

(1955) 07 AP CK 0036

In the Andhra Pradesh High Court

Case No : Writ Petns. No's. 216, 272 and 278 of 1955

Nallanthighal Bhaktavatsalam Iyengar

APPELLANT

Vs

Secretary, Andhra Public Service Commission, Kurnool and
another

RESPONDENT

Date of Decision : 15-07-1955

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 227, 234, 235

Citation : AIR 1956 AP 14

Hon'ble Judges : Subba Rao, C.J; Bhimasankaram, J

Bench : Division Bench

Advocate : E. Venkatesam and N.K. Acharya in No. 216, O. Chinnappareddi in No. 272 and N.K. Acharya in No. 278, for the Appellant;

Final Decision : Dismissed

Judgement

1. "Writ Petn. No. 216 of 1955:" This is an application for issuing a Writ of Mandamus directing the Andhra Public Service Commission to entertain petitioner's application for appointment as District Munsif and to restrain the said Public Service Commission from finalising the selection of candidates for appointment as District Munsifs till his application is considered on its merits.

2. The Andhra Public Service Commission at Kurnool, by a notification dated 19-11-54 invited applications for the post of District Munsifs in the Andhra State Judicial Service to be filled by direct recruitment. According to para 5 of the notification, an applicant must satisfy the commission

(A) that at the time when he applies (i) he is practising as an Advocate of the High Court, (ii) he has been actually practising in Courts of Civil or Criminal jurisdiction in India for a period of not less than three years.

(B) that on 1st July 1951 he had not completed the age of 32 years i.e. that he was born on or after 2nd July 1919.

3. The petitioner is a graduate of the Andhra University, having passed the B.A. degree examination in 1943. He passed the LL.B. degree examination of the Bombay University in 1945 and the M.A. degree examination of the Bombay University in 1947. He was enrolled as an Advocate of the Bombay High Court on 14-2-1950. He set up practice at Masulipatam and has been practising in the Courts of the District and Sessions Judge and Subordinate Judge and other civil and criminal courts in the Krishna District. Pursuant to the notification issued by the Andhra Public Service Commission, he submitted his application on 20-12-1954.

He received a communication from the Andhra Public Service Commission on 15-4-1955 to the effect that his application had been rejected as he did not satisfy the conditions announced in para 5 (A) (i) of the notification i.e. he was not practising as an Advocate of the Andhra High Court. The petitioner contends that he was duly qualified to apply for the post and that the order of the Commission, rejecting his application, was illegal.

4. Ms. E. Venkatesam, Learned Counsel for the petitioners, raised before us two contentions:

(i) that the condition laid down in para 5 (a) (i) of the notification is complied with if a candidate is an Advocate of any High Court in India;

(ii) if it be construed to refer only to the High Court of Andhra the said clause would be void as infringing the provisions of Arts. 14 and 16 of the Constitution of India.

5. The first argument turns upon the construction of para 5 (a) (i) of the notification:

Para 5 (A) (i) reads: "that at the time when he applies (i) he is practising as an advocate of the High Court". The short question is whether "the High Court" in that clause refers to the Andhra High Court or to any High Court in India. If the intention of the commission was to enable any person practising as an advocate of any High Court to apply as a candidate, they would have specifically stated so. The use of the definite article "the" is a pointer to the contrary and the particular High Court they meant could be ascertained only by considering the entire notification and also the rules under which that notification was issued.

The Governor of Andhra, in exercise of the powers conferred by Art. 234 and the proviso to Art. 309 of the Constitution of India, made special rules in respect of the Andhra State Judicial Service. Rule 2 (2) (b), in defining "appointing authority", says "in the case of promotion of a District Munsif as a Subordinate Judge, the High Court". Here, the High Court obviously must mean the Andhra High Court for the simple reason that the other High Courts have no power to promote a District Munsif serving in the Andhra State.

In Rule 4 under the heading "appointments", Translators of the High Court are made eligible for appointment to the service by transfer. High Court here also

must mean the Andhra High Court. In the case of direct recruitment, Rule 12 (b) prescribes the following qualifications:

- (1) must not have completed 32 years of age.
- (2) must be practising as an Advocate of the High Court.
- (3) must have been actually practising in Courts of civil or criminal jurisdiction in India for period of not less than three years; and
- (4) must have
 - (i) passed the third class language test (viva voce parts A. B and D) in Telugu or
 - (ii) passed the B.A. degree examination with Telugu as an optional subject, or
 - (iii) Passed the Intermediate Examination including composition in Telugu;

Provided that this qualification shall not be necessary if the candidate is certified by a District Judge or the Registrar of the High Court that he can talk fluently in Telugu and can read and write in Telugu: Transfer: (1).....

- (2) Must have passed the examination prescribed by the High Court for Advocates:

Provided that persons, who have passed the examination prescribed by the High Court at Madras for advocates and held before the 5th July 1954, shall be deemed to possess the qualification specified in this item; and

- (3) must have
 - (i) passed the third class language test (viva voce Parts A, B and D) in Telugu or
 - (ii) passed the B.A. degree examination with Telugu as an optional subject: or
 - (iii) passed the intermediate examination including composition in Telugu;

Provided that this qualification shall not be necessary if the candidate is certified by a District Judge or the Registrar of the High Court that he can talk fluently in Telugu and can read and write in Telugu.

6. In the aforesaid provisos, "the High Court" can only mean the Andhra High Court, for it is the Registrar of the Andhra High Court that will have to issue the requisite certificates. In the case of appointment by transfer, item (2) prescribes that the candidate must have passed the examination prescribed by the High Court for Advocates. The High Court here can only mean the High Court of Andhra, for it is not suggested that officers of other High Courts can be appointed by transfer.

The proviso to item (2) makes the intention of the author of the rules clear and beyond any dispute, for under the proviso, persons, who have passed the examination prescribed by the High Court at Madras for advocates and held before 5th July, 1954 are deemed to possess the qualifications specified in that

item. This proviso became necessary in view of the fact that the officers might have passed the examination before the constitution of the Andhra High Court.

Where a different High Court was intended, it was specifically mentioned. In this context, in item 2 one of the qualifications prescribed for direct recruitment "High Court" cannot mean any other High Court except the Andhra High Court.

7. Pursuant to the aforesaid rules, a notification was issued. In the preamble to the notification, the following statement appears:

The remaining 30 candidates will be selected by direct recruitment from practising advocates of the High Court who. on the date of this notification, are not in the service of the Government of India or the Government of a State....

The High Court mentioned above can only mean the Andhra High Court. If they meant any High Court, they would have said so. Paragraph 2 reads:

Application should be sent to the Commission through the Andhra High Court, Guntur by the candidates practising in the Andhra High Court and through the Dt. Judges concerned and the High Court by others.

In this clause "The High Court" can only refer to the Andhra High Court. It is not suggested that the applications could be sent by candidates through other High Courts. In para 3, it is stated that the applications must reach the High Court or the District Judge concerned not later than 5 P.M. on 22-12-1954. "The High Court" here obviously refers to the Andhra High Court. Paragraph 5 repeats the qualifications found in the aforesaid rules.

8. Having regard to the aforesaid rules and the express terms of the notification, there cannot be any doubt that the Commission meant only the Andhra High Court. The scheme of the notification is that a person practising as an advocate of the Andhra High Court is qualified to be a candidate for selection, provided he has been practising for the prescribed period in any civil or criminal court in India.

9. Learned Counsel relied upon the Bar Council Rules in support of his intention but, in our view, they cannot be of any help in construing the notification issued under a different set of rules. We, therefore, reject the first contention.

10. The next contention is based upon the Articles of the Constitution of India. The argument based on Art. 16 of the Constitution can easily be disposed of. Art. 16 reads:

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment for office under the State".

Here, persons who are not practising as Advocates of the Andhra High Court, are disqualified and they are not discriminated on any of the grounds mentioned in

cl. (2) and therefore, the provisions of that clause are not, in any way, infringed.

11. Strong reliance is placed on the provisions of Art. 14 of the Constitution. Art. 14 reads:

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Learned Counsel, while conceding that equal protection does not prevent reasonable legislative classification, contended that there is no reasonable basis for discriminating advocates of other High Courts from those of the Andhra High Court in the matter of selection of District Munsifs.

This Article was the subject of judicial scrutiny by the various High Courts and the Supreme Court. We have recently considered the scope of this Article in some detail in "Writ Appeal No. 1 of 1955, (Andhra) (A)". It would be unnecessary to cover the ground over again.

It would be sufficient if we extract the relevant passage from the latest pronouncement of the Supreme Court in *Budhan Choudhry and Others Vs. The State of Bihar*, where in the law on the subject was restated in clear terms. "At page 193" Das J., observed as follows:

It is now well-established that while Art. 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order however to pass the test of permissible classification two conditions must be fulfilled, namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question.

The classification may be founded on different bases: namely, geographical or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under conjuration. It is also well established by the decision of this Court that Art. 14 condemns discrimination not only by a substantive law but also by a law of procedure.

To this, we will add the statement of Professor Willis that:

If any state of facts can reasonably be conceived to sustain a classification, the existence of the state of facts must be assumed and that one, who assails a classification, must carry the burden of showing that it does not rest upon any reasonable basis.

12. It is also necessary to bear in mind the presumption of law laid down in "*Middleton v. Texas Power and Light Co.*," (1918) 249 U.S. 152 at p. 157 (C) that:

it must be presumed "that" a Legislature understands and correctly appreciates

the needs of its own people that its laws are directed to problems made manifest by experience and that its discriminations are based upon adequate grounds.

13. Having regard to the aforesaid principles, can it be said that the classification in the present case is arbitrary and it is not based upon the differences pertinent to the subject in respect of which it was made and has no rational relation to the objective sought to be achieved? To put it in other words has the qualification prescribed, namely, practising as an Advocate of the Andhra High Court any rational basis, having regard to the subject to be achieved? The object is to recruit suitable persons to the Judicial Service of the Andhra State.

One of the qualification is that the candidate should have practised for at least three years in any Court in India. If this be the only qualification, persons practising in remote parts of the country where the local laws, customs and practices are totally different from those obtaining in Andhra will have the right to compete. It became, therefore, necessary to impose an additional qualification that it should also be an advocate of the Andhra High Court. Under the Constitution, the Subordinate Judiciary is under the control and superintendence of the High Court. (See Articles 235 and 227 of the Constitution of India).

An Advocate of the High Court, except in exceptional cases, would have undergone apprenticeship for one year in the chambers of an experienced Advocate of that Court, attended lectures on different subjects given by leading advocates of that Court and passed the apprenticeship examination in different and useful subjects prescribed by the Bar Council. He would have acquainted himself with the law administered, the practice followed and the conventions developed in that Court.

He would have developed a sentimental attachment to and inherent respect for that institution. He would be under the disciplinary jurisdiction of that Court. Is it unreasonable if the authority concerned was of the view that the Advocates of the Andhra High Court would make better Munsiffs serving in the Andhra area under the control of the said High Court? In this view, the classification has a rational basis and is intended to achieve the object,

14. It is then said that, though there may be justification for the classification in so far as advocates practising in other parts of the country are concerned, there is no reasonable basis for excluding advocates of the High Courts practising in the Andhra area for the prescribed period and that the notification to that extent is bad. It is also pointed out that, under the rules framed under the Bar Councils Act an advocate can enroll himself by paying the prescribed fee, which indicates, the argument proceeds, that the Andhra High Court and the Bar Council put the advocates of other High Court on a par with the advocates of the Andhra High Court.

15. Reliance is placed upon Rule 1 (ii) of the Andhra Bar Council Rules which reads:

An advocate entered on the roll of Advocates of a High Court established by law in India other than the High Court of Andhra at Guntur.

Provided that the rules for admission in such High Court entitle an advocate entered on the roll of the High Court of Andhra at Guntur to be enrolled as an advocate of that High Court:

Provided further that where any person had been admitted as an advocate of such High Court without undergoing a course of study in the chambers of a practising advocate for a period of one year, he shall be of not less than one year's standing as an advocate of such High Court.

This rule is conceived in mutual respect and recognition of the principle of reciprocity. It is hedged in by conditions. Advocates of other High Courts may take advantage of this privilege, get themselves enrolled as advocates of the Andhra High Court and practice therein. An advocate of another High Court without invoking the privilege specially conferred on him, cannot claim equal rights in the matter of appointments and cannot be equated to advocates of the Andhra High Court for all purposes.

The argument that, under the Constitution all the High Courts have the same status does not appeal to us for the differentiation is not based on status but on the peculiar advantages possessed by the Advocates of the Andhra High Court in the context of selection of District Munsiffs functioning under the control of the Andhra High Court. We cannot, therefore say that the additional qualification imposed is either inherently unreasonable or there is no nexus between it and the object intended to be achieved.

16. In the result, the petition fails and is dismissed with costs which we fix at Rs. 50/-.

17. "Writ Petitions Nos. 272 and 278 of 1955" - It is not disputed that our decision in Writ Petition No. 215 of 1955 will govern these cases also. These petitions are also dismissed with costs, which we fix at Rs. 50/-.