
(1900) 09 MAD CK 0012
In the Madras High Court

D. Mangayarkarasi

APPELLANT

Vs

The District Backward Classes Welfare Officer

RESPONDENT

Date of Decision : 06-09-1900

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1988) 2 MLJ 370

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—The petitioner is a Post-Graduate in Economics and a Graduate in Education (B.Ed.,). She registered her name with the

Employment Office at Alankayam North Arcot District, in 1978. There is no dispute that she belongs to Hindu Backward Class. She was

informed by the Employment Office by a Communication dated 12.11.1987 that she should appear for an interview on 19.11.1987 before the

District Backward Classes Welfare Officer, Vellore - 1, North Arcot District, the respondent herein, for the post of Tutor-cum-Warden. She

appeared for the interview and she was selected by the respondent. By order dated 7.12.87 she was appointed temporarily as Tutor-cum-

Warden in the Government Backward Class Welfare Women's Hostel, Tiruvannamalai. The order of appointment made it clear that it was purely

temporary and the services could be terminated at any time without any prior notice. By order dated 19.4.1988 her services were terminated with

the closure of the Hostel at the end of the academic year 1987-88. It was also stated in the said order that whenever any vacancy arose in the

District in Backward Classes Welfare Hostels or Schools for the post of Warden, the persons whose services were terminated by the said order

should be considered for reappointment. By order dated 26.5.1988, the petitioner was reappointed as Tutor-cum-Warden in the same Hostel.

The services of the petitioner and two others were terminated by order dated 2.6.1988 on the ground that they were not qualified to be appointed

for the post as they had crossed the age of 35 years at the time of appointment. The petitioner is challenging the validity of the said order in the

present writ petition.

2. The contention advanced by the petitioner is that the age limit prescribed in the Special Rules framed for the Tamil Nadu Backward Classes

Welfare Subordinate Service will not apply to persons belonging to Backward Classes/Scheduled Castes/Scheduled Tribes in view of the

provisions contained in Rule 12(d)(ii) of the Tamil Nadu State and Subordinate Services Rules (General Rules)- Reliance is placed on the

Government Letter No. 100862/per.P/80-2, dated 20.12.1980 from the Deputy Secretary to Government to the Director of Employment and

Training, in which it is stated that there is no age limit for candidates belonging to B.C./S.C./S.T. holding a degree is the prescribed qualification

unless age limit is specifically prescribed in the concerned Special Rules about B.C./S.C./S.T. candidates.

3. The Learned Government Pleader, who appeared for the respondent on issue of notice of motion contended that Rule 12(d) of the Tamil Nadu

State and Subordinate Services Rules (General Rules) would operate only with reference to services for which Special Rules were already in

existence as on 1.1.1955 when the General Rules came into force. It was also contended by the learned Government Pleader that when the

Special Rules have fixed the age limit, they would exclude the applicability of the General Rules since Rule 2 of the General Rules provides that the

Special Rules shall prevail over the provision in the General Rules in the event of repugnancy between"" the provision in the General Rules and the

provision in the Special Rules. It was argued by the learned Government Pleader if the contention of the petitioner is accepted, it would lead to

disastrous consequences in that members of B.C./S.C./S.T. classes could get appointed at any age before the age of superannuation.

4. The Special Rules for the Tamil Nadu Back-ward Classes Welfare Subordinate Service are framed under Article 309 of the Constitution of

India by G.O.Ms.No. 264, Social Welfare Department dated 25.4.1978. The Rules shall be deemed to have come into force on and from 2nd

May, 1969. The service comprises six classes and each Class comprises several categories. The post of Tutor-aim-Warden is, in category I in

Class II. The Educational qualification for the said post is found in the Annexure to the Rules as a Degree of L.T. or B.T. of the Madras University

or the B.Ed., Degree of the Annamalai or the Madurai University. There is no dispute that the petitioner is having the requisite educational

qualification. Rule 5 of the Special Rules prescribes the age limit for the various categories. It reads thus:

5. Age:- (a) No person shall be eligible for appointment to the following Posts by direct recruitment, if he has completed or will complete 35 years

(Age limit amended with reference to G.O.Ms.No. 923, Social Welfare Department, dt.27.11.80) of age on the 1st day of July in the year in

which the selection for appointment is made:

1. Headmasters of Secondary Schools (Category I Class 1)
2. Teachers in Secondary Schools with degree in teaching (Category 2 Class I)
3. Secondary Grade Teachers (Men) and (Women) (Category 3 Class I)
4. Higher Elementary Grade Teachers (Category 4 Class I)
5. Pandits (Category 6 Class I)
6. Supervisors of Schools
(Category 7 Class I)
7. Tutors-cum-Wardens (Category 1 Class I)
8. Tutor-cum-Matrons (Category 2 Class II)
9. Wardens (Category 3, Class II)
10. Matrons (Category 4, Class II)
11. Assistant Matrons/Assistant Wardens
(Category 5, Class II)
12. Scout Organisers (Junior and Senior)
(Category 2, Class IV).

Provided that the maximum age limit specified in this rule in respect of the posts to which the minimum general educational qualification or any

lower qualification has been prescribed, shall be increased by five years in the case of candidates belonging to the Scheduled Castes and Scheduled Tribes.

There is no age limit for other categories.

(b) If no candidate belonging to any of the eligible communities and who is within the prescribed age limit is available for appointment as Teacher in

any of the Schools other than those referred to in Sub-rule (c) below, a candidate belonging to such community who is over aged but otherwise

qualified may be appointed with the sanction of the Director of Backward Classes, Madras.

(c) In the case of the School in the Habitual Offender Settlement at Aziznager, if no candidate from the eligible communities and those in the

settlement, who is within the prescribed age limit is available for appointment as Teacher, a candidate belonging to an eligible community who is

over aged, may be appointed with the sanction of the Director of Backward Classes, Madras.

EXPLANATION: For purposes of this rule, eligible Communities shall mean the communities referred to in Schedules I and II to Part I of the

Tamil Nadu State and Subordinate Services Rules.

5. On a query from the Court, the learned Government Pleader conceded that the recruitment to the Categories in the Tamil Nadu Backward

Classes Welfare Subordinate Services is open to all communities and not confined to B.C./S.C./ S.T. Classes, after ascertaining the same from the

concerned officials. Thus the age limit prescribed by the Special Rules is with reference to all the communities and there is no special prescription

for the members of B.C./S.C./S.T. Classes. The only exception is made in the Proviso to Rule 5(a) of the Special Rules that in respect of posts to

which the minimum general educational qualification or any lower qualification has been prescribed, the maximum age limit specified in the Rule

shall be increased by five years in the case of candidates belonging to the Scheduled Castes and Scheduled Tribes. The proviso will apply only to

such posts for which the minimum general educational qualification or any lower qualification has been prescribed. For example, for Secondary

Grade Teachers, the educational qualification prescribed in the minimum general educational qualification prescribed in Schedule I to the General

Rules. Similarly, for the post of Supervisors of Schools, the minimum general educational qualification has been prescribed. According to the Rule

12(a)(i) of the General Rules, the minimum General Educational Qualification wherever referred to in the Special Rules shall mean the qualification

prescribed in Schedule I to the General Rules. Under Schedule I to the General Rules, the minimum general educational qualification is S.S.L.C.

Hence, the proviso to Rule 5(a) of the Special Rules will not apply in the present case.

6. Rule 12(d)(ii) and (iii) of the General Rules is in the following terms:

The age limit prescribed in the special rules shall not apply

(i) ...

(ii) to the appointment to a post included in a service of a candidate belonging to any of the Scheduled Castes, Scheduled Tribes or Backward

Classes who holds a degree of any University mentioned in Schedule II to this part:

Provided that, for direct recruitment to a post included in a service for which the minimum qualification required is not higher than the minimum

general qualification, the age limit prescribed shall be increased by five years in respect of candidates belonging to Scheduled Castes or Scheduled

Tribes who do not possess a general educational qualification which is higher than the minimum general educational qualification.

(1) by the Commission in cases where the appointment has to be made in consultation with it, and

(2) by the State Government or by the appointing authority with the approval of the State Government, in other cases, if the degree he holds is not

lower than the degree, if any, prescribed in the Special Rules for appointment to such post and if he is otherwise qualified for appointment, or

(iii) to the appointment, in special circumstances to be recorded in writing of a person selected for appointment to one service or a class or

category thereof to another service or a class or category thereof, the qualifications prescribed for appointment to which are identical with those

prescribed for appointment to the former service, class or category.

7. The learned Government Pleader submits that it is clear from the language of the rule that it refers only to Special Rules which were in existence

at the time when the General Rules came into force i.e., 1.1.1955. According to

the learned Government Pleader, the relevant word used in the rule is ""prescribed"". As it is in the past tense the learned Government Pleader submits that it could apply only to the prescription already made by the Special Rules and that it would not govern the Special Rules which were framed subsequently for different services. As seen already, the Special Rules for The Tamil Nadu Backward Classes Welfare Subordinate Service were framed only in 1978 and by a fiction they were deemed to have come into force from 2nd May, 1969. Hence the arguments of the learned Government Pleader is, Rule 12(d) cannot be invoked by a person seeking appointment to a post governed by the Tamil Nadu Backward Classes Welfare Subordinate Service Special Rules. Though the arguments is attractive, it cannot be accepted. Rule 2(19) of Part I - Preliminary of the Tamil Nadu State and Subordinate Services Rules defines Special Rules"" to mean the rules in Part III applicable to each service or class of service". When ever Special Rules are framed under Article 309 of the Constitution of India, they are included in Part III of the Tamil Nadu State and Subordinate Service Rules. In fact the Special Rules for the Tamil Nadu Backward Classes Welfare Subordinate Service Manual, Volume II 1970. Applying the definition of "Special Rules" found in Rule 2(19) of Part I Preliminary of the Tamil Nadu State and Subordinate Services Rules to Rule 12(d) of Part II, viz., General Rules, it is evident that Rule 12(d) of the General Rules will govern the Special Rules for the Tamil Nadu Backward Classes Welfare Subordinate Service. There is no warrant for construing Rule 12(d) of the General Rules as to apply one to the Special Rules already made or the age limit prescribed already in the Special Rules in existence in 1955. That would be really adding words to Rule 12(d) which is not permissible. The Rules has to be understood as it is. Rule 12(d) of the General Rules has really been framed in the patterns adopted by the Legislature in several enactments. Many an enactment have utilised the word ""prescribed"" in the sections thereof. Normally, the terms ""prescribed"" whenever used in an enactment will also be defined in that enactment as ""prescribed by Rules framed under the Act"". Since Rules could be framed under an Act only after the Act came into force, the term ""prescribed"" in such Acts would necessarily apply to Rules framed subsequent to the Act.

8. For example, Section 2(f) of the Madras General Sales Tax Act (IX of 1939) defines the term ""prescribed"" to mean ""prescribed by the Rules

made under the Act"". Similarly, Section 2(21) of the Motor Vehicles Act defined the word ""prescribed"" as ""prescribed by rules made under the

Act"". While dealing with the question of retrospective effect of a rule framed under the Madras General Sales Tax Act (IX of 1939). Rajagopala

Iyyengar, J. observed in *Guruviah v. State of Madras* (1958) 1 M.L.J. 132 : 1958 M.W.N. 917 : (1958) 71 L.W. 321 : (1958) 9 S.T.C. 145 :

AIR 1958 Mad. 249 as follows:

...But the use of the word ""prescribe"" as the normal expression conferring a power to make a rule is too well known to require detailed

explanation. For instance in this very Act. Section 2(f) defines the word ""prescribed"" thus: ""prescribed"" means prescribed by rules made under this

Act and when one turns to Section 19 where power is expressly conferred on the State Government to make rules under the Act, it is specifically

enacted:

19(2): In particular and without prejudice to the generality of the foregoing power such rules may provide for

(a) all matters expressly required or allowed by this Act to be prescribed.

The reference to prescription here, if read in the light of the definition in Section 2(f) can only mean ""by rules made under this Act"". I am therefore,

clearly of the opinion that ""prescription"" in the Act merely means ""by rules made under the Act"" and is wholly unconcerned with the content of the

rule in relation to the time from which it shall ""operate which is determined by other considerations....

9. In *N.S. Ghouse Miah and Abdullaha Sheriff Vs. Regional Transport Authority, Cuddapah*, , a Division Bench of the Andhra Pradesh High

Court had to consider the vires, regarding Rule 153-D framed under the Motor Vehicles Act, 1939. Referring to the use of the word ""prescribed

in the various sections of the Act, the Bench made the following observations:

... It will be seen that if all these sections the word ""prescribed"" is used, which means according to Section 2(21) of the Act - ""prescribed by rules

made under this Act"". Now it is clear that these sections, wherever the word ""prescribed"" occurs, do not expressly authorise any subordinate

authority to make rules. It is only Section 68(2)(za) which empowers the State

Government to make rules in regard to all those matters mentioned in various sections as "prescribed". The argument therefore that Section 68(2)(za) empowers the State Government to prescribe and specify some additional matters regarding which the State Government can make rules is not correct. In fact that would amount to delegating the powers of legislation itself a function which falls within the realm of "the legislature. On a plain reading of Section 68(2)(za) it is clear that the State Government is empowered to make rules in regard to matters which are specifically referred to in several sections using the word "prescribed". It also empowers the Government to frame Rules in case any such matter is prescribed by the Legislature in future by following a legislative process.

10. It is argued by the learned Government Pleader that at the time when the General Rules were framed in 1955, the competition for employment was not as much it is at present and that there were not many members of the B.C./S.C./ S.T. classes at that time qualified to be appointed to the various services under the Government. The learned Government Pleader contends that if there is no age limit for the members of B.C./ S.C./S.T. classes, there would be a heavy rush of applications for appointment and even people who would attain the age of superannuation within a short period would apply for employment. The argument might give the correct picture of the present state of affairs but that would not enable the Court to interpret the rule in the manner in which the learned Government Pleader desires it to be interpreted. If the situation has changed since 1955 and the necessity for the special provision contained in Rule 12(d) of the General Rules has ceased to exist, it is for the Government to amend the rule or make an express provision in the Special Rule whenever they are framed so as to exclude the applicability of Rule 12(d) of the General Rules.

So long as the Rule exists in its present form and in the absence of any express exclusion by the Special Rules applicable to the service concerned there is no alternative but to accept the contention of the petitioner.

11. The argument that by virtue of Rule 2 of the General Rules, the age limit prescribed in the Special Rules would prevail over the provision contained in Rule 12(d) of the General Rules, is also not acceptable. No doubt, Rule 2 of the General Rules provides that a Special Provision will prevail over the general provision. But Rule 12(d) of the General Rules is itself a

special provision contained in the general rules. In fact Rule 12 of the General Rules by the terminology used therein should be treated as part of the Special Rules relating to different services whenever they are framed. The applicability of Rule 12 of the General Rules has to be excluded by the Special Rules either expressly or by the implication by containing a provision which is repugnant to Rule 12 of the General Rules. In the matter of interpretation of statutes two Latin maxims are normally found useful. They are (1) *generalia specialibus non-derogant* i.e., a Special Law is not abrogated by a later General Law and (2) *generalibus specialia derogant* i.e., a prior general law maybe abrogated by a later special law. The best known judicial statement of the position is Lord Phillimore's in *Nicolle v. Nicolte* (1922) 1 A.C. 284 which is as follows:

It is a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law, expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases of which the particular law is but one.

12. In the present case, Rule 12(d) of the. General Rules is a special provision for B.C./S.C./S.T. classes. Rule 5(a) of the Tamil Nadu Backward Classes Welfare Subordinate Service Rules in general in its terms applicable to all the classes of which B.C./S.C./S.T. form part. Unless there is a specific provision in the Tamil Nadu Backward Classes Welfare Subordinate Service Rules prescribing age limit for B.C./S.C./S.T. classes specially, there is no question of Rule 12(d) of the General Rules being excluded or abrogated. In fact the position in law has been correctly understood and enunciated in the Government Lr.No. 100862/Per.P/80-2, Personnel and Administrative Reforms (Per.P) Department dated 20.12.1980 relied on by the petitioners.

13. Consequently, the petitioner was not disqualified on the date of her appointment as Tutor-cum-Warden. The termination of her services on the ground that she was not qualified for appointment as she had crossed the age of 35 on the date of appointment is not sustainable. As that is the only ground on which the petitioner's services have been terminated, the order of termination has to be quashed.

14. In the result, the writ petition is allowed and the order made by the respondent in R.C.No. N3/ 120959/87, dated 2.6.1988 is quashed. The

petitioners will be entitled to her costs, from the respondent. Counsel's fee Rs. 250.