

(2006) 04 MAD CK 0101

In the Madras High Court

Case No : Writ Petition No. 14737 of 2001

K. Velayudham and Others

APPELLANT

Vs

The I Additional District-cum-Chief Judicial Magistrate

RESPONDENT

Date of Decision : 10-04-2006

Acts Referred:

Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 48

Citation : (2006) 04 MAD CK 0101

Hon'ble Judges : R. Sudhakar, J;P.K. Misra, J

Bench : Division Bench

Advocate : S. Elamurugan, for the Appellant; E. Sampath Kumar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—Heard the learned Counsel for both parties.

2. The petitioners in this writ petition have joined the services in Class IV of Tamil Nadu Basic Services as Night Watchman/Masalchi in office of

the first respondent. They have been selected as their names have been sponsored by the employment exchange. Though the petitioners have not

passed Class VIII, in course of time, they were promoted as Office Assistants on transfer in the year 1988 so far as petitioners 1 to 4 are

concerned and in the year 1990 so far as petitioners 5 and 6 are concerned.

3. It is, of course, true at that stage, the instruction contained in G.O.Ms. No. 1077, Personnel and Administrative Reforms (Per.F) Department,

dated 1.12.1987, was to the effect that the employees belonging to Class IV of Tamil Nadu Basic Service, having the educational qualification of

passing the III Form or VIII Standard and completed probation in Class IV or served in the said class for not less than one year, shall be eligible

for appointment to all categories in Class III on transfer from Class IV.

4. Subsequently, by G.O.Ms. No. 374 Personnel and Administrative Reforms (Per.F) Department, dated 22.10.1993, the Special Rules for the

Tamil Nadu Basic Service had been amended with retrospective effect from 1.12.1987, that is to say, the date on which G.O.Ms. No. 1077,

Personnel and Administrative Reforms (Per.F) Department, dated 1.12.1987 had been issued, incorporating similar conditions for appointment in

Class III on transfer from Class IV. Subsequently, in a matter relating to one A.Solamuthu, it was ascertained that he had been so appointed even

though he did not possess the minimum educational qualification of passing Class VIII.

5. In spite of such amendment in the Special Rules, the petitioners continued to hold the post of Office Assistant. In the meantime, in respect of one

A. Solamuthu, who was appointed as Office Assistant, even though he did not possess the minimum qualification, proceedings were initiated and

he was reverted to the post of Masalchi. While rejecting his appeal, the Registrar, High Court observed that it would be open to the District Judges

concerned to take action in respect of others in accordance with law. Thereafter, the present impugned order dated 30.7.2001 was issued by the

respondent against the writ petitioners by indicating that they did not possess the minimum qualification and therefore, they cannot continue to

function as Office Assistants.

6. Learned counsel for the petitioners has raised two contentions. It was first contended that such order has been passed by the respondent

without seeking any explanation from the petitioners. It is further submitted that at the time when they were appointed, the statutory rules were not

in force even though the executive instruction had been issued and the Rules were changed only in 1993, but with retrospective effect. It is also

contended by him that at any rate, there is a power to relax under Rule 48 of the Tamil Nadu State and Subordinate Services Rules and if any

proceedings would have been initiated and an opportunity would have been given, the petitioners would have submitted for relaxation, and in view

of the nature of service already rendered for more than 10 years, there was every possibility for relaxing such rules.

7. Apart from the above, the learned Counsel for the petitioner also placed

reliance on the decisions of the Supreme Court in H.C. Puttaswamy

and others Vs. The Hon"ble Chief Justice of Karnataka High Court, Bangalore and others, and State of U.P. and others Vs. Sant Lal, . In H.C.

Puttaswamy and others Vs. The Hon"ble Chief Justice of Karnataka High Court, Bangalore and others, , it was observed as follows :

The precedents apart, the circumstances of this case justify an humanitarian approach and indeed, the appellants seem to deserve justice ruled by

mercy. We also take note of the fact that the writ petitioners also would be appointed in the High Court as stated by the learned Advocate General

of the State.

In State of U.P. and others Vs. Sant Lal, , it was observed as follows :

Mr. Prithvi Raj, learned Counsel appearing for the State contended that it was necessary that we set at rest the legal controversy, namely, whether

in view of the order of the Governor issued on April 30, 1969, it is the District Magistrate who would be the authority to terminate the services of

the concerned employees though they were appointed earlier by the Joint Director, Medical Services. Since the respondent has put in a long

service of 28 years and more, we feel that even if the point is decided in favour of the State Government, it would be too late to permit the

Government to terminate his services. No useful purpose will, therefore, be served in going into the exercise of deciding the point. Besides, an

occasion to decide the said point may not arise even in future. We, therefore, refrain from expressing any opinion on the point and direct the State

Government to continue the respondent in service. We have no doubt that taking into consideration the long service of the respondent and also

taking into consideration the fact, that even when his services were sought to be terminated in February 1976, he had put in no less than 14 years

of service, though according to the State Government, in a temporary capacity, the State Government would now take steps to regularise his

services and given him all the benefits including that of promotion to which he is entitled.

8. In the peculiar facts and circumstances of the case, we are inclined to accept the submissions made by the counsel for the petitioners. It is

apparent that the impugned order was passed by the respondent without following the principles of natural justice. If notice of proceedings would

have been issued to the petitioner, it would have been possible for the petitioners to pray for relaxation of the rules.

9. It is apparent to note that the petitioners have been continuing in service as Office Assistants for at least more than 15-16 years. The nature of

job does not require a high degree of qualification or skill. Moreover, the petitioners have acquired valuable experience and there is no complaint

regarding their service efficiency at any point of time.

10. In such view of the matter, in our opinion, the decisions of the Supreme Court in H.C. Puttaswamy and others Vs. The Hon"ble Chief Justice

of Karnataka High Court, Bangalore and others, and State of U.P. and others Vs. Sant Lal, will come to the aid of the petitioners" in the present

case. Accordingly the writ petition is allowed. No costs. Consequently, WPMP No. 21864 of 2001 is closed.