
(2021) 12 TEL CK 0035

In the Telangana High Court

Case No : Writ Petition Nos. 26681, 26685, 26924 Of 2019

Kanukuntla Shankar

APPELLANT

Vs

State Of Telangana, And Another

RESPONDENT

Date of Decision : 14-12-2021

Acts Referred:

Telangana State Judicial Service Rules, 2017 — Rule 5(2)(a)(i)

Citation : (2021) 12 TEL CK 0035

Hon'ble Judges : Satish Chandra Sharma, CJ;N. Tukaramji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Regard being had to the controversy involved in the aforesaid cases, they were heard together and are being decided by a common order.

The facts of W.P.No.26685 of 2019 are reproduced as under:-

W.P.No.26685 of 2019 has been filed by the petitioner who has appeared in the examination conducted for the post of Junior Civil Judge by virtue of a Notification dated 08.03.2019 claiming appointment to the post of Junior Civil Judge by virtue of inclusion in the provisional select list.

The undisputed facts of the case reveal that a Notification was published by the High Court in the Official Website on 08.03.2019 inviting applications for 67 posts of Civil Judges (54 by direct recruitment and 13 by way of recruitment by transfer). The last date was fixed as 15.04.2019. The recruitment rules governing the field i.e., Telangana State Judicial Service Rules, 2017, prescribed the eligibility criteria and as per Rule 5(2)(a)(i) of the said Rules, a person who has been practicing for not less than three years as an Advocate as on the date of publication of the Notification was eligible to apply for the post of Civil Judge under the direct recruitment category. Some of the candidates who were not having three years eligibility criteria approached this Court by filing W.P.Nos.34953, 35166, 35195, 35978 of 2018 and 23658, 23659, 5284 and

5285 of 2019. This Court while hearing the said writ petitions on the grant of interim relief has passed an interim order on 14.03.2019, which is reproduced as under:-

"We have seen the order dated 30.10.2018 in Writ Petition No.34953 of 2018 and connections which was issued by this Court in relation to the notification No.141/2018-RC dated 15.09.2018 issued for selection for appointment of Civil Judges in the previous year. We think that ends of justice require that the same situation be applied as far as the impugned notification is also concerned.

Hence, applying the reasons stated in the order dated 30.10.2018 in Writ Petition No.34953 of 2018 and connections, there will be an interim order that if the petitioners are eligible to apply for being considered for appointment as Civil Judge in terms of the notification impugned in this Writ Petition, those persons will be provisionally admitted for the selection process, by receiving those persons' applications, without insisting on the experience of practice as an Advocate; if those persons are otherwise eligible in accordance with the impugned rules and notification. Such persons, whose applications are received within the time fixed as per the Notification, shall be subjected to requisite test for which they have to appear. The result of the selection shall not be declared and such selection process in relation to such candidates will be provisional and subject to further orders. It is directed that the Registry will follow this order, not only as regards the writ petitioners, but also in relation to applications of other similarly situated persons, which are submitted within the time fixed for receipt of applications in terms of the impugned Notification."

In the light of the interim order granted by this Court, the persons who were not having three years practice as an Advocate were also permitted to appear in the examination. The screening test was conducted on 11.05.2019 and the merit list was prepared after the examination was over on 12.07.2019. 95 candidates qualified under the direct recruitment quota and 3 candidates qualified under the recruitment by transfer quota. They were called for interview and a provisional select list was declared by the High Court. The grievance of the petitioners is that they were included in the provisional list which was published on 01.10.2019. Their grievance is that subsequently a final notification was issued by the High Court on 18.11.2019 and they were deselected. Meaning thereby, they were not included in the final list issued by the High Court. The undisputed facts reveal that at the time when the provisional list was prepared and published, the writ petitions preferred by the candidates were pending and it was only after the disposal of the writ petitions on 05.11.2019, a final list was published by the High Court. The operative paragraph of the judgment delivered by the High Court in W.P.Nos.34953, 35166, 35195, 35978 of 2018 and 23658, 23659, 5284 and 5285 of 2019 is reproduced as under:-

"In the case of K.H. Siraj vs. High Court of Kerala and others [(2006) 6 SCC 395], the Apex Court has observed as under:-

"In addition, further requirements are necessary for assessment of suitability of the candidate and that is why power is vested in a high-powered body like the High Court to evolve its own procedure as it is the best judge in the matter. It will not be proper in any other authority to confine the High Court within any limits and it is, therefore, that the evolution of the procedure has been left to the High Court itself. When a high-powered constitutional authority is left with such power and it has evolved the procedure which is germane and best suited to achieve the object, it is not proper to scuttle the same as beyond its powers. Reference in this connection may be made to the decision of this Court in *Union of India vs. Kali Dass Batish* [(2006) 1 SCC 779] wherein an action of the Chief Justice of India was sought to be questioned before the High Court and it was held to be improper."

The principle stated by the Apex Court cannot be questioned. However, the said principle was stated by the Hon'ble Supreme Court in a different factual matrix. The issue before the Apex Court was whether the High Courts are empowered to prescribe the minimum pass marks in written and oral examination in order to get the best available talent or not? Therefore, the observations made by the Apex Court are inapplicable to the present case.

Since in the case of *All India Judges' Association and others vs. Union of India* [(2002) 4 SCC 247], the Apex Court had "directed" the High Courts to amend the Service Rules and to delete any imposition of a pre-requisite of three years experience at the Bar, and since Rule 5(2)(a)(i) of the Rules and the Notification dated 08.03.2019 are contrary to the said "direction", obviously Rule 5(2)(a)(i) of the Rules is unconstitutional. Hence, the impugned Notification, which is based on Rule 5(2)(a)(i) of the Rules, is equally unsustainable. Therefore, the imposition of the said condition by Notification dated 08.03.2019 cannot be read as an obstacle to the eligibility of those who are freshly out of the law colleges. Even such fresh candidates would be deemed to be eligible to apply for the post of Junior Civil Judges in the State.

Therefore, this Court directs that the cases of the petitioners should be considered for the post of Junior Civil Judges, and if they are found to be eligible and suitable, and are above the cut-off marks, their results should be declared by the High Court.

All these writ petitions are, hereby, allowed. There shall be no order as to costs.

The miscellaneous petitions pending, if any, shall stand closed."

Meaning thereby, the Division Bench of this Court has held that those persons who were not having three years experience are also entitled to participate in the process of selection and taking into account the said judgment, a final list was prepared.

The final list certainly includes more meritorious candidates than the present petitioners and therefore, in the considered opinion of this Court, as certain

candidates were permitted to appear and participate in the process of selection provisionally by the order of this Court and once they have succeeded in the process of selection and they are more meritorious, they were rightly included in the final merit list prepared by the High Court.

Resultantly, this Court does not find any reason to interfere with the publication of final select list and the selection carried out by the High Court.

The writ petitions are accordingly dismissed. The miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.