

(1985) 02 BOM CK 0012

In the Bombay High Court

Case No : Writ Petition 2147, 2107, 2103 of 1983

Jayant Jairam Rohee

APPELLANT

Vs

Maharashtra Public Service Commission and others

RESPONDENT

Date of Decision : 13-02-1985

Acts Referred:

Bombay Judicial Services Recruitment Rules, 1956 — Rule 21, 3, 4(4)
Constitution of India, 1950 — Article 14, 16, 226

Citation : (1986) 2 LLJ 487 : (1986) MhLj 426

Hon'ble Judges : M.L. Pendse, J;G.A. Paunikar, J

Bench : Division Bench

Judgement

Pendse, J.—These three petitions filed under Article 226 of the Constitution of India can be conveniently disposed of by common judgment, as the question raised in all these petitions is identical. The petitioners in each of the petition are practising lawyers and are practising for a duration of more than three years and less than five years at the relevant time. The Secretary, Maharashtra Public Service Commission published Notification No. 19/2408/D-X on April 2, 1983 inviting applications for 80 posts of Civil Judges (Junior Division) and Judicial Magistrates (First Class) in the judicial service of the State of Maharashtra, Class I. Forty posts, were reserved for candidates belonging to the Backward Classes. The advertisement sets out that to be eligible for appointment, a candidate must (a) ordinarily be not less than 21 years and not more than 35 years of age (40 years in the case of candidates belonging to Communities recognised as Backward by the Government of Maharashtra for purposes of recruitment) on August 3, 1983, (b) have practised as an Advocate, Attorney or Pleader in the High Court or in Courts subordinate thereto for not less than three years on 5th May, 1983 and (c) be certified to have sufficient knowledge of Marathi to enable him to speak, read, write and translate with facility into English and vice-versa. The advertisement contained a note that information common to all posts is given in a separate sheet attached to the Application Form. In accordance with the advertisement, each of the petitioners applied to the Maharashtra Public

Service Commission in the prescribed form for being appointed to the post of Civil Judge and Judicial Magistrate. Each of the petitioner was eligible for appointment to the post but was informed by communication from the Secretary of the Commission that they have not been selected for an interview for the post. This action on the part of the Commission has given rise to the filing of these three petitions and a relief sought by the petitioners in direction to the Commission to consider the claim of the petitioners for the post of a Civil Judge by giving call for an interview and by considering the claim of the petitioners on merits.

2. In answer to the petitions, Mr. Vithal Ramchandra Gaonkar, Under Secretary of the Commission, has filed returns on November 7, 1983. It is not disputed that each of the petitioners fully satisfies the minimum requirement for the post of Civil Judge (Junior Division) and Judicial Magistrate (First Class). The return claims that in response to the advertisement, the Commission received a large number of applications from the eligible candidates and thereupon in accordance with Instruction No. 7 attached to the application form decided to invite only those candidates who have practised for five years or more for interview. The return claims that the total number of applications were 924 and out of them 834 candidates were eligible. As the number of eligible candidates, claims the Commission, were disproportionately large in comparison with the number of advertised posts, it was felt desirable to select candidates for interview by laying down certain criteria. In other words, the Commission felt that it was necessary to reduce the number of candidates who can be interviewed by applying a different rule than one stated in the advertisement. It is claimed that the Commission has a right to decide and lay down the principles for selection of the candidates where the number of applications is high. The respondents, therefore, claimed that action of the Commission is not calling the petitioners for interview as they had not practised for a duration of five years for perfectly justified.

3. In view of these rival contentions, the question which arises for determination is whether it is permissible for the Commission to introduce a new criteria for determining whether a candidate who is otherwise eligible in accordance with advertisement should be called for interview. The Governor of Bombay, in exercise of the powers conferred by Art. 234, the proviso to Art. 309 of the Constitution of India and Art. 234 reads with the Government Notification in the Home Department, No. 1734/7 dated 17th August, 1953, has made rules after consultation with the Bombay Public Service Commission and High Court of Bombay and the rules are known as "The Bombay Judicial Service Recruitment Rules, 1956" (hereinafter referred to as the "Rules"). Rule 3 inter alia prescribes that the service shall consist of two Branches, namely, Junior Branch and Senior Branch. The Junior Branch shall consist of Class I Officers including Civil Judges (Junior Division) and Judicial Magistrates of the First Class. Sub-rule (4) of Rule 4 provides for appointments to the post of Civil Judges and Judicial Magistrates and prescribes that appointments can be either by nomination from members of the Bar or, in special circumstances, by re-employment of retired Civil Judges. The

appointments are to be made by the Governor in consultation with the Public Service Commission except in the case of re-employment of retired Civil Judges. It further prescribes that the Commission shall invite a representative of the High Court to be present at the interview held by the Commission and the representative may take part in the deliberations of the Commission but shall not be entitled to vote. Sub-rule (4)(iii)(b) of Rule 4 prescribes that the candidate applying for the post of Civil Judge shall, unless otherwise expressly directed, should ordinarily have practiced as Advocates, Attorneys or Pleaders in the High Court or Courts subordinate thereto for not less than three years on the last date prescribed for the submission of the applications. It is, therefore, clear that there is a statutory provision prescribing eligibility criteria of candidate applying for the post of Civil Judge. In accordance with these statutory rules, the advertisement issued by the Public Service Commission sets out the three basic requirements needed for appointment to the post of a Civil Judge. As stated hereinabove, it is not in dispute that each of the petitioners was eligible for appointment to the post of Civil Judge on the date of filing of the application before the Commission. The return filed by the Commission does not dispute this fact but claims that it is open for the Commission to prescribe a different criteria to determine whether a candidate who is otherwise eligible should be called for interview or otherwise. Reliance is placed on behalf of the Commission on the not included in the advertisement which provides that information common to all posts is given a separate sheet attached to the Application Form. The reliance is on Instruction No. 7 in this attached form which reads as under :

"7. Where the number of applications from candidates who are eligible to be called for interview is disproportionately large in comparison with the number of advertised posts, the Commission, at their discretion, may select candidates for interview by applying any criteria which may be decided by them. Candidates not selected for interview will be informed of their non-selection, but the reasons for non-selection will not be communicated."

The respondents claimed that in accordance with the powers conferred on the Commission by Instruction No. 7, it was decided that only those candidates who had practised for five years or more should be called for interview. The Commission also decided that all eligible candidates with a Bachelor's Degree in Law in First Class or a Post-graduate Degree in law be selected for interview. As eligible candidates belonging to the Backward community were not in large in number, the Commission decided to interview all the candidates belonging to the reserved category. The gravamen of the charge of the petitioner is that the Commission evolved a new test of eligibility to determine whether a candidate should be called for interview and the criteria applied by the Commission has no nexus whatsoever to the object to be achieved. We find considerable merit in the complaint made by the petitioners.

4. The Commission has issued advertisement in accordance with the statutory rules and the advertisement called upon the eligible candidates to apply for the

spot of a Civil Judge. The advertisement prescribes that Advocates practising for at least a period of three years are eligible for consideration for appointment to the post and in accordance with the advertisement, each of the petitioners had applied for the post. It is undoubtedly true that the Public Service Commission can prescribe some method or criteria to scrutinise applications in case they are large in number and disproportionate to the number of posts available. It was not very seriously disputed on behalf of the petitioners that the Commission, while scrutinising the applications, may adopt a criteria to ascertain whether some of the eligible candidates should be dropped out. But it was contended that whatever may be the criteria adopted by the Commission, it must have nexus to the object to be achieved. The object to be achieved is obvious being selection of the best available material. It was urged on behalf of the respondents that the Commission felt that the candidate who had practised for a period of five years or more would be more meritorious and suitable than a candidate who had practised for a period less than five years. In our judgment, the assumption of the Commission in this regard is entirely without any basis. It is not a secret that some competent Advocates who had practised for a period of three years are far better suited than an Advocate who had merely put in practice of five years. In case the object of the Commission is to select the best candidate and as the statutory rules prescribe that the minimum requirement for appointment to the post is a practice for a duration of three years, it is not permissible for the Commission to totally eliminate all candidates who had practised between three years and five years at the Bar. In our judgment, the criteria employed by the Commission has no relevance whatsoever to the merit of the candidate and by adopting this new method to determine which candidate should be called for interview, the Commission had contravened the statutory rules framed by the Governor of Maharashtra. It is undoubtedly true, as claimed on behalf of the respondents, that instruction No. 7 attached to the application form enables the Commission to select candidates for interview by applying any criteria which may be decided by the Commission. But we are afraid that it is not permissible for the Commission to select a criteria which is entirely arbitrary and which has not nexus whatsoever to the object to be achieved. It is possible that the Commission, on receipt of large number of applications which are totally disproportionate to the number of posts available, may have to find out some method to select better candidates out of the candidates who had applied for calling an interview, but the method cannot be arbitrary. In our judgment, the method applied for deleting all eligible candidates who had not practised for a minimum period of five years was entirely arbitrary and cannot stand a scrutiny of reasonableness. The Commission could not have assumed that the candidate would have better merit merely because he has put in practice of five years or more than the candidate who has practised for the period between three and five years. The suitability of a candidate does not depend merely on the number of years he put in at the Bar but upon the experience he has gathered by working out matters in Court. In our judgment, the Commission has travelled beyond the statutory provisions by evolving a criteria of inviting for an interview only those

candidates who had put in practice of over five years.

5. Reliance was placed on behalf of the respondents on the decision of the Madhya Pradesh High Court reported in *Jayant Kumar Chavhan v. Public Service Commission, M.P. Indore and another*, 1979 (1) Service Law Reporter 316. The Public Service Commission, Madhya Pradesh had invited applications for recruitment to the posts of Civil Judges and the qualification for eligibility was a Graduate in law or a Barrister or a member of the Faculty of Advocates. The experience at the Bar was to be an additional qualification and weightage was to be given for each completed year, subject to the maximum of three years of practice. The Madhya Pradesh Public Service Commission had issued general instructions to candidates and clause 8 inter alia prescribed that the Commission will make preliminary selection on the basis of the material furnished by the candidates in their applications. The possession of the minimum qualifications will not automatically entitle a candidate to be called for the test or interview if better qualified candidates are available. In pursuance to the advertisement, 2367 applications were received for the available 33 posts. The Commission decided that only those candidates who have passed LL. M. Examination or who have passed LL. B. Examination in First Class or those who have passed LL. B. Examination in the Second Class and possess at least year's legal experience as practicing Lawyers should be called for interview. One of the candidates, who was not called for interview in view of this additional criteria, filed the petition before the Madhya Pradesh High Court. The Division Bench of Madhya Pradesh High Court found that there were no statutory rules for recruitment of persons to the judicial service of Madhya Pradesh State. However, by executive instructions, the Government had adopted the Rules of 1955 as a guide for recruitment to the judicial service. The Division Bench found that Rule 21 of the existing Rules provides that the Commission shall consider all the applications received and shall interview such candidates as it may consider suitable for appointment. It was felt that clause 8 of the General Instructions was in conformity with Rule 21 and the procedure adopted by the Commission was legal. The Madhya Pradesh High Court felt that it would be extremely difficult, if not impossible, if all the candidates are to be called for interview and therefore it is open for the Commission to make a preliminary selection for restricting the number of candidates to be called for interview. It was then observed that if the criteria laid down by the Commission for calling candidates for interview are reasonable, no objection can be taken to the course adopted. It was held that it is open for the Commission to lay down criteria for preliminary selection, but the power of the Commission is not unrestricted or unrestrained and the Commission had to lay down the criteria for preliminary selection having regard to the object of selecting best persons for the judicial service within a reasonable time. In our judgment, the decision of the Madhya Pradesh High Court does not lay down that any criteria howsoever unreasonable and arbitrary employed by the Commission for a preliminary selection should be upheld. In the case before the Madhya Pradesh High Court, there were not statutory rules for selection of judicial

service, while in the present case the selection is to be made in accordance with the Bombay Judicial Service Recruitment Rules framed by the Governor in exercise of its constitutional powers. It is, therefore, not open for the Commission to ignore those rules and adopt criteria or method which is in violation of the Rules. It is not permissible for the Commission to alter the minimum requirement prescribed by the rules for selection to the post by prescribing that only those candidates who had put in practice of five years or more will be called for interview. In our judgment, the decision of the Madhya Pradesh High Court in no way supports the submission urged on behalf of the respondents that the criteria adopted by the Commission was reasonable and, therefore, the intimation sent to the petitioners that they are not considered for interview was in order. Our attention was also invited to the decision of the Andhra Pradesh High Court in *The Union of India and others v. Ch Pooranachandra Rao* 1975 LIC 1638, but the decision has not direct bearing on the controversy involved in the present petition. In the case before the Andhra Pradesh High Court, a candidate, though eligible for appointment to a post advertised by the Commission, was not selected and it was claimed that in spite of the fact that a candidate possessed better qualification, the claim was overlooked by the Commission without assigning any reasons. The Andhra Pradesh High Court held that there were no statutory rules governing the advertisement for the posts and the posts were filled up only on the basis of certain executive instructions. The advertisement did not indicate any method or manner which would be followed by the Public Service Commission in calling the candidates for interview. In absence of guidelines laid down for the purpose of calling the candidates for interview and for assessment of merit for the selection, the Court felt that it was not possible to determine what grounds appealed to the Commission for turning down the application of the petitioner. It was held that as the Public Service Commission declined to make their record available for perusal of the Court, it was not possible to ascertain whether the criteria or the method applied by the Commission in declining to call some of the candidates for interview was just or otherwise and, therefore, the rights under Articles 14 and 16 of the Constitution were infringed. In our judgment, the decision of the Andhra Pradesh High Court would not assist the respondents in the present case.

6. A faint submission was advanced on behalf of the respondents that the instructions issued by the Public Service Commission and specially Instruction No. 7 enables the Commission to prescribe for criteria which is different from the one prescribed by the statutory rules. It is impossible to accede to this submission. It is well settled that administrative instructions issued by the Commission in settling the criteria cannot modify the statutory rules relating to recruitment. A reference can be usefully made in this connection to the decision of Supreme Court reported in *State of Haryana, Vs. Shamsheer Jang Bahadur, etc.* etc., In our judgment, the exercise of powers by the Commission in accordance with Instruction No. 7 on the facts and circumstance of the present case was clearly violative of Articles 14 and 16 of the Constitution of India and the action

of the Commission in not inviting each of the petitioner for interview was clearly erroneous.

7. That takes us to the question as to what relief should be granted in each of these petitions. The petitioners claimed that writ of mandamus should be issued directing the Commission to consider the petitioners for the post of Civil Judge by calling them for interview and considering their claim on merits. The petitions were filed in this Court in the month of September, 1983. The petitions were submitted in November, 1983 and it was directed that the appointments of Civil Judges in accordance with the advertisements shall be made subject to the result of the petitions and the Civil Judges shall be made aware of this position at the time of their appointment. It was urged on behalf of the petitioners that in view of this interim order, the entire process of selection undertaken by the Commission in the year 1983 should be struck down and the Commission should be directed to undertake a fresh exercise for selection of suitable candidates. We are afraid, we are unable to grant any such relief to the petitioners inspite of our conclusion that the petitioners were erroneously left out from consideration. We are conscious of the fact that this Court has directed the Commission to make selection and directed the Government to make appointments subject to the result of this petition. Inspite of this order, we are not inclined to disturb the selection of 80 Civil Judges. The appointment of these 80 Civil Judges was made some time in the beginning of the year 1984 and these Civil Judges have undertaken the training and have been posted in different parts of the State. The Civil Judges appointed in accordance with the advertisement must have delivered large number of judgments and it would be extremely harsh to these Judges in case their appointments are nullified on the ground that they were selected, while other eligible candidates are left out ? it is undoubtedly true that these Judges were made conscious of the pendency of the petition, but we cannot overlook that by delivering a large number of judgments these Judges have determined the interest of several litigants. It would be extremely dangerous and would lead to serious complications in case their appointments are nullified at this stage. Fortunately, each of the petitioners in these three petitions is not yet age barred and can apply for appointment to the post in the next selection. In case the selection made by the Commission in the year 1983 is set at nought, then the Commission would be required to call for interview all those candidates who were eligible in the year 1983 and thereafter determine who should be selected on comparative merits. In our judgment, it would be extremely embarrassing for the Judges who were appointed in the years 1984 to got back to the Commission and stand for interview along with other eligible candidates. Taking all these facts and circumstances into consideration we are not inclined to grant any relief to the petitioners. It is unfortunate that the hearing of these petitions could not be taken up at an earlier date due to heavy arrears in Court. Though some hardship is undoubtedly caused to the petitioners, we are not inclined to grant relief to them because that would lead to greater complications and more serious hardships to those who are already selected and appointed.

8. Accordingly, rule in each of the petitions stands discharged but there will be no order as to costs.