
(1960) 02 KL CK 0013
In the High Court Of Kerala
Case No : O.P. No. 816 of 1959

Kunhavulla Haji

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 12-02-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1960) KLJ 942

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : V. Rama Shenoï and R. Raya Shenoï, for the Appellant; V. Bhaskaran Nambiar for Respondents 4 and 5 and K.P.G. Menon for 6th Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Velu Pillai, J.—The petitioner was appointed temporarily as the Adhikari of Kuppadithara Village in South Wynad Taluk. The Revenue Divisional Officer at Tellicherry invited applications from intending candidates, for appointment as the permanent Adhikari of that Village, when, the petitioner, respondents 4 to 6, and two others made applications. The petitioner, respondents 4 and 6 and another, appeared before the Revenue Divisional Officer, who appointed the fourth respondent by Ext. P. 3 order. The petitioner and the sixth respondent appealed against Ext. P. 5 to the District Collector, who set aside the appointment observing, that two brothers of respondents 4 and 5 "are Adhikaries of two adjoining villages, and that his (fourth respondent's) appointment will create the curious situation of three brothers holding posts of Adhikaries in three adjacent amsoms. Such a situation is certainly undesirable as it is most likely to interfere with the administration". In the result, he remanded the case to the Revenue Divisional Officer "for fresh enquiry and disposal according to rules and standing orders". The Revenue Divisional Officer then appointed the petitioner by Ext. P. 2 order, negating the claim of the fourth respondent in these terms:

The appointment of Sri. N. T. Narayanan Nair (the fourth respondent) was set aside by the Collector, as it was considered not desirable to have members of the same family as Adhikaries of adjoining amsoms.

Respondents 4 to 6 appealed against this to the Collector, who confirmed it by Ext. P. 3, and on a motion to revise Ext. P. 3 the Board of Revenue set aside Exts. P. 2 and P. 3 by Ext. P. 4, and remanded the case once again to the Revenue Divisional Officer for fresh disposal. This petition is for quashing Ext. P. 4, on three grounds which were pressed before me, first, that the fourth respondent not having sought to revise Ext. P. 1 became disentitled to prefer an appeal to the Collector against Ext. P. 2, and a petition to the Board of Revenue to revise Ext. P. 3, secondly, that having failed to appear before the Revenue Divisional Officer initially and to prefer an appeal against Ext. P. 5, the first respondent was not entitled to take part in the proceedings after remand or to prefer an appeal against Ext. P. 2, and thirdly, that Ext. P. 4 is vitiated by an error of, law apparent on the face of the record, in that, the Board of Revenue wrongly thought, that the Revenue Divisional Officer had not adduced reasons, as he was bound to do, by the Standing Orders, to "overlook" the claims of respondents 4 and 5 on the ground of their relationship to the Adhikaries of the adjacent villages.

2. Though an objection was raised by the learned government pleader, that the orders impugned are administrative in nature, for the disposal of this petition, I shall assume without deciding, that as held by the Madras High Court in *Ratnaswami Padayachi v Hani Pillai* ((1959) 1 M. L. J. 201) they are quasi-judicial. I shall therefore dispose of this petition on the merits, taking the last ground first for consideration. According to the learned counsel for the petitioner, the reason for not appointing the fourth respondent has been stated by the Collector in Ext. P. 1 as extracted above, and this has been adopted by the Revenue Divisional Officer in passing Ext. P. 2 after remand, and the Collector had endorsed the same on appeal by Ext. P. 3. It was therefore complained, that the view taken by the Revenue Board in Ext. P. 4, that no reason has been stated is erroneous in law. The substance of Rule IX(vi) of the Malabar Collector's Standing Order No. A4-2262/50 dated 29--9--1950, which is extracted in paragraph 2 of the affidavit is, that preference should be given to applicants who are not closely related to Village Officers of adjacent villages. This Rule had been amended subsequently, and at the material time the relevant part of the Rule was in the following terms:

The appointing authority may, for reasons to be recorded in writing, overlook the claims of persons on the ground that they are related to the Village Officers of other villages in a particular locality to such a degree and that the circumstances are such that their appointment is likely to interfere with the administration.

On the terms of the Rule as amended, it is plain, that relationship with other Village Officers is not per se a disqualification; but the appointing authority can, for good reasons which must be stated in writing, overlook the claims of applicants on the ground of such relationship, where it is of such a degree and

where the circumstances are such, that the appointment is likely to cause administrative difficulties. To my mind, the Rule makes a distinction between reasons in support of the ground, and the ground for overlooking the claims of an applicant on account of his relationship. For rejecting the claim the requisite ground must exist. This can be made out, only from reasons to be stated in writing. This I consider, is also the effect of the decision of the Madras High Court in the case cited.

3. In the present case, what the Collector had stated in Ext. P. 1 "was only the ground, without reasons to support it. The Revenue Divisional Officer after remand adopted what the Collector had stated. This was the illegality pointed out by the Revenue Board in its decision now impugned. I am therefore satisfied, that there is no such error in the order of the Revenue Board as complained of. The first and second grounds formulated above may be considered together. It is true, that in Ext. P. 1 the Collector had held against the appointment of the fourth respondent; but instead of directing the Revenue Divisional Officer to consider the rival claims of the petitioner and the sixth respondent alone, he remanded the case for fresh enquiry and disposal. It seems to me, that the matter was therefore set at large, although in taking the decision, the Revenue Divisional Officer may be bound by what had been decided by his superior authority. It was not contended, that a right of appeal against the decision of the Collector to the Revenue Board was conferred by the Standing Orders, and the argument before me was only, that the fourth respondent could have moved the Revenue Board to revise the opinion expressed by the Collector. No decided case was brought to my attention, in support of the contention, that under such circumstances, a party standing in the position of the fourth respondent, is bound to invoke the revisional jurisdiction. It is unnecessary to pursue this matter, for on the wide terms on which the Collector ordered the remand, it was open to the fourth respondent to await the final order which would be passed, and to challenge it in further proceedings by way of appeal and revision. This apparently is what the fourth respondent has done. Similarly, the fifth respondent too was entitled to participate in the proceedings once the order passed by the Revenue Divisional Officer in the first instance was set aside, and the case remanded, as stated above. It was very well open to the Collector in remanding the case, to restrict the scope of the enquiry in the same manner; this has been done by the Revenue Board now.

In the above view there is no ground on which I can interfere under Article 226. This petition is therefore dismissed, but without costs.