

(1924) 09 MAD CK 0091
In the Madras High Court

The President, Taluk Board

APPELLANT

Vs

Jutur Chandrappa

RESPONDENT

Date of Decision : 08-09-1924

Acts Referred:

Citation : AIR 1925 Mad 173 : (1925) ILR (Mad) 309 : (1924) 47 MLJ 774

Hon'ble Judges : Jackson, J

Bench : Division Bench

Judgement

Jackson, J.—Petition to revise the order of the District Court of Bellary on a reference made to him u/s 57 of Madras Act XIV of 1920. The point referred to by the Judge, which is the sole question for determination, is whether an Honorary Magistrate who is disqualified for election as a member of a Local Board u/s 55(2)(iv) of the above Act, can relieve himself of that disqualification by submitting his resignation to Government, or whether, on the contrary, the disqualification subsists until Government have removed him from his office.

2. The point was also referred to the Local Self-Government Department by the President of the District Board, Bellary, and it replied in G. O. No. 1308, L and M. Mis., dated 1st August, 1922 : "An Honorary Magistrate is disqualified for election or appointment as a member of a Local Board before his resignation is accepted by the Government." This order was filed before the District Judge who held that it was in literal conformity with the law, and there, it would be thought, the matter might have ended. But the learned Judge proceeding upon what he describes as the spirit of the law, apparently meaning the intention of the Legislature which it had failed to express in its statute, declared that a bare resignation is sufficient. A Judge has no dispensing power which allows him to go behind the plain import of a statute, and on this particular point the law is clear. u/s 14(1) of the Code of Criminal Procedure the Local Government may confer upon any person all or any of the powers conferrable on a Magistrate u/s 26 of the Code of Criminal Procedure all Magistrates may be removed from office by the Local Government. A person so appointed cannot remove himself by

resignation. This is the doctrine of the English Common Law : " After an office was conferred and assumed, it could not be laid down without the consent of the appointing power." (Payne's Law of Elections, 1890, page 201). English case-law is not of much assistance unless we know the exact terms on which the office sought to be renounced was held. But *Pease v. Lowden* (1898) 1 QB D 386 follows the above principle of Common Law. Two Scotch cases quoted in *Rogers on Elections*, Vol. II, p. 27, carry the matter no further, as shown in *Akula Sudarsana Rao Vs. J.A. Christian Pillai and Others*, where they are discussed. In this Madras case it is remarked, " It may be that the need for acceptance does not apply to honorary appointments. But it is unnecessary to pursue this line of argument further " page 799. I do not know what line of argument was then advanced. It is suggested before me that the appointment of an Honorary Magistrate is analogous to a contract without consideration, but pursued to its logical conclusion, this becomes absurd, for such an appointment would be void ab initio. I see no distinction in law between a Magistrate who receives and a Magistrate who does not receive a salary for the performance of his duties. Therefore the head note to *Akula Sudarsana Rao Vs. J.A. Christian Pillai and Others*, is correct, " An Honorary Magistrate does not cease to hold his office on his resignation, but only when the resignation is accepted," although that actual judgment contains obiter a query in the contrary sense.

3. The Civil Revision Petition is allowed with costs.