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STATE OF U.P. AND ORS.

v.

CHANDRA PRAKASH PANDEY AND ORS.

MARCH 20, 2001

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[G.B. PATTANAİK AND B.N. AGRAWAL, JJ.]

*Service Law :*

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*Kurk Amins—Appointment of—On commission—For recovery of outstanding dues of co-operative societies—High Court held such Kurk Amins as Government servants entitled to regular scale of pay—Earlier judgment declaring Kurk Amins as Government Servants not challenged by Government—Held, there is no infirmity in the judgment of the High Court—Hence, no interference called for.*

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The respondents were appointed as Kurk Amins on commission basis by different District Magistrates/Collectors within the appellant-State for realisation of outstanding dues of the various co-operative societies. Two different Benches of the High Court held that the respondents-Kurk Amins were Government servants entitled to regular scale of pay. Hence this appeal.

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On behalf of the respondents it was contended that the earlier decisions of the High Court declaring them as Government servants had attained finality, as their correctness was not challenged by the appellant-State.

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Dismissing the appeal, the Court

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**HELD :** 1. The High Court after taking into consideration all relevant factors as laid down by this court in the cases of Shri Kanak Chandra Dutta, P.K. Rajamma and Raman Lal Keshav Soni, has come to the conclusion and recorded a finding of fact that Kurk Amins appointed on commission basis for recovery of outstanding dues of the co-operative societies were members of service and government servants. On behalf of the State, it has not been challenged that the aforesaid statements of facts in the two judgments are incorrect. There is no infirmity in the judgments rendered by the High Court so as to be interfered with by this

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Court. [514-D-E; G]

*State of Assam v. Shri Kanak Chandra Dutta*, [1967] 1 SCR 679; *Superintendent of Post Offices v. P.K. Rajamma*, [1977] 3 SCR 678 and *State of Gujarat v. Raman Lal Keshav Soni*, [1983] 2 SCC 33, referred to.

*Venkata Swamy v. Superintendent of Post Offices*, AIR (1957) Ori.112, cited.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8467-68 of 1995.

From the Judgment and Order dated 5.5.95 of the Allahabad High Court in S.A. Nos. 16(SB) and 39(SB) of 1994.

WITH

Civil Appeal Nos. 2167 of 2001, 36/1994 and 6075 of 1997.

Rakesh Dwivedi, R.K. Jain, P.N. Mishra, R.C. Verma, R.B. Misra, Mrs. Niranjana Singh, K. Misra, (Vijay Hansaria,) for M/s. Jain Hansaria & Co., R.A. Mishra, P.K. Jain, C.S. Ashri, Manoj Saxena H.A. Raichura and Shakil Ahmed Syed for the appearing parties.

The Judgment of the Court was delivered by

**B.N. AGRAWAL, J.** Leave granted in SLP (C) No. 15849 of 1993.

The question involved in these appeals is whether Kurk Amins appointed on commission basis by different District Magistrates/Collectors within the State of Uttar Pradesh for realisation of outstanding dues of the various cooperative societies as arrears of land revenue can be treated to be employees of the State Government holding civil post under the State of Uttar Pradesh within the meaning of Article 311 of the Constitution of India inasmuch as they are entitled to a scale of pay which is payable to Kurk Amins appointed in the Revenue Department.

The short facts are that the Registrar, Cooperative Societies, Uttar Pradesh framed a scheme on 8.5.1978 for appointment of Kurk Amins throughout the State by the concerned District Collector for realisation of outstanding dues of the cooperative societies as land revenue and their salary and conditions of service were also prescribed. Pursuant to the said scheme, Kurk Amins were appointed in different Districts of the State. Subsequently, it transpired that such Kurk Amins were not recovering sufficient outstanding dues to meet even payment of salary to them. Therefore, they were asked to work on commission basis. Those Kurk Amins who agreed to work on

A commission basis were retained in service whereas services of others were terminated, which led to filing of a writ application before the Allahabad High Court by one Ram Bihari Misra giving rise to CMWP No. 738/1980 claiming therein that he was regular employee as such his services could not have been terminated. Similarly situated persons also filed other writ applications in the same year. All the writ applications were heard and disposed of by a Division Bench of the High Court on 16.11.1985 whereby orders of termination of the writ petitioners were quashed and it was held that they were Government servants as such their services could not have been terminated otherwise than in accordance with the procedure prescribed under law.

C Thereafter one Chandra Prakash Pandey and others, who are respondents in Civil Appeal Nos. 8467-68 of 1995, filed a writ application before the High Court for a direction to the State to pay regular scale to them as was payable to Kurk Amins of the Revenue Department. The learned Single Judge of the High Court following the judgment rendered by the Division Bench on 16.11.1985 in CMWP No. 738/1980 referred to above allowed the writ application and directed to pay salary and regular scale of pay to the writ petitioners against which order Special Appeal was preferred by the State of Uttar Pradesh before the Division Bench whereas writ petitioner - Chandra Prakash Pandey also preferred an appeal against the judgment of the learned Single Judge as no direction was given for fixing their pay and granting arrears. Both the appeals were disposed of by judgment dated 5th May, 1995. The appeal preferred by the State was dismissed and the appeal preferred by the writ petitioner was allowed which gave rise to Civil Appeal Nos. 8467-68 of 1995.

F In the meantime, Uttar Pradesh Sahakari Sangharsh Karamchhari Sangh filed a writ petition being Writ Petition No. 2829(S)/92 praying therein, *inter alia*, for payment of regular scale to Kurk Amins appointed on commission basis for realising dues of the cooperative societies as was payable to Kurk Amins of Revenue Department. Some other organisations and individual Kurk Amins also filed separate writ applications and following the decision rendered in CMWP No. 738/1980 on 16.11.1985, a Division Bench of the High Court held that the principle laid down in the aforesaid case also applied to the case of Kurk Amins appointed on commission basis as if both stood on the same footing, without considering the distinction between the two. The said decision was challenged before this Court by way of a Special Leave to Appeal being SLP (C) Nos. 1046, 945, 1462-1463 of 1991 and when the same were placed for consideration before this Court on 16.1.1992 leave was

granted, appeals were allowed and the matter was remanded to the High Court for considering the question as to whether cases of Kurk Amins appointed on commission basis can be treated to be at par with that of Kurk Amins appointed on salary basis and the ratio of the decision in CMWP No. 738/1980 rendered by the High Court on 16.11.1985 would be applicable to them or not. As by the time the matter was remanded, writ applications, according to the Rules of that High Court, were required to be heard by a Single Judge, the same were placed for consideration before a Single Judge, who, by order dated 22.3.1996, recorded a tentative finding that the cases of Kurk Amins appointed on commission basis were at par with that of Kurk Amins appointed on salary basis, but was of the opinion that the matter should be heard by a larger bench. Against the said order, special appeal was preferred before the High Court and a Division Bench disposed of the same on 4.4.1997 by allowing the appeal, setting aside that portion of judgment rendered by the learned Single Judge whereby he directed the matter to be placed before a larger bench and held that the Kurk Amins appointed on commission basis also held civil posts like Kurk Amins appointed on salary basis for realisation of outstanding dues of cooperative societies. Challenging the said decision of the Division Bench, Civil Appeal No. 6075 of 1997 has been preferred.

In the meantime, one Syed Zurrar Ahmed, who is respondent in Civil Appeal arising out of SLP (C) No. 15849 of 1993, filed a writ application before the High Court claiming that he being appointed as Kurk Amin on commission basis was also entitled to similar relief and the High Court by order dated 14.1.1991 allowed the writ application and directed that he shall be treated to be a Government servant holding civil post and paid regular salary in accordance with law which judgment is under challenge in the Civil Appeal arising out of the aforesaid SLP.

In the meantime, one Ram Kishore, respondent in Civil Appeal No. 36 of 1994, filed a writ application being CMWP No. 5660/90 claiming regular scale of pay as payable to Kurk Amins of Revenue Department as he was also appointed as Kurk Amin on commission basis. The High Court following its earlier judgment granted the prayer which necessitated filing of the said appeal.

In all these appeals preferred by the State of Uttar Pradesh, Mr. Rakesh Dwivedi, learned senior counsel appearing on behalf of the State, has assailed the judgments on the ground that Kurk Amins appointed for realisation of outstanding dues of cooperative societies could not have been treated to be

A Government servants and the High Court was not justified in holding that they held civil posts under the State of Uttar Pradesh as the Kurk Amins were appointed under a scheme framed by the Registrar of Cooperative Societies for recovery of outstanding dues of the cooperative societies. On the other hand, Mr. R.K. Jain, learned senior counsel appearing on behalf of the respondents, submitted that neither in Civil Appeal Nos. 8467-68 of 1995 nor in Civil Appeal No. 6075 of 1997 in which separate detailed judgments have been rendered by the High Court, any counter affidavit was filed on behalf of the State before the High Court inasmuch as even after remand of the matter by this Court no affidavit in opposition was filed on behalf of the State. It has been further submitted that the so-called scheme, which is the basis of submission of the State before this Court, was not brought on the record either before the High Court or before this Court and the same has been produced during the course of argument as such it should not be taken into consideration. It has been further submitted that for deciding the question as to whether there was relationship of master and servant between the Kurk Amins appointed for realisation of outstanding dues of cooperative societies and the State, there would be host of circumstances which have to be considered for determining the same and such a question whether a person or class of persons is servant of the State, which is a question of fact, has been decided in the present case by the High Court after considering the various ingredients which are required under law for coming to a conclusion that the respondents were holding a civil post and they were Government servant, but the State has failed to challenge the said statements of facts, in the judgments.

Undisputedly, the decision of the Allahabad High Court that the Kurk Amins, appointed on salary basis for realisation of dues of co-operative societies, held civil posts and became Government servant has attained finality as its correctness has not been challenged by the State of Uttar Pradesh by bringing the matter to this Court, rather the same got approval of this Court while remanding the matter to the High Court for considering the question whether cases of Kurk Amins appointed on commission basis stand on the same footing as that of Kurk Amins appointed on salary basis in whose cases it was declared that they held civil posts and would be entitled to the same salary as is payable to Kurk Amins of Revenue Department.

The question as to when a person can be said to be holder of a civil post has been subject matter of consideration before this Court on numerous occasions. In the case of *State of Assam & Ors. v. Shri Kanak Chandra Dutta*,

[1967] 1 SCR 679, a Constitution Bench of this Court was considering a case where a Mauzadar was appointed for collection of land revenue under the Mauzadari System prevailing in the Assam Valley whose primary duty was to collect land revenue and other government revenues. He was working as Revenue Officer and *ex-officio* Assistant Settlement Officer exercising delegated powers of the Government and the State had the power and right to select and appoint him inasmuch as power to suspend and dismiss. The Mauzadar was drawing not a regular salary but commission by way of a remuneration. The Court observed that there must be existence of relationship of master and servant between the State and its employees and such a relationship can be established by presence of all or some of the ingredients. After due consideration of the entire matter, the Court laid down the law as follows:-

“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

A conditions of service of a Mauzadar enable him to engage in other activities.

In *Venkata Swamy v. Superintendent of Post Offices*, AIR (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."

(emphasis added)

C In the case of *Superintendent of Post Offices etc. etc. v. P.K. Rajamma etc. etc.*, [1977] 3 SCR 678, this Court was considering the case whether extra departmental agent held a civil post and for his dismissal or removal the provision of Article 311(2) of the Constitution was applicable. The Court laid down that an extra departmental agent held a civil post and his dismissal or removal would be invalid if there was infraction of provisions of Article 311(2) of the Constitution as it then stood. The Court observed that extra departmental agent was not a casual worker but he held a post under the administrative control of the State and the relationship between the postal authorities and the extra departmental agent was that of a master and servant.

E In the case of *State of Gujarat & Anr. v. Raman Lal Keshav Lal Soni & Ors.*, [1983] 2 SCC 33, again a Constitution Bench of this Court was considering the question as to whether the Panchayat Service constituted under Section 203 of the Gujarat Panchayat Act was a civil service of the State and the members of the service were Government servants. The Court after due consideration enumerated the following indicia for deciding whether a particular person is a member of civil service of the State and a Government servant in paragraph 27 which runs thus:-

G "We do not propose and indeed it is neither politic nor possible to lay down any definitive test to determine when a person may be said to hold a civil post under the Government. Several factors may indicate the relationship of master and servant. None may be conclusive. On the other hand, no single factor may be considered absolutely essential. The presence of all or some of the factors, such as, the right to select for appointment, the right to appoint, the right to terminate, the employment, the right to take other disciplinary action, the right

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to prescribe the conditions of service, the nature of the duties performed by the employee, the right to control the employee's manner and method of the work, the right to issue directions and the right to determine and the source from which wages or salary are paid and a host of such circumstances, may have to be considered to determine the existence of the relationship of master and servant. *In each case, it is a question of fact whether a person is a servant of the State or not.*"

(emphasis added)

In the light of the foregoing discussions, we consider these appeals. In the impugned judgment under Civil Appeal Nos. 8467-68 of 1995, the Division Bench of the High Court after due consideration recorded its conclusion which runs thus:-

"It appears that the Collector was the appointing authority and the petitioners were being paid out the cost recovered according to provisions for the recovery of land revenue and that they had been given revised scale of pay having been performing the same duties and responsibilities as other Kurk Amins of other departments and that their counter parts on salary basis having been so found to hold civil posts by the Hon'ble Supreme Court, as referred to hereinbefore, and that the petitioners were working under the control and supervision of Assistant Registrar of Co-operative Society and are performing public duties."

Likewise, in another detailed judgment under Civil Appeal No. 6075 of 1997, rendered by another Division Bench of the High Court upon the matter being remanded by this Court, the Court after due consideration came to the following conclusion:-

"It is not disputed that the appointing authority in case of both is the District Magistrate/Collector, the power to terminate the service of both the categories vests in the same authority, they are amenable to same disciplinary authority, the nature of their duties is the same and they exercise similar power. The Kurk Amin appointed on commission basis similarly enjoys and exercises the power to arrest a person, who is defaulter, can attach his property, which he can put to auction like his counter part on regular basis. A Kurk Amin on commission basis and on regular basis similarly follows the provisions of U.P.

A Zamindari Abolition and Land Reforms Act, 1951 and U.P. Land Revenue Act, 1901 in so far as the recovery of land revenue.

B Once the District Magistrate issues a recovery citation both the sets of Kurk Amins in order to execute the recovery follow the same procedure and exercise the powers and they are under the control of one and same authority. The Kurk Amin, be on commission basis or on regular basis, gets his salary from the Government exchequer out of 10 per cent collection charges realized as arrears of land revenue. It is, thus, clear that both the sets of Kurk Amins work in the same capacity under the control of the State Government and their appointment and duties fully comply with the tests laid down by the Supreme Court in the decision of *State of Gujarat and Another v. Raman Lal Keshav Lal Soni and Others*, [1983] 2 SCC 33.”

C From a bare perusal of the aforementioned decisions of the two different benches of the High Court it would be clear that after taking into consideration all relevant factors as laid down by this Court in its judgment referred to above, the High Court has come to the conclusion and recorded a finding of fact that Kurk Amins appointed on commission basis for recovery of outstanding dues of the cooperative societies were members of service and government servants. On behalf of the State, it has not been challenged that the aforesaid statements of facts in the two judgments are incorrect. During the course of arguments learned senior counsel appearing on behalf of the State made an unsuccessful attempt to refer to a scheme prepared by the Registrar of Cooperative Societies, but in view of the fact that neither any counter affidavit was filed before the High Court nor the said scheme was filed before this Court either along with the Special Leave Petitions or with any other affidavit, we are of the opinion that it is not possible for us to look into the said scheme as such the same can be of no avail to the State by its mere production in Court during the course of argument.

D In view of the foregoing discussions, we do not find any infirmity in the judgments rendered by the High Court so as to be interfered with by this Court.

E The appeals are, accordingly, dismissed but there shall be no order as to costs.

F V.S.S.

G Appeals dismissed.