

1956

September 21

G. A. MONTERIO

v.

THE STATE OF AJMER.

[BHAGWATI, JAFER IMAM and GOVINDA MENON JJ.]

*"Officer"—Tests to determine who is an 'officer'—Metal examiner, called chaser, in Railway Carriage workshop—Whether officer—Indian Penal Code (Act XLV of 1860), s. 21(9)—Prevention of Corruption Act (II of 1947), s. 2.*

The appellant was a Class III servant employed as a metal examiner, also called chaser, in the Railway Carriage Workshop at Ajmer. He accepted a sum of Rs. 150 as illegal gratification for securing a job for some person. He was charged under s. 5(1)(d) of the Prevention of Corruption Act, 1947 (Act II of 1947). The appellant contended that he was not an "officer" within the meaning of the term used in s. 21(9) of the Indian Penal Code and so could not be a public servant for purposes of Act II of 1947. It was found that the appellant was working under the Works Manager who was certainly an officer of the Government and the duties which he performed were immediately auxiliary to those of the Works Manager who was also armed with some authority or representative character *qua* the Government.

*Held*, that the appellant was an officer within the meaning of s. 21(9) of the Indian Penal Code and, therefore, a public servant within the meaning of s. 2 of Act II of 1947.

The true test in order to determine whether a person is an officer of the Government, is:—

- (1) whether he is in the service or pay of the Government, and
- (2) whether he is entrusted with the performance of any public duty.

The public duty may be either a function of the Government delegated to him or may be a duty immediately auxiliary to that of someone who is an officer of the Government.

*Reg. v. Ramajirav Jivbajirav* ([1875] XII Bom. H.C.R. 1), explained.

*Nazamuddin v. Queen-Empress*, ([1900] I.L.R. 28 Cal. 344) and *Ahad Shah v. Emperor*, (A.I.R. 1918 Lah. 152), relied on.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 146 of 1954.

Appeal from the judgment and order dated the 27th November 1954 of the Court of Judicial Com-

missioner at Ajmer in Criminal Appeal No. 15 of 1954 arising out of the judgment and order dated 25th August 1954 of the Court of Special Judge at Ajmer in Criminal Case No. 5 of 1953.

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*B. P. Maheshwari*, for the appellant.

*C. K. Daphtary*, *Solicitor-General for India*, *Porus A. Mehta*, *H. R. Khanna* and *R. H. Dhebar*, for the respondent.

1956. September 21. The Judgment of the Court was delivered by

**BHAGWATI J.**—This Appeal with a certificate of fitness under article 134(1)(c) of the Constitution against the decision of the Judicial Commissioner at Ajmer raises an important question as to the connotation of the word “officer” contained in section 21(9), Indian Penal Code.

The appellant was a Class III servant employed as a metal examiner, also called Chaser, in the Railway Carriage Workshops at Ajmer. He was charged under section 161, Indian Penal Code with having accepted from one Nanak Singh currency notes of the value of Rs. 150 as illegal gratification as a motive for securing a job for one Kallu. He was also charged under section 5(1)(d) of Act II of 1947 with abusing his position as a public servant and obtaining for himself by corrupt or illegal means pecuniary advantage in the shape of Rs. 150 from the said Nanak Singh. He was further charged with having committed an offence under section 420, Indian Penal Code for having induced the said Nanak Singh to deliver to him currency notes of the value of Rs. 150 by dishonest representation that he could secure a job for the said Kallu. The learned Special Judge, State of Ajmer, who tried him in the first instance for the said offences convicted him of the offence under section 161, Indian Penal Code as also the offence under section 5(1)(d) of Act II of 1947 and sentenced him to suffer rigorous imprisonment for six months and one year respectively in regard to the same, both the sentences to run concurrently. In so far,

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however, as it was not proved that the appellant did not believe when he accepted the money that he could secure or would try to secure a job for Kallu, it was held that no case under section 420, Indian Penal Code was made out and he was acquitted of that charge.

The appeal taken to the Judicial Commissioner, State of Ajmer, by the appellant failed and on the 10th December, 1954, the learned Judicial Commissioner granted to the appellant a certificate of fitness for appeal on two main grounds, viz., (1) whether the appellant was an "officer" within the meaning of clause (9) of section 21, Indian Penal Code, and (2) whether the provisions of section 137 of the Railways Act excluded all railway servants from the definition of public servants except for purposes of Chapter IX, Indian Penal Code.

Concurrent findings of fact were reached by both the Courts below on the question as to whether the appellant accepted Rs. 150 from Nanak Singh as and by way of illegal gratification and these findings could not be and were not challenged before us by the learned counsel for the appellant. The only questions which were canvassed before us were the two legal points which formed the basis of the certificate of fitness for appeal granted by the learned Judicial Commissioner, State of Ajmer, to the appellant.

The second question has now become academical in the facts of the present case by virtue of a decision of this Court in *Ram Krishan v. Delhi State*<sup>(1)</sup>, which lays down that before the amendment of section 137 of the Railways Act by Act 17 of 1955 railway servants were treated as public servants only for the purposes of Chapter IX, Indian Penal Code, but in any event they were public servants under the Prevention of Corruption Act (Act II of 1947). In so far as the appellant has, in our opinion, been rightly convicted of the offence under section 5(1)(d) of Act II of 1947 and awarded the sentence of rigorous imprisonment for one year, the question whether he was rightly convicted of the offence under section 161,

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Indian Penal Code for which he was awarded the lesser sentence of six months' rigorous imprisonment has become merely academical and the only question which remains to be considered by us here is whether he was an "officer" within the meaning of section 21 (9), Indian Penal Code.

The provisions of law in regard to the first question may be conveniently set out at this stage:—

Section 2 of the Prevention of Corruption Act II of 1947 provides:—

"for the purposes of this Act "public servant" means a public servant as defined in section 21 of the Indian Penal Code".

Section 21, Indian Penal Code provides so far as is relevant for the purposes of the present appeal:—

"The words 'public servant' denote a person falling under any of the descriptions hereinafter following, namely,

.....  
Ninth.....and every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty".

There is no doubt that the appellant was in the service or pay of the Government and was performing the duty of a metal examiner known as Chaser in the Railway Carriage Workshops at Ajmer and was thus performing a public duty.

It was, however, contended that the appellant was not an officer within the meaning of that term as used in section 21(9), Indian Penal Code. An Officer, it was contended, on the authority of *Reg. v. Ramajirav Jivbajirav and another*(<sup>1</sup>), meant one to whom was delegated by the supreme authority some portion of its regulating and coercive powers and who was appointed to represent the State in its relations to individual subjects. According to the dictum of West, J., the word "officer" meant some person employed to exercise to some extent and in certain circumstances a delegated function of Government. He was either himself armed with some authority or repre-

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representative character or his duties were immediately auxiliary to those of some one who was so armed. It was, therefore, contended that the appellant being a metal examiner known as Chaser in the Railway Carriage Workshops had not delegated to him by the supreme authority some portion of its regulating and coercive powers nor was he appointed to represent the State in its relations to individual subjects. He was neither armed with some authority or representative character nor were his duties immediately auxiliary to those of some one who was so armed. He was not employed to exercise to some extent and in certain circumstances the delegated function of Government and, therefore, was not an "officer" within the meaning of that term as used in section 21(9), Indian Penal Code. If he was thus not an officer of the Government, he could not be a public servant within the meaning of section 21, Indian Penal Code nor could he be a public servant for the purposes of Act II of 1947 and could not be convicted of the offence under section 5(1)(d) of Act II of 1947.

It has to be noted, however, that the case before the learned Judges of the High Court of Bombay in 12 Bombay High Court Reports 1, concerned an Izaphatdar, that is a lessee, of a village who had undertaken to keep an account of its forest revenue and pay a certain proportion to the Government, keeping the remainder for himself and the question that arose for the consideration of the Court was whether such a person was an officer within the meaning of section 21(9), Indian Penal Code. It was in this context that the aforesaid observations were made by West, J., and the Court came to the conclusion that Deshmukhs and Deshpandes would be sufficiently within the meaning of the clause they being appointed to perform for the State a portion of its functions or to aid those who were its active representatives but not so an Izaphatdar or the lessee such as the accused. He was not an officer but a mere contractor bound by his engagement but not by the terms of his office or employment to pay a certain proportion to the Government. There was no delegation to him of any

authority for coercion or interference nor was he an assistant appointed to help any one who was vested with such authority. The duties which he performed were contractual duties fraudulent deception in the discharge of which might subject him to punishment for cheating but not duties attached to any office conferred on him or his predecessor in title, failure to perform which with integrity could make him liable, as an officer, to the special penalties prescribed for delinquent public servants.

This decision in 12 Bombay High Court Reports 1, came to be considered by the Calcutta High Court in *Nazamuddin v. Queen-Empress*<sup>(1)</sup>. The petitioner in that case was a peon attached to the office of the Superintendent of the Salt Department in the district of Mozafferpur and he had been convicted under section 161, Indian Penal Code. The contention urged on behalf of the petitioner was that he did not fall within the terms of the last portion of clause (9) of section 21, Indian Penal Code which declared "every officer in the service or pay of Government" was a public servant because he was not an officer. The case of *Reg. v. Ramajirav Jivbajirav*<sup>(2)</sup> was cited in support of that contention and the learned Judges of the Calcutta High Court observed at page 346 as under:—

"The learned Judges in that case had to consider whether a lessee from Government was on the conditions of his lease a public servant, and, in doing so, they considered generally the meaning of the term "officer". It was there held that an officer means "some person employed to exercise, to some extent and in certain circumstances, a delegated function of Government. He is either armed with some authority or representative character, or his duties are immediately auxiliary to those of some person who is so armed". The meaning which we are asked to put on these words seems to us to be too narrow as applied to the present case. The peon who has been convicted as a public servant is in service and pay of the Government, and he is attached to the office of the Superintendent of the Salt Department. The exact

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nature of his duties is not stated, because this objection was not taken at the trial, but we must take it that, from the nature of his appointment, it was his duty to carry out the orders of his official superior, who undoubtedly is a public servant, and in that capacity to assist the Superintendent in the performance of the public duties of his office. In that sense he would be an officer of Government, although he might not possibly exercise "any delegated function of the Government". Still his duties would be "immediately auxiliary to those of the Superintendent who is so armed". We think that an "officer in the service or pay of Government" within the terms of s. 21 of the Penal Code is one who is appointed to some office for the performance of some public duty. In this sense the peon would come within s. 21, cl. 9".

The true test, therefore, in order to determine whether a person is an officer of the Government, is:—

- (1) whether he is in the service or pay of the Government, and
- (2) whether he is entrusted with the performance of any public duty.

If both these requirements are satisfied it matters not the least what is the nature of his office, whether the duties he is performing are of an exalted character or very humble indeed. As has been stated in Bacon's Abridgment at Vol. 6, page 2, in the article headed "Of the nature of an officer and the several kinds of officers":—"The word 'officium' principally implies a duty, and in the next place, the charge of such duty; and that it is a rule that where one man hath to do with another's affairs against his will, and without his leave, that this is an office, and he who is in it is an officer". The next paragraph thereafter may also be referred to in this context:—"There is a difference between an office and an employment, every office being an employment; but there are employments which do not come under the denomination of offices; such as an agreement to make hay, herd a flock, &c; which differ widely from that of steward of a manor" &c. (Vide 12 Bombay High Court Reports 1 at page 5).

This was the sense in which the decision in 12 Bombay High Court Reports 1, was understood by the learned Judges of the Lahore High Court in *Ahad Shah v. Emperor*<sup>(1)</sup> when they observed at page 157:—

“But it is not enough that a person should be in the pay or service of Government to constitute him a public servant within the meaning of s. 21 (ninthly), I.P.C. He must also be an “Officer”. That expression is not, of course, to be restricted to its colloquial meaning of a Commissioned or non-Commissioned Officer; it means a functionary or holder of some “officium” or office. The office may be one of dignity or importance; it may equally be humble. But whatever its nature, it is essential that the person holding the office, should have in some degree delegated to him certain functions of Government”.

The question for consideration before the learned Judges of the Lahore High Court was whether a Quarter Master’s clerk was a public servant within the meaning of that expression in section 21, Indian Penal Code. On the facts elicited before them the learned Judges came to the conclusion that the Quarter Master’s clerk as such was just a Babu and no more ‘an officer’ than a labourer or menial employed and paid by Government to do public work (*See Queen v. Nachimuttu*<sup>(2)</sup>).

If therefore on the facts of a particular case the Court comes to the conclusion that a person is not only in the service or pay of the Government but is also performing a public duty, he has delegated to him the functions of the Government or is in any event performing duties immediately auxiliary to those of some one who is an officer of the Government and is therefore ‘an officer’ of the Government within the meaning of section 21(9), Indian Penal Code.

Applying this test to the facts of the case before us, we find that the appellant was a Class III servant and was employed as a metal examiner known as Chaser in the Railway Carriage Workshop. He was working under the Works Manager who was certainly

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an officer of the Government and the duties which he performed were immediately auxiliary to those of the Works Manager who, beside being an officer of the Government was also armed with some authority or representative character qua the Government. The appellant was thus, even on a narrow interpretation of the dicta of West, J. in 12 Bombay High Court Reports 1, an officer in the service or pay of the Government performing as such a public duty entrusted to him by the Government and was therefore, a public servant within the meaning of section 21 of the Indian Penal Code.

This being the true legal position, this contention of the appellant also does not avail him and the first question must be answered against him.

The appellant was, therefore, an officer within the meaning of section 21(9) and therefore a public servant within the meaning of section 21, Indian Penal Code and being such public servant he fell within the definition of a public servant contained in section 2 of the Prevention of Corruption Act II of 1947. He was, therefore, on the facts and circumstances of the case, rightly convicted under section 5(1)(d) of Act II of 1947. His conviction and the sentence imposed upon him by the Courts below were therefore quite in order and this appeal must therefore stand dismissed.

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