

(1942) 09 AHC CK 0005
In the Allahabad High Court

Rup Kishan Agha

APPELLANT

Vs

Secy. of State

RESPONDENT

Date of Decision : 01-09-1942

Acts Referred:

Citation : AIR 1943 All 56 : (1942) 12 AWR 363

Hon'ble Judges : Verma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Verma, J.—This is an appeal by a plaintiff whose suit has been dismissed by the Court below, but costs have not been awarded to the defendant. There is no appeal or cross-objection by the defendant with regard to the costs. The plaint, which seems to have been drafted by some one who had neither training nor practice in the drafting of pleadings, is not only prolix, but contains matters which are not relevant to the, reliefs actually prayed for. Some of these irrelevant matters are unfortunately such as may, not unjustifiably, be described as scandalous. The plaint is also in places far from intelligible. The material allegations may be stated thus. The plaintiff was in the service of the Crown in this province as a member of the judicial branch of the Provincial Service and retired in February 1934. He does not state when he entered the service. He alleges that during a period of seven years immediately preceding his retirement he had been "working as a Sessions Sub-Judge and mostly as a District Judge." He then alleges that his "confirmation in both these offices had become due shortly before retirement and also promotion to the selection grade," that "all the three had been withheld, the selection grade only nominally" and that his pension had been reduced by Rs. 1000 per annum. He further states that "the withholding of nominal promotion to the selection grade is not material for reason to be stated." He evidently made representations to the Local Government re-requesting them to pass an order confirming him in the posts of Sessions and Subordinate Judge and of District Judge, but the Government

declined to do so on the ground that his work generally had not been of such a character as could persuade Government to pass such an order.

2. The plaintiff thereupon preferred two appeals--apparently one after the other--to the Governor against the order of the Local Government. According to the plaint, both these appeals were withheld by the Local Government. These appeals, the plaintiff alleges, were under Rule 57, Civil Services (Classification, Control and Appeal) Rules. He thereupon prepared an appeal to the Secretary of State in Council and submitted it to the Local Government with the request that it be forwarded. This appeal, according to the plaintiff, lay under Rule 58 of the said Rules. The Local Government declined to forward this appeal to the Secretary of State. It is stated in the plaint that the reasons given for withholding this appeal were "cryptic and ambiguous and not such as contemplated by Rule 64," but it is not stated what those reasons were. It would appear, however, from the first relief for which the plaintiff has prayed that the appeal was withheld under Clauses (1) and (3) of Rule 64 of the Rules mentioned above, in other words, that the Local Government held that no appeal lay to the Secretary of State under the Rules and that they further found that the appeal had not been preferred within six months after the date on which the appellant had been informed of the order appealed against and no reasonable cause had been shown for the delay. Paragraphs 7 and 8 purport to give reasons for holding that the appellant was entitled to appeal to the Secretary of State in Council and that the view of the Local Government to the contrary was incorrect. We may mention that we have not found it easy to follow all that is said in these paragraphs, and the arguments of the learned Counsel for the appellant have not removed our difficulty. The cause of action for the suit is thus stated in para. 9 of the plaint:

The cause of action arose (a) because my appeal to the Secretary of State was not withheld "under these rules" as required by Rule 64, but in spite and contravention of the rules, and (b) because Rule 64(1) and (3) and Rule 65 and power of selection implied in the Selection Grade are ultra vires.

3. It is further stated in this paragraph of the plaint that

the cause of action arose at Allahabad in April last when the order of the Local Government withholding the appeal was communicated to me.

4. The reliefs that the appellant prayed for were as given below:

Reliefs.--That Rules 64(1) and (3) and 65, Classification, Control and Appeal Rules of 1930, and the power of selection implied in the designation "Selection Grade," are ultra vires, making the withholding of my appeal to the Secretary of State under Rule 58, by the Local Government, inoperative.

In the alternative. --That the withholding of my appeal to the Secretary of State under Rule 58, by the Local Government, is in contravention of Rule 64 and consequently void and inoperative being misuse of power.

5. It seems to us that what the appellant put down as the alternative relief comes first, for, it is manifest that what the appellant wanted was a declaration, in the first place, that the Local Government in withholding his appeal to the Secretary of State in Council had acted in contravention of Rule 64, and in case the Court was of the opinion that the Government had not acted in contravention of that rule, then a declaration that Clauses (1) and (3) of Rule 64 and Rule 65-- which lay down that no appeal shall lie against the withholding of an appeal by a competent authority -- were ultra vires. He further asked for a declaration that "the power of selection implied in the designation "Selection Grade" is ultra vires." The basis of the suit thus clearly was the withholding by the Local Government of the appellant's appeal to the Secretary of State in Council, the appellant's case being that he had a right under Rule 58 of the Classification, Control and Appeal Rules to appeal to the Secretary of State and that the Local Government, in withholding, his appeal, had acted in contravention of Rule 64. As has already been mentioned, the reasons given by the Local Government for withholding the appellant's appeal to the Secretary of State are not stated in the plaint. If one of the reasons given by the Local Government was that prescribed in Clause (3) of Rule 64, there is no allegation in the plaint showing why the Local Government were not entitled to withhold the appellant's appeal under that clause. It is not alleged that the period of six months mentioned there had as a matter of fact not expired when the appeal was preferred. The appellant's alternative case was that, if Rule 64 did authorise and justify the Local Government in withholding his appeal to the Secretary of State, the rule was ultra vires. A further declaration was sought to the effect that Rule 65 was also ultra vires. It is, however, not quite clear how a cause of action has arisen, for that declaration in respect of Rule 65, for it is not alleged that any attempt was made to prefer an appeal against the order of the Local Government withholding the appellant's appeal to the Secretary of State.

6. The essential features of the appellant's case being as stated above, it is difficult to see why he considered it necessary to attribute various base motives to the Local Government and to the High Court for their not having considered him to be fit for appointment as a permanent Sessions and Subordinate Judge or District Judge. If the law confers a certain right upon A, and B infringes that right, A has a right of action against B and the motive which actuated B in infringing A's right is immaterial. There is not even a prayer for damages in the suit before us. It is further manifest that the correctness, or validity, of the action of the Government in not selecting the appellant for the "Selection Grade" and in not appointing him as a permanent Sessions and Subordinate Judge or District Judge is not a matter which arises for consideration in the suit. We fail to see, in these circumstances, how the question of motive is relevant. It is, further, not quite clear why the appellant considered it necessary to drag in the "Selection Grade" in the first relief prayed for by him when he had clearly stated in para. 2 and in Clause (q) of para. 6 of the plaint that his non-selection for the "Selection Grade" had not affected him adversely and was therefore not material.

7. The defendant's written statement, somewhat naturally, traversed most of the ground covered by the plaint. It is only necessary, however, to state that it was pleaded that the plaintiff's appeal to the Secretary of State did not lie and was rightly withheld by the Local Government and that the rules in the Classification, Control and Appeal Rules impugned by the plaintiff had been framed by the Secretary of State u/s 96B(2), Government of India Act, and were not ultra vires. As for the rest, it was denied that the plaintiff, or any other member of the service, could, as a matter of right, claim selection for inclusion in the "Selection Grade" or appointment to the posts of Sessions and Subordinate Judge and District Judge. It was further pleaded that the suit was barred by Section 42, Specific Relief Act, and that in any event, the declarations sought by the plaintiff were of such a character that the Court, in the exercise of its discretion, should not grant them, as the granting of those declarations would be useless. Various issues were framed for trial. The Court below has dismissed the suit substantially on the findings (a) that the suit was barred by the provisions of Sections 4 and 6, Pensions Act of 1871, (b) that the rules impugned by the plaintiff were "neither ultra vires nor illegal nor void," (c) that "an unfit person could be superseded and the Local Government had this power of selection," and (d) that the plaintiff had no right to sue in a Court of law. The decision of the Court below on issue 7,

whether plaintiff had as a Sub-Judge (Civil Judge) or officiating Sessions and Subordinate Judge or District Judge a right of appeal, under Rule 58 of the Classification Rules, to the Secretary of State for India and has this right been wrongfully withheld and how does it affect the suit ?

is obscured by the introduction, and a lengthy discussion, of matters not quite germane to the particular issue, but the Court would seem to have been of the opinion that the plaintiff was entitled to appeal to the Secretary of State. With regard to the question of malice, the Court below observed--after a somewhat confused discussion that--"malice would not confer a jurisdiction upon the Court which it has not," and that "the decision about malice may be futile."

8. Lengthy arguments have been addressed to us on behalf of the appellant. Learned Counsel has attempted to trace, from the earliest times to the present day, the history of the services, particularly of the judicial branch of the Provincial Service, in British India, and has dealt with what, according to him, were the successive stages in the development of the constitutional position. We do not, however, propose to deal with those parts of the arguments which, in our opinion, are not material for the decision of those questions which alone arise for consideration in this case and which lie within a narrow compass, nor do we consider it necessary to deal with all the issues framed in the Court below or with all the matters discussed by the learned Small Cause Court Judge in his judgment. The only points which arise for decision are whether the Local Government, when they withheld the appellant's appeal to the Secretary of State, acted in contravention of Rule 64, and, alternatively, if the Local Government did not act in contravention of that rule, whether Clauses (1) and

(3) of the rule are ultra vires. It will be noticed that the appellant in his prayer for the declaration that the Government acted in contravention of Rule 64 when they withheld his appeal, wants the Court to say that the Government were guilty of "misuse of power." Here again, we are not able to follow the mental processes which induced the appellant to make this prayer. It has not been made clear to us what power the Government are supposed to have misused. The appellant's allegation, on this part of the case is that the Government acted in contravention of the rule, in other words, that the Government had no power under the rule to withhold the appeal. There being no power, no question of misuse of power can arise. According to the plaintiff, the Government assumed a power which they did not possess. That, however, is not misuse of power (already possessed).

9. With regard to the first of the points mentioned above, it is pointed out on behalf of the appellant that in the classification of the services given in Rule 14, Civil Services (Classification, Control and Appeal) Rules, made by the Secretary of State for India in Council, on 27th May 1930, the Provincial Services are shown at No. (4), and reliance is placed on Rules 49, 56 and 58 in support of the contention that the appellant had a right of appeal to the Secretary of State. The relevant portions of these rules are as follows:

49. The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon members of the services comprised in any of the classes (1) to (5) specified in Rule 14 namely: (ii) Withholding of increments or promotion....

56. Every person included in one of the classes (1) to (5) specified in Rule 14 shall be entitled to appeal, as hereinafter provided, from an order passed by an authority in India -- (a) imposing upon him any of the penalties specified in Rule 49;

58 (1). Every member of a service other than a subordinate service shall be entitled to appeal to the authority hereinafter specified against any order passed by an authority subordinate to the said authority which (a) alters to his disadvantage his conditions of service, pay, allowances or pension as regulated in rules or in a contract of service, or; (b) interprets to his disadvantage the provisions of any rules or contract of service whereby his conditions of service, pay, allowances or pension are regulated. (2) The authority hereinbefore referred to shall be the authority which made the rule to which the order under appeal relates, or in the case of an appeal relating to a contract of service, the authority which appointed the appellant: provided that where the rule or the appointment was made by the Local Government of a Governor's Province the appeal shall lie to the Governor.

10. The argument is, firstly, that the action of the Government in not selecting the appellant for inclusion in the "selection grade" and in not appointing him permanently to the posts of Sessions and Subordinate Judge and District Judge

was tantamount to the withholding of a promotion or increment, to which the appellant was entitled, within the meaning of Clause (2) of Rule 49 quoted, above. It is then argued that the appellant had a right of appeal under Rule 56(a). It is next argued that Rule 58, properly interpreted, gives the appellant a right of appeal to the Secretary of State. On behalf of the defendant-respondent, it is argued that selection for inclusion in the "selection grade" and for appointment to the posts of Sessions and Subordinate Judge and District Judge is made by the Local Government, from among the members of the Provincial Judicial Service, of those, and those alone, whom the Local Government consider to be deserving of such selection and appointment by reason of their merit and ability, and that such selection and appointment do not come within the meaning of the word "increment," or "promotion," as used in Clause (2) of Rule 49. It is said that such selection and appointment are entirely within the discretion of the Local Government. It is contended therefore that when the Local Government did not select or appoint the appellant for the grade or the posts mentioned above, the Government did not impose any penalty on the appellant. It is argued that consequently the right of appeal, conferred by Rule 56, never accrued to the appellant. It is next argued that, even if the appellant could be held to have had a right of appeal, he could only appeal in accordance with Clause (5) of Rule 57 which is as follows : "A member of a Provincial Service ... may appeal to the Governor from an order passed by the Local Government," and that he had no right of appeal under Rule 58. In our judgment the contentions put forward on behalf of the defendant-respondent are well-founded and. must be accepted. With regard to the "selection grade," the position, as it appears from the materials laid before us, is this. Sub-section (2) of Section 96B, Government of India Act of 1915, as amended by the Act of 1919, empowered the Secretary of State in Council to

make rules for regulating the classification of the civil services in India, the methods of their recruitment, the conditions of service, pay and allowances, and discipline and conduct.

11. It was further provided by this sub-section that

such rules may, to such extent and in respect of such matters as may be prescribed, delegate the power of making rules to the Governor-General in Council or to Local Governments....

12. A set of rules were accordingly made by the Secretary of State in Council, apparently at various dates between the years 1920 and 1924, which were all finally published in Notification No. F.-472-II-23, dated 21st June 1924, with the following announcement:

The following rules made by the Secretary of State in Council under Sub-section (2) of Section 96B, Government of India Act, are published for general information. Rules 16 to 29 and the entry in the Schedule of Provincial Services relating to Burma have effect from 21st June 1924. The remaining rules have

been in operation with effect from varying dates since 22nd December 1920.

13. By a subsequent notification, dated 17th July 1924, it was laid down that the rules would apply only to Governors' provinces. There was no rule in these set of rules delegating the power of making rules to Local Governments in accordance with the latter half of Sub-section (2) of Section 96B of the statute. We find however that in the Civil Services (Classification, Control and Appeal) Rules, made by the Secretary of State in Council on 27th May 1930,

it is stated in Sub-rule (2) of Rule 1 that the Civil Services (Governors' Provinces) Classification Rules and the Civil Services (Governors' Provinces) Delegation Rules, 1926, are hereby cancelled.

14. These Delegation Rules of 1926 and the rules made by the Local Government in pursuance of the power conferred upon it by those rules have not been laid before us. It may be taken to be fairly certain, however, that there was a delegation of power to the Local Governments and that the Local Government of this province made certain rules in pursuance of the power so delegated. Be that as it may, in the rules of 27th May 1930 there is Rule 41 which is as follows:

The power to make rules regulating the conditions of service, the pay and allowances, and the pensions of a provincial service in any Governor's Province is hereby delegated to the Local Government:

Provided that rules regulating (a) the pay of members of such services while officiating in posts borne on the cadre of an all India service; ... shall be made by the Secretary of State in Council.

15. In exercise of the power thus conferred, the Local Government made certain rules on 10th July 1933, regulating the probation, pay, and seniority of the members of the United Provinces Civil (Judicial) Service, which were published in the United Provinces Gazette dated 15th July 1933 at page 645 of Part 1. It was laid down in Rule 4 that all candidates on appointment to the service would, subject to the provisions of Rule 7, be placed on probation for two years. By Rule 5 the salaries which were to be drawn during the period of probation were laid down. The rule then prescribed that on the completion of two years' total service, and on being favourably reported on, the probationer would be allowed to draw pay in the time-scale laid down in Rule 8. Confirmation of a probationer in his appointment at the end of his period of probation was to take place on the recommendation of the High Court provided that there was a vacancy. Rule 7 laid down that, if the officer on probation failed to give satisfaction, his services would be dispensed with. There is a proviso to this rule which authorises an extension of the period of probation in certain cases. Rule 8 laid down the time-scale of pay. Clause (a) dealt with those officers who had been appointed or approved for appointment before 4th July 1931, and Clause (b) provided for those who were approved for appointment on or after 4th July 1931. The maximum pay of the former was to be Rs. 850 with an Efficiency Bar at Rs. 540, and the maximum pay of the latter was fixed at Rs. 800 with an Efficiency Bar at

Rs. 550. Rule 9 laid down that no Munsif could draw more than Rs. 540 per month in the time-scale in Rule 8(a) or more than Rs. 550 per month in the time-scale in Rule 8(b), as the case might be, unless he was certified by the Governor in Council as fit to hold the post of Subordinate Judge. We then come to Rule 10 which contains the provisions with regard to the "Selection Grade." It is as follows:

10. (a) The number of posts in the selection grade shall be

(1) In the Agra Province ... 4

(2) In Oudh ... 2

Provided that this grade in each province will disappear with the disappearance from the service of the last officer to whom the scale of pay laid down in Rule 8(a) applies.

(b) Promotion to this grade will be made by the Governor in Council after considering the recommendation of the High Court, or of the Chief Court, as the case may be. Members of the service who have passed the Efficiency Bar prescribed in Rule 8(a) and held the post of Subordinate Judge for not less than four years, including officiating service in that post, whether continuous or not, are eligible, at the discretion of the Governor in Council, for promotion to this grade. The pay of the selection grade will be Rupees 1000-50-1200.

16. As we have already indicated, no rules, made prior to the rules just mentioned and dealing with the selection grade, have been shown to us. The appellant has therefore entirely failed to show that at any time one of the conditions of the service was that an officer was entitled as a matter of course to step into the "Selection Grade" by the mere fact of his seniority. On the contrary, it seems to us that it would be wholly futile to establish such a grade if officers were entitled to be included in it by the mere fact of seniority. As the very name implies, the whole object of the bringing into existence of such a grade must be to enable the Government to put into that grade only those officers whom they consider deserving of selection on account of their outstanding abilities. There can, in our opinion, be no doubt that the Government are not bound to select, for inclusion in the "Selection Grade," the seniormost officer in the grade immediately below the "Selection Grade," or, for the matter of that, any other officer in the service. We have not the slightest hesitation in holding that the decision of the question whether any particular member of the service--or, for the matter of that, any member of the service at a particular time -- deserves selection for being put into the "Selection Grade" must be entirely within the absolute discretion of the authority that has to select. No one has a right to be so selected. It is impossible, in our opinion, to hold that the decision that a particular officer does not deserve such selection amounts to the withholding of an increment or promotion, in other words, that it amounts to the imposition of a penalty within the meaning of Rule 49. The increments and promotion spoken of in that rule must mean increments and promotion to which a member of a

service is entitled in the ordinary course, by the mere fact of his having been in the service for a certain number of years or of his saving come to occupy, as the result of retirements, deaths, etc., a certain place in the list of those who are in the service, and not an increase in salary or the acquisition of a higher official position which would be the result of a selection for appointment to a special grade or to a particular post.

17. Thus, even apart from the fact that, on the appellant's own case, his non-selection for the "Selection Grade" did not affect him adversely and consequently did not furnish any cause of action for the suit--the arguments put forward on behalf of the appellant fail on the merits. Coming now to the complaint that the Government did not make the appellant a permanent Sessions and Subordinate Judge and a permanent District Judge, the case of the appellant is, if possible, still more weak. There was a time when these posts were reserved exclusively for members of the Indian Civil Service. In course of time, a certain number of these posts were thrown open to certain classes of persons who were not members of the Indian Civil Service. By legislation and statutory , rules, lists were prepared in which the numbers of these posts--along with the numbers of certain other posts which too had at one time been reserved for members of the Indian Civil Service and which were also thrown open to persons not belonging to that service --were shown, and such posts came to be known as "Listed posts." The section in the Government of India Act of 1915 which dealt with this matter was Section 99, which occurs in part 8, headed "The Indian Civil Service." The relevant portions of that section were as follows:

(1) The authorities in India, by whom appointments are made to offices in the Indian Civil Service, may appoint to any such office any person of proved merit and ability ... although the person so appointed has not been admitted to that service in accordance with the foregoing provisions of this Act.

(2) Every such appointment shall be made subject to such rules as may be prescribed by the Governor-General in Council and sanctioned by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council of India.

(3) The Governor-General in Council may, by resolution, define and limit the qualification of persons who may be appointed under this section, but every resolution made for that purpose shall be subject to the sanction of the Secretary of State in Council, and shall not have force until it has been laid for 30 days before both Houses of Parliament.

18. The necessary rules, resolution etc., were made and passed under the earlier statutes as well as u/s 99 of the Act of 1918. Those made and passed under the earlier statutes have not been laid before us. We have, however, been referred to the rules made under Sub-section (2) of Section 99 of the Act of 1915. They were published at page 333 of part 1 of the Gazette of India, dated 1st April 1922 (Notification No. F-438, dated 30th March 1922, "Establishments"). It will

be convenient to reproduce relevant portions of some of these rules. They are as follows:

1. With the previous sanction of the Governor-General in Council and of the Secretary of State in Council the Local Government may, by notification in the official gazette, declare the number of superior executive and judicial offices being offices ordinarily filled from amongst the members of the Indian Civil Service, to which, subject to the provisions of Sub-section (1) of Section 99, Government of India Act, persons not being members of the Indian Civil Service may be appointed.

2. Within the limit of number declared under Rule 1, the Local Government may appoint :...

(ii) to a superior judicial office, a member of the Provincial Civil Service subordinate to the Local Government, or a person who at the time of the appointment is--(a) a barrister of England or Ireland or a member of the Faculty of Advocates in Scotland; or (b) a vakil, pleader, advocate or attorney of a High Court in India; or (c) a pleader or advocate of a Chief Court or of a Judicial Commissioner's Court ; or (d) a pleader of a District Court ; and in respect of such qualification is of not less than five years" standing.

(3) Notwithstanding anything contained in Rule 2, the Local Government may, within the limit of number declared under Rule 1, appoint to a superior ... judicial office any person not having the qualifications prescribed for such office by Rule 2.

* * * *

(4) The Local Government may, by notification in the local official gazette, declare the number of inferior offices, being offices required under the provisions of Section 98, Government of India Act, to be filled from amongst the members of the Indian Civil Service, to which, subject to the provisions of Sub-section (1) of Section 99 of the said Act, persons not being members of the Indian Civil Service may be appointed.

(5) Within the limit of number declared under 11. 4, the Local Government may appoint ... to an inferior judicial office any person having the qualifications prescribed by Rule 2 for appointment to a superior judicial office.

(7) The Local Government may declare any person appointed under these rules to be appointed on probation only, and may prescribe the terms and conditions of such probation.

19. It may be explained that the post of District Judge is among the superior judicial posts and the post of Sessions and Subordinate Judge--or Civil and Sessions Judge, as it is now called--is an inferior judicial office. Now, so far as the rules promulgated u/s 99 of the Act of 1915, quoted above, are concerned, it will be noticed that Rules 1 and 4 say : "Subject to the provisions of Sub-section

(1) of Section 99," Government of India Act. The sub-section prescribed that the person to be appointed shall be "of proved merit and ability." It is obvious that the Local Government, who had to make the appointment, must be the sole judges of such merit and ability. It will further be noticed that the persons who were declared eligible for appointment to the posts thus thrown open to persons who were not members of the Indian Civil Service were, not only members of the Provincial Judicial Service, but also members of the legal profession of a certain standing. It cannot be denied that appropriate rules, framed under the provisions of the earlier statutes, existed prior to the promulgation of the rules made under the Act of 1915 which have been reproduced above. One of our learned colleagues in this Court, T.N. Mulla J., was a member of the legal profession in active practice when he was appointed in 1921 to the post of District Judge. There can thus be no doubt that, even before the rules made under the Government of India Act of 1915 were promulgated, there were rules under which the Local Government had the power to appoint to the Listed posts, on the judicial side, persons who were not members of the Provincial Judicial Service. It appears to us that it is impossible, in these circumstances, to argue that a member of the Provincial Judicial Service can claim appointment to or confirmation in, the post of Sessions and Subordinate Judge or the post of District Judge as a matter of right, merely because he has attained to a certain position in the order of seniority in the Provincial Judicial Service or because he has been called upon to officiate in one or both of those posts. There are distinct provisions in the law authorising the making of officiating or acting appointments. The contention that by being called upon to officiate in any one of the posts mentioned above a person can acquire a right to be appointed permanently to the post, is, in our judgment, a wholly untenable argument. We consider it unnecessary to pursue the matter any further.

20. We come now to the contention of the appellant that he had a right of appeal under Rule 58 of the Civil Services (Classification, Control and Appeal) Rules of 27th May 1930. We have reproduced that rule in an earlier part of this judgment. It may be pointed out that there is no question of any contract of service in the present case and that, therefore, the appellant can only complain of an alteration to his disadvantage of his conditions of service, pay, allowances or pension as regulated in rules, or of an interpretation to his disadvantage of the provisions of any rules whereby his conditions of service, pay, allowances or pension were regulated. Now, it appears to us to be obvious, on the facts of this case, that the Local Government never altered to the appellant's disadvantage any condition of his service, or his pay, allowances or pension as regulated in any rule. It is, further, obvious in our opinion that the Local Government never interpreted to the appellant's disadvantage the provisions of any rule whereby his conditions of service, pay, allowances or pension were regulated. No occasion for any such alteration or interpretation ever arose. All that happened was that the Local Government, on whom the law cast the duty of appointing persons, of proved merit and ability belonging to certain classes, to certain posts, did not consider

that the appellant possessed the merit and ability which in their judgment was requisite and of which they were the sole judges. The mere fact that the appellant belonged to one of the classes a member of which could be selected for appointment to the posts in question, or the fact that he had officiated for some time in those posts, cannot create a right in the appellant for permanent appointment to the posts. No rule, under which any such right could be claimed, has been cited. The only occasion that might be said to have arisen for the interpretation of any rule was when the Local Government withheld under Rule 64, the appellant's appeal to the Secretary of State. That, however, cannot possibly be brought under Rule 58(1)(b). On the contrary, that order is expressly declared by Rule 65 to be non-appealable. The contention therefore fails. Our conclusion is that the appellant's case entirely fails on the merits. He is, therefore, not entitled to the reliefs claimed. For the reasons stated above, we dismiss the appeal with costs.