
(1958) 08 KL CK 0021
In the High Court Of Kerala

Subramonia Ayyar

APPELLANT

Vs

State of Travancore-Cochin and Others

RESPONDENT

Date of Decision : 01-08-1958

Acts Referred:

Constitution of India, 1950 — Article 226, 309, 310, 311, 313

Citation : (1959) 1 LLJ 376

Hon'ble Judges : N. Varadaraja Ayyangar, J

Bench : Single Bench

Judgement

N. Varadaraja Ayyangar, J.—This is a petition under Article 226 of the Constitution filed by N.P. Subramonia Ayyar who was a municipal commissioner in the service of the respondent 1, Travancore-Cochin State, and has, on the formation of Kerala State subsequent to the filing, opted for Madras. The complaint is in respect of the rank assigned to him as among the municipal commissioners in the State, in the gradation list as on 1 April 1953.

2. The Travancore District Municipalities Act 23 of 1116 by Section 13(1) provided for appointment by Government of a commissioner for any municipality in the State. Prior to 1945 only four major municipalities of the Travancore State had commissioners so appointed and they were also all deputed from the State service. By Government order dated 19 September 1945, Government sanctioned the appointment of municipal commissioners for eleven more municipalities tentatively for a three years" period. Re-appointments were made in respect of all the commissioners at the expiry of the three years in 1948. Similar reappointments were made in 1951, the notification concerned being Ex. D, dated 16 September 1951.

3. On 8 June 1953, Government issued notification, prescribing certain rules relating to the conditions of service of municipal commissioners. Under these rules, published at p. 934 of Vol. II of the Statutory-Rules and Notifications, 1953, the municipal commissioners were constituted officers under the service of Government belonging to a separate cadre, but not ordinarily entitled to transfer

to, or interchangeability with, other services under the Government. The cadre was to consist of 25 officers, divided into four grades in descending order of scales of pay, with particular numbers attached to each grade. Government, however, reserved power in themselves to vary the total number of officers and the number of officers in each grade as and when found necessary. Rules 4 and 5 which are material for our purpose ran as follows:-

4. Appointment of the cadre of municipal commissioners shall ordinarily be in the last grade, promotions to the higher grades being made from the next lower grade on considerations of merit and past record and not merely of seniority.

5. Appointments shall ordinarily be made by direct recruitment and by promotion of persons already in municipal service possessing the prescribed qualifications, in equal proportions.

It shall, however, be open to Government to vary this proportion if, on the occurrence of vacancies in the cadre, suitable persons with the prescribed qualifications are not available for promotion from municipal service or in exceptional cases, to appoint as municipal commissioners suitable persons in Government service on foreign service conditions.

The present municipal commissioners recruited to the cadre otherwise than from Government service may, subject to suitability on consideration of past service and subject to the approval of the Public Service Commission, be treated to be substantive in the respective posts from the dates of their appointment as such.

4. On 16 November 1953 Government increased the number of municipal commissioners in the second and fourth grades by four temporary posts and on the same date they issued notification Ex. B, absorbing all the existing municipal commissioners in the State provisionally in the cadre and assigning rank to them on certain principles mentioned. A gradation list prepared on the above basis and intended to be finalised later, was published along with the notification. The petitioner was first entertained as a municipal commissioner on 18 September 1945. The respondent 3 G. Appukuttan Pillai was taken later on 24 September 1945 on the same grade as the petitioner. But by Government proceedings dated 24 September 1952, the respondent 3 was allowed to officiate in a senior grade in a major municipality. As a result of this preferment of this respondent 3, his name was placed as the second in the grade 3, while petitioner was given only the next place, in the grade list above. Appeal had been taken by the petitioner against the deputation of the respondent 3 to act in higher grade then and there. He also took appeal on the higher ranking of the respondent 3 under the gradation list as above, as allowed under the notification itself. Nevertheless, the higher ranking of the respondent 3 was perpetuated in the final list which was issued under Ex. C, notification dated 10 November 1955. One of the two matters of complaint in this petition is this precedence granted to the respondent 3.

5. The respondent 2, K. Ananthan Pillai was the tahsildar at Neyyattinkara on 8

July 1954, outside the special cadre of municipal commissioners constituted by the notification of 8 June 1953 above referred to. His services were however requisitioned as Commissioner, Trivandrum Corporation, for purpose of relieving the confusion prevailing there. This appointment resulted in the introduction of a " foreigner" into the topmost place in the cadre. This is the second matter for complaint herein.

6. The petition avers that the preferment granted to and the precedence in the cadre so gained by the respondent 3 and the granting of a place to the respondent 2 in the cadre at all, are violative of the petitioner's rights guaranteed under the notification of 8 June 1953 and that petitioner had been denied opportunity of being heard. The prayer is therefore made for the issue of a necessary writ or direction, so as to secure for the petitioner his rightful place and consequent benefits of higher pay and increments, etc.

7. The petition is resisted by the respondents 1 and 3 by separate objections. The respondent 2, having retired by 1954, did not appear. Respondents 1 and 3 have taken the common ground that there has been no violation of any of the rules governing the matter and that in any event the complaint of the petitioner is not to any extent justiciable.

8. On the petition being taken up, learned Counsel for the respondents raised preliminary objection that the petitioner had since the date of the petition left the service of the respondent 1 State and that on that ground alone, the petition should be struck off. Petitioner's learned Counsel replies that the position of the petitioner in the new State of his service, depends considerably on the disposal on the merits, of the petition herein and there was anyhow no merit in the preliminary objection. As however I have heard fully and I am clear the petition fails on the merits, I do not desire to dispose of the petition on the preliminary objection.

9. Taking up first the appointment of the respondent 2, there is no doubt that his appointment as municipal commissioner was in departure from the ordinary rule as to appointment by way of promotions in the municipal service and did diminish the chances of promotion of the petitioner and others already employed in that service. But it could not be a matter for complaint. For Government had reserved power in themselves in exceptional cases to appoint as municipal commissioners, suitable persons in Government service on foreign service conditions. It would appear that there was confusion prevailing in the administration of the Trivandrum City Corporation and the appointment of the respondent 2 was intended solely as a temporary expedient to restore order and stability in the financial affairs of that institution. The order passed by the then Minister as quoted in the counter-affidavit, expresses clearly this object behind the appointment. There can therefore be no legal objection taken to the appointment of the respondent 2. Learned counsel says that there were persons of equal experience and competency among the municipal commissioners and the matter was therefore one for previous consultation with them. But this was a

matter for the Government to decide and the fact that they went out a field must give the matter a quietus. Nor does the fact that Government did not hear the petitioner or others personally, before they came to their decision and again that they did not use the expression " exception " in the particular case, affect the position.

10. Taking up next, the ranking of the respondent 3 higher than the petitioner. That depended on his earlier selection for appointment in higher grade. And when the Government say they made the selection because of his greater experience and efficiency, there must here also, in my opinion, be a quietus. The appraisal does not require a viva voce. Personal non-consultation which alone can be and is relied on by the petitioner is therefore of no consequence.

11. It follows accordingly that there is no merit in either of the matters raised by the petitioner. This is enough to dispose of the petition. But as the question of justiciability was elaborately argued on either side, I will deal with that also. The question then is, whether a violation of service conditions under the notification of Government dated 8 June 1953 will furnish a civil servant wronged by such a contravention, with a cause of action for redress in the municipal courts. Learned counsel is willing to concede that if the notification in question is taken to be merely executive or administrative directions, he has no case to argue, in view of the rule well established in this Court under the decisions ending with C.P. Mary Vs. State of Travancore-Cochin, But he says that the notification here has got the force of a statutory enactment and if so, its violation was amenable to judicial review under Article 226. Learned Government Pleader in reply refuses the assumption that we have here any statutory rules at all as to service conditions and he says further that even so the courts have no jurisdiction in this matter.

12. On the first aspect as to the character of the notification we have to notice that it purports to be issued u/s 13(i) of the District Municipalities Act, 23 of 1116. Now Section 13(i) says:

Our Government may, by notified order, appoint a commissioner for any municipality and may, by a like order, cancel such appointment. Every order appointing a commissioner shall specify the reasons therefor.

Obviously there is no provision herein for fixation of service condition governing municipal commissioners appointed for all the various municipalities. To the extent, therefore, that the notification provides for service conditions of municipal commissioners it cannot be viewed as subsidiary legislation under Part V of the Act. For it is only where the rules or notifications carry out all or any of the purposes of the Act, that Section 323, falling under Part V is attracted. The argument of learned Counsel on this aspect fails.

13. But even assuming it is a case of statutory provisions, how does the matter stand. This precise question came up for consideration before Rajagopala Ayyangar, J., in N. Devasahayam Vs. State of Madras and Others, After elaborate discussion of the position in all its historical prespective, the learned Judge

observed at p. 58 :

On the language of the Article 310 of the Constitution the argument scarcely seems open that the "pleasure" is qualified or conditioned by the observance of the rules framed under Article 309 or other similar provisions or continued under Article 313. If I am right so far the violation or infraction of a statutory rule would give rise to a cause of action for being agitated in Courts only if the nature of the infringement brought it within the jurisdiction of the Courts or their competency to afford relief. If the violation of a statutory rule governing governmental action caused an injury to a right enforceable in Court, say, a right to property or a right to carry on business or trade, apart from the right being guaranteed by the Constitution, the established Courts of law would be competent to afford relief. In such cases, if the jurisdiction of a High Court under Article 226 were invoked, there would be ample power vested in the Court to redress the grievance. The right, however, that was infringed in the case on hand, viz., the reduction in seniority, was an injury in relation to an office that was constitutionally declared to be held at the "pleasure" of the Governor.

(The italicizing is mine.)

14. Reference may also be made to the decision of Rajagopalan, J., in *A. Sambandhan Vs. Regional Traffic Superintendent (Personnel) Southern Railway and Others*, . That was a case where the conditions of service of railway employees were governed among other things by statutory rules in the Indian Railway Establishment Code, and the petitioner-employee challenged the validity of an order alleged to be in violation of such rules, by petition under Article 226 of the Constitution praying for a writ of mandamus or other appropriate writ. The learned Judge, in the course of his order, observed:

The effect of Article 310(1) of the Constitution would be to allot to the exclusive domain of the executive the right to employ civil servants at its pleasure, subject, of course, to any other express provision made in that behalf by the Constitution itself.

Legislative competence to legislate on that subject was specially conferred by Article 309 of the Constitution. Item 70 of list I and item 41 of list II of Sch. VII of the Constitution are in conformity with the provisions made in the proviso to Article 309, the executive would have had the power to regulate conditions of service by rules made by it from time to time. But violation of any of the service rules by which the seniority or other status or incident of a civil servant is regulated is not justiciable, although violation of the guarantees afforded by Article 311 is actionable in the sense that recourse can be had to Court to redress the wrong.

Further down, the learned Judge said:

The rules promulgated under Article 309 of the Constitution do not, of their own force, become part of the Constitution, so as to fall within the scope of the

expression " except as expressly provided by the Constitution " in Article 310(1); nor can the rule be viewed as terms of any contract between the civil servant and the Government.

Though services rules framed u/s 241(2) of the Government of India Act, 1935, and continued in force by Article 313 of the Constitution have been comprehended within the scope of the expression " laws in force" in Article 313, violation of service rule, rule of sonority of a railway servant, for instance, even as a " law in force," is not enough to make it justiciable. It is still the exclusive domain of the executive to grant redress and it is not an actionable wrong for which the Court could grant redress.

15. Learned counsel referred to two cases in S.D. Mathur Vs. Municipal Board, Agra and Another, , and Banmali Vs. District Board, Jhansi, . But these oases concern statutory bodies whose powers are limited by the provisions of the statute concerned, e.g., the municipal corporation in the one case and a district board on the other. The decisions held that in discharging their servants the positive rules laid down in statute should be conformed to. These have hardly any bearing on the powers of the State under Article 310 which we have on hand. It follows; therefore, that even assuming that Ex. C notification is of legislative origin, even then there is no help for the petitioner.

16. The petition fails in the result and is therefore dismissed. There will be no costs, however, in the circumstances.