

(1961) 11 MAD CK 0037
In the Madras High Court

R. Sampath

APPELLANT

Vs

The State of Madras and Another

RESPONDENT

Date of Decision : 08-11-1961

Acts Referred:

Citation : (1962) 75 LW 758 : (1962) 2 MLJ 140

Hon'ble Judges : Jagadisan, J

Bench : Division Bench

Judgement

Jagadisan, J.—This is a petition under Article 226 of the Constitution for the issue of a writ of mandamus or other appropriate order, writ or direction, directing the State of Madras to recognise the petitioner as an Upper Division Clerk, in the Office of the Commissioner, Hindu Religious and Charitable Endowments, as and from 1st December, 1947. ,

2. The history of the service of the petitioner as set out by him in his affidavit is as follows. The petitioner entered service on 23rd August, 1944 as acting Second Division Clerk in the Office of the Hindu Religious Endowments Board which was in existence prior to the enactment of Madras Act XIX of 1951. Between the dates 1st December, 1947 to 30th September, 1949, for a period of 1 year, 2 months and 17 days he was officiating as an Upper Division Clerk having been promoted from the lower division cadre to the upper division cadre. Under Rule 30 of the Madras Ministerial Services Rules a Lower Division Clerk promoted to the higher cadre prior to 30th September, 1951, need not pass any test for confirmation as Upper Division Clerk. After 30th September, 1949, he reverted to the Lower Division cadre but in 1954 and 1955 he was promoted as Upper Division Clerk for short periods of service. On 20th May, 1955, he was reverted to the Lower Division cadre. The petitioner made representations to the authorities that he should be given permanent posting as an Upper Division Clerk. On 16th January, 1957, the petitioner received a communication from the office of the Commissioner, Hindu Religious and Charitable Endowments that he will not be promoted as Upper Division Clerk unless he passed the required tests.

The petitioner states that the Commissioner sent up proposals to the Government to regularise his services as Upper Division Clerk prior to 30th September, 1951, but that the proposals did not meet with the approval of the Government. The petitioner alleges that several other clerks, whose names are mentioned in the supplemental affidavit filed by him, who were in the same position as himself have been confirmed as Upper Division Clerks without their being obliged to pass the required test. The petitioner appealed to the Government urging his claims but was not successful. Then he issued a suit notice to the Government but on 8th December, 1958, he received a communication from the Government stating that his threatened suit was awaited. The petitioner complains that he has been treated unjustly by the Government, and that the act of the Government in not promoting him to the Upper Division cadre is discriminatory and violative of his fundamental rights under the Constitution.

3. This writ petition was filed on 24th April, 1961. There has been an inordinate delay on the part of the petitioner to seek his remedies in this Court. The petitioner pleads justification for the delay in the following manner in paragraph 5 of his affidavit:

I state that I did not file a writ petition immediately thereafter for the reason firstly such an action may jeopardise my position as an employee of the Government and secondly I was expecting that the department will realise the injustice done to me and mete out justice. I was taking all possible steps all these time with the Government to reconsider my case. Unfortunately my endeavours and expectations have not materialised. Hence I am filing this writ petition.

4. I am not satisfied with the explanation given by the petitioner for his tardiness in not moving this Court till 1961, though he had suffered an adverse order in 1958 when the Government refused to recognise his claim. With commendable frankness the petitioner has submitted that he did not want to antagonise the Government against him by preferring a writ petition in this Court. But, surely, that cannot help him to get over the legal infirmities arising out of delay and laches.

5. The petitioner's grievance that he has not been promoted to the Upper Division cadre from the Lower Division because of the failure of the Government to exempt him from passing the required test is not a matter which can be ventilated in a Court of law. Members of a civil service, of the Union or of a State, hold office during the pleasure of the President or the Governor, but wear a mantle of protection against being dismissed, removed or reduced in rank without being given a reasonable opportunity of showing cause against the proposed adverse action. But for the constitutional armour their official fortunes are linked up with the pleasure of the constitutional heads. The conditions of service form an elaborate code consisting of rules which are detailed and minute in character. They have the force of a statute being framed or having been

framed under Article 309 of the Constitution but they are not part of the Constitution itself. In practice they are followed and obeyed literally and substantially. Irregularities in the observance of the rules may occur. But a civil servant aggrieved by such irregularities cannot have recourse to the Court of law either in the form of a suit or action or in the form of a prerogative writ except in cases of violation of the provisions of Article 311 of the Constitution. This is now an indisputable axiom of law resulting from the constitutional provisions relating to civil servants.

6. Promotions from the lower ranks to the higher ranks of civil services are also guided by rules to some extent. Though as a rule seniority may facilitate and help-promotion, suitability, fitness and merit play a large part. A reduction in rank is a punishment, but the failure to secure a promotion need not necessarily be a punishment unless it be that it is inflicted as a result of the framing of a charge and an enquiry. No civil servant has a claim to ask for promotion as of right and the giving or refusal of promotion is a matter within the exclusive discretionary domain of the executive authorities concerned in the matter.

7. The chapter of fundamental rights guaranteed by the Constitution contains provisions with regard to appointment to services. Article 16 is as follows:

(i) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth,, residence or any of them be ineligible for, or discriminated against in respect of any employment or office under the State.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State, is not adequately represented in the services under the State.

This special form of equality of opportunity in matters relating to employment and appointment has been guaranteed by the Constitution in addition to the general equal protection of laws provided for under Article 14. It may be assumed that the words " appointment or employment" occurring in Article 16 are wide enough to cover promotions from one rank of office to the higher rank.

8. In *Banarsi Das and Others Vs. The State of Uttar Pradesh and Others*, , it has been held that the equality guaranteed under Articles 14 and 16 of the Constitution cannot take away the right of the Government to pick and choose proper persons for employment in Government service. At page 361, Sinha, J., as he then was observed as follows:

Article : 6 of the Constitution is an instance of the application of the general rule of equality laid down in Article 14, with special reference to the opportunity for appointment and employment under the Government. Like all other employees, Government are also entitled to pick and choose from amongst a large number of

candidates offering themselves for employment under the Government.

It cannot be said that the act of the Government in exempting some members of service from passing the test required to be passed for promotion and its denial of such exemption to other members by itself constitutes an unequal discriminatory treatment violative of the equality clause. It may be that such exemption was granted to deserving members of the service and was refused to members who in their view were not competent to be given promotion. If it is open to the Government to deny promotion from a Lower Division cadre to the Upper Division cadre even to a member who has passed the prescribed tests, there is nothing improper in the Government refusing promotion to a member who has not made himself qualified to earn it. The granting of exemption depends upon the opinion of the Government about the competency and merits of the candidate applying for an exemption. Even accepting the averments contained in the affidavit of the petitioner, I am unable to : see that the act of the Government in not giving promotion to the petitioner has resulted in any infringement of his fundamental rights under the Constitution.

9. The petition fails and is dismissed.