Gazula Dasaratha Rama Rao

Vs

The State of Andhra Pradesh & Others

Petition No. 133 of 1959

(S.K. Das, M. Hidayatullah, K.C. Das Gupta, J.C. Shah, N. Rajgopala Ayyangar JJ)

06.12.1960

JUDGMENT

S. K. DAS, J. -

This is writ petition under Art. 32 of the Constitution. Gazula Dasaratha Rama Rao is the petitioner. The respondents are (1) the State of Andhra Pradesh, (2) the Board of Revenue, Andhra Pradesh, (3) the Collector of Guntur in Andhra Pradesh and (4) Vishnu Molakala Chandramowleshwara Rao. The petitioner prays that this Court must declare section 6 of the Madras Hereditary Village-Offices Act, 1895 (Madras Act III of 1895), hereinafter called the Act, as void in so far as it infringes the fundamental right of the petitioner under Arts. 14 and 16 of the Constitution, and further asks for an appropriate writ or direction quashing certain orders passed by respondents 1 to 3 in favour of respondent No. 4 in the matter of the latter's appointment as Village Munsif of a newly constituted village called Peravalipalem. When this petition first came up for hearing we directed a notice to go to other States of the Union inasmuch as the question raised as to the constitutional validity of the law relating to a hereditary village office was of general nature and might arise in relation to the existing laws in force in other States. Except the State of Andhra Pradesh which has entered appearance through its Advocate-General, none of the other States have entered appearance. The Advocate-General of Andhra Pradesh has appeared for respondents 1 to 3, and respondent 4 has been separately represented before us. These respondents have contested the application and have pleaded that section 6 of the Act does not violate any fundamental right, nor are the impugned orders of respondents 1 to 3 invalid in law.

The short facts are these : Village Peravali in Tenali taluq of the district of Guntur in the State of Andhra Pradesh was originally comprised of a village of the same name and a fairly large hamlet called Peravalipalem. The two were divided by a big drainage channel. It is stated that for purposes of village administration the villages felt some difficulties in the two being treated as one unit. So the villagers, particularly those of the hamlet, put in an application to the Revenue authorities for constituting the hamlet into a separate village. This application was recommended by the Tehsildar and was accepted by the Board of Revenue and the State Government. By an order dated August 25, 1956, Peravali village was bifurcated and two villages were constituted. The order was published in the District Gazette on October 15, 1956, and was in these terms :

> "The Board sanctions the bifurcation of Peravali village of Tenali taluq, Guntur district, into two villages, viz., (1) Peravali and (2) Peravalipalem along the boundary line shown in the map submitted by the Collector of Guntur with his letter Re. A. 4. 28150/55 dated 30th June, 1956. These orders will come into effect from the date of publication in the District Gazette.

> 2. The Board sanctions the following establishments on the existing scale of pay for the two villages :
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> #Peravali :-1 Village Munsif.1 Karnam.1 Talayari.3 Vettians.Peravalipalem :-1 Village Munsif.1 Karnam.1 Talayari.1 Vettian."##

It is convenient to read at this stage sub-section (1) of section 6 of the Act under which the bifurcation was made :

> "S. 6(1). In any local area in which this Act is in force the Board of Revenue may, subject to rules made in this behalf under section 20, group or amalgamate any two or more villages or portions thereof so as to form a single new village or divide any village into two or more villages and, thereupon, all hereditary village offices (of the classes defined in section 3, clause (1), of this Act) in the villages or portions of villages or village grouped, amalgamated or divided as aforesaid, shall cease to exist and new offices, which shall also be hereditary shall be created for the new village or villages. In choosing persons to fill such new offices, the Collector shall select the persons whom he may consider the best qualified from among the families of the last holders of the offices which have been abolished."

On the division of the village into two villages, all the hereditary village offices of the original village ceased to exist under the aforesaid sub-section, and new offices were created for the two villages. We are concerned in this case with the appointment to the office of Village Munsif in the newly constituted village of Peravalipalem. In accordance with the provisions of sub-section (1) of section 6 and certain Standing Orders of the Board of Revenue, the Revenue Divisional Officer, Tenali, invited applications for the post of Village Munsif of Peravalipalem. Eight applications were made including one by the petitioner and another by respondent 4. Respondent 4, be it noted, is a son of the Village Munsif of the old village Peravali. By an order dated October, 18, 1956, the Revenue Divisional Officer, appointed the petitioner as Village Munsif of Peravalipalem. From the order of the Revenue Divisional Officer, respondent 4 and some of the other unsuccessful applicants preferred appeals to respondent 3, the Collector of Guntur. By an order dated April 1, 1957, respondent 3 allowed the appeal of respondent 4 and appointed him as Village Munsif of Peravalipalem. In his order respondent 3 said : "Shri V. Chandramowleswara Rao is qualified for the post. He is the son of the present Village Munsif of Peravali and is, therefore, heir to that post..... Section 6(1) of the Hereditary Village Offices Act states that in choosing a person to fill a new office of this kind the Collector shall select the person whom he may consider best qualified from among the family of the last holder of the office which has been abolished. The Village Munsif's post of the undivided village of Peravali was abolished when the village was divided and the new post of Village Munsif of Peravalipalem has to be filled up from among the family of the previous Village Munsif. The same instructions are contained in Board's Standing Order 148(2)."

The petitioner then carried an appeal from the order of respondent 3 to the Board of Revenue. By an order dated April 24, 1958, the Board dismissed the appeal and stated :

> "According to section 6, in choosing the person to fill in a new office like this, the Collector shall select the person whom he considers best qualified from among the families of the last holders of the office, which have been abolished. Here the office of the Village Munsif was abolished and two new offices have been created. As the last holder of the office was appointed to the new village, Peravali, after bifurcation,

> the Collector has appointed the son of the last office holder as Village Munsif of Peravalipalem as he is the nearest heir. The appellant before the Board cannot claim any preference over the son of the last office holder. The Board, therefore, holds that the Collector's order is in accordance with the law on the subject. No interference, is, therefore, called for."

The petitioner then moved respondent 1, but without success. Thereafter, he filed the present writ petition.

The petitioner relies mainly on clauses (1) and (2) of Art. 16 of the Constitution. We may read those clauses here :

> "Art. 16(1). There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State :
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> (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State."

On behalf of the petitioner it has been contended that (1) the office of Village Munsif of Peravalipalem is an office under the State, and (2) respondents 1 to 3 in passing their orders in favour of respondent 4 expressly stated that they proceeded on the basis of the hereditary principle laid down in section 6(1) of the Act and discriminated against him as a citizen on the ground of descent only. This discrimination, it is argued, violates the guarantee of equal opportunity enshrined in Art. 16, cls. (1) and (2); and section 6(1) of the Act to the extent that it permits such discrimination is void under Art. 13(1) of the Constitution.

The first question before us is if the office of Village Munsif under the Act is an office under the State within the meaning of cls. (1) and (2) of Art. 16 of the Constitution. For determining that question it is necessary to examine the scheme and various provisions of the Act. The long title shows that it was an Act made to repeal Madras Regulation VI of 1831 and for other purposes. The purposes mentioned in the preamble are - "to provide more precisely for the succession to certain hereditary village offices in the State; for the hearing and disposal of claims to such offices or the emoluments annexed thereto; for the appointment of persons to hold such offices and the control of the holders thereof; and for certain other purposes." Section 3 of the Act refers to classes of village offices to which the Act applies and Village Munsif is one of such offices. Under section 4 "emoluments" of the office means and includes (i) lands; (ii) assignment of revenue payable in respect of lands; (iii) fees in money or agricultural produce; and (iv) money-salaries and all other kinds of remuneration granted or continued in respect of, or annexed to, any office by the State. Section 5 lays down that the emoluments of village offices, whether such offices be or be not hereditary, shall not be liable to be transferred or encumbered in any manner whatsoever and it shall not be lawful for any Court to attach or sell such emoluments or any portion thereof. Sub-section (1) of section 6 relates to the grouping or division of villages; this sub-section we have already read. Sub-section (2) of section 6 gives a right to the Board of Revenue, subject to the approval of Government, to reduce the number of village offices, and on such reduction the Collector is empowered to dispense with the services of the officers no longer required. Sub-section (3) of section 6 which was subsequently added in 1930 says that a minor shall not be ineligible for selection by reason of his minority only. Section 7 states the circumstances in which the Collector may, of his own motion or on complaint and after enquiry suspend, remove or dismiss, etc., some of

the village officers mentioned in section 3. A similar power of punishment is also give to the Tehsildar. Under these provisions the Collector may suspend, remove or dismiss the Village Munsif. Section 10 lays down certain rules which are to be observed in making appointments to some of the village offices and these rules lay down, among other things, the general qualifications requisite for appointment to the offices in question. For examples, for the appointment to the office of Village Munsif no person is eligible unless he has attained the age of majority, is physically and mentally capable of discharging the duties of the office, has qualified according to the educational test prescribed for the office by the Board of Revenue, has not been convicted by a Criminal Court of any offence which, in the opinion of the Collector, disqualifies him for holding the office and has not been dismissed from any post under the Government on any ground which the Collector considers sufficient to disqualify him for holding the office. One of the qualifications prescribed by section 10 as it originally stood required that the applicant must be of the male sex. This requirement was deleted by the Adaptation (Amendment) Order of 1950, presumably to bring the section into conformity with Arts. 15 and 16 of the Constitution which prohibit discrimination on the ground of sex. Sub-section (2) of section 10 says that the succession shall devolve on a single heir according to the general custom and rule of primogeniture governing succession to impartible zamindaris in Southern India. Sub-section (3) of section 10 says that where the next heir is not qualified, the Collector shall appoint the person next in order of succession, who is so qualified, and, in the absence of any such person in the line of succession, may appoint any person duly qualified. Sub-ss. (4), (5) and (6) of section 10 deal with matters with which we are not directly concerned. Section 11 lays down the rules to be observed in making appointments to certain offices in proprietary estates and one of the rules is that succession shall devolve in accordance with the law or custom applicable to the office in question. Section 13 in effect says that any person may sue before the Collector for any of the village offices specified in section 3 or for the recovery of the emoluments of any such office on the ground that he is entitled to hold such office and enjoy such emoluments. There are some provisos to the section which lay down limitations on the right of suit. With those limitations we are not concerned in the present case. Section 14 lays down the period of limitation for bringing a suit. Sections 15, 16 and 17 relate to the transfer and trial of such suits and the decrees or orders to be passed therein. Section 20 empowers the Board of Revenue to make rules and section 21 bars the jurisdiction of Civil Courts. Section 23 provides for appeals.

The above gives in brief the scheme and provisions of the Act. These provisions show, in our opinion, that the office of Village Munsif under the Act is an office under the State. The appointment is made by the Collector, the emoluments are granted or continued by the State, the Collector has disciplinary powers over the Village Munsif including the power to remove, suspend or dismiss him, the qualifications for appointment can be laid down by the Board of Revenue - all these show that the office is not a private office under a private employer but is an office under the State. The nature of the duties to be performed by the Village Munsif under different provisions of the law empowering him in that behalf also shows that he holds a public office. He not only a aids in collecting the revenue but exercise power of a magistrate and of a Civil Judge in petty cases. He has also certain police duties as to repressing and informing about crime, etc.

The learned Advocate-General appearing for respondents 1 to 3 has contended that the expression "office under the State" in Art. 16 has no reference to an office like that of the Village Munsif, which in its origin was a customary village office later recognised and regulated by law. His contention is that the expression has reference to a post in a Civil Service and an ex-cadre post under a contract of service, as are referred to in Arts. 309 and 310 in Part XIV of the Constitution relating to the Services under the Union and the States. He has referred in support of his contention to Ilbert's Supplement to the Government of India Act, 1915, p. 261, where a similar provision with

regard to the Indian Civil Service has been referred to as laying down that "no native of British India..... is by reason only of his religion, place of birth, descent, or colour, or any of them disabled from holding any place, office or employment under His Majesty in India" and has pointed out that the aforesaid provision reproduced section 87 of the Act of 1833 and historically the office to which the provision related was an office or employment in a Service directly under the East India Company or the Crown. He also referred to section 298 of the Government of India Act, 1935, which said inter alia that "no subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of them be ineligible for office under the Crown in India". The argument of the learned Advocate-General is that Act. 16 embodies the same principle as inspired the earlier provisions referred to above, and like the earlier provisions it should be confined to an office or post in an organised public Service or an ex-cadre post under a contract of service directly under the Union or the State. He has further suggested that the deletion of the requirement as to sex in section 10 of the Act was by reason of Art. 15 and not Art. 16 of the Constitution. The argument is plausible, but on a careful consideration we are unable to accept it as correct. Even if we assume for the purpose of argument that Arts. 309 and 310 and other Articles in Chapter I, Part XIV, of the Constitution relate only to an organised public Service like the Indian Administrative Service, etc., and ex-cadre posts under a direct contract of service which have not yet been incorporated into a Service, we do not think that the scope and effect of cls. (1) and (2) of Art. 16 can be cut down by reference to the provisions in the Services Chapter of the Constitution.

Article 14 enshrines the fundamental right of equality before the law or the equal protection of the laws within the territory of India. It is available to all, irrespective of whether the person claiming it is a citizen or not. Article 15 prohibits discrimination on some special grounds-religion, race, caste, sex, place of birth or any of them. It is available to citizens only, but is not restricted to any employment or office under the State. Article 16, cl. (1), guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State; and cl. (2) prohibits discrimination on certain grounds in respect of any such employment or appointment. It would thus appear that Art. 14 guarantees the general right of equality; Arts. 15 and 16 are instances of the same right in favour of citizens in some special circumstances. Article 15 is more general that Art. 16, the latter being confined to matters relating to employment or appointment to any office under the State. It is also worthy of note that Art. 15 does not mention 'descent' as one of the prohibited grounds of discrimination, whereas Art. 16 does. We do not see any reason why the full ambit of the fundamental right guaranteed by Art. 16 in the matter of employment or appointment to any office under the State should be cut down by a reference to the provisions in Part XIV of the Constitution which relate to Services or to provisions in the earlier Constitution Acts relating to the same subject. These Service provisions do not enshrine any fundamental right of citizens; they relate to recruitment, conditions and tenure of service of persons, citizens or otherwise, appointed to a Civil Service or to posts in connection with the affairs of the Union or any State. The word 'State', be it noted, has a different connotation in Part III relating to Fundamental Rights : It includes the Government and Parliament of India, the Government and Legislature of each of the State and all local or other authorities within the territory of India, etc. Therefore, the scope and ambit of the Service provisions are to a large extent distinct and different from the scope and ambit of the fundamental right guaranteeing in all citizens an equality of opportunity in matters of public employment. The preamble to the Constitution states that one of its objects is to secure to all citizens equality of status and opportunity; Art. 16 gives equality of opportunity in matters of public employment. We think that it would be wrong in principle to cut down the amplitude of a fundamental right by reference to provisions which have an altogether different scope and purpose. Article 13 of the Constitution lays down inter alia that all laws in force in the territory of India

immediately before the commencement of the Constitution, in so far as they are inconsistent with fundamental rights, shall to the extent of the inconsistency be void. In that Article 'law' includes custom or usage having the force of law. Therefore, even if there was a custom which has been recognised by law with regard to a hereditary village office, that custom must yield to a fundamental right. Our attention has also been drawn to cl. (4) of Art. 16 which enables the State to make provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. The argument is that this clause refers to appointments or posts and further talks of inadequate representation in the services, and the learned Advocate- General has sought to restrict the scope of cls. (1) and (2) of Art. 16 by reason of the provisions in cl. (4). We are not concerned in this case with the true scope and effect of cl. (4) and we express no opinion with regard to it. All that we say is that the expression 'office under the State' in cls. (1) and (2) of Art. 16 must be given its natural meaning.

We are unable, therefore, to accept the argument of the learned Advocate-General that the expression 'office under the State' in Art. 16 has a restricted connotation and does not include a village office like that of the Village Munsif. In M. Ramappa v. Sangappa and other ([1959] S.C.R. 1167.) the question arose whether certain village offices governed by the Mysore Villages Offices Act, 1908, were offices of profit under the Government of any State within the meaning of Art. 191 of the Constitution. This Court held that the offices were offices of profit under the Government and said :

> "An office has to be held under someone for it is impossible to conceive of an office held under no one. The appointment being by the Government, the office to which it is made must be held under it, for there is no one else under whom it can be held. The learned Advocate said that the office was held under the village community. But such a thing is an impossibility for village communities have since a very long time, ceased to have any corporate existence."

Learned Counsel for respondent 4 has presented a somewhat different argument on this question. He has submitted that the office of Village Munsif is not merely an office simpliciter; but it is an office cum property. His argument is that Art. 16 does not apply to a hereditary village office because a person entitled to it under the Act has a pre-existing right to the office and its emoluments, which he can enforce by a suit. We now proceed to consider this argument.

Learned Counsel for respondent 4 has relied on the decision of this Court in Angurbala Mullick v. Debabrata Mullick ([1951] S.C.R. 1125.) where it was held that in the conception of shebaiti under Hindu law, both the elements of office and property, of duties and personal interest, are mixed up and blended together; and one of the elements cannot be detached from the other. He has argued that on the same analogy the office of a village Munsif must be held to be an office cum property. We do not think that the analogy holds. As this Court pointed out in Kalipada Chakraborti and Another v. Palani Bala Devi and Others ([1953] S.C.R. 503.) shebaitship is property of a peculiar and anomalous character and it is difficult to say that it comes under the category of immovable property as it is known to law. As to the office of a Village Munsif under the Act, the provisions of the Act itself and a long line of decisions make it quite clear that what go with the office are its emoluments, whether in the shape of land, assignment of revenue, agricultural produce, money, salary or any other kind of remuneration. These emoluments are granted or continued in respect of, or annexed to, the office by the State. This is made clear by section 4 of the Act. Apart from the office there is no right to the emoluments. In other words, when a person is appointed to be a

"Village Munsif" it is an appointment to an office by the State to be remunerated either by the use of land or by money, salary, etc.; it is not the case of a grant of land burdened with service, a distinction which was explained by the Privy Council in Lakhamgouda Basavprabhu Sardesai v. Baswantrao and Others (A.I.R. 1931 P.C. 157.). In Venkata v. Rama (I.L.R. 8 Mad. 249.) where the question for decision was the effect of the enfranchisement of lands forming the emoluments of the hereditary village office of Karnam, it was pointed out :

> "Emoluments for the discharge of the duties of the office were provided either in the shape of land exempt from revenue or subject to a lighter assessment, or of fees in grain or cash, or of both land and fees.
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> When the emoluments consisted of land, the land did not become the family property of the person appointed to the office, whether in virtue of an hereditary claim of the office or otherwise. It was an appanage of the office inalienable by the office holder and designed to be the emolument of the officer into whose hands so ever the office might pass. If the Revenue authorities thought fit to disregard the claim of a person who asserted an hereditary right to the office and conferred it on a stranger, the person appointed to the office at once become entitled to the lands which constituted its emolument."

The same view was re-affirmed in Musti Venkata Jagannada Sharma v. Musti Veerabhadrayya (A.I.R. 1922 P.C. 96.) where the history of the office of Karnam was examined and it was observed that the "Karnam of the village occupies his office only by hereditary or family right, but as personal appointee, though in certain cases that appointment is primarily exercised in favour of a suitable person who is a member of a particular family." This latter decision was considered by a Full Bench of the Madras High Court in Manubolu Ranga Reddi v. Maram Reddi Dasaradharami Reddi (I.L.R. [1938] Mad. 249.) and it was pointed out that their Lordships of the Privy Council, though they indicated the nature of the right which the Karnam had, did not consider the question whether on the creation of an office under section 6(1), the members of the family of the last holder of the abolished office had the right to compel the Collector to carry out the duty cast upon him by the section. It was held that section 6(1) creates a right in the family which can be enforced by suit. Learned Counsel for respondent 4 has relied on this decision. It is worthy of note, however, that the decision was given on the footing that section 6(1) was valid and mandatory in character. No question arose or could at that time arise of the contravention of a fundamental right guaranteed by the Constitution, by the hereditary principle embodied in section 6(1) of the Act. The decision proceeded on the footing that the Act recognised a 'right vested in a family' to the office in question and contained provisions to enforce that right. It did not proceed upon the footing that the family had a right to the property in the shape of emoluments, independent or irrespective of the office. In other words, the decision cannot be relied upon in support of the contention that a hereditary village office is like a shebaiti, that is, office cum property. That was not the ratio of the decision. The ratio simply was this that the Act had recognised the right vested in a family to the office in question. That decision cannot assist respondent 4 in support of his contention that Art. 16, cls. (1) and (2), do not apply to the office, even though the office is an office under the State. In Ramachandurani Purshotham v. Ramachandurani Venkatappa and Another (A.I.R. 1952 Mad. 150.) the question was whether the office of Karnam was 'property' within the meaning of Art. 19(1)(f) of the Constitution. It was held that it was not property within the meaning of that Article. The same view was

expressed in Pasala Rama Rao v. Board of Revenue (A.I.R. 1954 Mad, 480.) where it was observed that the right to succeed to a hereditary office was not property and the relation back of an adopted son's rights was only with regard to property. This view was not accepted in Chandra Chowdary v. The Board of Revenue (A.I.R. 1959 Andhra Pradesh 343.) where it was observed that the fact that the adoption was posthumous did not make any difference and the adoption being to the last office holder, the adopted son must be deemed to have been in existence at the time of the death of the male holder and had the right to succeed to the office. It was further observed that the office of a Village Munsif was 'property' so as to attract the operation of the rule that the adoption related back to the date of the death of the last male holder. We are not concerned in this case with the doctrine of relation back in the matter of a posthumous adoption. The simple question before us is whether the office, though it is an office under the State, is of such a nature that cls. (1) and (2) of Art. 16 of the Constitution are not attracted to it. We are of the view that there is nothing in the nature of the office which takes it out of the ambit of cls. (1) and (2) of Art. 16 of the Constitution. An office has its emoluments, and it would be wrong to hold that though the office is an office under the State, it is not within the ambit of Art. 16 because at a time prior to the Constitution, the law recognised a custom by which there was a preferential right to the office in the members of a particular family. The real question is - is that custom which is recognised and regulated by the Act consistent with the fundamental right guaranteed by Art. 16 ? We do not agree with learned Counsel for respondent 4 that the family had any pre-existing right to property in the shape of the emoluments of the office, independent or irrespective of the office. If there was no such pre-existing right to property apart from the office, then the answer must clearly be that Art. 16 applies and section 6(1) of the Act in so far as it makes a discrimination on the ground of descent only, is violative of the fundamental right of the petitioner.

There can be no doubt that section 6(1) of the Act does embody a principle of discrimination on the ground of descent only. It says that in choosing the persons to fill the new offices, the Collector shall select the persons whom he may consider the best qualified from among the families of the last holders of the offices which have been abolished. This, in our opinion, is discrimination on the ground of descent only and is in contravention of Art. 16(2) of the Constitution.

Learned Counsel for respondent 4 has also submitted that the petitioner cannot be permitted to assert the invalidity of section 6(1) of the Act when he himself made an application for appointment as Village Munsif under the Act. He has drawn our attention to the decision in Bapatla Venkata Subba Rao v. Sikharam Ramakrishna Rao (A.I.R. 1958 Andhra Pradesh 322.). That was a case where the appellant was appointed as a hereditary Karnam under the Act and but for the Act, he would not have had any claim to be appointed to the office of Karnam. It was held that he could not be permitted to contend for the first time in appeal that the very Act but for which he would not have had any right to the office, was unconstitutional. Apart from the question whether a fundamental right can be waived, a question which does not fall for consideration in this case, it is clear to us that the facts here are entirely different. The petitioner had the right to make an application for the new village office and he was accepted by the Revenue Divisional Officer. Respondents 1 to 3, however, passed orders adverse to him and in favour of respondent 4, acting on the principle of discrimination on the ground of descent only as embodied in section 6(1) of the Act. It is, we think, open to the petitioner to say that section 6(1) of the Act in so far as it violates his fundamental right guaranteed under Art. 16 of the Constitution is void and his application for appointment must, therefore, be decided on merits.

Finally, we must notice one other argument advanced by the learned Advocate-General on behalf of respondents 1 to 3. The argument is based on the distinction between Arts. 15 and 16. We have said

earlier that Art. 15 is, in once respect, more general than Art. 16 because its operation is not restricted to public employment; it operates in the entire field of State discrimination. But in another sense, with regard to the grounds of discrimination, it is perhaps less wide than Art. 16, because it does not include 'descent' amongst the grounds of discrimination. The argument before us is that the provision impugned in this case must be tested in the light of Art. 15 and not Art. 16. It is submitted by the learned Advocate-General that the larger variety of grounds mentioned in Art. 16 should lead us to the conclusion that Art. 16 does not apply to offices where the law recognises a right based on descent. We consider that such an argument assumes as correct the very point which is disputed. If we assume that Art. 16 does not apply, then the question itself is decided. But why should we make that assumption ? If the office in question is an office under the State, then Art. 16 in terms applies; therefore, the question is whether the office of Village Munsif is an office under the State. We have held that it is. It is perhaps necessary to point out here that cl. (5) of Art. 16 shows that the Article does not bear the restricted meaning which the learned Advocate-General has canvassed for; because an incumbent of an office in connexion with the affairs of any religious or denominational institution need not necessarily be a member of the Civil Service.

For the reasons given above, we allow the petition. The orders of respondents 1 to 3 in respect of the appointment to the post of Village Munsif of Peravalipalem in favour of respondent 4 are set aside and we direct that the application of the petitioner for the said office be now considered on merits by the Revenue authorities concerned on the footing that section 6(1) of the Act in so far as it infringes the fundamental right of the citizens of India under Art. 16 of the Constitution is void. The petitioner will be entitled to his costs of the hearing in this Court.

Petition allowed.

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