

MYSORE HIGH COURT

V.N. Chowdiah

Vs

Deputy Commissioner

WP. 911 of 1972

(Govinda Bhat and Datar, JJ.)

31.08.1972

ORDER

Datar, J.

1. These writ petitions arise the same or similar question and are therefore heard and disposed of by this common judgment. For the purpose of deciding the question arising in these cases it would be convenient to state the facts in one case and for that purpose the facts in Writ Petition No. 911 of 1972 are stated.

2. Petitioner in WP. 911 of 1972 was a barawardar Shanbhogue of certain villages and on the abolition of the hereditary village officers by the Mysore Village Officer Abolition Act, 1961, the hereditary right was extinguished. The petitioner however continued to work as a Village Accountant. The Mysore General Services (Revenue Subordinate Branch) Village Accountants (Cadre and Recruitment) Rules, 1961 were brought into force on the 1st of December 1961. The petitioner and other village Accountants continued to work as Village Accountants. Thereafter the Mysore Land Revenue Act of 1964 was brought into force with effect from 1.4.1964. Under S. 16(2) of the said Act Village Accountants who were discharging the duties of the post were continued until appointments were made under S. 16(1) of the Act. The petitioner therefore continued to work as a Village Accountant. Even though selections were made on the earlier two occasions the services of the petitioner were not dispensed with. However the 1961 Rules were repealed by the Rules made on the 25th March 1970 known as the Mysore General Services (Revenue Subordinate Branch) Village Accountants (Recruitment) Rules, 1970. Thereafter action was taken to make the selections and the petitioner's services are terminated. It is at this stage petitioner has presented the writ petition for quashing the orders issued by the Deputy Commissioner and the Tahsildar and for the issue of a writ in the nature of mandamus directing respondents 1 and 2 to continue the petitioner in service as Village Accountant till he attains the age of superannuation. As already stated, the facts in the other cases are also the same and same reliefs have been prayed for by the other petitioners also.

3. The only contention raised by the petitioners in these writ petitions is that under Rule 10 of the 1961 Rules they were entitled as of right for continuance and therefore they were entitled to

continue in service until they reach the age of superannuation. Therefore, the termination of their services to make room for the persons appointed as a result of the selections made in the year 1971 was impermissible.

4. On behalf of the respondents a common counter-affidavit has been filed. It has been stated in counter-affidavit that 680 posts of Village Accountants including leave reserve has been sanctioned by the Government for the District of Mysore. It is further stated that in accordance with the 1961 Rules, 67 persons were recruited in the initial selection in the year 1962 and in the second selection held in the year 1966, 126 persons were selected as Village Accountants. For the remaining vacancies of Village Accountants in the District, the Deputy Commissioner of Mysore called for applications on the 25th of January 1971 according to 1970 Rules. But it is necessary to note that the petitioners did not make applications. It is also stated that from the records available it appears that the petitioners had not applied for selection in the earlier selections held in the year 1962 and 1966. As regards some of the petitioners it is stated that they did not possess the requisite qualifications and they were over-aged and therefore their applications have been rejected. It is also stated that after the applications have been rejected. It is also stated that after the applications were received, candidates were interviewed and in all 326 persons have been selected including 10 per cent reserve and the selection list had been sent to the Divisional Commissioner for approval. It is further stated that the Divisional Commissioner has approved the list except as regards one candidate and having regard to the approval of the list by the Divisional Commissioner, orders have been issued by the Deputy Commissioner making appointments and postings of the persons selected to the respective Village Panchayats displacing the petitioners and others who were continued under sub-sec. (2) of S. 16 of the Mysore Land Revenue Act, 1964. It is further stated that the petitioners are not entitled to claim for regularisation or for continuance on the basis of either the letter of the Government or Rule 10 of the 1961 Rules as the application of Rule 10 would arise only when the petitioners had applied for selection and are selected in accordance with the second proviso to 1961 Rules. It is therefore urged in the counter-affidavit that there is no merit in these writ petitions and they deserve to be dismissed.

5. The Mysore Village Office Act, 1908 was enacted to consolidate and amend the law relating to village offices in the then State of Mysore and the Act recognized the hereditary rights to the village offices. The Supreme Court, however, in the case of *Dasaratha Rama Rao v. State of A.P.*¹, declared that a law which recognized the custom by which a preferential right to an office vested in the members of a particular family was violative of the fundamental right guaranteed by Art. 16 of the Constitution. The Supreme Court held that S. 6(1) of the Madras Hereditary Village Official Acts, 1895, in so far as it made discrimination on the ground of descent only, was held to be void. The principle established by this decision was sought to be given effect to by the Mysore Village Offices Abolition Act, 1961. After this Act was enacted the 1961 Rules were issued which came into force with effect from 1.12.1961. These rules provide for the recruitment of Village Accountants, prescribe educational qualification and the maximum age limit for initial recruitment in the case of persons holding the posts of village officers on the date of commencement of these

¹ AIR 1961 SC 564

Rules. The provision of the Mysore Village Offices Abolition Act was upheld by this Court in the case of *Hanumantha Rao v. State of Mysore*², and the Supreme Court affirmed that decision in the case of *Shankaranarayana v. State of Mysore*³, It is necessary to state here that a uniform

law for the entire new State of Mysore, relating to land and land revenue was enacted by the Mysore Legislature as the Mysore Land Revenue Act, which came into force on 1.4.1964. S. 2(39) of the LR Act defines 'Village Accountant' as a village accountant appointed or deemed to be appointed u/s. 16(1). Section 16(1) provides that the Deputy Commr. may subject to the general orders of the State Government and the Divisional Commissioner, appoint a Village Accountant for a village or group of villages. Sub-sec. (2) of S. 16 provides that persons holding office of a Village Accountant prior to the commencement of this Act shall be deemed to be Village Accountants till another person is appointed under sub-section (1)

6. In the case of *Krishna Rao v. Deputy Commissioner*⁴, this Court laid down that S. 16(2) of the Mysore Land Revenue Act does not create a legal fiction of appointment at all. It only refers to the continuance in office of persons who had lost their right to hold the offices. Thus village accountants who continue to hold office by virtue of S. 16 (2) cannot be described as person appointed to that post. That is why this Court held that the village accountants who are continuing under S. 16(2) of the Act were not entitled to have regularization of their services in accordance with the Mysore State Civil Services (Recruitment of Local Candidates to Class III posts) Rules, 1966.

7. It would now be appropriate to refer to the Rule upon which the entire claim made by the petitioners depends. It reads thus :

"10. *Initial recruitment to Village Accountants*-Notwithstanding anything contained in these Rules recruitment for the first time in respect of the posts of Village Accountants shall be made-

(i) from amongst persons holding the posts of Village Officers on the date of commencement of these Rules and whose age does not exceed forty years on the said date and who possess the minimum qualification prescribed in Rule 7 and and who are not disqualified under Rule 8 and who are selected under Rule 11 :

Provided that in the event of persons satisfying the said qualifications not becoming available even after advertising the vacancies twice, recruitment shall be made from among persons holding the posts of Village Officers who are not more than 50 years of age on the date of commencement of these rules and who have passed Lower Secondary or Vernacular Final, or equivalent Examination.

(ii) and also by direct recruitment."

Under the 1961 Rules cadre of Village Accountants was created and that was treated as Class III Services of the State Civil Services. It is further provided by Rule 5 that the method of appointment is by direct recruitment and the appointing authority was the Deputy Commissioner of the District. Rule 7 provides minimum qualification for

²(1964) 1 Mys L.J. 50

⁴(1971) 1 Mys L.J. 287

³AIR 1966 SC 1571

recruitment to the post of a Village Accountant shall be a pass in the S.S.L.C. or an equivalent examination and the disqualifications were stated in Rule 8. The recruitment to be made by a Recruitment Committee as provided under Rule 11 and training was to be given as provided under Rule 12. Two provisions however were made in these rules. One is by Rule 10 which

related to the initial recruitment of Village Accountants and the second is Rule 16 which related to the local appointments. So far as the initial recruitment of Village Accountants is concerned, it was stated that notwithstanding anything contained in these Rules recruitment for the first time in respect of the posts of Village Accountants shall be made from amongst persons holding the posts of Village Officers on the date of commencement of the Rules and whose age does not exceed 40 years and who possess the minimum qualification prescribed in Rule 7 and who are not disqualified under Rule 8 and who were selected under Rule 11. The proviso gives further concession, namely, that in the event of persons satisfying the said qualifications becoming not available even after advertising the vacancies twice, recruitment was to be made from amongst persons holding the post of Village Officers who were not more than 50 years of age on the date of commencement of the Rules and who had passed lower Secondary or Vernacular Final, or equivalent Examination.

8. It is contended by Sri S.K. Venkataranga Iyengar, learned counsel appearing on behalf of the petitioners, that having regard to the proviso to Rule 10(i) of the Rules, petitioners are deemed to have been appointed and therefore their services could not be terminated. It is necessary to see as to whether there is any substance in this contention. The proviso was inserted by the notification dated 8.1.1963. The first condition laid down in the proviso is that even after advertising the vacancies twice the persons satisfying the qualifications prescribed under Rule 10 are not available, then only recruitment can be made from amongst lesser qualified candidates. It is not even alleged that advertisement was given twice and in spite of that persons with qualifications did not become available. If this condition is not fulfilled, it is not open to the appointing authority to recruit persons like the petitioners, possessing lesser qualifications. Therefore, as a condition precedent for claiming the benefit under the proviso is not satisfied, petitioners are not entitled to any relief in these writ petitions.

9. Even otherwise, in our view, there is no substance in the contention that persons like the petitioners are to be treated to have been continued in their posts. When the rule making authority wanted to provide that persons holding posts of Village Accountants are to be continued and are to be treated as deemed Village Accountants specific provision has been made in that behalf. By the original Rule 19 of the Rules as regards Talathi or Shanbhogue in the Bombay Area and Coorg District, it was provided that notwithstanding anything contained in the Rules these officials shall be deemed to be a Village Accountant appointed under these Rules; such provision has not been made regarding the hereditary Village Accountants working in the old Mysore Area.

10. Rule 10 states that as regards the initial recruitment of Village Accountants the provisions of Rule 10 are to be followed and not the other provisions. Initial recruitment in so far as the District of Mysore was concerned was made in the year 1962. At the time when the recruitment was made in the 1962 this proviso was not in existence at all, and therefore, so far as the District of Mysore is concerned, since the initial recruitment was done in 1962, the entire proviso becomes inapplicable. Further what is provided under Rule 10 is for consideration of the claims of candidates satisfying the proviso and making recruitment from among persons satisfying the proviso. It is not that every one of the Village Accountant who satisfies the proviso is to be recruited. If the number of posts is smaller and number of applicants is larger, then from amongst the persons who have made applications, some of the persons who satisfy the proviso are to be selected and appointment made. The wording of the posts clearly denotes that everyone is not entitled to continue but only some can be selected for appointment. Some of the Petitioners have

not made applications at all and some others who have made applications were not qualified for the post. It is also necessary to note that as these rules of 1961 have since been repealed by the 1970 Rules, petitioners are not entitled to ask for the enforcement of right given to them after they are repealed, as the present writ petitions have been filed some time in April 1972. Thus, no case is made out by the petitioners for interference under Art. 226 of the Constitution of India.

11. It was stated by Sri S.K. Venkatranga Iyengar, learned counsel for the petitioners, that in the State of Tamilnad and Andhra Pradesh, so far as the hereditary Village Accountants were concerned, even though the hereditary right is abolished, persons holding the posts were allowed to continue and it is only in this State all the Village Accountants have been unceremoniously asked to go home. It is also stated that the human aspect of the problem has not been taken into consideration by the authorities. These are all matters on which it is not for this Court to state anything in the matter. It is for the Government to consider the hardships of the officials and make suitable provisions. But for that purpose officials have to seek their redress at the hands of the State Government and not before the Court.

12. In the result, these writ petitions fail and are dismissed. No costs.
Petitions dismissed.