
(2014) 02 MAD CK 0125

In the Madras High Court

Case No : W.P.(MD) Nos. 15080, 19247 of 2013, 3105 of 2014 and M.P.(MD) Nos. 1, 1, 2, and 2 of 2013, 1 and 2 of 2014

B. Rajendran

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2014) WritLR 468

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B. Rajendran, J.—The petitions in W.P.(MD) Nos. 15080 and 19247 of 2013 have been filed seeking for issuance of Writ of Quo-Warranto and W.P.(MD) No. 3105 of 2014 has been filed seeking issuance of a Writ of Certiorari to call for the records relating to the impugned G.O.Ms. No. 133, Tourism, Culture and Religious Endowments Department, dated 31.05.2013 by which Mr. P. Dhanapal, the second respondent was reemployed as Commissioner by the Principal Secretary to Government, Tourism, Culture and Religious Endowments Department, is sought to be quashed. By consent, all the Writ Petitions are taken up together for final disposal Insofar as two quo-warranto petitions viz., W.P.(MD) No. 15080 of 2013 and 19247 of 2013 are concerned, W.P.(MD) No. 15080 of 2013 is filed by a retired officer of the Hindu Religious and Charitable Endowment Department and W.P.(MD) No. 19247 of 2013 is filed by a person interested in the worship of various temples. The main contention of the petitioner in both these writ petitions is that u/s 9 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1951 (hereinafter referred to as "the Act") alone the Commissioner can be appointed. Therefore, the method of reemployment after retirement is not permitted and hence, the appointment of Mr. P. Dhanapal is not valid. In this connection, the petitioners would contend that Section 6(6) of the said Act defines a Commissioner which specifically says who is to be appointed u/

s 9 of the Act. Therefore, there is a violation in respect of the appointment of Mr. P. Dhanapal and the appointment other than u/s 9 is invalid. According to the petitioners, u/s 9(2)(a)(ii) of the Act, there are only three methods of appointment viz., (i) by transfer from among the members of the [Tamil Nadu] State Higher Judicial Service or of the [Tamil Nadu] State Judicial Service or of any other service; or (ii) by promotion from Additional Commissioner; or (iii) by direct recruitment. When this has not been done, the Commissioner cannot be a person as appointed under the Act. They would also contend that when the entire Act, as per the preamble, is a consolidated in nature and it is exhaustive one, the defense taken by the authorities concerned that they had power under Rule 45 of the Tamil Nadu State and Subordinate Services Rules, cannot be applicable. Therefore, the appointment of Mr. P. Dhanapal is illegal. They would also rely upon a Division Bench decision of this Hon''ble Court in the case of State Government of Tamil Nadu Vs. K. Vijayakumar and Smt. Kamala A. Christopher, for the proposition that when there is a specific power in the Act, recourse to another rule is not permissible. They would also contend that even if it is a re-employment, the appointing authority should give reason and that reason should be only on the basis of where there is dearth of qualified candidates and where a person is of outstanding ability, cases may be considered on merits for extension or re-employment. It is to be specifically noted that in this case, such a thing has not been done. Therefore, the order is illegal. They would lastly contend that even assuming for a moment but not admitted, a Government servant as contemplated u/s 12 of the Act that the appointment for such period or any earlier period it is taking away the right. Therefore, also they cannot appoint. This was the main contention raised by Mr. G.R. Swaminathan, learned counsel for the petitioner.

2. For better understanding the relevant Sections 6(6), 8 and 9 of the Act are extracted hereunder:

6. Commissioner means the Commissioner appointed u/s 9.

8. Authorities under the Act: There shall be the following classes of authorities under this Act, namely,

(a) the Commissioner,

(aa) Additional Commissioner,

(b) Joint Commissioner,

(c) Deputy Commissioner,

(d) Assistant Commissioners

9. Government to appoint Commissioner, etc., (1) The Government shall appoint the Commissioner [the Additional Commissioner] and [such number of Joint, Deputy and Assistant Commissioners] as it may think fit.

(2) (a) Appointment to the post of Commissioner shall be:

(i) by transfer from among the members of the [Tamil Nadu] State Higher Judicial Services or of the [Tamil Nadu] State Judicial Service or of any other service; or [(ii) by promotion from Additional Commissioner]; or

(iii) by direct recruitment

[(aa) Appointment to the post of Additional Commissioner shall be by promotion from Joint Commissioner;

(aaa) Appointment to the post of Deputy Commissioner shall be-

(i) by transfer from among the members of the [Tamil Nadu] State Judicial service or of any other service; or

(ii) by promotion from Assistant Commissioner; or

(iii) by direct recruitment; or

(iv) by agreement or contract

3. Mr. Balasubramania Iyer, learned counsel appearing for the petitioner in W.P. (MD) No. 19247 of 2013, had gone one step further to state that the Hindu Religious and Charitable Endowment Department staff are not Government servants. Even as per the Act, the employees are only paid initially from the Consolidated Fund and thereafter, it is reimbursed by the department from out of the funds or hundial collections raised from various temples. Therefore, they cannot be construed as Government servants. The Writ Petition is filed by one of the former employee who has retired long back seeking for issuance of Writ of Certiorari to cancel the very order of extension. Again mainly on the ground that the appointment is against the provisions of Sections 9 and 12 when there is a Government servant the restrictions is an embargo. He would mainly contend that no locus standi will arise even though the petitioner is a former employee. In fact, he had also filed a Public Interest Litigation and permitted to withdraw. Thereafter, he has filed the present Writ Petition.

4. In W.P.(MD) No. 15080 of 2013, the first respondent has filed a consolidated counter affidavit stating that the Writ Petitions are not maintainable as the petitioners have no locus standi because two of them are former employees of the Hindu Religious and Charitable Endowment Department. The main argument was that in none of the cases they have not even averred whether the appointment is against the statutory rules. When the appointment is within the statutory rules, the Writ of Quo-warranto cannot be maintainable. Further, they would argue that the possessor of the office does not suffer from any disqualification which debars the person to hold such office. It is also made clear that since he had already employed as a Commissioner, the question of disqualification does not arise. Their main defense was originally the special rules were issued in the Madras Service Manual with reference to Section 8 of the Madras Hindu Religious and Charitable Endowments Act, 1951, thereafter, after the repeal, of the old Act, special rules have been reissued under the proviso to

Article 309 of the Constitution of India and under G.O.Ms. No. 1948, Revenue Department, dated 27.07.1968 read with Section 9 of the present Act. Since the post mentioned in the impugned order is under the Special Rules for the State services, all the employees will be the servants of the Government of Tamil Nadu. The second respondent right from the year 1985 appointed and promoted to the posts of Deputy Commissioner, Joint Commissioner and Additional Commissioner in the Tamil Nadu Hindu Religious and Charitable Endowments Administration Department, there is no question of qualification and ability arise. Relying upon the decision of the Hon''ble Supreme Court in the case of B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees'' Association and Others, , they would only contend that Quo-Warranto can be issued only when the appointment is contrary to the statutory rules. In fact, in the Act, there is no details regarding qualification for appointment. Whereas the Special Rules and in G.O.Ms. No. 1498, Revenue Department, dated 27.07.1968, only specifies the qualification for appointment of a Commissioner. Therefore, he can only be construed as a Government servant. In fact, Section 12 clearly states that the Government servants payment is made from the consolidated fund and they place their right to Rule 45 of the Tamil Nadu State and Subordinate Service Rules which specifically provides for the reemployment of retired persons. The said rule traces out the power to Article 309 of the Constitution of India. Therefore, they would contend that there is no prohibition or bar to appoint a person for reemployment in the Hindu Religious and Charitable Endowment Department.

5. The second respondent also filed independent counter reiterating his right to continue his office. He also specifically stated that the two petitioners are the former employees are debarred, locus standi is not there. The petitioner in W.P. (MD) No. 3105 of 2014 had filed with malice against him as he come forward with an application for reemployment after a lapse of 11 years which was negated by him. In any view of the matter, he would only contend that the power is vested with the Government under Rule 45 is exhaustive one on reemployment. Therefore, the order is valid. In this connection, he would also contend that Entry 28 of List III of the Constitution of India deals with Charities and charitable institutions, charitable and religious endowments and religious institutions. But, whereas Entry 41 of the List II deals with State public services and State Public Service Commission. Therefore, when the person is appointed and when he is a Government servant his statutory rights given under Entry 41 of List II when the Act does not specify the rules conditions service matters definitely it will be governed under the List II. Therefore, they are all Government servants. Hence, the reemployment power is vested under Rule 45 which traces the right under Article 309 of the Constitution of India. Therefore, the Act only deals with the charitable endowments and specifically Section 12 mentions all of them are Government servants. As the Government servants are governed by the State Service conditions. Therefore, the rules are within the frame work of law. Similarly, Fundamental Rule 56 prescribes for extension of

service.

6. Heard all the parties.

7. The main contention of all the petitioners in the cases is that Mr. P. Dhanapal was originally employed as Commissioner of Hindu Religious and Charitable Endowment Department and he retired on 31.05.2013. He was appointed as Assistant Commissioner in the year 1985 which is a feeder post. According to the Government, he has got unblemished records and retired on 31.05.2013 and based on application made by him, the Government thought it fit to reappoint him for a period of three years. The Government Order reappointing him for a period of three years is questioned.

8. First, let us deal with W.P.(MD) No. 3105 of 2014 seeking issuance of Writ of Certiorari. The Writ of Certiorari will not be granted and simply it has got to be dismissed for the simple reason that it is filed by an employee who was appointed as Assistant Commissioner originally and promoted as Deputy Commissioner in 2002 and Joint Commissioner in the year 2007 then his next line of promotion is Additional Commissioner. But that was not given because of some departmental proceedings against him. In any way, he added that he is not a person seeking equally to be appointed as Commissioner. Therefore, certiorari can not be issued. In this context, he also says that as a result of the reemployment of the second respondent, one B. Raja, who was holding the post of Additional Commissioner could not be promoted. Placing the case of another who is due to retire, the petitioner cannot seek for the relief. Therefore, certiorari will not lie. In this connection, the learned Advocate General relies upon a decision of the Hon'ble Supreme Court in the case of B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees' Association and Others, . The relevant portion of the judgment is extracted as under:

78. The High Court, in the instant case, was not exercising certiorari jurisdiction. Certiorari jurisdiction can be exercised only at the instance of a person who is qualified to the post and who is a candidate for the post. This Court in Dr. Umakant Saran Vs. State of Bihar and Others, held that the appointment cannot be challenged by one who himself is not qualified to be appointed.

9. Now, we can take up the two petitions for Quo-Warranto. Again one application is filed by a retired employee. Though there was a heated argument in regard to the locus standi. Even locus standi, if it is not taken into consideration, the only point is to be seen that whether they have raised any points to seek for quo-warranto. For seeking quo-warranto, the basic principle is that the appointment should have been in violation of some statutory rules. In fact, the Hon'ble Supreme Court time and again stated that the quo-warranto does not lie if the alleged violation is not a statutory provision. With this background, we have to analyse the grounds raised by the petitioners. The only ground which has been raised by Mr. G.R. Swaminathan, learned counsel appearing for the petitioner is that the Tamil Nadu Hindu Religious and Charitable

Endowments Act is a code by itself. Section 6(6) defines the Commissioner and Section 9 defines method of appointment which includes transfer from judicial service or any other service by promotion or by direct recruitment. Therefore, if an appointment is made u/s 9, the reemployment made by the Government which is not provided for under the Act is in total violation. In this connection, he would only contend that when the Act is defined by itself, the Government cannot look into any other provision or rule to substantiate such appointment. But, when we consider Section 12 of the Act it clearly says that the expenditure including audit fees of the Department would be initially paid from out of consolidated fund but later on, it is reimbursed from out of the funds of the temple. Therefore, it is a clear case even as per the Act, all these people would be a Government servant. Once they are Government servant, they will be governed by the Tamil Nadu State and Subordinate Service Rules. Rule 45 of the Tamil Nadu State and Subordinate Service Rules clearly empowers reemployment. The Rule 45 is extracted hereunder:

45. Re-employment of pensioners-Nothing in these rules or the Special Rules shall be construed to limit or abridge the powers of the State Government and of subordinate authorities to reemploy persons who have retired on a civil pension or gratuity or who while in service were subscribers to a Contributory Provident Fund, in any service in accordance with the provisions contained in the Tamil Nadu Pension Rules, 1978. The re-employment of such a person in any service shall not be regarded as a first appointment to that service.

10. The above rule also clearly says the reemployment of such a person for any service shall not be regarded as first appointment to that service. In this case, the second respondent was already appointed. In fact, as per the Act, the feeder post is the Assistant Commissioner. He was appointed and he was given the post of Commissioner. Therefore, the qualification and his incumbency in the office was clearly proved. Therefore, his appointment is not a first appointment and it will not be construed as a first appointment. Therefore, the Government Order specifies that he is eligible for reemployment for three years. This has been interpreted by Mr. Balasubramania Iyer, learned counsel for the petitioner and Mr. G.R. Swaminathan that there is restriction in respect of the period of service of the Government servant. It is not a restriction on the Government servant. In fact, it is only a reemployment on the basis of the rule making power which power conferred under Article 309 of the Constitution of India. In fact, this has been explained by the learned Advocate General. Further, by bringing to the notice of the Court, the Madras Service Manual Vol. III State Service Special Rules Section 18 which deals with the Madras Hindu Religious and Charitable Endowments (Administration) Service. This has been made as per the old Act, 1951. That rule came into force from 1955. As per the rules, the qualification for appointment of Commissioner, Deputy Commissioner, Assistant Commissioners has been mentioned and appointment to various categories is also mentioned. After the repealing of the old Act by virtue of G.O.Ms. No. 1498, Revenue Department, dated 27.07.1968, the Special Rules for the Madras Hindu Religious

and Charitable Endowments (Administration) Services have been amended with reference to Section 9 of the new Act, relating to the appointment of Commissioner, Deputy Commissioners and the Assistant Commissioners and pursuant to that, in exercise of powers conferred by the proviso to Article 309 of the Constitution of India, read with Section 9 of the Madras Hindu Religious and Charitable Endowments Act, 1959 (Madras Act 22 of 1959) and in suppression of the rules on the subject, the Governor of Madras had made the rules. Section 2, Rule 2 refers to the appointment, the qualification for appointment. Then, under the Tamil Nadu State and Subordinate Services Rules, under Rule 45, when they are governed as Government servants, they are also equally governed as reemployment as a pensioner. Therefore, according to the learned Advocate General, the power is vested with the Government to appoint a retired employee and hence, he would only contend that the petitioners have not pointed out contravention of any rules. Contra, since the qualifications are all made out in the service rules and the appointment is made under the rules the argument that they cannot be treated as government servants because the expenditure is reimbursed to the Government from the department cannot be accepted. In this connection, he would rely upon a decision of the Hon'ble Supreme Court in the case of Central Electricity Supply Utility of Odisha Vs. Dhobei Sahoo and Others, . The relevant portions of the judgment is extracted as under:

40.....To understand the said facet, we have to refer to certain provisions of the Act which encapsulate the basic map of the functions of the licensees and the utility service.

47. The whole thing has to be scrutinised from the point of view of power. Suitability or eligibility of a candidate for appointment to a post is within the domain of the appointing authority. The only thing that can be scrutinised by the Court is whether the appointment is contrary to the statutory provisions/rules.

11. In fact, in the above judgment, the Hon'ble Supreme Court has very categorically held that suitability or eligibility of a candidate for appointment is within the domain of the appointing authorities. Similarly, the Court can only scrutinise whether appointment is contrary to the statutory provision or Rules. Beyond that in writ of Quo-Warranto, the court cannot interfere with. In fact, the learned Advocate General also relies upon a decision of the Hon'ble Supreme Court in the case of B. Srinivasa Reddy (cited supra) for the proposition that a Writ of quo warranto does not lie if the alleged violation is not of a statutory provision. In the above case, the Supreme Court also held that the High Court in a quo warranto proceedings should be slow to pronounce upon the matter unless there is a clear infringement of the law. When we analyse Section 6(6) which defines a Commissioner and Section 9 defines the method of appointment. As earlier stated, under the said Act, no qualification is stated. The qualification comes only under the rules. Further, in this connection, when the section itself is exhaustive and when, the rule comes which is traced under Article 309 of the Constitution of India definitely Rule 45 to reappoint can be looked into and

availed by the government. In this connection, the learned Advocate General distinguishes the case cited by the petitioner in *State Government of Tamil Nadu Vs. K. Vijayakumar and Smt. Kamala A. Christopher*, . This case was mainly relied upon by the petitioner for the proposition that the Government in respect of granting of extension of service or reemployment of retired employees should specify the need for such reemployment. In that case, the Government circular specifically stated that for reemployment it should be specified where there is dearth of qualified candidates and where a person is of outstanding ability, cases may be considered on merits for extension or re-employment. That extension was put to challenge on the ground that his promotion will affect the next person and hence, sought certiorari. When a person who is next in line to the promotion, when his promotion is affected, he is competent person to question the extension by way of certiorari it is not so in a quo warranto. Therefore, under the certiorari a different yardstick has to be applied and that yardstick is applied in the particular case and having found that extended person did not have any special qualification and as per the circular when they did not possess additional ability that was questioned by this Court. That case does not arise under a quo warranto. But here the rule specifically empowers the Government which is derived under Article 309 of the Constitution of India seeking for extension. In this rule, there is no specific direction that there should be any dearth of qualified candidates and outstanding ability, is not in their consideration. But, here is the case for quo warranto, we have to see only the violation of statutory rule. As pointed out by the learned Advocate General, the petitioners have not pointed out a single rule which has been violated. Therefore, the facts of the above case will not be applicable to the facts of the present case and it is totally different. In this connection, an argument advanced by Mr. R. Muthukumarasamy, learned Senior Counsel has to be taken note of. He would contend that the Act deals with charities, charitable institutions, charitable and religious endowments. But the service conditions of the parties are not enumerated. Therefore, he would point out that source is Constitution of India under list III concurrent list under Entry 28 which is extracted as under:

28. Charities and charitable institutions, charitable and religious endowments and religious institutions.

Whereas insofar as governing the service conditions it is governed by List II which is a State List under Entry 41 which specifically states regarding State Public Services and State Public Service Commission. That is why, they have relied upon the Tamil Nadu State and Subordinate Service Rules which governs all the employees which is all the more enunciated u/s 12. u/s 12 the payment is originally made from consolidated fund and later on it is reimbursed it take away the rights of the Government servant as argued by Mr. Balasubramania Iyer, it is not correct because as stated supra, right from the original Act and later on by the amended Act, the rules have been framed, the qualifications have been fixed and thereafter, the selection has been made even from the feeder category. Section 12 embodies that they are only a Government servant. Therefore, when

there is a specific service conditions under the Rules and there is no violation of the service rules, the Writ of Quo Warranto cannot be granted. In fact, Section 9(2) deals with the method of appointment. Again it is not argued or brought to the notice of the Court that the rule is against the Constitution or violation of the Act. In this connection, Mr. R. Muthukumarasamy, learned Senior Counsel relies upon the judgment of the Hon''ble Supreme Court in the case of High Court of Gujarat and Another Vs. Gujarat Kishan Mazdoor Panchayat and Others, for the proposition that the reemployment can be questioned only if it is against the statutory rules and the case of quo warranto is different from writ of certiorari. Again an unreported judgment of the Single Judge of this Court passed in W.P. No. 15927 of 2012, dated 28.08.2012 it is clearly spelled out regarding the scope of quo warranto. In fact, he would also rely upon a decision of the Hon''ble Supreme Court in the case of Hari Bansh Lal Vs. Sahodar Prasad Mahto and Others, , for the proposition that PIL is not maintainable in service matters. Therefore, the Writ of Certiorari is not maintainable as he is not the competent person. Lastly it is also argued that the petitioner who have got ill-will or malice against the second respondent. As discussed earlier, even if we do not go into the question of locus standi, since we have come to the conclusion that the petitioners in none of the cases has ever been proved beyond reasonable doubt that the appointment violates any statutory rules, the question of quo warranto will not arise. Therefore, all the Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.