
(1976) 09 MAD CK 0039
In the Madras High Court

B. Thirumalai Pillai

APPELLANT

Vs

S. Ramalingam and Another

RESPONDENT

Date of Decision : 02-09-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1977) 90 LW 626 : (1977) 2 MLJ 119

Hon'ble Judges : A.D. Koshal, J

Bench : Single Bench

Judgement

A.D. Koshal, J.—Till the 31st December, 1970 respondent No. 1 held the post of karnam in village Melkaripur on a permanent basis. He absented himself from duty without leave and with effect from the 1st January, 1974, the petitioner was appointed a village karnam instead on a temporary basis by the Tahsildar, Chengam whose order was confirmed on the 29th March, 1971 by the Revenue Divisional Officer (hereinafter referred to as the R.D.O.). Later on respondent No. 1 returned to duty and by his order dated the 27th November, 1971, the R.D.O. permitted the first respondent to join duty again. It is this last mentioned order of the R.D.O. that is challenged by the petitioner under Article 226 of the Constitution of India, with a prayer that is be quashed by a writ of certiorari.

2. The filling up of vacancies in the office of a village karnam is regulated by the Tamil Nadu Village Officers Service Rules, 1970 (hereinafter referred to as the Rules), of which Rules 6, 7, 13 and 14 are relevant and are reproduced below:

6. Where it is necessary in the public interest to fill immediately a vacancy in a village office and there would be undue delay in making such appointment in accordance with these Rules, the appointing authority may temporarily appoint a person otherwise than in accordance with these Rules. No such temporary appointment shall be continued except for special reasons, beyond a period of three months.

7. The appointment of a village officer in a vacancy arising from dismissal,

removal or suspension of the previous incumbent shall terminate automatically on the return of the previous incumbent to duty

(i) on the revocation of the order of dismissal or removal, on appeal or revision by the appropriate authority by orders of a Court of law, or

(ii) on the revocation or the expiry of the period of suspension.

13.(1) Members of the service on attaining the age of 55 years shall retire and shall not be retained in service:

Provided that the Board of Revenue may require a village Officer to retire at any time after he has completed¹ thirty years of service provided that the appointing authority shall give in this behalf a notice in writing to the Village Officer, at least three months before the date on which he is required to retire.

(2) Village Officers are permitted to avail themselves of a maximum period of fifteen days" casual leave in a year of which not more than three days casual leave can be availed of at a time.

(3) The appointing authority may grant leave to Village Officers for periods not exceeding six months at a time and may appoint a paid substitute in the leave vacancy.

14. (1) A member of the service may resign the post by submitting his resignation to the appointing authority.

(2) The resignation shall take effect on acceptance thereof by the appointing authority and it shall not thereafter be withdrawn.

A bare perusal of these Rules would show that a vacancy in the office of a village karnam does not arise by the permanent incumbent thereof merely absenting himself from duty without leave. If he does so absent himself, he might be suspended, removed or dismissed from service, but till action is taken against him and he ceases to hold office by reason of the punishment awarded to him or of his resignation he continues to have the status of the village karnam on a permanent basis so that the question of a vacancy being available does not arise. In case of abandonment of duty by a permanent incumbent, it may be open to the appointing authority to appoint a paid substitute under Sub-rule (3) of Rule 13 of the Rules or treat the vacancy as a temporary vacancy and fill it up under Rule 6 of the Rules but it cannot treat the vacancy as a permanent vacancy so long as the permanent incumbent has not vacated the office. In this view of the matter, no vacancy on a permanent basis can be said to have arisen in the present case by reason of respondent No. 1 merely absenting himself without leave. No action for the abandonment of duty by him having been taken by the appointing authority, he continued to be the permanent incumbent and the impugned order which brought him back in the saddle cannot be considered faulty.

3. In the result, the petition fails and is dismissed but with no order as to costs.