

M. Gurumoorthy

Vs

Accountant-General, Assam And Nagaland and Others

Civil Appeal No. 2023 of 1968

(CJI S. M. Sikri, G. K. Mitter, S. K. Hegde, A. N. Grover, P. Jagmohan Reddy JJ)

(G. K. Mitter, K. S. Hegde, P. Jagmohan Reddy JJ)

(G. K. Mitter, K. S. Hegde, A. N. Grover JJ)

(J. M. Shelat, V. Bhargava, I. D. Dua JJ)

(C. A. Vaidialingam, A. N. Ray JJ)

21.04.1971

JUDGMENT

GROVER, J. -

This is an appeal by certificate from a judgment of the High Court of Assam and Nagaland dismissing a petition filed by the appellant under Article 226 of the Constitution.

2. It is necessary to set out the facts and the relevant correspondence in order to determine the points which have to be decided. The Assam Government had sanctioned the post of Secretary to the Chief Justice on a temporary basis with a pay scale of Rs. 400-20-500 for a period of one year with effect from July 13, 1948. It appears from the letter of the Registrar of the High Court to the Secretary, Judicial Department, dated August 25, 1955, that although the said post had been sanctioned but there was hardly sufficient work for a whole-time Secretary at that time. The post was not filled up and the duties of the Secretary were performed by the Stenographer attached to the Chief Justice. He got a special pay of Rs. 50/- per mensem which had been sanctioned by the Government in 1950. This arrangement continued till February 20, 1955. From February 21, 1955, a Lower Division Assistant was appointed to perform the duties of Private Secretary in addition to his own duties. He also got a special pay of Rs. 50/- per mensem. By the aforesaid letter the view of the Chief Justice was conveyed that services of a whole-time Secretary were indispensable and necessary for proper discharge of administrative functions and work of a confidential character which had gradually increased. Request was, therefore, made to the Government to sanction the post of a whole-time Secretary to the Chief Justice permanently on the same scale which had been sanctioned in 1948. It may be mentioned that at that time the Stenographers' service in the High Court consisted of 7 permanent posts. There was one temporary post of Secretary to the Chief Justice. Out of the 7 permanent posts there were 4 posts of Stenographer Grade I, and 3 posts of Stenographer Grade II. It seems that the Government had reorganised the Secretariat Stenographers Service with effect from May 21, 1955. The Selection Grade Stenographer was given the scale of pay of Rs. 400-20-600 plus allowances. On February 14, 1956, the Registrar addressed a letter to the Chief Secretary saying that the Chief Justice had reorganised the Stenographers Service in the High Court

(presumably on the same lines as had been done by the Government) with a view to providing them with sufficient incentive. There was to be a Selection Grade Stenographer in the scale of pay of Rs. 400-20-600 plus allowances and there were to be 3 posts of Stenographer Grade I (Senior). One post of Stenographer Grade I (Junior) and 2 posts of Stenographer Grade II. In other words there were to be 7 posts of permanent Stenographer in addition to the post of a Secretary. On April 16, 1956, the Government wrote to the Registrar conveying the sanction of the Governor to the creation of a post of Secretary to the Chief Justice for the time being in the same scale as before subject to the revision by the Pay Committee.

3. The appellant was originally working as a Stenographer in the Ministry of Law, New Delhi, and had been confirmed as a Stenographer in the Income-tax Appellate Tribunal, Delhi Branch, with effect from July 1, 1952. It is stated that on the basis of a competitive examination and interview the Chief Justice appointed him as his Secretary temporarily with effect from the date on which he was appointed to the post on a scale of Rs. 400-20-500, by an order, dated July 30, 1956. By a letter, dated August 6, 1958, the Government intimated to the Registrar that the Governor had agreed to the proposed reorganisation of the Stenographers Service in the High Court with effect from May 21, 1955, "subject to the condition that the procedure of recruitment, promotion, etc., should be in the same or similar manner as laid down in the Government resolution, dated October 22, 1955." The pay-scales were to be same as accepted by the Government on the recommendation of the Pay Committee. The Registrar addressed a letter on October 3, 1958, to the Government pointing out that the conditions which had been imposed relating to the procedure of recruitment, promotion, etc., could not be so imposed in view of the provisions of Article 229 of the Constitution as it was for the Chief Justice to regulate the conditions of service of the officers and employees of the High Court. The Court had framed its own Rules in that behalf. The Government was requested to waive the conditions as laid down in Government resolution in so far as the reorganisation of the Stenographers Service of the Court was concerned and to issue revised orders. The High Court also asked for a clarification on the point whether the Government sanction referred to the post of the Secretary to the Chief Justice-cum-Stenographer or the separate post in the selection grade of Stenographer (letter from the Registrar, dated December 16, 1958). On April 27, 1958, the Government informed the Registrar that a Stenographer whether of the selection grade, Grade I (Senior) or Grade II, when attached to the Chief Justice as Private Secretary was to have the Gazetted status. The following portion of that letter deserves to be particularly noticed :

"Government's sanction for the Selection Grade Stenographer was for the post of the Secretary to the Chief Justice-cum-Stenographer only and not for an addition Selection Grade post."

On May 7, 1959, Shri C. P. Sinha the then Chief Justice of the High Court of Assam passed two orders which may be reproduced :

"(1) In exercise of the powers conferred on me under Article 229 of the Constitution of India, read with (1) Rule 11 of the Assam High Court Appointment and Conditions of Service Rules; (2) Letter No. LLJ 74/56/26, dated August 6, 1958; and (3) Letter No. LLJ 74/56/36, dated April 27, 1959, of the Government of Assam, Law Dept., I hereby direct that the post of Secretary to the Hon'ble Chief Justice be merged into the post of Selection Grade Stenographer, with effect from August 24, 1956, the date when the present incumbent, Sri M. Gurumoorthy was appointed.

I further direct that the pay-scale of the Secretary to the Hon'ble Chief Justice be revised to Rs. 450-

30-600 p.m. with effect from October 1, 1956, as recommended by the Pay Committee and accepted by the Government.

(2) In exercise of the powers conferred on me under Article 229 of the Constitution of India, read with Rule 5(i) Part II of the Assam High Court Appointment and Conditions of Service Rules, I hereby appoint Sri M. Gurumoorthy, as Secretary to the Hon'ble Chief Justice of Assam-Cum-Selection Grade Stenographer, in a substantive capacity in the pay-scale of Rs. 450-30-600 p.m. with effect from August 24, 1958. Sri M. Gurumoorthy will be deemed to have been placed on probation with effect from August 24, 1956, under Rule 4(ii), Part II of the Assam High Court Appointment and Conditions of Service Rules."

4. The letter of the Registrar, dated December 23, 1959, to the Government referred to the material correspondence which led to the passing of the order by the Chief Justice, dated May 7, 1959, by which the appellant was appointed as Secretary to Chief Justice-cum-Selection Grade Stenographer substantively with effect from August 24, 1956. In this letter sanction was asked for the post of one pre-reorganisation Grade I Stenographer (Grade I Junior) with effect from August 24, 1956. It is noteworthy that prior to the orders of the Chief Justice, dated May 7, 1959, there were seven posts of Stenographer of all grades and one temporary post of Secretary to the Chief Justice. After the appointment of the appellant as Secretary-cum-Selection Grade Stenographer substantively only 6 posts of Stenographers were left and therefore the High Court asked for sanction for the post of a Stenographer as above. As stated in Para 27 of the writ petition the Accountant-General was fully satisfied about the validity of the order, dated May 7, 1959, passed by the Chief Justice and the necessary pay-slips authorising the appellant to draw salary in the scale of Rs. 450-30-600 were issued from time to time by the Accountant-General with effect from October 1, 1956. This was admitted in the return, Para 12, but it was added that the Accountant-General was simultaneously corresponding for a normal sanction for the creation of a permanent post of Selection Grade Stenographer and a definite assurance had been given by the High Court in its letter, dated September 1, 1959, that action was being taken separately to make the necessary modification in the High Court Appointment and Conditions of Service Rules. By a letter, dated January 12, 1961, the Finance Minister, Assam, wrote to the Chief Justice in reply to the letter, dated November 15, 1960, from him saying that from the Charge Report of the Appellant, dated August 28, 1956, his appointment was exclusively to the post of Private Secretary and he could not be held to have been appointed in any other post. That post was a separate one and could not be merged with any other post as was ordered by the High Court. He made certain suggestions for consideration of the High Court. It was pointed out that if those suggestions were accepted the position would be as follows :

##Existing posts New posts as resulted of re-organisationPrivate Secy. to Chief
Private Secy. to Chief Justice 1Justice 1Selection Grade Steno (by upgrading) 1Grade
I Steno 4 Grade I Steno 3Grade II Steno 3 Grade II Steno 3--- ---Total 8 Total 8--- ---
##

Now new creation of a post as proposed by the High Court was stated to be necessary. The following portion from that letter may be set out :

"I am however to point out once more that the main difficulty in the matter lies on the question of appointing Sri Gurumoorthy as a Selection Grade Steno from his original appointment as Private Secretary to the Chief Justice which was a separate

post."

5. This letter was addressed to Shri H. Deka who had become Chief Justice by that time. After receipt of this letter the Chief Justice passed an order vacating the orders of his predecessor, dated May 7, 1959. He expressed the view that the post of the Secretary to the Chief Justice could not be merged with that of the Selection Grade Stenographer inasmuch as the incumbent was not a Selection Grade Stenographer. He agreed with the Government's suggestion contained in the aforesaid letter and vacated the order merging the post of Secretary with that of Selection Grade Stenographer and of absorbing the appellant substantively in there permanent cadre and in the post of Secretary-cum-Selection Grade Stenographer. He asked for sanction to revise the pay-scale of the Secretary to Rs. 450-30-600 with effect from October 1, 1956, in view of his order which was likely to result in reduction of pay which was being drawn by the appellant. In September, 1961, Shri Gopalji Mehrotra who had succeeded Shri H. Deka as Chief Justice re-examined the whole matter and observed that from the orders of his predecessor, dated February 9, 1961, two consequences would flow; firstly, the appellant would have to refund the salary which he had overdrawn and secondly even if the sanction was granted from August 24, 1961, or his post was made permanent he might get salary on the old scale. In his view the appointment of the appellant by the Chief Justice Shri C. P. Sinha on May 7, 1959, was a valid appointment and the Chief Justice had full powers to pass the said order under Article 229 of the Constitution. He, further considered that once the appellant had been appointed substantively he could not be asked to vacate that post in violation of the provisions of Article 311(2). He, therefore, vacated the order made by Shri H. Deka and restored that of Shri C. P. Sinha.

6. Once an order had been passed by the Chief Justice of the High Court in exercise of his power under Article 229 of the Constitution the only course open to the Government, if it wanted to challenge those orders, was to take appropriate proceedings either by way of persuading the Chief Justice to rescind or amend his order on the administrative side or to file a writ petition challenging his orders in the High Court. But the Government took the extraordinary and somewhat unusual step of directing the Account-General not to issue any pay-slip to the appellant until final orders of the Government were issued. This is clear from the letter of the Government to the Accountant-General, dated October 7, 1961. It appears that the appellant challenged the directions given by the Government to the Accountant-General by a petition under Article 226 of the Constitution. That petition was, however, withdrawn on July 12, 1963, in view of an assurance given by the Advocate-General that if a proposal was sent to the Government by the High Court on the following lines it would be accepted :

"(1) Creation of a permanent post of Secretary to the Hon'ble Chief Justice, outside the cadre of Stenographers, in the scale of Rs. 450-30-600 with retrospective effect, the date with reference to which this would take effect being decided by the Government in consultation with the Hon'ble Chief Justice.

(2) Pending finalisation of the above proposal, the petitioner would be allowed to draw pay in the abovementioned grade at Rs. 570/- per month subject to adjustment in the light of the finalisation of the matter."

7. On July 23, 1963, the Registrar wrote to the Government enclosing a copy of the High Court order, dated July 12, 1963. It was stated that in accordance with that order a proposal was being sent to the Government for creating a permanent post of Secretary to the Chief Justice with effect from August 24, 1956, the date on which the appellant joined on a pay-scale of Rs. 450-30-600. On

October 1, 1963, the Government wrote to the Registrar intimating sanction of the Governor to the creation of a permanent post of Secretary with effect from May 7, 1959. The Registrar in his letter of November 12, 1963, pointed out that the sanction was inconsistent with the High Court's proposal. This was followed by a long correspondence but the Accountant-General revived his demand for refund of a sum of Rs. 15,621.2 nP. on account of the salary which was stated to have overdrawn by the appellant.

8. On November 15, 1965, the appellant filed a petition under Article 226 of the Constitution which was heard on January 2, 1967, by a division bench consisting of C. S. Nayudu and S. K. Dutta, JJ. The learned Judges differed in their decision. Nayudu, J., dismissed the petition where Dutta, J., allowed it. The petition was referred to a third Judge Goswami, J., who agreed with the judgment of Nayudu, J.

9. The main point raised in the petition related to the ambit of the powers of the Chief Justice of the High Court under Article 229 of the Constitution and the authority of the State Government to interfere with or override those orders of the Chief Justice by directing the Accountant-General not to issue the pay-slips to the officer whose appointment had been made by the Chief Justice as his Secretary-cum-Stenographer. Indeed, it was stressed, this had been done after the State Government had accorded sanction in clear terms for such a post. The position taken up by the appellant was controverted in every way by the respondents.

10. We may now refer to the constitutional provisions for determining the power and authority of the Chief Justice of a High Court in the matter of appointments of officers and servants of that Court. Clause (1) of Article 229 provides that appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct, i.e., his nominee. The proviso empowers the Governor of the State to require by Rule in certain cases to make appointments after consultation with the State Public Service Commission. Clause (2) of the article contains two important provisions. The first is that conditions of service of officers and servants of a High Court shall be such as may be prescribed by Rules made by the Chief Justice or his nominee. This is, however, subject to the provisions of any law made by the Legislature of the State. The second is that the Rules so far as they relate to salaries, allowances and pensions require the approval of the Governor. Clause (3) declares that the administrative expenses of a High Court including all salaries, allowances, etc., in respect of officers and servants of the Court shall be charged upon the Consolidated Fund of the State. Under Article 202 the Governor shall in respect of every financial year, cause to be laid before the House or Houses of the Legislature of the State a statement of the estimated receipts and expenditure for that year. Under clause (2) the estimates of expenditure shall show separately : (a) the sums required to meet expenditure described by the Constitution as expenditure charged upon the Consolidated Fund to the State; and (b) the sums required to meet other expenditure. Clause (3) gives the expenditure which shall be charged on the Consolidated Fund of each State. Clause (f) reads "any other expenditure declared by this Constitution or by the Legislature of the State by law to be so charged." Under Article 203, the estimates which relate to expenditure charged upon the Consolidated Fund of the State shall not be submitted to the vote of the Legislative Assembly. Article 204 relates to Appropriation Bills. The bill to provide for appropriation out of the Consolidated Fund of the State must include the expenditure charged on that Fund. Clause (2) prevents any amendment being proposed to an Appropriation Bill which will have the effect, inter alia, of varying the amount or altering the destination of any grant or varying the amount of expenditure charged on the Consolidated Fund of the State. Article 146 contains provisions relating to officers and servants of the Supreme Court in terms analogous to Article 229 the other provisions being also similar.

11. The unequivocal purpose and obvious intention of the framers of the Constitution in enacting Article 229 is that in the matter of appointment of officers and servants of a High Court it is the Chief Justice or his nominee who is to be the supreme authority and there can be no interference by the executive except to the limited extent that is provided in the article. This is essentially to secure and maintain the independence of the High Courts. The anxiety of the Constitution-makers to achieve that object is fully shown by putting the administrative expenses of a High Court including all salaries, allowances and pension payable to or in respect of officers and servants of the Court at the same level as the salaries and allowances of the judges of the High Court nor can the amount of any expenditure so charged be varied even by the Legislature. Clause (1), read with clause (2) of Article 229 conferred exclusive power not only in the matter of appointments but also with regard to prescribing the conditions of service of officers and servants of a High Court by Rules on the Chief Justice of the Court. This is subject to any legislation by the State Legislature but only in respect of conditions of service. In the matter of appointments even the Legislature cannot abridge or modify the powers conferred on the Chief Justice under clause (1). The approval of the Governor, as noticed in the matter of rules, is confined only to such rules as relate to salaries, allowances, leave or pension. All other rules in respect of conditions of service do not require his approval. Even under the Government of India Act the power to make rules relating to the conditions of service of the staff of the High Court vested in the Chief Justice of the Court under Section 242(4), read with Section 241 of the Government of India Act, 1935. By way of contrast reference may be made to Article 148 relating to the Comptroller and Auditor General of India. Clause (5) provides :

"Subject to the provisions of this Constitution and of any law made by Parliament the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor General."

12. It is significant that the Comptroller and Auditor General unlike the Chief Justice of a High Court has not been given the power to prescribe the conditions of service of persons serving in the Indian Audit and Accounts Department in the same terms as are embodied in Article 229(2). There the rules have to be made by the President after consultation with him. Article 187 may also be noticed. Clause (2) of that article provides that the Legislature of a State may by law regulate the recruitment and conditions of service of persons appointed to the secretarial staff of the House or Houses of Legislature. Clause (3) is to the effect that until provision is made under clause (2) the Governor may, after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, make rules regulating the recruitment and the conditions of service of persons appointed to the secretarial staff of the Assembly or Council. Thus Article 229 has a distinct and different scheme and contemplates full freedom to the Chief Justice in the matter of appointments of officers and servants of the High Court and their conditions of service. These can be prescribed by rules made by him. Apart from the special situation contemplated by the proviso to clause (1) the only exception is that the Governor's approval must be sought to the extent the rules relate to salaries, leave or pension. This exception, it is abundantly clear, has to be made because the finances have to be provided by the Government and to the extent there is any involvement of expense the Government has to approve of it.

13. Dutta, J., in this judgment considered that there was no dispute on the following position. There were originally 7 sanctioned posts of stenographers in the High Court. The Court sent a proposal that the Stenographer's Service should be reorganised. This included the post of one selection grade stenographer. There was also a separate proposal to make the post of Secretary to Chief Justice

permanent with a pay-scale similar to that of a selection grade stenographer. The Government accepted the proposal with regard to the reorganisation of the Stenographers Service. The pay-scale of the selection grade stenographer was first fixed at Rs. 400-600 with effect from May 21, 1955. It was revised to Rs. 450-600 from October 1, 1956 but it was afterwards fixed at Rs. 600-900 with effect from September 1, 1959. The Government had made it clear that the person holding the post of selection grade stenographer should also work as Secretary to the Chief Justice and that the temporary post of the Secretary to the Chief Justice should cease to exist. Dutta, J., repelled the contention of the counsel for the State that no post of Secretary-cum-selection grade stenographer had been created by the Government or that such a post could not be created except by means of framing rules. It was pointed out by the learned judge that a number of posts had been created with different pay-scales by the Government or the High Court and several of these posts and pay-scales were never integrated in any rule. The Government never took up the position that all those posts did not legally exist. When a post was created with the approval of the Government in the High Court and the pay-scale was sanctioned for it, its inclusion in the rules was a mere formality. It was also held by him that the conditions laid down while sanctioning the post of selection grade stenographer in the letter of the Government, dated August 6, 1958, that the procedure of recruitment should be on the same or similar lines as laid down in the Government Resolution, dated October 22, 1955, came into conflict with the powers of the Chief Justice under Article 229 and it was so accepted by the Government itself in the letter, dated April 27, 1959. His view finally was that the Government had the authority to sanction the post. But it could not interfere with the choice of the incumbent which undoubtedly was to be of the Chief Justice under Article 229 of the Constitution. We are inclined to concur with the reasoning and conclusion of Dutta, J.

14. It is unnecessary to refer to the decision of Nayudu, J., who acceded to certain contentions raised on behalf of the State which were wholly untenable and have not been sought to be supported before us. By way of illustration, one of the arguments which was accepted was that the letter Annexure R, dated April 27, 1959, from the Secretary to Government of Assam, Law Department, to the Registrar and which he was obviously writing on behalf of the Government, which meant, the Governor, did not satisfy the requirements of Article 166 of the Constitution. In view of the tenor and contents of that letter such a contention could never have been sustained.

15. Goswami, J., did not fall into the same errors as Nayudu, J. and his comprehension of the true legal position was substantially correct. But he erred in coming to the conclusion that the Government had not accorded sanction for the post to which the appellant was appointed by the orders of Sinha, C.J., dated May 7, 1959. His reasoning was that there were seven permanent stenographers holding seven posts. By the appointment of the appellant as selection grade stenographer-cum-Secretary the strength was raised to eight for which no sanction of the Government existed. Goswami, J., further took into consideration the fact that the Government had made it clear that the selection grade post should be filled by promotion strictly on merits from among the stenographers Grade I.

16. It may be stated at once that any restrictions imposed by the Government of the above nature while communicating the sanction could not bind the Chief Justice in view of Article 229 of the Constitution. This was recognised by the Government itself in its letter, dated April 27, 1959. Even as regards the strength of the cadre of stenographers which was seven there was evidence that at the relevant time all the posts were not filled up (see the affidavit filed by the appellant in the High Court, dated August 7, 1967, together with Annexure I). At any rate the Government had itself taken up the position in Para 6(vii) of the affidavit, dated December 12, 1965, that as a result of the order of the Chief Justice of May 7, 1959, one post of Grade I stenographer stood automatically

retrenched. If that be the correct position there was no additional financial burden involved in the appointment of the appellant as Secretary-cum-selection grade stenographer and it is difficult to understand how the Government could interfere in the choice of the person who was appointed or insist on his having certain type of qualifications, as seems to have been emphasized in some of the letters. It may also be pointed out that the post of selection grade stenographer-cum-Secretary to Chief Justice had been sanctioned vide the letter, dated April 27, 1959. The appellant was appointed to that post by the Chief Justice who was competent to do so under Article 229. If there were any technical difficulties they could be easily sorted out by natural co-operation which is essential between the Chief Justice of the High Court and the State Government in such matters. But instead of doing so the usual step of the Accountant General withholding the pay-slips under the directions of the Government was taken for which there was no legal justification or warrant.

17. The appeal is consequently allowed and the judgment of the High Court is set aside. An appropriate writ or direction shall issue to the respondents to give effect to the orders of Sinha, C.J., dated May 7, 1959, and Mehrotra, C.J., dated September 27, 1961. The appellant will get his costs in this Court.

</html