
(1972) 09 MAD CK 0014
In the Madras High Court

R. Nanjundeswaran

APPELLANT

Vs

The Sub-Collector and Others

RESPONDENT

Date of Decision : 06-09-1972

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1973) 86 LW 226 : (1973) 1 MLJ 1

Hon'ble Judges : M.M. Ismail, J

Bench : Single Bench

Judgement

M.M. Ismail, J.—The unsuccessful petitioner in W.P. No. 3452 of 1971 on the file of this Court is the appellant herein. Consequent upon

the resignation of the post of permanent Karnam of Thekkampatti Village by the then Karnam, the appellant herein was temporarily appointed to

that post until the vacancy was permanently filled up. The vacancy arose on 6th November, 1970, and the appellant was appointed temporarily

soon thereafter. On 20th November, 1970, certain Rules railed the Tamil Nadu Village Officers Service Rules, 1970 were made under the proviso

to Article 309 of the Constitution of India and they were published in the Fort St. George Gazette dated 16th December, 1970. Rule 18 of those

Rules is the relevant rule. That Rule as originally promulgated stood as follows:

Nothing contained in these rules shall apply to persons, who, on the date of coming into force of these rules, are holding the posts of village

headman or additional village headman, village karnam or additional village karnam either temporarily or permanently.

This Rule was amended by G.O. Ms. No. 268, Revenue dated 18th February, 1972, by the substitution of the following Rule:

Rules not to apply to certain causes:

(a) Nothing contained in these rules shall apply to persons who, on the date of coming into force of these rules, are holding the posts of village

headman or additional village headman, village karnam or additional village karnam permanently.

(b) Nothing contained in these rules shall apply to persons, who on the date of coming into force of these rules, are holding, the posts of village

headman or additional village headman, village karnam or additional village karnam temporarily provided that at the time of their temporary

appointment they were fully qualified under the standing orders applicable to the areas not governed by the statute and their appointments had been

made by the authority competent under the said Board Standing Orders after calling for applications.

Thereafter, applications were called for on 22nd December, 1970, for filling up the post permanently. The Sub Collector, Mettur, Salem District

who is the appointing authority by order dated 20th July, 1971, appointed the appellant herein after comparing the merits and the qualifications of

both the appellant and the third respondent. The third respondent took up the matter in appeal to, the District Revenue Officer, Salem who

reversed the order of the Sub-Collector and appointed the third respondent herein as the permanent Village Karnam. It was to quash the order of

the District Revenue Officer that the writ petition was filed on the file of this Court and the same was dismissed by Ramaprasada Rao, J., by order

dated 23rd August, 1972. Hence, the present appeal by the petitioner in the writ petition.

2. Three contentions appear to have been advanced before the learned Judge and the learned Judge negated all of them. The first contention

which was advanced and which was repeated before us is that under Rule 18 as it originally stood and under Rule 18 (b) as subsequently

amended, the appellant herein is totally exempt from complying with any of the requirements of these Rules. Admittedly, the appellant has studied

only upto IV Form while the third respondent herein has studied upto S.S.L.C. If the argument of the learned Counsel for the appellant is to be

accepted, once a person is appointed temporarily to a post before coming into force of these Rules, he will continue to remain in the post till he

reaches the age of superannuation or resigns or dies even though he is not qualified and under the Rules. We are clearly of the opinion that that was not the intendment of Rule 18 as it originally stood or Rule 18 (b) as subsequently amended. The intention of Rule 18 or Rule 18 (b) is that once a person has been temporarily appointed as contemplated by the said Rules, even though he may not be qualified under the Rules in question, his temporary appointment should not be disturbed and must be continued for the period for which he was temporarily appointed. Once the temporary appointment comes to an end and the post is to be filled on a permanent basis, undoubtedly every applicant for that post will have to comply with the requirements of the Rules in question. The extreme argument advanced by the learned Counsel for the appellant that the effect of the Rule is that once a person is appointed temporarily he is exempt from all the rules for ever so long as he chooses to remain in the post or reaches the age of superannuation, cannot be accepted. Consequently, we agree with the conclusion of the learned Judge on this point.

3. The Second argument of the learned Counsel for the appellant is that the Rule requires that a person should have completed the S.S.L.C.

Examination and that means he should have passed the S.S.L.C. Examination and in this case, the third respondent had only appeared for

S.S.L.C. Examination and had not passed. The learned Judge has taken the view that there is a difference between "passing the examination" and

"completing the examination" and all that the Rule requires is completing the examination and not passing the examination. We are in entire

agreement with this conclusion of the learned Judge because the Rule requires only the completing of the examination and not passing of the

examination. The makers of the Rule are fully aware of the distinction between completing the examination and passing the examination, and when

the Rules have chosen to use the expression "completing the examination" as against "passing the examination" it will not be a proper interpretation

of the Rules to substitute the word "passing" for the word "completing" occurring in the Rules. Consequently, on this point also we agree with the

conclusion of the learned Judge that the third respondent is educationally qualified under Rule 5 of the Rules referred to above.

4. The last argument of the learned Counsel for the appellant is that the District Revenue Officer wrongly relied upon B.S. No. 155 (12) (ii) and

held that the appellant was disqualified in view of the fact that his uncle happened to be a karnam of a neighbouring village. The argument Of the learned Counsel is that before the appellant can be overlooked, the authority must record a finding that the appointment of the appellant is likely to interfere with the discharge of his duties and such a finding has not been recorded by the District Revenue Officer. We are of the opinion that it is unnecessary to pursue the point further because B.S.O. 155 (12) (ii) proceeds on the assumption that the appellant is qualified and on the admitted fact that the appellant is not qualified under the Rules in question, there is no scope for applying B.S.O. No. 155 and consequently, nothing turns upon the District Revenue Officer in not re-cording a finding as contended for by the appellant. Under these circumstances the writ appeal fails and is dismissed.