
(1970) 01 RAJ CK 0010

In the Rajasthan High Court

Case No : Full Bench Civil Writ Petition No. 1965 of 1969

Munni Lal Garg

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-01-1970

Acts Referred:

Constitution of India, 1950 — Article 14, 217, 226, 233, 236

Citation : AIR 1970 Raj 164 : (1970) RLW 502 : (1970) WLN 78

Hon'ble Judges : P.N. Shinghal, J; L.N. Chhangani, J; C.M. Lodha, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

L.N. Chhangani, J.—Muni Lal Gani of Karampur has filed this petition under Article 226 of the Constitution of India praying for an appropriate writ, order or direction to the effect that (i) Rule 15(ii) of the Rajasthan Higher Judicial Service Rules, 1969 (hereinafter referred to be the Rules) be declared ultra vires and (ii) respondents Nos. 1 and 2, i.e the State of Rajasthan and the High Court of Judicature for Rajasthan, be directed not to proceed with the making of the selections for recruitment to the Higher Judicial Service from amongst the advocates. A prayer for quashing the proceedings for the selection which have already been undertaken, has also been made.

2. The relevant facts are these. The petitioner is an Advocate practising at Shri Karanpur, District Ganganagar. After passing, his L.L.B. Examination in the year 1954 he was enrolled as a pleader first grade by the Rajasthan High Court in the year 1954. He was later on enrolled as an Advocate of the Rajasthan High Court under the Advocates Act in the year 1962. The Rules came into force on 21-1-1969. Rule 8 thereof provides for two sources of recruitment:

(1) by promotion from amongst the members of the Rajasthan Judicial Service, or

(2) by direct recruitment from the Advocates who have practised in the High Court or courts subordinate thereto for a period of not less than seven years.

Rule 15 prescribed the qualifications for a candidate for direct recruitment to the service; Sub-rule (ii) states that a candidate must be an advocate who has practised in the High Court or courts subordinate thereto for a period of not less than seven years.

3. In accordance with these rules, the Registrar, Rajasthan High Court, Jodhpur, invited applications from advocates who had practised in the Rajasthan High Court or courts subordinate there to for a period not less than seven years and who were otherwise eligible for appointment to fill in six vacancies by direct recruitment. After the issue of a notification by the Registrar, Shri Roshan Lal Gupta, Vice President Bar Association, Shri Ganganagar, moved the High Court of Rajasthan for a clarification of the notification, whereupon the Registrar, vide his letter No. A(ii)/4/69/(ii)/7515 dated 19-4-69 informed him that the period of practice of seven years prescribed in the rules means practice as an advocate and not as a pleader.

4. The petitioner, who was an advocate and who had more than seven years of practice, though not as an advocate but partly as an advocate and partly as a pleader, considering the interpretation of the rule by the Registrar as incorrect, submitted an application for appointment to the Higher Judicial Service. His grievance is that the High Court did not call him for an interview on the ground that he had not put in seven years" practice as an advocate even though the total period of his practice as an advocate and as a pleader exceeded seven years. He, therefore, filed the present writ petition on the following grounds:

1. That Rule 15(ii) of the Rajasthan Higher Judicial Service Rules, 1969 and the notice of the Registrar inviting applications are ultra vires of Articles 14 and 233 of the Constitution of India. It has been averred that although under Article 233(2) of the Constitution a person who has to his credit seven years" practice either as an advocate or as a pleader is eligible for appointment to the post of District Judge, Rule 15(ii) requires that a candidate for direct recruitment must be an advocate who has practised in the High Court or Courts subordinate thereto for a period of not less than seven years and thus a person who has, to his credit, seven years" practice as a pleader, has been rendered ineligible for applying for the post of District Judge in terms of the Rules. It has further been stated that Rule 15(ii) of the Rules is ex-facie ultra vires, of Article 233 of the Constitution of India and if, allowed to stand, will result in denying the petitioner an opportunity of being considered for appointment to the post of District Judge.

2. That respondent No. 2, while calling the applicants for interview, wrongly interpreted Rule 15 of the Rules. According to the petitioner, Rule 15 provides only that on the date of the application the appellant should be an advocate with a practice of seven years and it nowhere lays down that the period of seven years practice should be as advocate.

3. That Rule 15(ii) is also violative of Article 14 of the Constitution of India as it discriminates between the class of advocates who are practising in the Rajasthan

High Court or the Courts subordinate thereto, and the rest of the advocates, and the classification is irrational in as much as there is no nexus between classification and the object sought to be achieved by the Rules.

5. The writ has been opposed by the respondents mainly on the following grounds:

1. That the Court called for interview such advocates as if considered suitable for being so called, having regard to their qualifications, including the volume of their practice as indicated by the income tax paid by them. No advocate who did not pay income tax was considered suitable by the Court for being called for interview. The petitioner was not called for interview because he did not practice as an advocate for seven years.

2. That Article 233(2) only prescribes the minimum qualifications without fulfilling which a person cannot be deemed to be eligible for being appointed as a District Judgr. It does not mean that the rule-making authority cannot prescribe more stringent qualifications for recruitment. Article 233 is in no way offended if more stringent qualifications are prescribed because those recruited in accordance with the rules will always fulfil the minimum qualifications prescribed in the Constitution.

3. While framing the Rules it was definitely intended that the seven years practice should be practice as an advocate and not as a pleader. Had it been the intention that, the period of practice as a pleader should also be taken into account while counting the seven years practice as advocate, it would have, in that case, been provided that the candidate for direct recruitment to the service must be an advocate or pleader who practised in the High Court or Courts subordinate thereto for a period of not less than seven years.

4. The condition of practice in the Rajasthan High Court or Courts subordinate thereto has been prescribed to secure more effectively the object of requiring the applicant to have knowledge of local laws and to have exprience in the administration of these laws The classification of advocates who have practised in the Rajasthan High Court and courts subordinate thereto is quite a reasonable and rational classification and has definite nexus with the object to be achieved by the Rules which are to recruit suitable and proper persons to the Higher Judicial Service of the State of Rajasthan with a view to secure the efficient administration of justice.

6. Presumably in view of the importance of the question of law and the need of an authoritative decision, the writ petition has been referred to this Full Bench by the Hon"ble Chief Justice under proviso (a) to Rule 55 of the High Court Rules.

7. We have heard Mr. H.C. Rastogi for the petitioner and the Addl. Advocate General for the respondents.

8. We shall first address to the interpretation of Rule 15(ii). According to the respondents, Rule 15(ii) requires seven years" practcie as an advocate, whereas,

according to the petitioner, the rule will make a person who is an advocate and who has practised for not less than seven years partly as an advocate and partly as a pleader eligible for appointment to the Higher Judicial Service. The petitioner's counsel has relied upon the observations of the Division Bench of this Court in *Daulat Raj Singhvi v. The State of Rajasthan and ors.* Decided on November 17, 1969; (D. B. Special Appeal No. 31 of 1969). In that case, the petitioner had not submitted an application for being considered for appointment to the Rajasthan Higher Judicial Service but he submitted a writ application challenging the vires of Rules 15 (ii) and 8 (ii) of the Rules. The writ application was dismissed by a learned Single Judge who held that--

(i) the object of the Rules was to recruit suitable and proper persons to the Higher Judicial Service in the State with a view to securing an efficient administration of justice and that the qualification of seven years practice as an advocate in the Rajasthan High Court and the courts subordinate thereto had a reasonable nexus with the object underlying the Rules as the seven years' practice will enable a person to be recruited to secure sufficient knowledge of local laws, local conditions as well as the regional language which are necessary for discharging the duties of a District Judge efficiently.

(ii) Article 233(2) of the Constitution laid down only the minimum qualifications and it was open to the rulemaking authority to prescribe more stringent qualifications for the recruitment of persons to the Higher Judicial Service.

In a special appeal against that judgment, the Division Bench agreed with the above finding of the Single judge and dismissed the appeal. In the special appeal, the Advocate General had taken a preliminary objection as to the maintainability of the writ petition on the ground that the petitioner had not applied for appointment to the Higher Judicial Service. In that connection the learned Judges addressed themselves to the interpretation of Rules 8 (ii) and 15 (ii) of the Rules and recorded the following finding:

Having carefully considered Rules 8(ii) and 15 (ii) of the Rules we are convinced that the expression "advocates who have practised in the Court or courts subordinate thereto for a period of not less than seven years" cannot be restricted to advocates who have practised as advocates for seven years or that it will not take in a person who has been an advocate and has practised for not less than seven years though partly as an advocate and partly as a pleader.

In this connection, it was further observed as follows:

The practice of seven years need not, in our opinion, be as an advocate and could partly be as an advocate and partly as a pleader. From the various clauses of legal practitioners the recruitment is to be from the class of legal practitioners who are advocates, but how long a person has been an advocate is not of the essence. What is of the essence is his practice in the Rajasthan High Court or courts subordinate thereto for a period of not less than seven years, which may be either as an Advocate or as a Pleader.

It appears that during the course of arguments the learned Judge put it to the Advocate General whether the above interpretation sought to be adopted by them was a possible interpretation to make and the Advocate General having answered in the affirmative, the Learned Judges further observed that--

Now even if we were to think that on account of the language of the rule being not clear enough two interpretations are possible, we would be inclined to prefer an interpretation which will be in keeping with the requirement of the Constitution.

The Division Bench further related out the contrast in the language of Articles 233 and 217(3) and observed that "Rule 8(ii) and Rule 15(ii) would have been featured on the pattern of Article 217 of the Constitution if the intention of the rule making authority were that only a person who has practised for seven years as an advocate should be eligible. There should have been no difficulty in adding the words "as such an Advocate" after the word "practised" in Rule 8(ii) or Rule 15 (ii)." The counsel for the petitioner has placed great reliance upon the above observations of the Division Bench.

9. We have given our careful consideration to the reasoning adopted by the Division Bench, but we do not feel persuaded to accept the view taken by the Division Bench as regards the interpretation of Rules 8 (ii) and 15(ii). In our opinion, the words "who has practised in the Court or courts subordinate thereto" have been used in Rule 8(ii) and 15(H) of the Rules to qualify the words "an advocate" and according to the plain grammatical meaning the practice referred to in the Rules must mean "practice as an advocate" and we see no adequate justification for adding to the Rules words such as, "as pleader" or "as any other kind of legal practitioner" after the word "practised" in the Rules. It may be pointed out here that before the promulgation of the Advocates Act, 1961, there were several laws dealing with legal practitioners and there were various categories of legal practitioners such as, advocates, barristers, pleaders, mukhtars, vakils etc. It may also be mentioned that the connotation of the word "pleader" was not identical in the different States and that in some States the pleaders were entitled, as of right, to practise in the High Court. This position was examined by the All India Bar Committee, which made important recommendations for the creation of a Unified All India Bar and a common roll for advocates. In pursuance of the recommendations of the Bar Committee the Advocates Act, 1961 came into force. One important feature of the law was the integration of Bar into a class of legal practitioners known as "Advocates". The Rules are promulgated eight years after the Advocates Act, when there was no provision for enrolment as pleaders or any other kind of legal practitioners, the only provision for enrolment as "Advocates" and when the other categories of legal practitioners were nearing extinction. In such a background the rule making authority could not have intended to include practice as a pleader for the purpose of seven years practice to enable an advocate to be eligible under Rule 15(ii) of the Rules.

10. Reference to the provisions of the Constitution in Article 233 and 217 also cannot, in our opinion, be of any help in interpreting Rule 8(ii) and 15(ii) The Constitution was passed in the year 1950 whereas, as observed above, there were various categories of legal practitioners and various enactments dealing with them and when, in some cases, pleaders could practise in the High Courts. Article 236 of the Constitution defines "district judges" to include as judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional session judge and assistant sessions judge. It appears to us that having regard to the varying conditions in the different states, both as regards the categories of the legal practitioners and their rights and the nature of judicial service including the higher judicial service, the Constitution provided the minimum qualifications for appointment as district judges in general terms and it will hardly be proper to allow our interpretation of Rules 8(H) and 15(H) passed after the promulgation of Advocates Act to be coloured by reference to the provisions of Article 233 of the Constitution made in general terms. The condition of the petitioner relating to the interpretation of the Rules 8 (ii) and 15 (ii) is rejected.

11. On the above interpretation of the Rules, the "next contention of the petitioner's counsel is that the Rule 15(ii) is ex-facie, ultra vires Article 233(2) of the Constitution. In Daulat Raj Singhvi's case the learned Single Judge, vide his judgment dated 15-9-1969, and the Division Bench by its judgment dated November 17, 1969, held that Article 233(2) of the Constitution laid down only the minimum qualification and it was open to the rule making authority to prescribe more stringent qualifications for the recruitment of the persons to the Higher Judicial Service. We agree with the view taken in the earlier decisions as Also with the reasons given in support of the view.

12. The last contention of the petitioner is that these Rules are hit by Article 14 of the Constitution on account of discrimination between the advocates practising in the Rajasthan High Court and courts subordinate thereto and those practising in rest of India. In Daulat Raj Singhvi's case the learned Single Judge and, on appeal, the Division Bench, repelled a similar contention by relying on some observations made in J. Pandurangarao Vs. Andhra Pradesh Public Service Commission, We need only extract the following observations of the Supreme Court in J. Pandurangarao Vs. Andhra Pradesh Public Service Commission,

In this connection, it may be permissible to point out that the second condition in regard to three years' actual practice might more appropriately have required that the said three years practice should be in the Civil or Criminal Courts subordinate to the jurisdiction of the Andhra High Court. That would have more effectively secured the object of requiring the applicants to have knowledge of local laws and to have experience in the matter of administration of the said laws, As it happens, the said condition under the relevant rule enables advocate's practising in Civil or Criminal Courts all over India to apply, and so,

the requirement about the knowledge of local laws cannot invariably be satisfied by the said condition.

13. Having regard to these observations, we are clearly of opinion that the impugned rules are based upon a reasonable classification founded on intelligible differentia having a rational relation to the objects to be achieved and we agree with the view taken in the earlier decisions of this Court.

14. The various contentions of the petitioner having failed, there is no force in this writ application and it is hereby dismissed. There will be no order as to the costs.