

(1975) 11 MAD CK 0021
In the Madras High Court

T. Muthukumaran

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 04-11-1975

Acts Referred:

Tamil Nadu Village Officers Service Rules, 1970 — Rule 18(b)

Citation : (1976) 1 MLJ 273

Hon'ble Judges : G. Ramanujam, J

Bench : Single Bench

Judgement

G. Ramanujam, J.—The petitioner was one of the four applicants for the post of village headman of Senthurai village. The Revenue

Divisional Officer, the third respondent herein, found that the petitioner and the fourth respondent had all the requisite qualifications, but that the

petitioner is to be preferred for the reason that he had got previous experience of eleven years. On appeal by the fourth respondent, the second

respondent cancelled the petitioner's appointment and appointed the fourth respondent instead as village headman on the ground that as between

the petitioner and the fourth respondent who had the requisite qualifications, the petitioner was over-aged and therefore, the fourth respondent was

to be selected. Aggrieved against the order of the second respondent, the petitioner went before the first respondent, but without any success. The

petitioner has now approached this Court for the issue of a writ of certiorari to quash the order of the first respondent which virtually affirms the

order of the second respondent appointing the fourth respondent as village headman.

2. The two grounds of attack put forward by the Learned Counsel for the petitioner before me are:

(1) that the revisional authority, the first respondent herein has not recorded the reasons as to why the petitioner's revision is rejected; and (2) the

District Revenue Officer, the second respondent, had erroneously proceeded on the basis that Rule 18(b) of the Tamil Nadu Village Officers

Service Rules, 1970, will not apply to the petitioner's case and therefore; the age qualification prescribed under the said rule cannot be applied in

the case of the petitioner.

3. As regards the first contention, the Learned Counsel refers to Rule 10 of the said Rules and states that it is obligatory for the first respondent to

record reasons in writing while disposing of a revision petition filed before it. But, a perusal of Rule 10(4) indicates that the Government may call

for and examine the records relating to any order passed on appeal by the District Collector and, for reasons to be recorded in writing, annul,

modify or reverse or remit for reconsideration such order on any of the grounds specified in Sub-rule (5) of Rule 10. Sub-rule (5) sets out the

grounds on which the order may be annulled, modified or reversed or remitted for reconsideration. In this case, the revisional authority has refused

to interfere with the order passed by the District Collector on appeal. The question is whether the first respondent should have recorded reasons in

writing for rejecting the petitioner's revision petition. The recording of reasons has been made obligatory under the rule only when the order

appealed against is annulled or modified or reversed or remitted for reconsideration. The recording of reasons for annulling, modifying or reversing

or remitting for reconsideration any appellate order is necessary as the statute itself sets out the grounds on which an order could be annulled,

modified or reversed or remitted and one must know as to which of the grounds set out in the sub-clauses of Sub-rule (5) have been relied on by

the re-visional authority for the purpose of annulling, modifying or reversing or remitting for reconsideration of the appellate order. But, the

recording of reasons has not been made obligatory on the part of the first respondent when it is not annulling, modifying or reversing or remitting for

reconsideration any appellate order. I cannot, therefore, accept the contention of the Learned Counsel for the petitioner that the order in question

is vitiated for the reason that the Government has not set out the reasons for rejection of the petitioner's revision petition in the impugned order.

4. As regards the second contention that the age restriction cannot be put against the petitioner in view of Rule 18(b), it is admitted that the petitioner is 42 years of age and that if Rule 18(b) is not applicable to him, he cannot be considered for appointment as village headman under the said rules. The main contention is whether the petitioner can invoke Rule 18(b) so as to get over the age restriction set out in Rule 8. In this context, the undisputed fact is that the petitioner was appointed as a temporary village headman in the same village in the leave vacancy for a long period, but was not continuously for the period from 16th December, 1970 to 19th March, 1975 as required in Rule 18(b). There was a break of twenty-eight days and therefore, the second respondent has taken the view that the petitioner is not entitled to the benefit of Rule 18(b). The Learned Counsel for the petitioner submits that though there was an interruption for a period of twenty-eight days in the temporary service of the petitioner, that should be ignored and he should be taken to have been in continuous temporary service from 16th December, 1970 to 19th March, 1975. According to the Learned Counsel, the rule does not contemplate a continuous service from 16th December, 1970 to 18th March, 1975 and what it contemplates is a temporary service which is substantially continued upto 19th March, 1975. Rule 18(b), so far as it is relevant, is extracted below:

Nothing contained in these rules shall apply to persons who, on 16th December, 1970 were fully qualified under the Board's Standing Orders applicable to the areas not governed by the statute and their appointment had been made by the authority competent under the Board's Standing Orders and are holding the posts of village headman or additional village headman, village karnam or additional village karnam temporarily against permanent vacancies and continue as such on 19th March, 1975 and they shall be deemed to have been appointed on a permanent basis.

The Learned Counsel for the petitioner does not claim that the petitioner's temporary appointment made before 16th December, 1970 in this case should be taken to have been made on a permanent basis as has been provided In the last sentence of the said sub-rule. But, he relies on this sub-rule only for the purpose of getting over the age restriction contained in the Rules. The rule, as extracted, clearly shows that persons who were

found fully qualified and appointed under the Board's Standing Orders on or before 16th December, 1970 and who continue to hold the post on

19th March, 1975 are not to be governed by the restriction contained in these rules. First of all, the petitioner's earlier temporary appointment was

in a leave vacancy and not against a permanent vacancy. As a matter of fact, the admitted break in the service of the petitioner as temporary village

headman was only because the permanent incumbent joined duty and as a result thereof the petitioner had to go out. The permanent vacancy had,

in fact, arisen only on 6th December, 1973 consequent on the resignation of the last office-holder. Therefore, I am of the view that for two reasons

the petitioner cannot claim to be covered by Rule 18(b). Firstly, he has not been appointed in a permanent vacancy on a temporary basis;

secondly, his temporary service was not continuous from 16th December 1970 to 19th March, 1975 as contemplated by Rule 18(b).

5. Thus, the two contentions raised by the petitioner have failed. The writ petition is therefore dismissed.