

It is needless to go any further into this question. The plaintiff has not specifically claimed in any part of his plaint that he should be deemed to have remained in service till the age of sixty years. He would have attained the age of sixty on June 30, 1959. He has not even claimed salary for the period ending June 30, 1959, but has claimed the same only up to March 31, 1959. Though the application was filed on March 3, 1959, and salary for the whole of the month of March, 1959, which had not yet run out had been claimed, nothing was claimed for the months of April to June, 1959. No such specific claim for salary up to the age of sixty years having been made in the plaint we are unable to allow such a claim being pressed at the appellate stage for the first time. The claim of the plaintiff covered by Parts (A) and (C), therefore, fails, but his claim in respect of period (B) succeeds.

(16) For the foregoing reasons, we partially allow this appeal, set aside the decree of the trial Court and substitute for the same a decree for the payment of Rs. 2,960 in favour of the plaintiff-appellant against defendant-respondent No. 1 with proportionate costs throughout. If the decretal amount is not paid to the appellant within two months of the passing of this decree, it shall carry future interest at six per cent per annum with effect from today, till the date of actual payment.

SHAMSHER BAHADUR, J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

KUNDAN LAL,—Petitioner

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents

Civil Writ No. 650 of 1964

April 1, 1969

Public Accountants' Default Act (XII of 1850)—S. 3—Public accountant—Meaning of—Government servant receiving money contrary to the requirements of his duties—Such Government servant—Whether 'public accountant'.

Held, that if a Government servant who is not entrusted with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to any other person or persons but on the other hand is specifically excluded from receipt or control of money is

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not a 'public accountant' within the meaning of section 3 of the Public Accountants' Default Act, 1850. If a Government servant contrary to the requirements of the duties of his office, actually receives money and embezzles it, he does not become a 'public accountant'. The scheme of the Act shows that its specific provisions are intended to apply to only Government servants who are expected to come into possession or control of money by reason of their office. (Para 4)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus, prohibition or any other appropriate writ, order or direction be issued quashing the orders of respondent No. 1 attaching the immovable and movable properties of the petitioner and further praying that the respondents be directed not to proceed with the auction of the properties of the petitioner and also praying that the respondents or their servants or agents be restrained from taking any further proceeding against the petitioner for the recovery of the so called defalcated amount.

RAJINDER SACHAR, ADVOCATE, for the Petitioner.

J. L. GUPTA, ADVOCATE FOR ADVOCATE-GENERAL, PUNJAB, for the Respondents.

JUDGMENT

NARULA, J.—By order dated January 27, 1964 (copy Annexure 'A-1' to the writ-petition), the Collector, Gurdaspur, held that he was satisfied that Kundan Lal petitioner, ex-Wasil Baqi Nawis, Gurdaspur, was a 'public accountant' as defined in section 3 of the Public Accountants Default Act, 1950 (Act 12 of 1850), hereinafter called the Act and whereas he had in his capacity as a public accountant embezzled or defalcated Government money to the extent of Rs. 65,370.90 nP., it was directed that the said amount was liable to be recovered from him as arrears of land-revenue as provided in section 4 of the Act. It was further directed in the said order of the Collector that the residential house of the petitioner in Gurdaspur town be attached and auctioned according to the rules. The abovesaid order was passed without any notice to the petitioner and without affording him any opportunity to show cause against the allegation that he was a 'public accountant' as defined in section 3 of the Act or that he had embezzled any part of the amount in question or that he was otherwise liable to pay the amount in dispute. Objections of the petitioner dated February 28, 1964 (copy Annexure 'A-2' to the writ petition), against the impugned order of the Collector, were dismissed on March 17, 1964 (copy of order is Annexure 'A-3' to the writ petition). The plea about the petitioner not being a 'public

accountant' for more than one reason was pressed before the Collector. The learned Collector, however, held that the petitioner was a 'public accountant' within the meaning of section 3 of the Act and, therefore, repelled the petitioner's contention. Thereupon, the present writ petition was filed praying for the issuance of an appropriate writ, order or direction quashing the orders of the Collector.

(2) The petition has been contested on behalf of the respondents, who are the Collector of Gurdaspur and the State of Punjab. The respondents, have filed a joint written statement dated February 24, 1965.

(3) At the hearing of the petition Mr. Rajinder Sachar, the learned counsel for the petitioner, sought to press only two grounds in support of this writ petition. One of the grounds consists of an attack on the constitutionality and validity of section 4 of the Act, which has, however, been left out because of the view I have taken of the second point urged by the counsel. In the view I have taken of the second point, I have not considered it necessary to adjourn the hearing of the case which would have been necessitated in order to adjudicate upon the constitutionality of section 4, as a notice of the said question of law would have been necessary to be given to the Attorney-General for India as required by rule 1 of Order 27-A of the Code of Civil Procedure.

(4) In order to appreciate the second ground of attack, which is the same as was pressed before the Collector in the petitioner's objections, it is necessary to notice the relevant provisions of the Act. Section 3 of the Act defines 'public accountant' in the following terms:—

"3. For the purposes of sections 1 and 2 of this Act, the expression 'public accountant' means any person who as Official assignee or Trustee, or as sarbarahkar, is entrusted with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to any other person or persons, and for the purposes of sections 4 and 5 of this Act the expression shall also include any person who, *by reason of any office held by him* in the service of the Central Government or the Government of a State, is entrusted with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to such Government."

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Section 1 states that "Every public accountant shall give security for the due discharge of the trusts of his office, and for the due account of all moneys which shall come into his possession or control, by reason of his office." Section 2 deals with amount and kind of security and with the sureties to be furnished by a public accountant. Section 4 then states—

"The person or persons at the head of the office to which any public accountant belongs may proceed against any such public accountant and his sureties for any loss or defalcation in his accounts, as if the amount thereof were an arrear of land-revenue due to Government."

It has been fairly and frankly conceded by Mr. Jawahar Lal Gupta, the learned counsel for the respondents, that if the petitioner was not a 'public accountant' as defined in section 3 of the Act, on the date when the impugned order was passed by the Collector, it would be impossible for the respondents to support the order. I agree with Mr. Gupta that the mere fact that the petitioner did not furnish any security would not take him out of the purview of the definition of 'public accountant' if he otherwise fell within the mischief of that provision. On the merits of the contention whether the petitioner satisfied the requirements of section 3 or not, it would be appropriate to notice the specific plea contained in paragraph 4 of the writ petition, which is in the following words :—

"That the duties of the Wasil Baqi Nawis like the petitioner do not include within its scope the duty to collect the land-revenue or to handle the cash in any way, *vide* paras 510, 511, 539 and 593 of the Land Administration Manual. The Standing Order No. 31 further reinforces this position and is as below:—

Part VII. General, Para 2,—

- '2. Except as stated below, no one but the Tehsildar, or in the case of Sadr Tehsils the Sadr treasurer should receive or handle money, and it is strictly forbidden for the Wasil Baqi Nawis to do so. The Tehsildar is responsible for preventing the practice of payment of land-revenue to the Wasil Baqi Nawis by persons tendering the same."

In reply to the above said averments it has been stated in the corresponding paragraph of the written statement as follows :—

"Para 4 is admitted, but it is stated that the official handled the cash during the course of his duties, although he was

not authorised to do so. He had been receiving amounts from the Lambardars who *happened to visit Tehsil office during and after treasury hours.*"

Even at the hearing of the petition it was conceded by the learned State counsel that the duties of the office of the petitioner did not include the duty to receive or handle any money and that in fact he was prohibited from handling any money. It was, however, contended that if the petitioner had, contrary to the requirements of the duties of his office, actually received money and embezzled it, he should be deemed to have been a 'public accountant' within the meaning of section 3 of the Act. I have not been able to agree with this contention. The scheme of the Act shows that its specific provisions are intended to apply to only Government servants who are expected to come into possession or control of money by reason of their office. It cannot, for example be successfully urged that if a peon of a Government treasury receives from intending depositors the amounts which are expected to be put in the treasury he should be deemed to be a 'public accountant' within the meaning of section 3 of the Act, merely because he is a public servant and did actually receive the amounts. Error of law in the impugned order of the Collector dismissing the objection petition of the writ-petitioner on the abovesaid ground appears to be apparent. On the admitted facts of this case the petitioner could not be held to be a 'public accountant' within the meaning of section 3 as he was not entrusted with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to any other person or persons. He was entrusted with the duties which specifically excluded the receipt or control of money. I would accordingly hold that inasmuch as the petitioner was not a 'public accountant' within the meaning of section 3 of the Act, the Collector had no jurisdiction to pass any order against him under section 4 of the Act. Both the impugned orders are, therefore, set aside as they are wholly without jurisdiction.

(5) By quashing the impugned orders, I may not be understood to have pronounced in any manner on the question of liability of the petitioner for the amount for which he had been held to be responsible for repayment by the Collector or for any part thereof.

(6) In the circumstances of the case, I make no order as to costs.

R.N.M.