, J. M. Shelat, A. N. Ray, C. A. Vaidialingam JJ)

02.03.1971

JUDGMENT

REDDY, J. -

1. 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 Article 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) Rulers, 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, 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 Khasi-Jaintia Hills Autonomous District which shall be called the United Khasi-Jaintia Hills District Council Court. The Court shall consist of one or more Judicial Officers to be designated as Judge of Judges appointed by the Executive Committee with the approval of the Governor :

Provided that the Chief Executive Member of Members 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."

2. 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.

3. The Respondent who was an Additional District Judge in the senior grade of the Assam Judicial

Service was appointed with effect from January 7, 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 February 16, 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 April 22, 1965, placed him in the regular scale of Rs. 1,200-60(EB)-60-1,500 with effect from April 1, 1965. Thereafter on July 30, 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 August 31, 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 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.

4. 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 March 5, 1957, enquiring whether the respondent has been given an extension. In reply it was informed on March 25, 1957, that he was appointed on February 10, 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 February 10, 1954, was on the scale of pay of Rs. 750-30-960-1,000, but later he was placed in a regular scale of pay of Rs. 1,200 to Rs. 1,500 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 give. 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 respondents with powers for the schedule District 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 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.

5. 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.

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