

(1994) 12 MAD CK 0041

In the Madras High Court

Case No : Writ Petition No. 5897 of 1985

N. Kasinatha Perumal

APPELLANT

Vs

The Commissioner, Kovilpatti Municipality, Kovilpatti,
Tirunelveli District

RESPONDENT

Date of Decision : 02-12-1994

Acts Referred:

Constitution of India, 1950 — Article 320

Citation : (1995) 2 MLJ 2

Hon'ble Judges : Mishra, J

Bench : Single Bench

Judgement

Mishra, J.—The petitioner herein was initially appointed as a Mazdoor under the Nominal Muster Roll of the engineering section of the respondent/Municipality and after working for more than six years in the said capacity selected for appointment as a Bill Collector with effect from 14.8.1977. It appears that the Government of Tamil Nadu at some level, noticed that many heads of Departments of the Government, the Chief Executive of Corporations, Boards etc., were not following the procedure that the Government had envisaged for the posts outside the purview of the Tamil Nadu Public Service Commission and were irregularly making appointments to various posts in their respective establishments without consulting the employment exchange and on 7.11.1978, the Government issued G.O.Ms. No. 1352, Labour the Employment Department, and directed as follows :-

1. The appointment to the posts outside the purview of the Tamil Nadu Public Service Commission made upto the period of 31.2.1977, without consulting the employment exchange be ratified as a special case by the concerned administrative departments of the Secretariat, provided the individual possess all qualifications prescribed for the posts.

2. The irregular appointment, if any, after 31.12.1977 should not be regularised and the service of such persons should be terminated forthwith.

3. The Secretaries to Government, the Heads of Departments, the District Collectors and the Chief Executive of the State Public Sector undertakings, autonomous bodies, quasi Government institutions, etc., should initiate disciplinary action against the officers responsible for the appointments referred to in Clause (i) and (ii) above. The disciplinary action should be taken against the officers irrespective of the post now being held by them and the question of inflicting severe punishment should be considered. In cases officers, who made irregular appointments and who should be initiated against them (sic.) with reference to the existing orders in the civil service regulations.

4. Cases of irregular appointments where retrenchment has already been effected before the issue of these orders, need not be reopened now.

2. Since the petitioner was appointed on 14.3.1977 and in his case, employment exchange had not been consulted, he thought that his case would not be covered by the above and there would be no interference in his service. The respondent also issued an order in Rc. C.1/4606/80, dated 8.4.1980, regularising his service as Bill Collector. The petitioner to his surprise, found, vide Rc. No. 6977/32/C.1. dated 18.5.1985 that he has been reverted from the post of Bill Collector to that of Mazdoor. He has, therefore, moved this Court against the said reversion.

3. It is well settled that rules regulating the recruitment/appointment to a service form part of the conditions of service and such rules, subject to any enactment by competent Legislature govern the services of the employees. A Municipality constituted as a local self-Government under the Municipal Act, is a State and is authorised under the said Act to frame its own service regulations and govern the service conditions of the employees according to the conditions therein. Unless it is found that the service regulations of the Municipality concerned or otherwise any statutory provision has made consultation with the employment exchange imperative, however desirable the consultation may be it cannot be said that any appointment made without consulting the employment exchange is invalid. It is difficult to concede that consultation with the employment exchange can be put to a position higher than the consultation with the Public Service Commission, in the matter of appointment to the post under a Government of the State, consultation with the Public Service Commission, in the matter of appointment to the post under a Government of the State, consultation with the Public Service Commission, which is prescribed under Art. 320 of the Constitution of India, is a rule, which is followed almost rigidly by the Government of the States on all matters relating to the method of recruitment to civil services and for civil posts, but it has always been held and by now it is a settled principle of law that consultation envisaged under Art. 320 of the Constitution is not mandatory and any appointment made without consulting the Public Service Commission may not be invalid on that ground alone. A clear distinction is made between irregularity and illegality and between such irregularities which are fatal to the appointment, for the reason of the discrimination or arbitrariness involved in it, and irregularities, which are only procedural. On the facts of this case, it is

not possible to hold that there has been any such irregularity, which had inflicted the appointment of the petitioner on promotion as Bill Collector and rendered it invalid.

3-A. This Court shall always be reluctant in sanctioning any illegality or even irregularity which seriously affected any public appointment, for the obvious reason that if such an illegality and/or irregularity in the appointment is encouraged, people, who are exercising authority, may abuse their power and continue abusing their power. In the instant case, however, before the petitioner's service was terminated as Bill Collector, no attempt was made by the Authority concerned to inform him of the ground for doing so and held no enquiry whether on account of the alleged irregularity in the appointment, the appointment itself was fit to be cancelled or terminated, he has also given no reason why the petitioner had been demoted except under the said Government Order. The respondents have clearly acted in violation of the well known principles of natural justice i.e., *audi alteram partem* and they have in their proceedings, chosen to act upon the Government's Communication which do not appear to support the order.

4. In the result, the petition is allowed and the order of the respondent in R.C. No. 6977/82/C.1, dated 18.5.1985 is quashed. As a consequence, the petitioner shall be deemed to continue in the post of Bill Collector with effect from the date of his joining that post and to be entitled accordingly to all consequential benefits. The petition is accordingly allowed and a writ accordingly shall issue to the respondent. There will be no order as to costs.