
(1972) 11 MAD CK 0011
In the Madras High Court

V.P. Thirunavukkarasu

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 03-11-1972

Acts Referred:

Evidence Act, 1872 — Section 115

Citation : (1973) 86 LW 483 : (1973) 2 MLJ 181

Hon'ble Judges : K.S. Palaniswamy, J;K.S. Palaniswami, J

Bench : Division Bench

Judgement

K.S. Palaniswamy, J.—The petitioner prays for the issue of a writ of certiorari to quash the order of the District Revenue Officer,

Cuddalore, in his proceedings No. A2-20883 of 1970, dated 23rd November, 1970 by which the petitioner, who was serving as Deputy

Surveyor in the Survey Department, was reverted as Field Surveyor with immediate effect. The petitioner is a member of a Backward Class

(Hindu Agamudayar). Prior to the formation of the Andhra Pradesh State, the petitioner was recruited for survey training on 16th May, 1951 by

the Officer-in -charge, Chittoor. After training, he was appointed temporarily as Field Surveyor on 16th July, 1951 and he was taken in the

permanent establishment with effect from 1st August, 1951, but his services were not regularised by the Andhra Pradesh Government after its

formation. The petitioner was promoted by the Andhra Pradesh Government as Deputy Surveyor on 10th February, 1960. The petitioner applied

to the Tamil Nadu Government to be transferred to the services of the Tamil Nadu Government. By G.O. Ms. No. 837, Revenue, dated 16th

March, 1965, the Tamil Nadu Government decided to take back the petitioner on three conditions, (1) that he would be taken as a Field Surveyor

; (2) that he would take the last rank in the seniority list of Field Surveyors in the Tamil Nadu State and (3) that he would not be eligible for

travelling allowance for his transfer to the Tamil Nadu State. The petitioner accepted these conditions and joined duty as Field Surveyor in the

office of the Special Deputy Collector, Mettur Dam, on 14th June, 1965. One Murugesan, was also likewise transferred to the Tamil Nadu State

by G.O. Ms. No. 2780, Revenue, dated 27th September, 1965. The petitioner joined duty in Tamil Nadu State before Murugesan joined duty.

As the said Murugesan had been promoted as Deputy Surveyor, proceedings were issued by the Deputy Director of Survey and Land Records on

13th May, 1969 instructing the Assistant Director of Survey and Land Records, Cuddalore, to promote the petitioner also as Deputy Surveyor as

he had joined duty in the Tamil Nadu State earlier than Murugesan. For the purpose of declaring the probation of the petitioner, the Assistant

Director of Survey and Land Records addressed the corresponding : officer in Chittoor. It appears that at the time the Assistant Director of Survey

and Land Records, Chittoor, stated that the petitioner did not possess the minimum general educational qualification. On verification of the

S.S.L.C. book of the petitioner it was found that he had secured only 37 marks in English, which did. not satisfy the minimum general educational

qualification prescribed in Rule 12 of the General Rules for State and Sub-ordinate Service Rules. It is after this-fact was discovered, the impugned

proceedings were issued reverting the petitioner as Field Surveyor. By the same proceedings, .the petitioner was informed that he would continue

in service under Rule 10 (a) (1) of the General Rules for State and Subordinate Service as Field-Surveyor. The petitioner's contention is that at no

time he was informed that he did not possess the minimum general education qualification, that after having entertained him in service for nearly 20

years, it was wholly inequitable and unjust to revert him as Field Surveyor, and that too under Rule 10 (a) (1), that the respondent is estopped

from passing the impugned order and that considerable prejudice is likely to be caused to the petitioner on account of the reversion order, which

entails monetary loss also in addition to reduction in rank. His further submission is that the impugned order is vitiated in that he was not given a

reason-able opportunity to show cause as to why the said order should not be passed.

2. A counter affidavit is filed on behalf of the respondent pointing out that at the time when the petitioner was appointed, he was not fully qualified, as he had secured only 37 marks in English whereas, the minimum, according to rules was 40 marks in English. It is also pointed out that though the petitioner was entitled to concession which had been extended to Backward Classes, that concession was withdrawn with effect from 1st January, 1951 as per G.O. Ms. No. 543, Public Services, dated 13th January, 1951. It is, therefore, contended that the petitioner was continued only as a temporary hand, as his services could not be regularised for want of minimum general educational qualification. The impugned order is sought to be sustained on the ground that inasmuch as the petitioner was not qualified for appointment only on a temporary basis, he was reverted, as soon as the mistake was discovered.

3. This is indeed an unfortunate case. For no fault of the petitioner, he is now made to suffer after he has put in nearly 20 years of service in the belief that he was qualified to continue in service. It is not the case of the respondent that at any time the petitioner represented that he was fully qualified ; nor was the petitioner informed at any time that he did not possess the minimum general educational qualification so as to entitle him to get confirmed in Government service. It appears that, as the petitioner belonged to backward class, he applied to the Survey Department, and the appointing authority under the composite State, perhaps in ignorance of the withdrawal of the concession extended to backward classes, appointed the petitioner. No one appears to have noticed the said withdrawal of concession at any time. When the petitioner was transferred from Andhra Pradesh to Tamil Nadu in the year 1965, he was not told that he was not qualified ; nor did the Andhra Pradesh Government inform the Tamil Nadu Government that the petitioner did not possess the minimum general educational qualification ; nor did the concerned authorities of the Tamil Nadu Government take any care to verify at the time when the petitioner was promoted as Deputy Surveyor whether he possessed the necessary qualification. After the transfer to Tamil Nadu, the petitioner was permitted to appear for the Head Surveyor and Sub-Assistant Test, and after he came out successful, the results were published in the Fort St. George Gazette. He also passed the practical test, the result of which

was again published in the Gazette. It was thereafter that he was promoted as Deputy Surveyor. I felt that there should have been some materials

for the authorities concerned to proceed on the basis that the petitioner had the necessary qualification, and, therefore, I directed the Service

Register of the petitioner to be produced. Accordingly, the Assistant Government Pleader produced the Service Register which, on scrutiny, is

found to contain the entry:

S.S.L.G. Eligible for Service Commission.

at pages 5 and 7. It cannot be suggested that the petitioner should have made this entry fraudulently, as he is not the person who should maintain it.

It would be only with the superior officer or head of the office and would be made available to the petitioner only for the purpose of taking his

signature in column a, not regularly but only on certain occasions. The petitioner's signature was taken only once, presumably when the Register

was opened and his signature was not obtained subsequently at any time. There is no room to think that the entry about the petitioner's

qualification in the Service Register should have been made fraudulently. The entry in the Service Register is not explained by the respondent. It is

thus seen that at all material times the authorities concerned have proceeded on the basis that the petitioner was qualified for holding the post and

also for promotion. The petitioner was made to believe that he was fit enough to be continued in service and be considered for promotion. As a

matter of fact, his claim was considered and he was promoted, though temporarily. At the time of the filing of this writ petition, the petitioner was

aged about 40.

4. The question in these circumstances is whether it is open to the respondent to pass the impugned order reverting the petitioner as Field Surveyor

and directing him to continue in that post under Rule 10 (a) (1). It is contended on behalf of the petitioner that the respondent is estopped from

passing the impugned order. In my view, this submission is well-founded. In The Registrar, University of Madras Vs. Sundara Shetti and Others,

the doctrine of equitable estoppel was invoked by a student. A particular candidate was declared eligible for admission into the University Course

of studies. A few months prior to the termination of the course and before the University examination it was discovered that the candidate was not

eligible for admission. The University cancelled the certificate and the cancellation was challenged under Article 226 of the Constitution.

Rajagopalan, J., held that the candidate had to opportunity to make any representation to the University before the cancellation of the certificate

and that the revocation of the certificate, which was acted upon in good faith by the candidate, without giving an opportunity to him of showing

cause against the contemplated revocation, was opposed to principles of natural justice. The learned Judge further held that the cancellation of the

certificate amounted to an exercise of power so unreasonable in the circumstances of the case that the Court was bound to treat that by itself as

sufficient justification for setting aside the order of the University. The appeal preferred by the University was dismissed. Rajamannar, C.J.,

speaking for the Court observed at page 32:

On the strength of a wrong endorsement made by the Secretary, Secondary Education Board, acting presumably on behalf of the University, the

petitioner had expended time and money in pursuing a course of study in the College for nearly two years. He should not now be told that there

was a mistake and all the two years of his study should go waste. We would prefer to rest our decision on this ground of equitable estoppel rather

than on the ground of unreasonable exercise of power by the University, though ultimately the same result follows.... In our opinion, this is an

instance of something much more substantial than what Mr. Venkatasubramania Ayyar characterised as sentimental estoppel. It is a case of legal or

equitable estoppel which satisfies practically all the conditions embodied in Section 115 of the Evidence Act.

5. A single Judge of the Andhra Pradesh High Court took a similar view in K. Jagannadham Vs. District Collector, Kurnool and Another, . In that

case, the petitioner was allowed to appear for a competitive examination as being duly qualified and he came out successful in the examination.

Thereafter, he was appointed on probation as typist after his name was included in the list of approved candidates for appointment selected by the

Service Commission. Subsequently, it was discovered that he was not qualified to sit for the competitive examination and on that he was reverted.

The validity of the order of reversion was challenged. It was held that the petitioner had become over-aged at the time of discharge and that there

was no valid justification for depriving him of his service career merely because the authorities happened to be remiss or negligent in informing

themselves correctly at the appropriate time of a matter which related to a period anterior to the petitioner's appointment in Government service.

6. In *Kothainayaki v. Director of Secondary Education* W.P. No. 2749 of 1967, a similar question arose before Ismail, J. In that case, the

petitioner was appointed temporarily as a sewing mistress and was considered to possess the minimum general educational qualification though, in

fact, she did not possess. She was declared to have satisfactorily completed her probation. But it was discovered that at the time of appointment,

she did not possess, the requisite qualification and thereupon an order was passed refixing her salary on the basis of her being an unqualified

candidate and cancelling the previous-orders sanctioning increments. The petitioner was also asked to be relieved from her duties. The validity of

that order was challenged. The learned Judge allowed the petition pointing out that the petitioner at no time made any misrepresentation with

regard to her actual qualification or put forward a claim to a qualification which she did not possess and that, in those circumstances, the order was

unsustainable.

7. The Assistant Government Pleader contended that inasmuch as the petitioner did not possess the prescribed minimum general educational

qualification at the time of appointment, the appointment itself was illegal and that, therefore, the illegality cannot be perpetuated by invoking the

doctrine of estoppel. His submission is that the order of appointment itself is void ab initio and that, therefore, there is nothing in law to prevent the

Government to set right the mistake as soon as the mistake is discovered. In support of this argument, he relied on the decision of the Supreme

Court in *State of Punjab Vs. Jagdip Singh and Others*, . There , the facts are a bit complicated, and it is unnecessary to refer to the detailed facts.

The Financial Commissioner of the State of Pepsu confirmed certain persons who were officiating as Tahsildars. At that time, no posts were

available in which those persons could be confirmed. After the merger of the State of Pepsu with the State of Punjab by virtue of the operation of

the State; Reorganisation Act, 1956, the action of the Financial Commissioner was examined and the Punjab Government issued a notification,

reconfirming"" the persons concerned. The validity of this action was challenged. It was held by a majority that the order of the Financial

Commissioner had no legal foundation as there was no vacancy in which certain confirmation could take place and that, therefore, the order of the

Financial Commissioner making confirmation was wholly void. It was also held that there was no rule which empowered the Financial

Commissioner to create a new post of Tahsildar, and that the creation of supernumerary posts was an afterthought and was of no avail. In view of

these conclusions, the Supreme Court held that the impugned order was valid. I am unable to see how this decision is applicable to the facts of the

instant case. This is not a case of want of a vacancy ; nor is it a case of want of authority of the person who appointed the petitioner. The only

short question is whether at this stage after the petitioner has put in about 21 years of service he should be told that he is not qualified to hold the

post to which he was appointed and is also not qualified to be considered for promotion to higher post, though he was found to be qualified for

promotion, and, as a matter of fact, was promoted. It was open to the Government to relax the rule prescribed for the minimum general

educational qualification and to appoint the petitioner if at the time of appointment, the lack of minimum general educational qualification had been

noticed. As a matter of fact, it is alleged in the counter affidavit in this case that the case of the petitioner has been recommended to the Board of

Revenue for grant of exemption as regards the minimum, general educational qualification. Therefore, it is not as though there was absolute

prohibition against appointing a person not possessing the minimum general educational qualification. If the terms of a statute are absolute and do

not admit of any relaxation or exemption, then anything done contrary to the terms of such a statute would be ultra vires and would be void and no

person could be estopped from putting forward the contention that what he did was illegal or void. But, if, on the other hand, a statute having

prescribed certain conditions or qualifications for the doing of a certain thing itself pro-vides for exemption therefrom under certain circumstances

or authorises some-body to exercise the power of exemption then anything done not in terms of those conditions or qualifications would not be

said to be ultra vires. It may amount only to an irregularity and to such an act the proposition that there can be no estoppel against a statute will

have no application. It would be most inequitable and unjust to hold that the petitioner cannot hold the post at this late stage of his life and also to treat him as a candidate appointed under Rule 10 (a) (1) without any right to hold the post. If the authorities concerned, whose duty was to check up the qualification of the persons who apply for appointment, had done their duty properly and if the authorities concerned, who had maintained the Service Register of the petitioner for a long number of years, had done their duty properly by checking the qualification of the petitioner, it would have been possible for them to have discovered that the petitioner did not possess the minimum general educational qualification, though the Service Register was prepared wrongly as if he was eligible for Service Commission. If the petitioner had been told at the earliest opportunity about his lack of qualification, he would have taken a decision either to continue in service as a temporary candidate without necessary qualification or to seek employment elsewhere on a permanent footing or to qualify himself by appearing for the necessary examination. Though the authorities concerned cannot be charged with having done anything positively to the detriment of the petitioner, they by reason of their inaction or silence for a long number of years after the petitioner's entry into service have induced the petitioner to believe that he was qualified to continue in, service. In those circumstances, this is eminently a fit case for the application of the doctrine of equitable estoppel, and the order of the respondent cannot be sustained.

8. In the result, the writ petition is allowed and the impugned order is quashed. The petitioner is entitled to his costs. Counsel's fee Rs. 100.