

(2009) 01 MAD CK 0194

In the Madras High Court

Case No : Writ Petition No. 26901 of 2008 and M.P. No. 1 of 2008

N. Prabhakaran Nair

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 07-01-2009

Acts Referred:

Tamil Nadu Ministerial Service Rules — Rule 8, 8A, 9

Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 12, 12(A), 48

Citation : (2009) 4 MLJ 74 : (2010) 6 SLR 465

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : G.S. Thamby, for S. Giridharan, for the Appellant; Lita Srinivasan, Government Advocate, for the Respondent

Judgement

P. Jyothimani, J.—This writ petition is filed challenging the G.O.(D) No. 466, dated 16.8.2007, a copy of which is said to have been

furnished to the petitioner on 23.9.2008, declaring the petitioner's probation from 30.3.2005 and the consequential order passed by the third

respondent, the Revenue Divisional Officer dated 16.9.2008 and for a direction to declare the petitioner's probation and release all terminal

benefits as per law.

2. The petitioner was appointed as a part-time Village Headman at Anducode village in Kanyakumari District on 1.6.1975. The appointment was

originally based on the method prescribed under the Tamil Nadu Village Officers Service Rules, 1970. As per the said Rules, an applicant should

have completed SSLC course conducted by the Government and should have passed the Special Tests prescribed. The said Rules were extended

to Kanyakumari District on 15.11.1973. The petitioner, at the time of joining

service, had completed B.A. Degree course with History as main subject, however, he could not pass all the papers in B.A. Degree examinations. By the Tamil Nadu Abolition of Posts of Part-time Village Officers Ordinance, 1980 (Tamil Nadu Ordinance 10/80) which became Tamil Nadu Act 3/81, the part-time Village Officers posts were abolished with a view to introduce whole-time Village Officers in charge of village administration. The said Act was challenged by the part-time Village Officers who became jobless by virtue of the Abolition Act in the Supreme Court. During the pendency of the said case, a memorandum was filed in the Hon'ble Supreme Court by the Attorney General to the effect that the Village Officers who possess minimum qualifications as required under the Abolition Act, 3/1981, irrespective of their age, would be screened by the Committee to be appointed by the Government and such persons need not make any application or appear for any test conducted by the Tamil Nadu Public Service Commission for the post of Village Administrative Officer and they will be treated as new appointees under the Act and governed by the Act and Rules framed thereunder and the remaining vacancies will be filled up by the Tamil Nadu Public Service Commission.

2(a). The petitioner was qualified to be appointed as Village Administrative Officer under the Abolition Act and therefore, he was appointed by the third respondent as Village Administrative Officer on 8.8.1982 by selection by the screening committee. The petitioner has passed all the tests conducted in Tamil as per Section 6 of the Act and complied with all other requirements and his services were regularised as Village Administrative Officer in 1982.

2(b). Subsequently by G.O.Ms. No. 362 dated 21.6.1988, the Government has brought the post of Village Administrative Officer by an amendment into Special Rules for Tamil Nadu Ministerial Service and that was given effect from 1980. According to the petitioner, he has adequate knowledge in Tamil and his correspondence has been in Tamil language only and his increment and annual benefits have been given till 1991. However, by a communication dated 15.7.1999, the 4th respondent Tahsildar has called upon the petitioner to produce certificate to show that he has passed Tamil language test. It was replied by the petitioner and in

the meantime, he has also applied for exemption from passing the said test. However, relying upon some of the proceedings of the first respondent, the third respondent has issued the proceedings dated 16.10.1999 calling upon the petitioner to show-cause as to why action should not be taken for not passing the language test.

2(c). After receiving copies of the proceedings of the first respondent, the petitioner again applied for the grant of exemption praying the authority to grant the same if necessary, after explaining in detail that all the tests were passed by the petitioner in Tamil language only. The petitioner has also approached the Tamil Nadu Administrative Tribunal by filing O.A.No.6011 of 2000 and interim stay was granted by the Tribunal which was extended and thereafter, it was transferred as W.P. No. 35630 of 2005 to this Court. Since the Tribunal was not functioning, the petitioner moved the Madurai Bench of Madras High Court in W.P.(MD) No. 2042 of 2004 for direction against the respondents to consider his representation dated 14.3.2004 and such direction was given by the Madurai Bench of this Court on 16.10.2004 to consider the representation of the petitioner.

2(d). It was thereafter, the third respondent, Revenue Divisional Officer in his proceedings dated 3.11.2004 informed the petitioner that in view of the Rules 12(A) & 12 (b) of the Tamil Nadu Government Servants General Rules, the petitioner could not be given increments, selection grade and other allowances as he has not completed his probation. By the time when such communication was made by the third respondent in 2004, the petitioner has served nearly for 30 years, both as part-time Village Officer for seven years and as full time Village Administrative Officer for 23 years. The petitioner, in those circumstances, has filed W.P.(MD) No. 3731 of 2004 on the file of the Madurai Bench against the said order of the Revenue Divisional Officer and for direction to disburse annual increments including awarding of selection grade and other attendant allowances and benefits from 1991 onwards, without reference to Rules 12(A) and 12(b) of the Tamil Nadu State and Subordinate Services General Rules. In the meantime, the petitioner attained his age of superannuation on 31.3.2005 and was relieved from service, however, subject to the result of W.P. No. 35630 of 2005. Subsequently, there was an amendment sought for by the petitioner in the writ petition for direction to declare the petitioner's

probation without reference to Rules 12(A) and 12(b) of the above said Rules.

3. After elaborate arguments, final order was passed on 14.3.2006 in W.P. No. 35630 of 2005 setting aside the show-cause notice issued by the

third respondent dated 16.10.1999 with direction to the respondents to grant exemption to the petitioner from passing departmental language test

and to declare his probation and consequently to pay all terminal benefits. Following is the operative portion of the order:

Since the petitioner had already reached the age of superannuation after serving for more than a period of 20 years, I am of the opinion that if the

matter is remitted back to the Government so as to consider his representation, basing on the recommendation of the authorities, that will prolong

the issue. Hence, the impugned order is set aside for the reasons stated above. The respondents are directed to grant exemption to the petitioner

with regard to passing of the departmental language test and to declare his probation, and consequently, pay all the terminal benefits, to the

petitioner within a period of four months, from the date of receipt of a copy of this order.

13. The writ petition is disposed of with the above direction. No order as to costs.

4. In fact, as correctly pointed out by Mr. G.S. Thamby, learned Counsel appearing for the petitioner, in the said order, this Court has elaborately

discussed about the adequate knowledge of the petitioner in Tamil and held that the denial of terminal benefits and other benefits due to the

petitioner is unjustifiable. Holding so, this Court, after relying upon the judgment of the Supreme Court in Lila Dhar Vs. State of Rajasthan and

Others, , has given a positive direction to grant exemption after considering the circumstance that the petitioner was allowed to retire. The relevant

portion of the judgement is as follows:

8. That apart, even as per the averment in the counter also, the petitioner had passed all the departmental tests prescribed for the post of Village

Administrative Officer only in the Tamil language, which will lead to the inference that the petitioner is having adequate knowledge in the official

language, namely, the Tamil. That apart, if he did not possess adequate knowledge in Tamil, certainly, he could not have functioned as Village

Administrative Officer for the period of nearly 21 years. After serving for a period of 21 years, because of non-passing of the Tamil language test,

his probation could not be declared. Consequently, even after retirement in the year 2003, the petitioner is not able to get terminal benefits. That apart, basing on the interim orders granted by the Tamil Nadu Administrative Tribunal, the petitioner was permitted to continue in service till he reaches the age of superannuation. To say in other words, the petitioner had completed 21 years of service as Village Administrative Officer and he had executed his work in his capacity as Village Administrative Officer, without any complaint whatsoever from any quarter, with respect to any aspect. As such, non-passing of the Tamil Language Test by the petitioner has not in any way affected the execution of his work as Village Administrative Officer. That apart, after allowing him to continue for a period of 21 years, and denying the terminal benefits and other things, only basing on the non-passing of the Tamil Language Test, in my opinion, is unsustainable.

9. As rightly pointed out by the learned Counsel for the petitioner, neither in his appointment order nor in the Rules applicable to the said post, there is any whisper that for appointment to the post, one should have passed the Tamil Language Test and no condition has been prescribed in his appointment order also to this effect. But, after the lapse of 11 years, the petitioner has been called upon to explain with regard to non-passing of the test, i.e. prior to 4 years of his retirement.

10. According to the learned Counsel for the petitioner, as per the judgement reported in *Lila Dhar Vs. State of Rajasthan and Others*, , at page No. 164, in paragraph No. 6, the Supreme Court held that to subject a person to a written examination on the eve of his retirement, in the event of failure in the written examination or negative results, will be, in fact, an act of cruelty. Basing on this, the learned Counsel has contended that allowing the petitioner to continue in service from 1982, and issuing the impugned notice is in fact arbitrary and also prima facie illegal. That apart, since the petitioner had reached the age of superannuation without any complaint of any nature from any quarter and even in the counter affidavit filed by the respondents also, no defect of any nature has been pointed out, relating to the execution of his work, basing on the non-passing of the language test, namely, Tamil Part II, and as such, the impugned order passed by the third respondent will not be allowed to stand.

11. The learned Counsel for the petitioner further relying on the judgement reported in A.R. Antulay Vs. R.S. Nayak and Another, , at page No.

672, in paragraph No. 83, has contended that the power for relaxation or power to exemption given in Rule 48 of the General Rules is only for the

Governor. Taking into consideration the extraordinary circumstances of the petitioner, namely, his number of years of service as Village

Administrative Officer and also passing of the relevant test and other tests, exemption has to be ordered by this Court, which has been prayed in

this writ petition.

5. Based on the said order dated 14.3.2006, the petitioner made representation which was of no use and contempt application was filed. When

the contempt application was pending, copy of the impugned G.O.No.466 dated 16.8.2007 was produced. The said order contains a Clause

declaring the petitioner's probation only from 30.3.2005 instead of declaring the same from 1984 which the petitioner claims to be entitled to. The

third respondent has also ordered recovery of increments already paid to the petitioner. The impugned order is challenged on various grounds

including that the same is totally against the earlier order passed by this Court; that the denial of benefits for the service rendered for 23 years and

claiming recovery is illegal; that the declaration of probation of the petitioner with effect from 30.3.2005 thereby depriving the petitioner of his

service benefits for 23 years is totally against the principles of natural justice and against the Rules.

6. In the counter affidavit filed by the 4th respondent it is only reiterated that the petitioner has passed departmental tests as per Annexure 10 to

Rule 8A of the Tamil Nadu Ministerial Service Rules and has not passed second class language test in Tamil as prescribed in Rules 12(A) and

12(b) of the Tamil Nadu State and Subordinate Service Rules. It is stated that while the petitioner's service as Village Administrative Officer was

regularised from 1982, probation was not declared in respect of the petitioner and the petitioner retired from service on 31.3.2005 and it was from

that date, the petitioner's probation was declared and benefits were directed to be given from 31.3.2005 onwards. It is seen that the 4th

respondent by his letter dated 11.10.1990 has clearly stated that the petitioner has adequate knowledge in Tamil and requested for relaxing the

conditions. The said letter is as follows:

M/s. N. Prabhakaran Nair and J. Madhusoothanan who are working as Village Administrative Officers at Kalkulam Zone. The declaration of

completion of probation period has not been issued for the reason they have not passed Tamil Language Test. These two Village Administrative

Officers speak fluently Tamil also write and read Tamil. They have passed all departmental test in Tamil only. I am also enclosing the question

papers for the test and copies of the certificates. They were kept informed from time to time only when they passed the Second language test, their

probation will be declared as completed. However, since, these persons passed all departmental test conducted in Tamil and these persons having

adequate knowledge of Tamil, orders can be passed relaxing the conditions. They did not apply to appear for Second class Tamil language test.

As stated above in the reference letter cited, I am submitting herewith the special Test question paper and their Service Registers.

7. As per the appointment order issued to the petitioner dated 8.8.1982, appointing him as Village Administrative Officer u/s 4 of the Tamil Nadu

Abolition of Part-time Village Administrative Officers Act, 3/81, the petitioner's probation period would be completed in a period of two years

within continuous period of three years and the appointment order does not contain any stipulation to the effect that the petitioner should pass

Second Class Language Test in Tamil. It is seen that while the writ petition was disposed of by this Court as narrated above, apart from directing

to grant exemption to the petitioner, this Court has referred to Rule 12A of the General Rules and given a finding which is positive in nature

especially in paragraph-7, which is as follows:

7. Under Rule 12 A of the General Rules, a specific provision has been made. That is, no person shall be eligible for appointment to any service by

direct recruitment, unless he has an adequate knowledge of official language, namely, Tamil. As per the explanation to the said Rule, a person shall

be deemed to have adequate knowledge of Tamil, if he had passed Secondary School Leaving Certificate Public examination or its equivalent

examination with Tamil as one of the languages. But, as far as the petitioner is concerned, he did the Secondary School Leaving Course in

Malayalam language. So, as per Rule 12A of the General Rules, the petitioner did

not possess the qualification relating to Tamil language. But the purpose of this Rule is to enable the person to execute his work without any hindrance with reference to language to be used in executing his official work. As far as the petitioner is concerned, as rightly contended by the learned Counsel for the petitioner, there is no complaint at all and because of the non-passing of the Tamil language test, there was no hindrance or delay in executing his work as Village Administrative Officer.

8. That apart, inasmuch as the order of this Court dated 14.3.2006 has become final, it is certainly not open to the respondents now to turn around to say that the declaration of probation to the petitioner would be given only from 31.3.2005 viz., the date of his retirement.

9. The authorities are expected to follow the orders passed by the Courts and not to construe the orders in the manner which would please them, as it was held by S. Mohan, J. (as he then was) in *M. Palani v. The Director of Industries and Commerce and Ors.* 1987 WLR 151, that is,

The courts are here for every one, the lowest of the lowly as well as the highest of the high. No person can construe an order of this Court in a

manner that would please him and deny the benefit of the order of stay. The administration tries to overreach the lawful orders of this Court. It

cannot be contended that the order passed by this Court was only *ex parte* as was sought to be faintly argued. *Ex parte* orders are equally

efficacious as final orders. I should expect a better reasoning from the authorities while seeking to enforce law and not merely taking umbrage

under affixing of the seal of the Revenue Divisional Officer or the District Collector.

10. On the facts of this case, apart from the categorical finding given by this Court which has to be necessarily followed by the respondents,

especially on the factual assertion about the fluency of Tamil language on the part of the petitioner, the concept of justice requires that exemption be

granted to the petitioner and the probation be declared from his original date of appointment. The Supreme Court in *Lily Thomas, etc. etc v. Union*

of India and Ors. 2000 (3) L.W. 371 held that the Courts would not allow miscarriage of justice and in such event, the same would be rectified.

The relevant portion of the judgement is as follows:

7. ...Law has to be bend before justice. If the Court finds that the error pointed

out in the review petition was under a mistake and the earlier

judgement would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of

justice nothing would preclude the Court from rectifying the error....

11. In such view of the matter, there is no reason for the respondents to declare the probation of the petitioner from 31.3.2005, the date on which

the petitioner was allowed to retire. It is also relevant to point out at this stage that the impugned order itself shows as if the power of exemption

has been exercised as per Rule 12A. When the exemption proposal was pending for a long time as it was recommended by the Tahsildar much

earlier, it is not known as to how the declaration of probation of the petitioner on the date of his retirement will amount to exercising the powers of

exemption especially after a direction was already given by this Court.

12. In view of the same, the impugned orders of the first and third respondents are set aside with direction to the respondents to declare the

probation by granting exemption in respect of passing of Tamil language test and also to declare probation to the petitioner from the date of original

appointment order issued to him on 8.8.1982 by applying Rules 8 and 9 as per G.O.Ms. No. 2600, Revenue Department dated 18.11.1980 and

pass appropriate orders granting all benefits due to him and such orders shall be passed within a period of 12 weeks from the date of receipt of

copy of this order.

The writ petition is ordered accordingly. No costs. Connected miscellaneous petition is closed.