

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6442 OF 2017
(Arising out of SLP(C) No. 9698 of 2013)

UNION OF INDIA & ORS. . . APPELLANT(S)

VERSUS

R.MARI GOUNDER . . RESPONDENT(S)

O R D E R

1. Leave granted.
2. This appeal is directed against the order passed by the High Court of Judicature of Madras in Writ Petition No. 24957 of 2011, dated 22.06.2012.
3. The only question raised by the appellant, Union of India in this appeal is whether Shri V. Thangavelu, who was holding the post of Superintendent of Post Offices in a officiating capacity on an *ad hoc* basis

was competent to pass the order of dismissal of the respondent from service?

4. Heard learned counsel for the parties.

5. We are of the considered opinion that aforesaid question is covered by the decision of this Court in the case of State of Madhya Pradesh and Anr. vs. Laxmishankar Mishra, (1979) 2 SCC 270; Gopalji Khanna vs. Allahabad Bank & Ors., (1996) 3 SCC 538 and Gokaraju Rangaraju vs. State of Andhra Pradesh, reported in (1981) 3 SCC 132 where this Court had applied the *de facto* doctrine.

6. This Court in paragraph 9 of Laxmishanker Mishra's case (supra) held as follows :

".....Viewed from this angle, the confirmed holder of a substantive post would be discharging the functions attached to the post and when some one is placed in that very post in an officiating capacity or directed to hold charge of the post, he would be required to perform the duties and discharge the functions of the post rendering identical service. If the

rule expressly did not make any differentiation between the person working as a confirmed holder of substantive post and an incharge or officiating holder of the post, is there anything in the expression itself which by necessary implication excludes service in any other capacity except as a confirmed Head Master/Principal in a substantive post? A confirmed holder of a substantive post may look tautologous because one can only be confirmed in the substantive post."

7. This Court also in Paragraph 17 in case of Gokaraju Rangaraju (supra) held as follows:

"A judge, de facto, therefore, is one who is not a mere intruder or usurper but one who holds office, under colour of lawful authority, though his appointment is defective and may later be found to be defective. Whatever be the defect of his title to the office, judgments pronounced by him and acts done by him when he was clothed with the powers and functions of the office, albeit unlawfully, have the same efficacy as judgments pronounced and acts done by a Judge de jure. Such is the de facto doctrine, born of necessity and public policy to prevent needless confusion and endless mischief. There is yet another rule also based on public policy. The defective appointment of a de facto judge may be questioned directly in a proceeding to which he

be a party but it cannot be permitted to be questioned in a litigation between two private litigants, a litigation which is of no concern or consequence to the judge except as a judge. Two litigants litigating their private titles cannot be permitted to bring in issue and litigate upon the title of a judge to his office. Otherwise so soon as a judge pronounces a judgment a litigation may be commenced for a declaration that the judgment is void because the judge is no judge. A judge's title to his office cannot be brought into jeopardy in that fashion. Hence the rule against collateral attack on validity of judicial appointments. To question a judge's appointment in an appeal against the judgment is, of course, such a collateral attack.

Therefore, we find that it makes no difference if the competent authority was holding the post due to an *ad hoc* promotion. He must be considered eligible and competent enough to pass all necessary orders.

8. We are not inclined to go into the merits of the dismissal order since the respondent had admitted all the charges against him.

9. In view of the *de facto* doctrine explained by this Court in the aforementioned cases, the impugned order is set aside.

10. The appeal is allowed accordingly.

.....J.
[S.A. BOBDE]

.....J.
[L. NAGESWARA RAO]

NEW DELHI,
MAY 04, 2017.

ITEM NO.44

COURT NO.9

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 9698/2013

(Arising out of impugned final judgment and order dated 22/06/2012 in WP No. 24957/2011 passed by the High Court Of Madras)

UNION OF INDIA & ORS.

Petitioner(s)

VERSUS

R.MARI GOUNDER

Respondent(s)

(With interim relief and office report)
(FOR FINAL DISPOSAL)

Date : 04/05/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE
HON'BLE MR. JUSTICE L. NAGESWARA RAO

For Petitioner(s) Mr. Neeraj Kishan Kaul, ASG
Mr. Raghavendra M Bajaj, Adv.
Ms. Sunita Sharma, Adv.
Mr. S.S. Rawat, Adv.
Mr. B.Vivekananda, Adv.
Mr. G.S. Makker, Adv.

For Respondent(s) Mr. S. Beno Bencigar, Adv.
Mr. P. Soma Sundaram, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal allowed in terms of the signed order.

[Charanjeet Kaur]
A.R.-cum-P.S.

[Indu Pokhriyal]
Court Master

[Signed order is placed on the file]