

(1979) 07 RAJ CK 0011

In the Rajasthan High Court

Case No : Civil Writ Petition No. 344 of 1979

Ghanshyam Chandra Mathur

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-07-1979

Acts Referred:

Constitution of India, 1950 — Article 165, 217, 226
Criminal Procedure Code, 1973 (CrPC) — Section 417, 422

Citation : (1979) WLN 773

Hon'ble Judges : P.D. Kudal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.D. Kudal, J.—This writ petition is directed against the order of the State Government, No. F. 31(1) Jud/77 dated 27th May, 1978, whereby Shri Radha Kishan Rastogi, respondent No. 3, was appointed as Advocate General for the State of Rajasthan.

2. The contention of the learned Counsel for the petitioner is that in pursuance of Article 165 of the Constitution of India, the Government of each State shall appoint a person who is qualified to be appointed as Judge of a High Court to be Advocate General for the State Sub-clause (2) of Article 165 lays down the duties of Advocate General The qualifications for being appointed as a Judge of the High Court have been numerated in Article 217 of the Constitution of India. The contention of the learned Counsel for the petitioner is that Article 217(1) provides that the age of superannuation for a Judge of the High Court would be the age of 62 years. His contention is that as academic and other qualifications apply to the post of Advocate General, there is no reason why the age limit of 62 years as laid down for a High Court Judge under Article 217 be not made applicable to the post of Advocate General. It was further contended that Shri Rastogi, even on the date of appointment, was much older to 62 years and as such his appointment is void ab initio being in contravention of Article 217(1) of

the Constitution of India. Attention was also invited to Sub-clause (1) of Section 7 of the Rajasthan Law & Judicial Department Manual which lays down that the Advocate General is appointed u/s 492 of the Code of Criminal Procedure, 1898 (V of 1998) to be Public Prosecutor for all cases before the High Court. It was further contended that Section 13 of the said Manual provides that no person shall be appointed as a Public Prosecutor unless he agrees in writing to take no part in politics during the tenure of his appointment and give a declaration in writing that he is free from pecuniary embarrassment.

3. The learned Counsel also invited the attention of the Court to Section 15 of the Manual wherein it has been laid down that a Public Prosecutor shall be appointed for a period of three years, including the period of his probation and may be reappointed for further periods not exceeding three years at a time. Ordinarily, no person shall be appointed a Public Prosecutor after he attains the age of 60 years or continued in that office after he attains that age. Notwithstanding the expiry of the period, of his term of appointment, a Public Prosecutor shall continue as such until he is re-appointed or his successor is appointed.

4. The learned Counsel for the petitioner has placed reliance on *The State of Rajasthan and Another Vs. Fateh Chand and Another*, wherein it has been held that Rule 12 thus lays down the minimum academic qualifications required for eligibility to apply for the post of a Lower Division Clerk, while the rules as to posing the examination hold under Rule 7, as to nationality, age and physical fitness etc. are other qualifications required for the purpose of recruitment. It follows, therefore, that before a person can be recruited, he has to have not only the minimum academic qualifications required under Rule 12, but other qualifications also, namely, nationality, age and the necessity of his having to pass the examination under Rule 7 held on such terms and conditions laid down by the Government under that Rule.

5. The learned Counsel has also relied on *Mohambaram v. Javavelu* AIR 1970 May 63 wherein it has been held that the office of Public Prosecutor involves duties of public nature & of vital interest to the public. Provisions under Sections 417, 493, 422 & 494 of the Criminal PC bring out the importance of that office. These show that Public Prosecutor is not a just an Advocate engaged by the State to conduct its prosecutions. The importance of the office from the point of view of the State and the community is brought out in Section 494, Criminal PC which vests in the Public Prosecutor discretion to apply to the Court for its consent to the draw from the prosecution of any person. It was further held in this ruling that the office of Public Prosecutor is a public office and hence an appointment to that post can form the subject-matter of a petition under Article 226 seeking a writ of quo warranto.

6. It was further contended by the teamed counsel for the petitioner that a reference to *Dhelpur Co-operative Transport and Multipurpose Union Ltd. Bholpur v. Appellate Authority, Rajasthan, Jaipur* 1954 RLW 649 would show the

capability of the respondent No. 3. The contention was that a person to be appointed as Advocate General for a State should be a person of high caliber.

7. It was further contended that the petitioner is the General Secretary of the Bar Association, Jaipur and as such, he is very much interested in seeing that the dignity of the office of the Advocate General is maintained and that no-body is appointed to such an office because he happens to be actively associated with a political party. It was contended that the petitioner has brought this writ petition only with a view to impress that high standards have to be maintained by the State in making such appointments of public importance. Reference was made to *Hargovind Pant Vs. Dr. Raghukul Tilak and Others*, wherein the Supreme Court has held that paramount public policy underlying the need to ban appointment of holders of public offices after retirement to higher offices and posts under the Government. It was further held that a note of caution is needed as Creaser's wife must be above suspicion, that purity of public offices of high status is a constitutional value in itself, that nothing should be done which may create an impression that a holder of a public office can look forward to a higher appointment after retirement if he pleases the Government of the day and that no appointments should be made which may lend support to the criticism of favouritism or patronage and consequential weakening of credibility. The confidence of the community in the key instrumentalities is of considerable significance in the maintenance of the rule of law.

8. Reliance was placed on *K.M. Joseph, Trivandrum and Another Vs. State of Kerala and Another*, wherein it was observed that it will be an abuse of the executive power of the State, if posts are created in public service and appointments are made thereto, for achieving political objects or on considerations which are extraneous and irrelevant to the objects for which the power is vested in the State.

9. Reliance was also placed on *S.G. Jaisinghani Vs. Union of India (UOI) and Others*, wherein it has been held that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based.

10. The learned Counsel for the petitioner has also contended that the respondent No. 3 is the Executive Head of the RSS, which is a political organisation. He made reference to certain articles and news reports in the papers to testify his contention. His further submission was that the Court is entitled to take judicial notice of such articles and statements in the newspapers in the interests of justice. Reference be made to *Nadir Khan Vs. The State (Delhi Administration)*,

11. The learned Counsel for the petitioner also referred to *Corpus Juris* wherein the word "qualified" has been defined to mean eligible, entitled, endowed, with the qualifications fit or suitable for the purpose possessed of endowments or accomplishments, or intellectual capacity, or moral worth to discharge the duties of an office, and in another some, having performed the acts which one chosen is

required to perform before he can enter into office.

12. The basic question for consideration in this writ petition is, whether the age limit of 62 years as envisaged in Sub-clause (1) of Article 217 of the Constitution of India would apply to the appointment to the post of Advocate General. Article 165 lays down that the Advocate General must be qualified to be a High Court Judge. Under Article 217(2) certain qualifications have been laid down for appointment as a Judge of the High Court. The Edge of superannuation has also been mentioned in Sub-clause (1) of Article 217. On the contrary, no age of superannuation has been mentioned in Article 165 of the Constitution of India. This clearly means that the age of superannuation which applies to a High Court Judge, does not apply to the office or the Advocate General. The learned Counsel for the petitioner has relied on the Manual refereed to above wherein it has been stated that Public Prosecutor shall not ordinarily be appointed beyond the age of 60 years. The word "ordinary" has been defined in the Webster. Third New International Dictionary as in the ordinary course of event. The use of the word "ordinary" is indicative of the fact that certain amount of discretion has been left with the State Government in making appointments even of Public Prosecutors. The Advocate General holds office of the Public Prosecutor by virtue of Section 7(1) of the Manual.

13. The contention of the learned Counsel for the appellant that in view of Sections 13 and 15 of the Manual the appointment of the respondent No. 3 as a Public Prosecutor should be held to be ultra vires of these Section. Whether the RSS is a political organisation or not, is not a matter which could be decided in the proceedings under Article 226 of the Constitution of India. As Article 165 of the Constitution of India does not lay down age of superannuation for the Advocate General, the contention of the learned Counsel for the petitioner is that the appointment of the respondent No. 3 as Advocate General is void ab initio as he was of an age exceeding 60 years on date of appointment, loses all force. If the framers of the Constitution of India really wanted to fix the age of superannuation of the Advocate-General to be 62 years as contended by the learned Counsel for the petitioner, then such an age limit would have been mentioned in Article 165 as is the case with the High Court Judge whose age of superannuation is specified in Article 217(1). The learned Counsel for the petitioner has placed reliance on *State of Rajasthan v. Fateh Chand* (Supra), wherein, qualifications regarding academic qualifications, required eligibility were held also to include his nationality, and the physical fitness. In that case, Rule 11 prescribes the minimum and maximum age and age and Rule 10 prescribes about the nationality and others. The contention of the learned Counsel based on *State of Rajasthan v. Fateh Chand* (supra) has thus no force because in that case all these specifications were given under the various rules. The Supreme Court while interpreting Rule 12 took into consideration the prior rules also. In the instant case the age of superannuation of the Advocate General has not been enumerated in the Constitution and the Rajasthan Law and Judicial Department Manual. Under these circumstances having given my most anxious consideration

to the contentions raised by the learned Counsel for the petitioner, I am unable to hold, that any case is made out for interference by way of issuance of any appropriate writ.

14. The writ petition is accordingly dismissed in limine.