

COAL MINES PROVIDENT FUND COMMISSIONER

v.

RAMESH CHANDER JHA

JANUARY 31, 1990

[K.N. SAIKIA AND M. FATHIMA BEEVI, JJ.]

Code of Civil Procedure, 1908: Sections 2(17) and 80—Coal Mines Provident Fund Commissioner—Whether ‘public officer’.

Respondent instituted a suit against the appellant, the Coal Mines Provident Fund Commissioner without a notice as required under section 80 C.P.C. Appellant objected stating that he was a public officer within the meaning of the term occurring in section 80 C.P.C. and that the suit was incompetent.

The trial court overruled the objection and held that the appellant was not a public officer. The High Court confirmed the same.

Aggrieved, the appellant, has preferred this appeal by special leave.

Allowing the appeal, this Court,

HELD: 1.1 The courts below have erred in holding that the Coal Mines Provident Fund Commissioner is not a public officer within the meaning of the term in section 2(17)(h) of the C.P.C. The word ‘service’ in section 2 (17)(h) C.P.C. must necessarily mean something more than being merely subject to the orders of Government or control of the Government. To serve means “to perform function; do what is required for”. The Commissioner appointed by Government performs the functions as envisaged in the Act and the scheme thereunder. When he is actually acting in the capacity of Provident Fund Commissioner, he does not cease to be an officer in the service of the Government. [184E-F; 185F]

1.2 The fact that the Commissioner receives the salary and allowances out of the Coal Mines Provident Fund and not from the Government during the tenure as Commissioner would make no difference when the description as an officer in the service of the Government is answered. [184D]

2. In the present case, the Provident Fund Commissioner holds the office of Commissioner on appointment by Government by virtue of his office. His services are temporarily placed at the disposal of the Board constituted under Section 3 of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948. He does not, therefore, cease to be an officer in the service of the Government. The payment of his pay out of the Fund does not alter his status as Government employee. [185E]

Liquidator of Society Sangakheda Kalan Co-Operative Bank, Hoshangabad v. Ayodhyaprasad Shiamlal, AIR 1939 Nagpur 232; *Kuppu Govinda Chhattiar v. Uttukottai Co-Operative Society*, AIR 1940 Madras 831; *Vishnu Wasudeo Joshi v. T.L.H. Smith Pearse*, AIR 1949 Nagpur 362; *Commissioner of Wakfs, Bengal v. Shahebzada Mohammed Zahangir Shah*, AIR 1944 Calcutta 206 and *Kamta Prasad Singh v. The Regional Manager, F.C.I.*, AIR 1974 Patna 376, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1932 of 1982.

From the Judgment and Order dated 7.9.1981 of the Patna High Court in C.R. No. 341 of 1980 (R).

M.C. Mahajan, Hemant Sharma and Ms. A. Subhashini for the Appellant.

M.P. Jha for the Respondent.

The Judgment of the Court was delivered by

FATHIMA BEEVI, J. This appeal by special leave is against the judgment dated 7.9.1981 of the High Court of Judicature at Patna, Ranchi Bench, Ranchi in Civil Revision No. 341 of 1981. The short question that falls for consideration in this appeal is whether the Coal Mines Provident Fund Commissioner is a 'public officer' as defined in section 2(17) of the Code of Civil Procedure.

Section 80 of the Code requires a notice to be issued as prescribed before instituting a suit against a public officer in respect of any act purporting to be done by such public officer in his official capacity. The respondent herein instituted a suit against the appellant—the Coal Mines Provident Fund Commissioner—without a notice under section 80 C.P.C. The objection in this behalf was repelled by the trial court

and the High Court holding that the Coal Mines Provident Fund Commissioner is not a public officer. According to the appellant the Commissioner is a public officer within the meaning of the term occurring in section 80 of the C.P.C., and, therefore, the suit is incompetent. A

The term 'public officer' is defined in section 2(17) of the Code of Civil Procedure. Public Officer means a person falling under any of the descriptions in clauses (a) to (h). It is contended on behalf of the appellant that the Coal Mines Provident Fund Commissioner falls under the description in clause (h) which reads as under: B

“(h) Every Officer in the service or pay of the government or remunerated by fees or commission for the performance of any public duty.” C

It is necessary to refer to the relevant provision in the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 for the purpose of determining whether the appellant answers this description. Under section 3, the Central Government may, by notification in the Official Gazette, frame the Coal Mines Provident Fund Scheme for the establishment of a provident fund for employees and specify the coal mines to which the said scheme shall apply. The fund shall vest in, and be administered by the Board constituted under section 3A. The Board thus constituted consists of (a) a Chairman appointed by the Central Government; (b) the Coal Mines Provident Fund Commissioner, ex-officio; and others specified in the section. The other relevant provisions read thus: D

“3B. The Board of Trustees constituted under section 3A shall be a body corporate under the name specified in the Notification constituting it, having perpetual succession and a common seal and shall by the said name sue and be sued. E

3C. *Appointment of Officers:* (1) The Central Government shall appoint a Coal Mines Provident Fund Commissioner, who shall be the Chief Executive Officer of the Board and shall be subject to the general control and superintendence of the Board. F

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A 4. The method of recruitment, salary and allowances, discipline and other conditions of service of the Coal Mines Provident Fund Commissioner shall be such as may be specified by the Central Government and such salary and allowances shall be paid out of the Fund."

B It is thus seen that the Commissioner is an officer appointed by the Central Government as the Chief Executive Officer of the Board. Though subject to the general control of the Board, discipline and the condition of service are such as may be specified by the Central Government. The salary and allowances are paid out of the fund. The Commissioner may exercise the powers exercisable by the Central Government under the Act or scheme framed thereunder on delegation of such power under section 10C.

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It will be clear from these provisions that an officer in the service of the Government by virtue of his office, is appointed as Commissioner by the Government and he performs public duties. The fact that the Commissioner receives the salary and allowances out of the fund and not from the Government during the tenure as Commissioner would make no difference when the description as an officer in service of the Government is answered.

D

The word 'service' in section 2 (17)(h) must necessarily mean something more than being merely subject to the orders of Government or control of the Government. To serve means "to perform function; do what is required for". The Commissioner appointed by Government performs the functions as envisaged in the Act and the scheme thereunder. When he is actually acting in the capacity of Provident Fund Commissioner, he does not cease to be an officer in the service of the Government.

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In *Liquidator of Society Sangakheda Kalan Co-operative Bank, Hoshangabad v. Ayodhyaprasad Shiamlal*, AIR 1939 Nagpur 232, Pollock, J. held that liquidator is a public officer as he is appointed by the Government and discharges public duties. This decision is distinguished in *Kuppu Govinda Chettiar v. Uttukottai Co-operative Society*, AIR 1940 Madras 831 holding that Deputy Registrar acting as Liquidator is not a public officer. The reasoning adopted is that liquidator he is not an officer in the service of the Government.

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In *Vishnu Wasudeo Joshi v. T.L.H. Smith Pearse*, AIR 1949 Nagpur 362 it was held that a person who was a member of the Indian

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Educational Service but whose services were lent to the Rajkumar College, Raipur as principal is a public officer within section 2(17)(h) and did not cease to be in the service of the Crown by reason of his deputation.

In *Commissioner of Wakfs, Bengal v. Shahebzada Mohammed Zahangir Shah*, AIR 1944 Calcutta 206 the Court said that the expression "public duty" refers to duty concerning to the affairs or service of the public and the word 'public' may include any class of the public or any community. In this view, the Commissioner of Wakfs who functions in relation to such public endowments in general was held to perform a public duty and, therefore, a public officer within the meaning of section 80 of the Code.

In *Kamta Prasad Singh v. The Regional Manager, F.C.I.*, AIR 1974 Patna 376 the question arose whether the officers of the Food Corporation of India are public officers. The Corporation is a body corporate. The Court held that Government does not include a Corporation and that officers of the Corporation are not in the service of Government and are not public officers. These are cases where the concerned officer did not hold his office in the Corporation by virtue of his being a Government employee. In the present case, the Provident Fund Commissioner holds the office of Commissioner on appointment by Government by virtue of his office. His services are temporarily placed at the disposal of the Board. He does not, therefore, cease to be an officer in the service of the Government. The payment of his pay out of the Fund does not alter his status as Government employee. We are, therefore, of the opinion that the courts below have erred in holding that the Coal Mines Provident Fund Commissioner is not a public officer within the meaning of the term in section 2(17)(h) of the C.P.C. We, accordingly, allow the appeal and remit the case to the trial court for disposal in the light of what has been stated above.

G.N.

Appeal allowed.