Statesman (Private) Ltd vs H. R. Deb & Ors on 2 April, 1968

Equivalent citations: 1968 AIR 1495, 1968 SCR (3) 614, AIR 1968 SUPREME COURT 1495, 1968 LAB. I. C. 1525

Author: M. Hidayatullah

Bench: M. Hidayatullah, V. Ramaswami, C.A. Vaidyialingam, K.S. Hegde, A.N. Grover

PETITIONER:
STATESMAN (PRIVATE) LTD.

Vs.

RESPONDENT:
H. R. DEB & ORS.

DATE OF JUDGMENT:
02/04/1968

BENCH:
HIDAYATULLAH, M. (CJ)
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RAMASWAMI, V.
VAIDYIALINGAM, C.A.
HEGDE, K.S.
GROVER, A.N.

CITATION:
1968 AIR 1495 1968 SCR (3) 614
CITATOR INFO :
RF 1970 SC 694 (6)
E 1976 SC2283 (12)
RF 1988 SC 404 (6)
RF 1992 SC1213 (24)

ACT:
Industrial Disputes Act (14 of 1947), ss. 7(3)(d) and 2-"Judicial Office", if includes Office of Magistrate-Writ of Quo Warranto-Insuance.

HEADNOTE:
Section 7(3) (d) of the industrial Disputes Act provides that no person shall be qualified for appointment as the presiding officer of a Labour Court, unless he has held any

judicial Office for not less than seven years. Since 1940 the first respondent held the Office of Sub-Deputy Collector and was vested with Magisterial powers. In 1959 he was appoint the presiding officer of a Labour Court and he gave an award against the appellant. The appellant questioned the appointment on the ground that the first respondent had not held 'judicial office' for 7 years prior to his appointment.

HELD : A Magistrate holds a judicial office. That his dudes are partly judicial and partly other does not in any way detract from the position that while acting as a Magistrate he is a judicial officer. An office means no more than a position to which certain duties are attached. A public office is one which entities a man to act in the affairs of others without their appointment or permission. The office of a Magistrate is a correct expression in English and in law. The word 'office' has been applied to Magistrates. The Judicial Officers Protection Act, is intended to protect not Civil Judges alone but also Magistrate. [620 F-621 C].

The functions of a Labour Court are of great public importance and quasi civil in nature. Men of experience on the civil side of the law are more suitable than Magistrates. Persons employed on multifarious duties and in addition performing some judicial functions may not truly answer the requirement of s. 7. For it cannot be denied that the expression "holding a judicial office" signifies more than discharge of judicial functions while holding some other office. The phrase postulates that there is an office and that office is primarily judicial. In this case the distinction was unsubstantial because the Magistrate was holding a fixed position for nineteen years and performing functions primarily of judicial character. [622 B-D].

Even if there be some doubt that is to be resolved in favour of upholding the appointment on the ground that the legislature itself by s. 9 contemplates that such appointments should not be called into question. Although the provisions of s. 9 cannot shut out an inquiry (if there is a clear usurpation) for purposes of a writ of quo warranto at least in an. unclear case the intent of the legislature is entitled to great weight. The High Court in a quo warranto proceeding should be slow to pronounce upon the matter unless there is a clear infringement of the law. [621 D-F].

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 647 of1967.

Appeal from the judgment and order dated January 5, 1967 of the Calcutta High Court in Appeal from Original Order No. 1.34 of 1966.

Sachin Chaudhuri, J. K. Ghosh and D. N. Gupta, for the appellant.

S. C. Mazumdar and A. K. Mitter, for respondent No. 2. B. Sen, G. S. Chatterjee for P. K. Bose, for respondent No. 3.

The Judgment of the Court was delivered by Hidayatullah, C.J. This appeal on certificate arises from a petition under Art. 226 of the Constitution of India filed in the High Court at Calcutta by the appellant, the Statesman Private Ltd. This company prints and publishes daily and weekly newspapers and undertakes general printing work at Calcutta. By that writ petition the Company asked for a writ of certiorari against the Second Labour Court, West Bengal with a view to quashing an award, 21 September 1960, reinstating one Sheikh Kaloo, one of its employees. The Company had dismissed the said Kaloo after holding an inquiry but the Second Labour Court ordered his reinstatement with half wages for the period of his 'forced unemployment'. The writ petition was heard by B. N. Banerjee J. and by his order, 15 February, 1962, the petition was granted and the order of the Tribunal was quashed. The workmen who had sponsored the case of Kaloo appealed in the High Court. During the course of the appeal an application was filed by the Company stating that the Tribunal presided over by Mr. H. R. Deb was not qualified in law to adjudicate upon the dispute inasmuch as the appointment of Mr. Deb was in violation of the provisions of S. 7 (3) (d) of the Industrial Disputes Act, 1947. On June 16, 1964 by another affidavit the particulars of the services of Mr. Deb were stated to show that Mr. Deb had not held a 'judicial office' in India for not less than 7 years and as this was a condition precedent his appointment was illegal and the award made by him was a nullity. The Company stated that this was, so held in another matter (Matter No. 120/1961 decided on July 28, 1965 between Shree Hanuman Foundries v. H. R. Deb and others. The appeal was heard and allowed and the order of B. N. Banerjee J. was set aside but liberty was given to the Company, on terms as to costs, to amend the original petition and the learned Judge was directed to hear and determine the amended petition. The amendment was effected on August 5, 1964. On September 3, 1964 the Divisional Bench in Hanuman Foundries case delivered judgment. Two separate judgments were delivered. Bachawat J. held that the provisions of S. 7 (3) (d) of the Industrial Disputes Act were directory while Basu, J. held them to be mandatory. Bachawat J. also held that even if the appointment of Mr. Deb was not regular, the doctrine of de facto determination by a Court apparently possessed of jurisdiction applied and the order could not be questioned. Basu J. held to the contrary. The matter was then referred to Sinha J. (as he, then was) who held that (a) Mr. Deb had not held judicial office for 7 years prior to his appointment; (b) that s. 7 (3) (d) of the Industrial Disputes Act was mandatory; (c) a writ of quo warranto must therefore issue, against him; (d) that the de facto doctrine applied; and (c) proceedings for a writ of certiorari was collateral and, therefore, not available to quash the award of Mr. Deb.

The case of Hanuman Foundries as decided by the Full Bench was followed in the present writ petition by B. C. Mitra J. on June 6, 1966 and the writ petition was dismissed. The Company appealed against the judgment of B. C. Mitra J. Sinha C.J.- and A. K. Mookerjee J. dismissed the appeal, January 5, 1967 but ,-ranted a certificate and this appeal is the result.

Although this appeal is quite separate from the Hanuman Foundries case, the decision in that case was the one canvassed before us. After hearing the arguments in the case we are satisfied that the

appeal must fail on the ground that Mr. Deb was competent to exercise jurisdiction and his appointment cannot be called in question. In this view of the matter the very interesting and learned discussion of the de facto doctrine need not detain us and we express no opinion about it.

The question falls to be considered on the words and scheme of s. 7 and some other sections. To approach the problem we may first see some other provisions. The Act is intended to make provision for the investigation and settlement of industrial disputes. Chapter II names the authorities under the Act. They are Works, Committee (s. 3), Conciliation Officers (S. 4),Boards of, Conciliation (s. 5), Courts of Inquiry (s. 6), Labour Courts (s. 7), Tribunals (s. 7A), National Tribunals (s. 7B). Each of these sections prescribes the qualifications of the persons fit to be appointed. They are either wholly or partially different as we shall see presently. Section 7C, however lays down that no person shall be appointed to, or continue in, the office of the presiding officer of a Labour Court, Tribunal or National Tribunal if (a) he is not an. independent person; or (b) he has attained the age of 65 years. Section 8 deals with vacancies and then comes s. 9 laying down the finality of orders constituting Boards etc. We shall read it presently.

We are concerned with s. 7 which provides for the constitu- tion of Labour Courts and prescribes the qualifications for appointment. The section may be read here "7. Labour Courts."

.lm15 (1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act.

(2) A Labour Court shall consist of one person only to be appointed by the appropriate Government.
(3) A person shall not be qualified for appointment as the presiding officer of a Labour Court, unless-

(a) he is, or has been, a Judge of a High Court, or

(b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge or

(c) he has held the office of the chairman or any other member of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950, or of any tribunal, for a period of not less than two years; or

(d) he has held any judicial office in India for not less than seven years; or

(e) he has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years."

This matter is covered only by cl. (d) of the third sub- section. It may, however, be noticed that no special qualifications are prescribed for Works Committees, Conciliation Officers, Boards of

Conciliation and Courts of Inquiry such as are to be found in s. 7 quoted here. Special qualifications of the members are to be found only in respect of- Labour Courts, Tribunals and National Tribunals. These are one-man bodies and the qualification of the member is stated. In the case of Tribunals the qualification is :

> "7A. Tribunals.
>
> (1) (2) (3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless--
>
> (a) he is, or has been, a Judge of a High Court; or
>
> (b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or
>
> (b) he has held the office of the chairman or any other member of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950, or of any Tribunal, for a period of not less than two years."

and in the case of National Tribunals the qualifications are "7B. National Tribunals.

(1).....

(2)....

(3)...A person shall not be qualified for appointment as..the presiding officer of a National Tribunal unless-

(a) he is, or has been, a Judge of a High Court; or

(b)...he has held the office of the chairman or any other member of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950, for a period of not less than two years."

The selection thus is most restricted in the case of National Tribunals, and in varying degree less and less restricted as we pass to Tribunals and Labour Courts. Thus National Tribunals can be presided over only by a person who is or has been a Judge of a High Court or has held the office of the chairman or any other member of the Labour Appellate Tribunal for a period of not ,less than two years. These qualifications do not admit of any ,doubt or exception since the incumbent's qualifications are quite 'clearly set down. In the case of Tribunals the range of selection is made wider by including a District Judge or an Additional District Judge, who has held this office for a period of not less than 3 years. The selection is made still wider in the case of Labour Courts by making competent in addition presiding officers ,of Labour Courts constituted under any Provincial Act or State Act for not less than 5 years, and persons holding judicial office for not less than seven

years. There is, however, no definition of judicial office and here the difficulty arises.

Mr. Deb, the incumbent of the office in the present case, had at his back the following career :

> (a)Sri Hem Ranjan Deb was first appointed on 23rd January 1940 as a Sub Deputy Collector on probation and on 24th January 1940 was appointed as Sub-Deputy Collector and Circle Officer.
>
> (b)...On 1st July 1940 he was vested with, power of a third class Magistrate. He was confirmed in the post of a Sub-Deputy Collector on 23rd January, 1941.
>
> (c)...On 1st July 1950 the said Hem Ranjan Deb was vested with Powers of a Second class Magistrate and on 1st April 1951 he was vested with powers of a First Class Magistrate ...

On July 27, 1959 Mr. Deb was appointed the presiding officer of the Second Labour Court by Notification No. 3422-IR/IR/ 3A-9/59. The notification read :

> "In exercise of power conferred by Sub- sections (2) and (3) of S.T. of the Industrial Disputes Act 1947 read with S. 7C of the said Act, the Governor is pleased to appoint Hem Ranjan Deb who is an independent person and has not attained the age of 65 years and has held a judicial office in India for not less than 7 years to be the Presiding Officer of the Second Labour Court constituted under the Government of West Bengal's notification No. 1727-IR/IR/3A-1/58 dated 26th April 1958 vide Shri Probodh Chandra Maitra (Calcutta Gazettee, 6th August 1959)".

The notification took into account the provisions of S. 7C already analysed by us and also declared that he was qualified under s. 7 (3) (d). Government apparently considered the office held by him from January 23, 1940 to July 27, 1959 as a judicial office necessary for appointment. Since, the period for which he held his earlier office is well in excess of 7 years the only question is whether it was a 'judicial office'. If it was then undoubtedly Mr. Deb was qualified. If there be a dispute then the matter falls to be considered. In doing so we must take into further account the provisions of s. 9 of the Act as substituted by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1936 (36 of 1956). That amending Act also recast S. 7 in its present form and added ss. 7A, 7B and 7C. Section 9 may now be read but it is not necessary to read beyond the first sub-section "9. Finality of orders constituting Boards, etc. (1)...No order of the appropriate Government or of the Central Government appointing any person as the chairman or any other member of a Board or Court or as the Presiding officer of a Labour Court, Tribunal or National Tribunal shall be called in question in any manner; and no act or proceeding before any Board or Court shall be called in question in any manner on the ground merely of the existence of any vacancy in, or defect in the constitution of, such Board or Court."

L7 Sup.CI/68-15.

It may be noticed that the first part refers to the appointment of any person as the chairman or any other member of a Board or Court or as the presiding officer of a Labour Court, Tribunal or National Tribunal. The second part deals with Board or Court and 'in view of the definition of 'Board' 'and 'Court' in s. 2(c) and (f) refers to a Board of conciliation or Court of Inquiry constituted under the Act. With these we are not concerned and the second part of s. 9, therefore-' has no bearing although in the High Court that part alone was considered and the first part ignored.

Now the points for us to decide are, first whether Mr. Deb held a 'judicial office' and next even if our Opinion be that he did not can we declare his appointment to be invalid when s. 9 prohibits the calling in question of an appointment by Government ? Before we deal with these points in the, light of the arguments addressed to us, we may say a few words about how these points were viewed by the High Court.

Banerjee J. who first heard the Hanuman Foundries case made a distinction between 'judicial office' and 'judicial function' and came to the conclusion that although magistrates Perform judicial functions, they could not be said to hold 'judicial office'. Bachawat J., distinguished between 'judicial office' and 'judicial service'. He referred to the provisions of the Constitution bearing upon the appointment of Judges of the High Court and the District and subordinate courts, where these expressions occur and demonstrated the difference. In his view magistrates could be said to occupy judicial office, but they did not belong to judicial service. The approach of Sinha and Basu JJ., was the same as that of Banerjee J., although the matter was stated with great elaboration and copious references to the Criminal Procedure Code, and English and American cases, and text books.

It is not necessary to go over this field. All learned Judges seem to agree that a magistrate exercises judicial functions. This does not admit of any doubt and no reasons are required. That his duties are partly judicial and partly other does not in any way detract from the position that while acting as a magistrate lie is a judicial officer. The dispute, therefore, really reduces itself to this : Does the magistrate hold an "office". An office means no more than a position to which certain duties are attached. According to Earl Jowitt's Dictionary a public office is one which entitles a man to act in the affairs of others without their appointment or permission. The 'office of a magistrate' is a correct expression in English and in law. Indeed the well-known maxim of Coke on Littleton (234a) officia magistratus non debent-esse venalia (the offices of a magistrate ought not be saleable) clearly brings out that the word office can be, applied to magistrates. Thus there may be an office of a judge (officii judicis) which in ecclesiastical law at least was said to be promoted when criminal proceedings were taken. But there may be also the office of a magistrate. Cicero in his De Legibus and De officiis makes no difference between a magistratum and a judex. His famous saying Magistratum legem esse loquentem, legem autem mutum magistratum (The Magistrate is a speaking law, but the law is a silent magistrate) was intended to apply to all judges of all kinds. The word 'office has been applied to magistrates by Tacitus, Ovid and others. Bachawat J. has given many references to bear out the meaning we have given and has very -pertinently pointed out that the Judicial Officers Protection Act , is intended to protect not Civil Judges alone but also Magistrates. The distinction between judicial function and judicial office in this context is artificial and unsubstantial. We agree with Bachawat J., that a magistrate holds a judicial office. Once this is so held the appeal must fall. But we cannot overlook the fact that even if there be some doubt that is to be resolved in favour of

upholding the appointment on the ground that the Legislature itself contemplates that such appointments should not be called into question. Although the provisions of s. 9 cannot shut out an inquiry (if there is a clear usurpation) for purposes of a writ of quo warranto but at least in an unclear case the intent of the legislature is entitled to great weight. The Legislature has created the conditions of appointment and with its last voice his shut out inquiry. The provisions of s. 7 (3) (d) therefore, are not so absolute as to be wholly mandatory in the same, way as the provisions of other clauses are since they admit of no doubt, and therefore do not require construction. The High Court III a quo warranto proceeding should be slow to pronounce upon the matter unless there is a clear infringement of the law. If a station master were appointed we can readily question the appointment but when a person exercising judicial functions is appointed one cannot be too astute to say that the person does not hold a judicial office when it must at least be conceded that he holds ,in office of some kind. Nor does the argument that magistrates will claim to be appointed Judges of the High Court need detain us. The scheme of Chapter V of Part VI of the Constitution its own affect on the meaning of the expressions 'judicial office' and 'judicial service'. In any case the use of the same expression in any other enactment not in pari materia can have no bearing upon the Industrial Disputes Act and vice versa. In the Constitution these words must bear the meaning which the context dictates and in that connection the history of appointment of Judges cannot be overlooked. Lest our meaning be extended by Government to cases un- deserving of saving under S. 9, we wish to make it clear that the intention of the Legislature really is that men who can be described as independent and with sufficient judicial experience must be selected. The mention of High Court Judges and District Judges earlier in the same section indicates that ordinarily judicial officers from the civil judiciary must be selected at last so long as the separation of judiciary from the Executive in the public Services is not finally achieved. The appointment of a person from the ranks of civil judiciary carries with it an assurance which is unique. The functions of a Labour Court are of great public importance and quasi civil in nature. Men of experience on the civil side of the law are more suitable than Magistrates. Persons employed on multifarious duties and in addition performing some judicial functions, may not truly answer the requirement of s. 7 and it may be open in a quo warranto proceeding to question their appointment on the ground that they do not hold essentially a judicial office because they primarily perform other functions. For it cannot be denied that the expression "holding a judicial office" signifies more than discharge of judicial functions while holding some other office. The phrase postulates that there is an office and that that office is primarily judicial. Office means a fixed position for performance of duties. In this case the distinction was unsubstantial because the Magistrate was holding a fixed position for nineteen years and performing functions primarily of a judicial character. The case was not fit for interference by a writ in view of the provisions of s. 9 of the Act. In the result we are of opinion that the judgment under appeal is right although the, reasons justifying the conclusion 'are different from those accepted by the Divisional Bench from the- earlier case of the same Court. The appeal fails and will be dismissed with costs.

Y.P. Appeal dismissed.