

PETITIONER:
D. NAGARAJA ETC.

Vs.

RESPONDENT:
STATE OF KARNATAKA & ORS.

DATE OF JUDGMENT 18/01/1977

BENCH:
SINGH, JASWANT
BENCH:
SINGH, JASWANT
RAY, A.N. (CJ)
BEG, M. HAMEEDULLAH

CITATION:
1977 AIR 876 1977 SCR (2) 626
1977 SCC (2) 148
CITATOR INFO :
F 1978 SC 28 (1)

ACT:

Constitution of India--Article 226--Who can apply--Whether existence a right essential--Mysore Village Offices ,Act 1908--Mysore Village Offices Abolition Act 1961.
Karnataka General Services (Revenue Subordinate Branch) Village Accountants (Recruitment) Rules, 1970.

HEADNOTE:

The appellants held the post of Shambhoguees on hereditary basis under the Mysore Village Offices Act 1908. This Court in the case of Gowla Dasrath Ramarao held that a law which recognises the custom by which a preferential right to an office vested in the members of a particular family was not consistent with the fundamental right guaranteed by Article 16 of the Constitution and that the Madras Hereditary Village Offices Act of 1895 in so far as it made discrimination on the ground of descent only was violative of Article 16(2) of the Constitution and, therefore, void. With a view to give effect to the said judgment of this Court Mysore Village Offices Abolition Act of 1961 was enacted abolishing all the hereditary Village Offices including the office of Shambhoguees or Village Accountants created under the Mysore Villages Offices Act 1908. The President gave his assent to the said Act. Thereafter, the Governor of Mysore framed Mysore General Services (Revenue Subordinate Branch) Village Accountants (Cadre and Recruitment) Rules, 1961, to regulate the recruitment, pay and other conditions of service of Village Accountants. Rule 10 provided for the initial recruitment to the post of Village Accountants to be made from amongst persons holding posts of Village Officers on the date of commencement of those rules provided they fulfilled certain educational qualifications and were below a certain age. Challenge to the constitutional validity of the said Act was negatived by this Court in the case of B.R. Shankaranarayana & Ors. v. State of Mysore AIR. 1966 S.C. 1571. The State Legislature enacted the Karnataka Land Revenue Act 1964 Section 16 of the said Act provides for the appointment of Village Accountants and the continuance of Village Accountants hold the said post immediately

before the commencement of the Act. Section 16(e) provides that persons holding the office of the Village Accountant before the commencement of the Act shall be deemed to be village Accountants for such villages till other persons were appointed. The 1961 rules were repealed and replaced by Karnataka General Services (Revenue Subordinate Branch) Village Accountants (Recruitment) Rules, 1970. Rules 4 and 5 lay down the eligibility of the persons for the appointment as Village Accountant and the constitution of a Committee for selection and the method of selection. The Recruitment Committee invited applications, interviewed the applicants who were eligible and prepared a list of selected Candidates and, thereafter, issued the order of appointment. As the appellants had to give up their posts in consequence of the fresh appointments they filed the present writ petitions impugning the validity of rules 4 and 5 of the 1970 Rules on the ground that they were violative of Articles 14 and 16 of the Constitution and challenging the selection and appointment of respondents Nos. 3 to 191 as Village Accountants and for a direction that they should be continued as Village Accountants. The High Court dismissed the writ petitions.

Dismissing the appeals,

HELD: 1. Though Article 226 of the Constitution in terms does not describe the classes of persons entitled to apply thereunder, the existence of the right is implicit for invoking the exercise of the extraordinary jurisdiction by the High Court under the said Article. It is well established that a person who

is not aggrieved by the discrimination complained of cannot maintain a writ petition. The constitutional validity of the Abolition Act abolishing all hereditary Village Offices having been upheld by this Court, the appellants who did not apply for appointment as Village Accountants in response to the notification inviting applications, since they did not possess the prescribed qualifications, could not complain of the unconstitutionality of the 1972 Rules or of the infringement of Articles 14 and 16 of the Constitution. The High Court, therefore, was right in holding that the appellants have no right to maintain the writ petitions. [631 E-H 632 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 883 and 898-905/75.

Appeals by Special Leave from the: Judgment and Order dated 20-2-75 of the Karnataka High Court in Writ Petition Nos. 5825/74 and 5818, 5820, 5821, 5822, 5823, 5824, 5828 and 5829 of 1974.

R.B. Datar for the Appellants in all the appeals.

V.P. Raman, Addl. Sol. Genl (In CA 883/75) and N. Nettar for RR 1 and 2 in all the appeals.

The Judgment of the Court was delivered by

JASWANT SINGH J. This judgment shall dispose of Appeals Nos. 883 and 898 to 905 of 1975 which are, directed against the common judgment dated February 20, 1975 of the High Court of Karnataka at Bangalore dismissing writ petitions Nos. 5825, 5818, 5820, 5822 to 5824, 5828 and 5829 of 1974 on the ground that the appellants had no right to maintain the same.

The circumstances leading to these appeals are: The appellants held the posts of Shambogues on hereditary basis

under the Mysore Village Offices Act, 1908. In writ petition No. 133 of 1959 entitled Gazula Daseratha Rama Rao v. State of A.P. & Ors. (1) decided on December 6, 1960, this Court held that a law which recognised the custom by which a preferential right to, an office vested in the members of a particular family was not consistent with the fundamental right guaranteed by Article 16 of the Constitution; that a custom which is recognised by law with regard to a hereditary office must yield to a fundamental right and section 6(1) of the Madras Hereditary Village Offices Act/II of 1895 in so far as it made discrimination on the ground of descent only was violative of the fundamental right under Article 16(2) of the Constitution and was void.. With a view to giving effect to the principle settled by this decision, the Legislature of the then State of Mysore comprising the territories the erstwhile States of Mysore and Coorg and certain parts of the erstwhile States of Bombay, Hyderabad and Madras enacted the Mysore Village Offices Abolition Act, 1961 (Act XIV of 1961) (hereinafter referred to as 'the Abolition Act') abolishing all the hereditary village offices including the office of Shambogue or village Accountant created under the Mysore Village Offices Act, 1908. Pursuant to sub-section (3) of section 1 which authorised the State Government to fix a date for the commencement of the Act, the Government of Mysore issued a notification on January 9, 1963 notifying that the Abolition Act would come into force with effect from February 1, 1963.

(1) [1961] 2 S.C.R. 931=A.I.R. 1961 S C. 564.

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Shortly after the according of the assent to the Abolition Act by the President on July 8, 1961, the Governor of Mysore framed rules called the Mysore General Service (Revenue Subordinate Branch) Village Accountants (Cadre and Recruitment) Rules, 1961 in exercise of the powers vested in him under the proviso to Article 309 of the Constitution and other powers enabling him in that behalf. These Rules, as evident from their title, were designed to regulate the recruitment, pay and other conditions of service of Village Accountants. Rule 10 of the 1961 Rules which was in the nature of a non obstante provision provided for the initial recruitment to the posts of Village Accountants to be made from amongst persons holding the posts of village officers on the date of commencement of those Rules provided that such persons had passed the S.S.L.C. examination or an equivalent examination and their age did not exceed 40 years on the said date. By a proviso which was introduced in the year, 1963, it was provided that in the event of persons satisfying the qualifications mentioned in Rule 7 not being available even after the vacancies are twice advertised, the recruitment should be made from amongst persons holding the posts of village officers who were not more than 50 years of age on the date of commencement of the said Rules and who had passed the Lower Secondary or Vernacular Final or equivalent examination.

By a notification issued on January 6, 1963, the Government of Mysore directed the Deputy Commissioners to appoint persons recruited under the 1961 Rules as village accountants and relieve the then holders of their offices. On the issue of the aforesaid notification dated January 9, 1963, a number of writ petitions under Article 226 of the Constitution were filed in the High Court challenging the legality and constitutional validity of the Abolition Act on the ground that it was a piece of colourable legislation. During the pendency of the writ petitions, an ad-interim

order staying the operation of the aforesaid Notification dated January 9, 1963 was issued by the High Court. As a consequence of the stay order, the appellants and a number of other persons who were holding tile posts of Shambogues under the Mysore Village Offices Act, 1908 had to be continued by the State Government in the posts held by them. The writ petitions were eventually dismissed by the High Court by its judgment dated December 9, 1963 which was confirmed by this Court vide its judgment dated January 21, 1966 rendered in B.R. Shankaranarayana & Ors. v. State of Mysore(1). Thus the constitutional validity of the Abolition Act was finally upheld by the Court. During the pendency of the appeals against the judgment of the High Court dated December 9, 1963, the State Legislature enacted the Karnataka Land Revenue Act, 1964 (hereinafter referred to as 'the Act') which came into force on April 1, 1964. Section 16 of the Act provides for the appointment of Village Accountants and the continuance of village accountants hold the said posts immediately before the commencement of the Act. Sub-section (1) of section 16 lays down that, subject to the general orders of the State Government and the Divisional Commissioner, the Deputy Commissioner can appoint Village Accountants for villages or groups of villages. Sub-section (2) of section 16 provides that the

(1) A.I.R. 1966 S.C. 1571.

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persons holding the office of the Village Accountant before the commencement of the Act, shall be deemed to be Village Accountants for such villages till another person is appointed under sub-section (1) of section 16. Thus sub-section (2) of section 16, it would be seen, was designed to cover the case of the persons who had perforce to be continued as Shambogues because of the aforesaid stay order issued by the High Court despite the abolition of those posts by the Abolition Act.

The 1961 Rules were repealed and replaced by another set of Rules called the Karnataka General Services (Revenue. Subordinate Branch) Village Accountants (Recruitment) Rules, 1970 (hereafter referred to as the 1970 Rules) made by the State Government in exercise of the powers conferred by sections 16 and 17 of the Act. Rules 4 and 5 of the 1970 Rules which were amended from time to time stood as follows on the relevant date :-

"4. Recruitment. (1) Recruitment to the cadre of village Accountant shall be made by direct recruitment from amongst :-

(i) persons who have served as Village Officers;

(ii) local candidates whether in service or not, who have put in a total of not less than one year of service as on 1st January, 1970, if sufficient number of eligible persons are not available under (i);

(ii) persons who have been regularly recruited as Panchayat Secretaries in accordance with the rules in force at the time of the recruitment and working as Panchayat Secretaries who have passed the S.S.L.C. examination or any other examination declared as equivalent thereto by the State Government if sufficient number of eligible persons are not available under (ia) ;

(iii) persons who are regularly recruited as Panchayat Secretaries in accordance with the rules in force at the time of recruitment

and working as Panchayat Secretaries who--
 (a) have passed the Middle School examination or any other examination declared as equivalent thereto by the State Government; and
 (b) have put in not less than 10 years of service as Panchayat Secretaries as the case may be if sufficient number of eligible persons are not available under (ii);

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(c) are not more than 50 years of age as on 1st April, 1967;

(iv) xx xx xx

(v) others, if sufficient number of persons are not available under any of the above categories.

(2) No persons other than the persons referred to in categories (ii) and (iii) of sub-rule (1) "shall be eligible for appointment under these rules unless he has passed the S.S.L.C. examination or any examination declared by State Government as equivalent thereto.

(3) The limit for appointment under sub-rule (1) shall be--

(i) 33 years in the case of a person belonging to any of the Scheduled Castes or Scheduled Tribes; and

(ii) 28 years in the case of others as on 1st January, 1970.

Provided that in the case of person who have served as Village Officer or as Panchayat Secretary such age as on 1st April, 1967, shall not exceed 50 years.

Provided further that in the case of local candidates, such age shall be as on 1st January, 1965:

Explanation--For the purpose of this rule "Village Officer" means a person who held a 'Village Office' other than in inferior village office as defined in the Karnataka Village Offices Abolition Act, 1961 (Karnataka Act 14 of 1961)."

"5. Committee for selection--(1) There shall be a Committee for each district consisting of the Deputy Commissioner of the District, the Assistant Commissioner, shall be the Chairman of the Committee and one of the members appointed by the Deputy Commissioner shall be the Secretary.

(2) The Committee shall call for application for appointment as village Accountants and make selection in the manner laid down in the Mysore State Civil Services (Direct Recruitment by Selection) Rules, 1967.

(3) The decision of the Committee shall be final subject to the approval of the Divisional Commissioner.

(4) The list approved by the Divisional Commissioner shall be published and appointments shall be made in order in which the names of persons selected are arranged in the said list."

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Pursuant to the 1970 Rules, applications were invited by the Recruitment Committee in the year, 1972 to fill up

the posts of Village Accountants in the District of Hassan. After sorting out the applications received in response to the advertisement, the Committee interviewed the applicants who were eligible for appointment and prepared a list of the selected candidates for appointment as Village Accountants. This list was quashed by the High Court by its judgment dated November 19, 1972 rendered in writ petition No. 1871 of 1972 entitled Komari Gowda v. State of Mysore & Ors. and the Committee was directed to select the candidates afresh in accordance with law. Consequently the Committee again interviewed the eligible candidates and prepared a fresh list of the selected candidates which was published in the Karnataka Gazette on May 30, 1974. Thereafter, the Deputy Commissioner, Hassan issued orders of appointment of the candidates who were selected by the Recruitment Committee. Some of the candidates thus selected were posted as Village Accountants under section 16(2) of the Act to the villages in which the appellants were functioning. As the appellants had to give up their posts in consequence of the aforesaid fresh appointments under section 16(2) of the Act, they filed the aforesaid writ petitions impugning (i) the validity of rules 4 and 5 of the 1970 Rules on the ground that they were violative of Articles 14 and 16 of the Constitution, (ii) the selection and appointment of respondents 3 to 191 as Village Accountants and praying that a writ of mandamus be issued directing respondents 1 and 2 to continue them as Village Accountants under section 16(2) of the Act. The writ petitions having been dismissed by the High Court as stated above, the appellants have come up in appeal to this Court.

The sole question that requires to be determined in these appeals is whether the appellants could maintain that aforesaid writ petitions. It is well settled that though Article 226 of the Constitution in terms does not describe the classes of persons entitled to apply thereunder, the existence of the right is implicit for the exercise of the extraordinary jurisdiction by the High Court under the said Article. It is also well established that a person who is not aggrieved by the discrimination complained of cannot maintain a writ petition. The constitutional validity of the Abolition Act abolishing all hereditary village offices including the office of the Shambogue or Village Accountant having been upheld by this Court in B.R. Shankanarayana & Ors. v. State of Mysore (supra), and the first preference in the matter of appointment of Village Accountants having been given by Rule 4 of the 1970 Rules to all persons belonging to the category and class of the appellants who had served as Village Officers, the appellants who did not apply for appointment as Village Accountants in response to the aforesaid notification issued by the Recruitment Committee and did not possess the prescribed qualification, could not complain of the unconstitutionality of the 1970 Rules or of the infringement of, Articles 4 and 16 of the Constitution which merely forbid improper or invidious distinctions by conferring rights or privileges upon a class of persons arbitrarily selected from out of a larger group who are similarly circumstanced but do not exclude the laying down of selective tests nor prevent the Government from laying general educational

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qualifications for the post in question. The High Court was, therefore, right in holding that the appellants have no right to maintain the aforesaid writ petitions. The appeals accordingly fail and are dismissed but without any order

as to costs.
P.H.P.
dismissed.
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Appeals

JUDIS