

Madras High Court

E.J. Madhava Mudaliar vs The Revenue Divisional Officer ... on 2 August, 1971

Equivalent citations: (1972) 1 MLJ 108

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ORDER K.S. Palaniswamy, J.

1. The Office of the Headman, Injambakkam Village, Kancheepuram Taluk, fell vacant consequent on the death of the permanent incumbent. The petitioner was appointed on 1st February, 1967 as a temporary headman for the said village. To fill up the vacancy on a long term temporary basis, the Tahsildar of Kancheepuram invited applications. The petitioner and the fourth respondent applied for the post. On a consideration of the merits of the claims of the petitioner and the fourth respondent, the Revenue Divisional Officer appointed the fourth respondent. Against that order, the petitioner preferred an appeal to the District Revenue Officer. That appeal having been dismissed, the petitioner preferred a second appeal to the Board of Revenue. The Board having rejected the appeal, the petitioner has filed this writ petition praying for the issue of a Writ of certiorari to quash the said proceedings.

2. Mr. Sivamani, appearing for the petitioner put forward two main contentions. His first contention was that the petitioner having been already appointed on a temporary basis on a due consideration of his qualifications, there was no jurisdiction in the Revenue Divisional Officer to appoint the fourth respondent on a long term temporary basis for which there is no provision in the Board's Standing Order. The second contention was that the petitioner was not given a personal hearing by the Board and that this was in violation of the proviso to Board's Standing Order 156-A.

3. I am unable to accept any of these two contentions. The petitioner's appointment in the year 1967 was only temporary consequent on the demise of the permanent incumbent. As the petitioner was appointed purely temporarily with the further condition that his services were liable to be terminated at any time, such an appointment did not confer any right upon the petitioner to insist that he should be continued in office. To fill up the post on a permanent basis, applications were called for and the claims of the petitioner and the fourth respondent were considered. No doubt, the order did not state that the fourth respondent was appointed on a permanent basis. The order stated that the appointment was on a long term temporary basis. This was obviously due to the fact that at the time of this appointment in the year 1968, the position as to the rights of the incumbents was not settled on account of the decision of the Supreme Court holding that Section 6 of the Hereditary Village Officers Act was ultra vires. The Board had not framed necessary regulations regarding the permanent filling up of the posts. It was, therefore, evidently thought that the post should be filled up on a long term temporary basis. The petitioner after having applied for the post to be filled up on long term temporary basis, is hardly entitled to question the power of the Revenue Divisional Officer to make such appointment. As correctly pointed out on behalf of the respondents, if at all anybody is aggrieved, it is the fourth respondent who can say that his appointment should be permanent and not on a long term temporary basis. The petitioner has no locus standi to question that appointment, he having been appointed only temporarily without any lien over the post.

4. The proviso to B.S.O. 156-A says that no order prejudicial to any party shall be passed unless he has had a reasonable opportunity of making his representations. Mr. Sivamani's contention is that the order passed by the Board rejecting the appeal filed by the petitioner was prejudicial to him and that before passing that order, the petitioner should have been given a reasonable opportunity of making his representations. I am unable to accept this argument. At the time when the petitioner presented his second appeal, he put forward all his objections to the order against which he had filed the second appeal. The proviso is not intended to cover a case of confirmation of the order against which either an appeal or revision is filed. The proviso obviously contemplates a case of passing an order differing from the order of the lower authority, in which case the party against whom the order is proposed to be passed is naturally entitled to be heard before the adverse order is passed. If the intention was that the applicant who invokes the power under B.S.O. No. 156-A should be heard irrespective of the result of the order that may be passed, one would expect a different language.

5. Mr. Sivamani wanted to argue on the relative merits of the petitioner and the fourth respondent. In this proceeding it is not open to the petitioner to canvass the relative qualifications, as the competent authorities have considered the qualifications and found that the fourth respondent is a preferable candidate. There is no ground to interfere with that finding. The Writ Petition is dismissed. No costs.