
(1984) 06 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 229 of 1984

Bhagti Prakash Sharma

APPELLANT

Vs

H.P. High Court

RESPONDENT

Date of Decision : 18-06-1984

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1984) 13 ILR HP 345

Hon'ble Judges : P.D. Desai, C.J;H.S. Thakur, J

Bench : Division Bench

Advocate : K.S. Patyal and L.R. Dhiman, for the Appellant;

Final Decision : Dismissed

Judgement

P.D. Desai, C.J.—An advertisement, inviting applications for one temporary post of Additional District and Sessions Judge in the pay scale of Rs. 1580-60-1700/75-2000/100-2400 plus usual allowances as admissible in Himachal Pradesh from time to time, on the cadre of the Himachal Pradesh Higher Judicial Service to be filled by direct recruitment, was issued and published on January 18, 1984. In response to the advertisement 101 applications were received. The High Court on the administrative side decided at its Full Court meeting held on March 27, 1984 that 92 candidates, whose applications were found to be in order, be called for interview. The High Court on the administrative side at its Full Court meeting held on April 11, 1984 reconsidered the earlier decision and resolved that the eligible candidates, whose applications were found to be in order, be asked to state whether they paid Income Tax and if so, since when. Such candidates were also asked to supply particulars as to the assessable total income for the three preceding years and they were informed that the relevant information must reach the High Court within 15 days from the date of the receipt of the intimation failing which it would be presumed that the concerned candidate was not assessed to Income Tax. Pursuant to an intimation sent to such candidates consequent upon the

aforesaid decision, 29 candidates replied that they paid Income Tax. Out of the remaining 63 candidates, 16 replied informing that they were not assessed to Income Tax and the remaining sent no reply. In light of the above position, the High Court on the administrative side at its Full Court meeting held on May 14, 1984 resolved that all those candidates who had stated that their professional income attracted Income Tax be called for interview on May 26, 1984. Such candidates were accordingly interviewed on May 26/28, 1984 and on that occasion it was verified that the statement with regard to their professional income attracting Income Tax made in their communication was correct.

2. The Petitioner was one of the applicants for the post of Additional District and Sessions Judge. His application having been found in order, he was intimated on April 16/18, 1984 to inform the Registry whether he paid Income Tax and if so, since when. The Petitioner was also requested to furnish particulars of the total assessable income for the last three years. It is not in dispute that the Petitioner has not been assessed to Income Tax during the three preceding years and that he, therefore, did not send his reply to the above mentioned communication. As a natural consequence, the Petitioner was excluded from the interview test held on May 26/28, 1984. The Petitioner challenges in the present petition the decision of the High Court on its administrative side laying down a zone of selection or field of choice confined to candidates whose professional income attracted Income Tax on the ground that the screening test accordingly prescribed is unconstitutional.

3. Be it clarified that though the decision of the High Court on the administrative side has been challenged in the petition on diverse grounds, the challenge was confined at the hearing of the petition to one ground only, namely, that the formula or criterion adopted for the purpose of prescribing the zone of selection or field of choice is violative of Articles 14 and 16 of the Constitution.

4. Now, it is well-settled that though the Recruitment Rules may prescribe the minimum eligibility qualification, it is competent to an appointing authority to demarcate the zone of selection or field of choice, that is to say, to prescribe some rational screening test by the adoption of which the necessity of calling for interview or for examination, as the case may be, every eligible candidate is eliminated and the zone of selection is restricted to candidates with merit bearing a reasonable proportion to the number of vacancies to be filled up. In other words, though an obligation to consider every qualified candidate may be implicit in the recruitment rules as also in the equal opportunity right enshrined in Article 14 and 16 of the Constitution, screening a candidate out of consideration at an initial stage of the process of selection is not illegal or unconstitutional, if a legitimate field demarcating the choice by reference to some rational formula is carved out. In the present times of large-scale unemployment, unless such power is recognised, the appointing authority will have to allow every eligible candidate to compete in the process of selection at all stages upto the final appointment, involving much waste of public time, money and energy and

arousing false hopes in the minds of the competing candidates. Against the aforesaid background, the challenge to the power of the High Court on its administrative side to prescribe a zone of selection or field of choice was rightly not disputed and the challenge was advisedly confined merely to the rationality of the screening test. The question, therefore, which requires consideration is, whether the screening test is rational and whether it has a nexus with the objects of securing the most suitable candidate to fill the post of Additional District and Sessions Judge.

5. Judicial notice can be taken of the fact that professional income is regarded as relevant for the purposes of selection for public employment when the source is direct recruitment from the profession. Indeed, where a vacancy in a high judicial post has to be filled from amongst professional candidate, the proficiency and experience gained by the volume of work handled by the candidate could legitimately be regarded as one of the important factors to adjudge suitability. The professional income of a candidate would ordinarily indicate the quantum of work handled and, consequently, the proficiency and experience acquired at the Bar. At the relevant time, income exceeding Rs. 15,000/- attracted Income Tax. The screening test adopted by the High Court on its administrative side eliminated only those candidates whose professional income fell below the said level on a reasonable and realistic assumption that having regard to the prevalent standard of professional fees charged in the field of law, a candidate whose professional income does not even touch the said level could not be regarded as having adequate work, so as to enable him to gain sufficient proficiency and experience. It cannot be overlooked also that a direct recruit with less than 11 years of practice starts at the minimum of the grade, that is, his basic pay on appointment would be Rs. 1580/- per month. The total pay packet, inclusive of all allowances, in the case of such a candidate would be Rs. 2417/- per month. However, the Himachal Pradesh Higher Judicial Service Rules, 1973 prescribe a formula for the fixation of initial pay of a direct recruit at a higher scale depending upon the number of years of practice put in by the candidate. To illustrate, a candidate having more than 11 years and less than 12 years of practice is given one advance increment and a candidate having more than 12 years and less than 13 years practice is given two advance increments and so on and so forth. The zone of selection confined to candidates whose professional income attracts Income Tax is relevant even from this angle, since it prescribes the choice to be made from amongst those candidates whose professional income is shown to be approximately half of the minimum total emoluments that would be admissible on appointment. When selection is to be made from amongst professional candidates for responsible posts carrying higher pay scales, it could hardly be regarded as irrational to prescribe that the professional income of the candidate should not be less than half of the total emoluments admissible for the post. Having regard to all the aforesaid considerations, it is difficult to uphold the submission of the Petitioner that the screening test adopted by the High Court on its administrative side is irrational or irrelevant.

6. A submission made on behalf of the Petitioner must, however, be taken note of. It was urged that a person whose professional income does not reach taxable income may still have acquired adequate work and experience because he may be charging fees at a lower scale and that, therefore, the screening test cannot be regarded as rational. We are unable to agree. The rationality of the screening has to be adjudged on the basis, inter-alia, of a realistic assessment of the prevalent circumstances of which judicial notice can be taken. The Court cannot overlook that in these days the standard of professional fees in the legal field has reached a high level, so much so that it has been considered as one of the factors rendering access to justice difficult for the poorer sections of the society. Under the circumstances, a candidate whose professional income does not reach even Rs. 15,000/- per annum cannot reasonably be regarded as having sufficient work and experience. Besides, exceptions do not make a rule. The rationality of the screening test has to be adjudged on the basis of practical experience and common sense and not on purely hypothetical considerations.

7. Reliance was sought to be placed on the decision in *State of Bihar and Others Vs. Dr. Asis Kumar Mukherjee and Others*, We are unable to see the relevance of that decision on the facts and in the circumstances of this case. The question in Mukherjee's case was whether the first Respondent (original Petitioner) therein, possessed the prescribed eligibility qualifications and not whether the zone of selection validly prescribed. The dispute was whether the first Respondent had acquired the teaching experience in a teaching institution as required and on the basis of the answer to the said question, the further question whether he could be considered for appointment required determination. The Supreme Court found that the appointing authority had made short shrift of the first Respondent by "preliminary screening" without taking into account all relevant considerations and without excluding extraneous matters. It is in the aforesaid context that the Supreme Court made the following observations, upon which reliance has been placed on behalf of the Petitioner:

Although the State need not always make a reasoned order of appointment, reasons relevant to the rules must animate the order. Moreover, an obligation to consider every qualified candidate is implicit in the "equal opportunity" right enshrined in Articles 14 and 16 of the Constitution. Screening a candidate out of consideration altogether is illegal if the applicant has eligibility under the regulations. And for such a drastic step as refusal to evaluate comparatively i.e. exclusion from the ring of a competitor manifest grounds must appear on the record.

It is apparent that the question arising for consideration herein was not posed for the decision of the Supreme Court in that case. The observations extracted above, are sought to be read out of the context in order to support the case of the Petitioner herein. The Petitioner has been excluded from consideration not on the ground of ineligibility but having regard to the rational screening test apparent on the record. The decision in Mukherjee's case, has, therefore, no

application.

8. For the foregoing reasons, the writ petition is summarily rejected.