

(1983) 02 MAD CK 0005

In the Madras High Court

Case No : Writ Petition No. 10943 of 1981

Santhan Kamalanathan

APPELLANT

Vs

Tamil Nadu Housing Board, Madras and Another

RESPONDENT

Date of Decision : 07-02-1983

Acts Referred:

Constitution of India, 1950 — Article 245

Tamil Nadu State Housing Board Act, 1961 — Section 161(1), 161(3), 63

Citation : AIR 1983 Mad 355

Hon'ble Judges : Padmanabhan, J

Bench : Single Bench

Advocate : S. Govind Swaminathan, for R. Mohan, P. Ramachandrudu and A. Rajaram, for the Appellant; K. Doraiswami, of A. Muthukrishnan, T. Ganesan and S. Jagadeesan, for Govt. Pleader, for the Respondent

Judgement

1. The petitioner is a Super-intendent in the Tamil Nadu Housing Board (for short the Housing Board). She originally joined the service of the

Housing Board as a junior assistant. She has filed the writ petition for the issue of a writ of declaration declaring that the amendment made by the

Housing Board in its Resolution No.102 dt. 31-3-1981 and approved by the Government in G. O. Ms. No. 921 Housing and Urban

Development dt. 22-10-1981 null and void.

2. The Housing Board was constituted under the Tamil Nadu State Housing Board Act. 1961 (for short the Act). In exercise of the powers

conferred under the Act of the Housing Board framed service regulations. Appendix A II Item (8) provides that a candidate for appointment as

assistant (1) must be a graduate of a recognised university and (2) must have passed the Government Accounts Test for Subordinate Officers, Part

I. On 17-6-1975 the State Government issued G.O. Ms. 648 Housing Department confirming and approving an amendment to the service

regulations. The said amendment stated that the qualification for appointment as an assistant and as a clerk in the Housing Board would be the

minimum general educational qualification prescribed by the Government. At this stage it may be mentioned that in W. P. No. 4072 of 1975 filed

by the very same petitioner and W. P. No. 6258 of 1973 filed by one Irudayamani this court held in its judgment dt. 10-1-1978 that a person must

be a graduate for being appointed as an assistant and that the amendment made by G.O. No. 648 Housing Department dt. 17-6-1975 would have

effect only from an anterior date that the persons appointed as assistants prior to 17-6-1975 should have possessed a degree qualification.

3. Thereafter on 31-3-1981 the Housing Board passed resolution No.102 amending the service regulation in such a manner that the minimum

general educational qualification prescribed for the post of junior assistant was to be the same as in the case of State Ministerial Service with effect

from 22-4-1961. This was forwarded to the Government by the Chairman of the Housing Board on 9-4-1981. Thereafter, the State Legislature

passed the Tamil Nadu State Housing Board (Amendment) Act. 1981 (for short the Amendment Act) amending S. 161 of the Act. The

Amendment Act received the assent of the President on 28th May, 1981. On 22nd Oct., 1981 the Government issued G. O. Ms. No. 921

Housing and Urban Development Department approving and confirming the amendment suggested by the Housing Board for giving retrospective

effect with effect on and from the 22nd April, 1961 to the amendments to the service regulations, as already approved and confirmed by the

Government in G. O. Ms. No. 648 Housing dt. the 17th June 1975.

4. The contention of Mr. Govind Swaminathan on behalf of the petitioner is that the Housing Board has no power to make a retrospective

amendment to the service regulations. Therefore, the resolution of 102 of the Housing Board dt 31-3-1981 as approved and confirmed by G. O.

Ms. No. 921 Housing and Urban Development Department de. 22-10-1981 is null and void.

5. The question for consideration is whether the contention of the learned counsel for the petitioner can be sustained. S. 161 of the Act confers

power on the Board to make regulations. Section 161 (1) as it originally stood reads as follows:-

The Board may, by notification make regulations no inconsistent with this Act and the rules made thereunder, for the purpose of giving effect to the provisions of this Act.

Obviously it could be argued that on the language of S. 161, the Housing Board could not make service regulations with retrospective effect.

However, by the Amendment Act the words "whether prospectively or retrospectively" were added after the words "make regulations". S. 161

after its amendment reads thus:-

The Board may by notification, make regulations whether prospectively or retrospectively not inconsistent with this Act and the rules made thereunder for the purpose of giving effect to the provisions of this Act.

The learned counsel for the petitioner did not challenge the validity of the Amendment Act. It may be mentioned here that power may be conferred

to make subordinate Legislation in the shape of rules, bye-laws etc., which will have retrospective operation and that is what has been done by the

Amendment Act. Therefore on and after 25-8-1981 the Housing Board had the power to make service regulations with retrospective operation.

But the argument of Mr. Swaminathan was that on 31-3-1981 when the Housing Board passed the resolution 102 S. 161 of the Act had not been

amended and therefore, the resolution was invalid. I am unable to agree with the contention of the learned counsel. As rightly pointed out by Mr.

Doraiswami for the Housing Board S. 161 (3) of the Act provides that no regulation or its cancellation or modification shall have effect until the

same shall have been approved and confirmed by the Government. In view of S. (3) resolution No. 102 cannot be said to have taken effect on 31-

3-1981, but the said resolution could be said to have come into force only on 22-10-1981, but the said resolution could be said to have come into

force only on 22-10-1981 when the State Government by G. O. Ms. 921 Housing and Urban Development confirmed and approved the

resolution 102 : This is on the principle that requirement of prior approval or sanction if any prescribed by the enabling Act will be held to be

mandatory or subordinate legislation will have to receive prior approval or sanction prescribed before it can be effective. As on the date 22-10-

1981 Section 161 (1) had been amended by the Amendment Act which had received the assent of the President on 28-3-1981 In fact, even in the

letter dt, 9-4-1981 addressed by the Chairman, Housing Board to the Commissioner and Secretary to Government, Housing and Urban

Development Department, enclosing a copy of the Board's resolution No. 102 dt. 31-3-1981 the Chairman of the Housing Board has requested

the Government to pass orders amending the service regulation as approved by the Board in its resolution No. 102 dt. 31-3-1981 under S. 161 of

the Act. The Government approved and confirmed the resolution only after S. 161 (1) was amended by the Amendment Act. On Behalf of the

petitioner two decisions were relied on. One is The State of Mysore Vs. Padmanabhacharya etc., and the other is B.S. Yadav and Others Vs.

State of Haryana and Others, . I do not think these decisions are applicable to the facts of this case.

6. Mr. Govind Swaminathan next contended that by the amendment of S. 161 (1) of the Act alone by the Housing Board has not achieved its

object of giving effect to resolution 102 dt. 31-3-1981. According to him unless Ss. 17 and 19 of the Act are also amended the resolution cannot

be given effect to. There is no substance in this contention. S. 17 of the Act states that the remuneration and other conditions of service of the

Secretary, Housing Board Engineer and other officers and servants of the Board shall be such as may be prescribed by regulations can be framed

by the Board with the previous approval of the Government. S. 19 does not come into the picture at all. S. 17 deals with conditions of service of

officers and servants of the Housing Board. However, that also does not come to the rescue of the petitioner. S. 161 (1) is the only relevant

section and this has been appropriately amended by the Amendment Act. I am therefore of the view that the amendment to the service regulations

reducing the minimum general qualification with retrospective effect is valid and not null and void as stated by the petitioner.

7. No other argument or contention was placed before me. The Writ Petition therefore fails and is dismissed. There will be no order as to costs.

8. Petition dismissed.