
(2011) 10 JH CK 0070
In the Jharkhand High Court
Case No : Writ Petition (S) No. 5380 of 2011

Jai Prakash

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 20-10-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 24(9), 25(2), 25A, 25A(2)

Citation : (2012) 1 JCR 143

Hon'ble Judges : Prakash Tatia, C.J.;Jaya Roy, J

Bench : Division Bench

Judgement

1. Heard learned counsel for the petitioner and learned Advocate General.
2. Learned counsel for the petitioner vehemently submitted that Section 25-A has been inserted in the Code of Criminal Procedure, 1973 with effect from 23.06.2006 providing for establishment of the Directorate of Prosecution. As per sub-section (2) of Section 25-A, a person is eligible to be appointed as Director of Prosecution or a Deputy Director of Prosecution if he has been in practice as an Advocate for not less than 10 years and such appointment shall be made with the concurrence of the Chief Justice of the High Court. Though Section 25-A was inserted as back in the year 2006, but State decided to establish the Directorate of Prosecution in the year 2008 by taking a decision on 09.04.2008 then Rules were framed on 19.07.2011. In these Rules "Practising Advocate" has been defined in sub-clause A of Rule 2 which says that such Advocate shall be only who has given services as provided u/s 24(9) of the Code of Criminal Procedure, 1973; thereby only the Public Prosecutors have been made eligible by framing the Rules which is contrary to the specific provisions of the Code of Criminal Procedures i.e., Section 25(2), Cr. P.C. Then a schedule has been annexed with the Rules wherein under Clause 1 there is a sub-clause 2 which says that Advocates in profession and especially who are in prosecution cases and having the experience of 15 years or any person holding the post of Deputy Director. Prosecution for three years shall be eligible. In sub-clause 4 of Clause 1 of the

Schedule, the cut off date has been fixed as 31st March and eligibility has been given as 45 years and upper age limit has been given as 55 years. In the case of Scheduled Caste, Scheduled Tribe and Government servants, there is relaxation of two years in upper age limit. According to learned counsel for the petitioner, In fact all the provisions referred above are contrary to the specific provisions made in the Cr.P.C. as well as totally discriminatory and, furthermore, the cut off date has been fixed purposefully to see that petitioner may not compete and petitioner will be over-aged by one month and 20 days and no reason has been given why the cut off date has been given as 31st March of the year when it is first selection process u/s 25-A. It is also submitted that process can be initiated only after consultation with the Chief Justice of the High Court.

3. Learned Advocate General vehemently submitted that the minimum age prescribed u/s 25A(2), Cr.P.C. is not the age required to be kept and the State can fix upper age limit. However, learned Advocate General submitted that there is no Rule making power in the Cr.P.C. authorizing the State Government to frame the Rules but the vacuum can be filled up and if the circular is not contrary to any statutory provision or any Rule then the gap can be filled up by such administrative order. It is also submitted that to have the better talent in the field of prosecution, these provisions have been made.

4. We have considered the submissions of the learned counsel for the parties and we are of the considered opinion that the matter requires serious consideration, therefore, the matter is admitted for hearing. We are also of the considered opinion that the process of selection in pursuance of the impugned advertisement No. 19 of 2011 shall remain stayed till 16th of November, 2011.

Put up this case on 14.11.2011.