
(2003) 02 AP CK 0064

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3573 of 2002

D. Padmavati and Others

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 04-02-2003

Acts Referred:

Andhra Pradesh State Higher Judicial Services Rules, 2007 — Rule 12

Citation : (2003) 2 ALD 253 : (2003) 2 ALT 566

Hon'ble Judges : Motilal B. Naik, Acting C.J.;G. Rohini, J

Bench : Division Bench

Advocate : Nooty Rama Mohana Rao C.V. Nagarjuna Reddy, SC for the High Court, D. Ramalinga Swamy, G. Rama Gopal, Janardhan Reddy, K. Chidambaram, J. Ugranarasimham, V.R. Reddy Kovvuri, B. Parameswara Rao, M.A. Bari, G.V. Shivaji, N.V. Ramanujam, K.V. Chalapthi Rao, K. Rama Subba Rao, G. Dasaratha Rami Reddy, Taddi Nageswara Rao, K. Sarvabhouma Rao and J. Satya Prasad and Government Pleader for Home for appearing Parties, for the Appellant;

Final Decision : Dismissed

Judgement

Motilal B. Naik, ACJ

1. In all these writ petitions, the controversy is with regard to the prescription of maximum age limit as 32 years as on 1.7.2001 insofar as the Open Category candidates are concerned for appointment to the posts of Junior Civil Judges in the A.P. State Judicial Services. Since common issue is raised in all these writ petitions, they are disposed of by the following common order;
2. For better appreciation of the issues raised in these writ petitions, the facts narrated in W.P. No. 3573 of 2002 are recorded hereunder.
3. It is the case of Petitioners 1 to 3 in W.P. No. 3573 of 2002 that they have enrolled as Advocates on the rolls of Bar Council of Andhra Pradesh on 16.6.1993; 1.3.1995 and 15.6.1994 respectively and since then practising in various Civil and Criminal Courts in the twin cities of Hyderabad and

Secunderabad. According to them, they have put in more than three years of standing at the Bar having acquired adequate and necessary training and skill, desirous of being recruited for the posts of Junior Civil Judges in the A.P. State Judicial Service.

4. High Court of Andhra Pradesh issued Notification on 29.1.2002 inviting applications for filling up 45 posts of Junior Civil Judges. The maximum age limit prescribed for Open Category candidates is 32 years as on 1.7.2001, however five years age relaxation is given to Reserved Categories,

5. According to the petitioners, to obtain Law Degree it normally takes about 23 years and thereafter they have to be enrolled as Advocates, and to get eligibility to seek appointment to the posts of Junior Civil Judges, the requirement of minimum three years of standing at the Bar is to be fulfilled as per the existing Rules. It is also stated that for filling up 200 posts of District Munsifs (Junior Civil Judges), last notification was issued on 23.10.1996 reckoning the eligibility criteria with regard to the age limit from 1.7.1995. These petitioners claimed that two of them could not respond to the notification, dated 23.10.1996 as they had not put in three years of standing at the Bar by that time. After 1996, notification for recruitment to the posts of Junior Civil Judges has been issued only on 29.1.2002. As per the notification, dated 29.1.2002, the maximum age limit prescribed for Open Category candidates is 32 years. The grievance of the petitioners is that though all of them have necessary qualifications and eligibility, since they have crossed the age limit of 32 years, they are barred from competing for the selections to the posts of Junior Civil Judges.

6. It is alleged that prescribing the maximum age limit as 32 years for Open Category candidates, though recruitment for the posts of District Munsifs (Junior Civil Judges) fell due from the years 1997, 1998, 1999, 2000 and 2001 respectively, is contrary to the Rules and that the benefits flown from Rule 12 of Special Rules could have been extended to the petitioners appropriately, which provides "the time gap in between two successive direct recruitments should be added to the maximum age limit permissible." It is stated, by doing so the right of eligible candidates to compete for being recruited to the posts of Junior Civil Judges is not frustrated. It is alleged that denial of benefit under Rule 12 would amount to offending fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India.

7. Petitioners seek a writ of mandamus declaring the prescription of maximum age limit of 32 years for Open Category candidates for recruitment to the posts of Junior Civil Judges, contained in the notification issued by the High Court of Andhra Pradesh on 29.1.2002 as bad in law and seek consequential direction to the respondents to reckon the six years gap period in between the previous notification for direct recruitment and the present notification, to the maximum age limit for recruitment to the posts of Junior Civil Judges, for which direct recruitment is initiated through the notification dated 29.1.2002 and seek such other relief as is deem fit and proper in the circumstances of the case.

8. When these writ petitions came up for admission, the learned Division Bench before whom the writ petitions came up for admission, permitted all these writ petitioners and others, who filed similar writ petitions in this regard, to participate in the selection process imposing a condition that the said participation shall be subject to the result of the writ petitions.

9. Though more than 150 candidates have filed writ petitions, majority of them have not qualified in the written test and as such on the representation by the Counsel appearing for the parties, those writ petitions were dismissed as not pressed. However, in the present batch of writ petitions 29 candidates are found qualified to participate in viva test having secured qualifying marks, which necessitated to examine the contentions raised in all these writ petitions, which are being disposed of by the following common order.

10. On behalf of the writ petitioners it is primarily submitted by Sri N. Rama Mohana Rao, learned Counsel that the last notification for direct recruitment to the posts of District Munsifs was issued on 23.10.1996 and the cut off date was fixed as 1.7.1995. According to the learned Counsel, after that notification which was issued for filling up 200 posts of District Munsifs, the present notification was issued on 29.1.2002 proposing to fill up 45 posts of Junior Civil Judges, the cut off date is fixed as 1.7.2001 and the maximum age limit prescribed is 32 years for Open Category candidates. It is stated that as per Note (2) of Sub-rule (b) of Rule 12 of the A.P. State Judicial Service Rules, the age limit prescribed in the table and Sub-rules (c), (d) and (e) shall be raised uniformly by a period, not exceeding the period during which recruitment to the posts fell due but was not made. According to the learned Counsel, for direct recruitment to the posts of District Munsifs, one must not have completed 32 years of age as per the present notification dated 29.1.2002. He submitted that as provided under Note (2) of Sub-rule (b) of Rule 12, if the maximum age limit is uniformly raised by a period not exceeding the period during which recruitment to the posts of Junior Civil Judges fell due, but was not made, all these petitioners would be eligible to compete for the selection to the posts of Junior Civil Judges. The emphasis of the learned Counsel is that the last notification for direct recruitment to the posts of District Munsifs (Junior Civil Judges) was issued on 23.10.1996 inviting applications for filling up 200 posts of District Munsifs (Junior Civil Judges) from direct recruitment, the cut off date fixing 1.7.1995, thereafter no efforts were made for filling up the posts of Junior Civil Judges from 1996 to 2001 and that only in the year 2002 the present notification was issued on 29.1.2002 with the cut off date as 1.7.2001 by prescribing the maximum age limit as 32 years for Open Category candidates. It is in this background, learned Counsel stated the gap in between the two notifications is six years and as provided under Note (2) of Sub-rule (b) of Rule 12 all these petitioners shall be entitled to get the benefit of enhancement of six years age limit and are entitled to compete with others for the posts of Junior Civil Judges.

11. The learned Counsel also incidentally referred the Ad hoc Rules made under

G.O. Ms. No. 570, dated 28.10.1993 and stated that by virtue of the Ad hoc Rules the age limit is relaxed and raised to six years i.e., 28 plus 6 = 34 years and that as per the Ad hoc Rules also many of the petitioners would be entitled to compete in the selection process for the posts of Junior Civil Judges. Thus according to the learned Counsel the impugned notification prescribing maximum age limit as 32 years for Open Category candidates is illegal and seeks a declaration that the petitioners are entitled for the benefit of six years in terms of Note (2) of Sub-rule (b) of Rule 12 of A.P. State Judicial Service Rules and are eligible to participate in the selection process. The arguments advanced by Sri N. Rama Mohana Rao, learned Counsel are adopted by all the learned Counsel appearing on behalf of other petitioners in other writ petitions apart from adding some more submissions on similar lines.

12. On behalf of the High Court of Andhra Pradesh/3rd respondent in W.P. No. 3573 of 2002, a separate counter has been filed inter alia admitting the fact that the High Court issued notification earlier on 23.10.1996 inviting applications for appointment to 200 posts of District Munsifs (Junior Civil Judges) in Andhra Pradesh State Judicial Service under Limited and General recruitment and the maximum age limit for direct recruitment was fixed as 38 years as on 1.7.1995. It is also stated in the counter that raising of age limit equal to time gap between two recruitments is not automatic and Rule 12(b) of the Special Rules for Andhra Pradesh State Judicial Service, one of the conditions of qualifications is that, one must not have completed 32 years of age by Direct Recruitment. It is also denied that Note (2) of Sub-rule 2 of Rule 12 gives such benefit of time from the last notification to the latest notification. It is also stated in the counter that High Court in its letter, dated 29.2.1992 had sent proposals for the establishment of 72 new Courts in the State in various categories viz., District and Sessions Judges and Senior and Junior Civil Judges, the Government had finally issued orders in G.O. Ms. No. 299, Home (Courts-A) Department, dated 29.9.1995 for the establishment of 26 new Courts of which 21 Courts out of 72 were proposed by the High Court and 5 other Courts by the Government. It is further stated in the counter that as 21 Courts were sanctioned by the Government, out of the proposed 72 new Courts, the left over new Courts were 51 in the aforesaid three categories and in anticipation of sanction of establishment of 51 new Courts by the Government, the High Court while arriving at the estimation of vacancies in respect of District Munsifs (Junior Civil Judges) in the year 1996 had taken 29 additional vacancies for consideration out of the proposal pending with the Government and that 13 vacancies were found excess due to taking of 29 additional vacancies into consideration for arriving at the estimation of vacancies even before according sanction for establishment of new Courts. Thus according to the counter the vacancy position till the end of 1998 for General Recruitment was in excess and there were only 5 retirements in the category of District and Sessions Judges during the year 1999 and there were no recruitments in the categories of Senior and Junior Civil Judges and those 5 vacancies were adjusted from the 13 excess vacancies. There were only 10 retirements till the end of

2000 (i.e., 7 District and Sessions Judges and 3 Senior Civil Judges) and those vacancies were also adjusted against the aforesaid 8 surplus officers. It is further explained in the counter that during 2001 i.e., up to 29.6.2001 no vacancies in the category of Junior Civil Judges were available for making recruitments and that on 30.6.2001 one vacancy arose with the retirement of Sri M. Prakasa Rao. All other vacancies were notified in the category of Junior Civil Judges due to retirement of 10 District Judges during the year 2001, one Senior Civil Judge on 30.6.2001 and elevation of 5 District Judges after 1.7.2001. In addition to this, 11 anticipated vacancies taking into account retirement of 11 officers of various categories occurring in the year 2002 were also notified. 11 other vacancies arising on account of deputation and death of Judicial Officers in 2001 were also taken into account. 10% reserve vacancies added to them and thus the total vacancies became 45.

13. According to the 3rd respondent, recruitment to all the 45 posts of Junior Civil Judges fell due after 1.7.2001 only and as such the cut off date was rightly fixed as 1.7.2001. The maximum age limit for Open Category candidates was rightly fixed as 32 years.

14. On behalf of the State of Andhra Pradesh, the learned Government Pleader for Home and Courts submitted that G.O. Ms. No. 570, dated 28.10.1993 through which the age limit of six years was raised, has been rescinded by subsequent G.O. i.e., G.O. Ms. No. 426, General Administration (Ser.A) Department, dated 7.11.2001 and as such when the benefit flown from the said G.O. has been withdrawn, the petitioners cannot seek extension of such benefit which is not available.

15. It is argued by Sri Nagarjuna Reddy, learned Standing Counsel for the High Court that Rule 28 of A.P. State Judicial Service Rules speak about the applicability of General Rules, which says that except to the extent expressly provided in Clauses (1), (17) and (18) of Rule 2, Part I and II of the Andhra Pradesh State and Subordinate Services Rules shall not apply to this service. According to learned Standing Counsel, Rule 12 of the A.P. Judicial Service Rules prescribes the requisite qualification and eligibility criteria for entry into the Judicial Service, the provisions of A.P. State and Subordinate Services Rules, except to the extent indicated in Rule 28 of A.P. State Judicial Service Rules, have no application at all. He further stated that Rule 5 of the A.P. State Judicial Service Rules prescribe qualification, which includes upper age limit in respect of Open Category candidates, which is fixed as 32 years. The learned Standing Counsel stated that there was no vacancy available from the last recruitment process, which commenced in the year 1996, to 2002 and therefore, there was no need to issue any notification for filling up such vacancies. Thus it is submitted that the benefit as provided under Note (2) of Sub-rule (b) of Rule 12 is not available to these petitioners and there is no substance in the writ petitions and they are liable to be dismissed.

16. The point for consideration is, whether the petitioners are entitled to

relaxation in the age limit over and above the maximum age limit prescribed under the impugned notification?

17. At the outset we may state that G.O. Ms. No. 570, dated 28.10.1993, which was incidentally relied upon by the learned Counsel appearing on behalf of the writ petitioners to urge before us that the benefit of raise in age of six years for direct recruitment could be extended to all these petitioners also, cannot be accepted having regard to the fact that said G.O. has been rescinded by a later G.O. i.e., G.O. Ms. No. 426 General Administration (Ser.A) Department, dated 7.11.2001.

18. A.P. State Judicial Service Rules are framed in G.O. Ms. No. 2207 Home (Personal-A), dated 4.11.1962 by the Governor of Andhra Pradesh in consultation with the High Court of Andhra Pradesh in respect of members of the Andhra Pradesh State Judicial Service. The service conditions of members of A.P. Judicial Service are governed by the A.P. State Judicial Service Rules. Rule 28 of the A.P. State Judicial Service Rules clarify the extent of applicability of General Rules to the members of the A.P. State Judicial Service, which reads as under:

"Rule 28: Applicability of General Rules :--Except to the extent expressly provided in Clauses (1), (17) and (18) of Rule 2, Parts I and II of the Andhra Pradesh State and Subordinate Services Rules shall not apply to this service".

19. From a reading of the above Rule it is clear that the A.P. State and Subordinate Services Rules are applicable only to the extent indicated in Rule 28 to members of A.P. Judicial Service.

20. The principal contention raised on behalf of the writ petitioners that the last recruitment for the posts of District Munsifs (Junior Civil Judges) was held in the year 1996 inviting applications for 200 posts and the present notification was issued only on 29.1.2002 prescribing the maximum age limit of 32 years for Open Categories, fixing the cut off date as 1.7.2002 and that the petitioners are entitled to the benefit under Note (2) of Sub-rule (b) of Rule 12, cannot be accepted in view of the fact that the benefit under Rule 12 is extended in a given circumstance and is not a General Rule.

21. Rule 12 of the Andhra Pradesh State Judicial Service Rules provides as under:

"Rule 12: General Qualifications :--(a) No person shall be eligible for appointment to the service unless--

(i) he is a citizen of India;

(ii) his character and antecedents are such as to qualify him for such appointment; and

(iii) he is of sound health and active habits and free from any bodily defect or infirmity making him unfit for such appointment.

(b) Special qualifications :--No person shall be eligible for appointment to the

post of Judicial Magistrate of the Second Class or District Munsif by the method specified in column (1) of the table below unless he possesses the qualifications specified in the corresponding entries in column (2) thereof.

Note (1) :---Reference to age in the Table and Sub-rule (c) below shall be deemed to be references to age as on first day of July of the year in which the appropriate list of approved candidates is prepared. The candidates should possess the other qualifications at the time when they apply to the Andhra Pradesh Public Service Commission.

Note (2) :--The age limit prescribed in the Table and Sub-rules (c), (d) and (e) shall be raised uniformly by a period, not exceeding the period during which recruitment to the posts fell due but was not made:

Provided that during the period which had elapsed since the recruitment to the post was last made, the recruitment thereto would have fallen due but was not made".

22. From a reading of the said Rule, it would appear that the period between two recruitments to the post falling due and yet no effort is made to notify that vacancy, from the date of availability of that vacancy to the date of notification at a later time, such time gap could alone be extended uniformly for raising age limit and it is not the entire time gap between two recruitments relevant for raising maximum age limit. We think, there appears to be some fallacy in the submission, while construing the provision available under Note (2) of Sub-rule (b) of Rule 12 of A.P. Judicial Service Rules, benefit of which cannot be extended to these petitioners.

23. As explained in the counter filed on behalf of the High Court the vacancies of Junior Civil Judges notified in the present notification fell due only after 1.7.2001 and thus the maximum age limit for Open Category was prescribed as 32 years with the cut off date as 1.7.2001. This prescription of maximum age limit of 32 years for Open Category is in accordance with the Rule 12 of the A.P. State Judicial Service Rules, which prescribes general qualifications and the maximum age limit for Open Category for direct recruitment to the posts of Junior Civil Judges.

24. In view of our discussion, we are convinced that the grievances of the petitioners, are seemingly not supported by any Rules much less the A.P. State Judicial Service Rules and as such the relief sought for cannot be granted to the petitioners.

25. Since all these petitioners are over-aged and disqualified, the plea of offending Articles 14 and 16 of the Constitution of India is not available to them.

26. In view of the aforesaid discussion, we find no merits in these writ petitions and we accordingly dismiss these writ petitions. No costs.

27. These petitioners were permitted to participate in the recruitmental process,

subject to the results in the writ petitions. By a detailed discussion, now these writ petitions are dismissed by us. As a result, these petitioners are ineligible to compete with others in the selection process for the posts of Junior Civil Judges, pursuant to notification issued on 29-1-2002. Registry shall initiate consequential steps.