
(1956) 09 MAD CK 0007
In the Madras High Court

R. Kumaraswami Aiyar

APPELLANT

Vs

Commissioner, Tiruvannamalai Municipality and Others

RESPONDENT

Date of Decision : 19-09-1956

Acts Referred:

Penal Code, 1860 (IPC) — Section 420

Citation : (1956) 2 MLJ 562

Hon'ble Judges : Rajagopala Ayyangar, J

Bench : Single Bench

Judgement

Rajagopala Ayyangar, J.—The petitioner was employed as an upper division clerk in the Municipal Office at Tiruvannamalai and he has

moved this Court for the issue of a writ of prohibition to direct the Commissioner of the Municipality not to proceed with certain disciplinary

proceedings initiated with a view to terminate his service in the Municipality.

2. The facts giving rise to this petition are shortly these:

The petitioner, as mentioned earlier, is an upper division clerk in the Municipal Office at Tiruvannamalai. While so, he was charged before the

Additional First Class Magistrate, Tiruvannamalai, of the offence of cheating u/s 420 , Indian Penal Code in C.C. No. 94 of 1955. The petitioner

was convicted by the Additional First Class Magistrate on 29th March, 1954, but instead of sentencing him to imprisonment, taking into account

the youth of the accused and the fact that he was a first offender the learned Magistrate directed him to be released on his entering into a bond on a

sum of Rs. 500 with two sureties for a like amount u/s 4(1) of the Madras Probation of Offenders Act (III of 1937).

Under Rule (3) of the Rules framed regulating the conditions and tenure of

services under the municipal councils a person who is convicted of an offence involving moral turpitude should not be retained in municipal service. Acting under this rule, the first respondent, the Municipal Commissioner issued a memo, to the petitioner on 6th April, 1954, directing him to show cause why his service should not to be terminated under Rule 3 of the Statutory Rules whose purport I have mentioned. The petitioner submitted his explanation on 14th April, 1954, mentioning two matters (1) that notwithstanding the conviction u/s 420, Indian Penal Code, he had not been sentenced to any term of imprisonment but that he had been released under the Probation of Offenders Act and therefore, his conviction would not disqualify him from continuing in service under Rule 3 of the Statutory Rules by reason of the operation of Section 12-A of the Probation of Offenders Act (III of 1937) and (2) that he intended to prefer an appeal against his conviction, and therefore, wanted the Commissioner to await the disposal of the appeal. On 7th August, 1955, however, the petitioner reported to the Commissioner that he had decided not to prefer any appeal against his conviction and therefore, on 8th August, 1955 the charge memo, served on 6th April, 1954, was again served on the petitioner. On this the petitioner has moved this Court for a writ of prohibition and the sole point for consideration is whether the services of the petitioner could be terminated under Rule 3 of the Statutory Rules or whether Section 12-A of the Probation of Offenders Act constitutes a law that overrides or supersedes this rule. So far as the rule itself is concerned, it is clear in its terms and it was not suggested that the petitioner cannot be proceeded against under it. The only question, therefore, is whether Section 12-A of the Probation of Offenders Act is a bar to any-action under Rule 3 of the Statutory Rules. The relevant portion of Section 12-A is in these terms:

Any person who is found guilty of an offence and is dealt with under the provisions of this Act (Probation of Offenders Act) shall not suffer any disqualification attaching to a conviction for the offence.

3. Learned Counsel for the petitioner contended that Rule 3 of the Statutory Rules was such a disqualification and the municipal authorities were, therefore, incompetent to take any action against him treating his conviction as a ground for removing him from service. In my view Section 12-A is

incapable of the construction sought to be put upon it on behalf of the petitioner. What the section says is ""shall not suffer any disqualification attaching to a conviction"" and there is a vital distinction between a disqualification attaching to a conviction and the taking of proceedings consequent upon such a conviction. If for instance the petitioner is dismissed from service because he has been found guilty of an offence involving moral turpitude it cannot be said that he is suffering from a disqualification attaching to a conviction. What Section 12-A has in view is an automatic disqualification flowing from a conviction and not an obliteration of the misconduct of the accused. In my judgment the possibility of disciplinary proceedings being taken against a person found guilty is not a disqualification attaching to the conviction within the meaning of Section 12-A of the Probation of Offenders Act. In the present case the conviction does not act as any disqualification for holding any office, that is, it has no automatic effect. Only the moral turpitude involved in the petitioner's act is treated as a ground for removing him from service. If this is the proper construction of Section 12-A of the Probation of Offenders Act it is clear that the first respondent, the Municipal Commissioner, had jurisdiction to proceed under Rule 3 of the Statutory Rules and there is no substance in this Writ Petition. The rule is discharged and the petition is dismissed. In the circumstances of the case there will be no orders as to cost.