

(1998) 12 AHC CK 0091

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 2222 of 1998

Phool Chandra Yadav and Others

APPELLANT

Vs

Public Service Commission and Another

RESPONDENT

Date of Decision : 09-12-1998

Acts Referred:

Uttar Pradesh Nyayik Sewa Niyamavali, 1951 — Rule 12(1)

Citation : (1999) 1 UPLBEC 754

Hon'ble Judges : B. Dikshit, J;Aloke Chakrabarti, J

Bench : Division Bench

Advocate : R.G. Padia and Prakesh Padia, for the Appellant; V.M. Sahai and S.C., for the Respondent

Final Decision : Allowed

Judgement

B. Dikshit and Aloke Chakrabarti, JJ.—The petitioner, all law graduates and working as Assistant Public Prosecutor in the State of Uttar Pradesh, filed this writ petition for issuance of mandamus commanding the respondent No. 1, Public Service Commission, Allahabad to accept and entertain application forms of the petitioners in respect of U. P. Judicial Services Civil Judge (Junior Division) Examination, 1997 and to permit the petitioners to appear in the said examination and for consequential orders.

2. It has been stated in the writ petition that regarding appointment in respect of posts of Civil Judge (Junior Division) Rule 12 of U. P. Nyayik Sewa Niyamawali, 1951 prescribes academic qualification which includes "an Advocate, Vakil or pleader on the roll of, or entitled to practice in, the Court or Courts subordinate thereto".

3. In the writ petition it has been contended by the petitioners that as Assistant Public Prosecutors they are discharging duties exactly like Advocates practising in the Courts in respect of their clients being the State of Uttar Pradesh and in this connection relevant statements have been made in paragraph Nos. 21 to 28 of

the writ petition.

4. Counter affidavit has been filed by the State respondents and the petitioner filed rejoinder affidavit.

5. Heard Dr. R.G. Padia, Learned Counsel for the petitioners and Mr. V.M. Sahai, learned Counsel for U.P. Public Service Commission as also the learned Standing Counsel for State of Uttar Pradesh.

6. Learned Counsel for petitioner states that with regard to qualification as contained in Rule 12 (1) (b), as quoted in paragraph No. 5 of the writ petition can be interpreted in view of law now settled by the Apex Court. Reference was made to the case of All India Judges' Association Vs. Union of India and others, , wherein directions were given by the Apex Court for bringing uniform conditions of service for members of subordinate judiciary throughout the country. Review petitions were filed seeking review of the said judgment with regard to the qualification for recruitment to judicial posts in the lower rung and it was held in All India Judges' Association and Others Vs. Union of India and Others, , making it necessary that "all the States prescribe the minimum practice as a lawyer as a necessary qualification for recruitment to the lowest rung in the judiciary."

7. The matter was again considered on a further review petition and decided the same in the case of All India Judges' Association and others Vs. Union of India and other, , without explaining the matter further.

8. Thereafter the matter was again considered by the Apex Court and decided by judgment and order dated 10-5-1995, a copy whereof has been annexed as Annexure No. 2 to the writ petition. In the said judgment some amendment in the Rajasthan Judicial Service Rule, 1955 was being considered for the purpose of considering Rule 11 thereof prescribing that "no candidate shall be eligible for recruitment to the Rajasthan Judicial Services unless, inter alia, he has not less than three years practice as a lawyer."

9. While considering the aforesaid provision regarding Assistant Public Prosecutor for further competing in the selection process, it was held that an Assistant Public Prosecutor practices as a lawyer and is eligible for selection to the judicial service, provided he has not less than three years practice as a lawyer. Considering the said aspect the petitioners in the said proceeding were granted relief holding that Assistant Public Prosecutors having not less than three years practice were entitled to participate in the selection process.

10. Learned Counsel for the petitioner made further reference to the case of Sushma Suri etc. v. Government of National Capital Territory of Delhi and Ors., reported in JT 1998 (7) SC 121, wherein again the Apex Court while considering the requirement of appointment under Delhi Higher Judicial Service Rules came to a finding that the test is not whether such person is engaged on terms of salary or by payment of remuneration, but whether he is engaged to act or plead on its behalf in a Court of law as an Advocate. In that event the terms of

engagement will not matter at all. It was further observed that what is of essence is as to what such Law Officer engaged by the Government does-whether he acts or pleads in Court on behalf of his employer or otherwise.

11. In view of the aforesaid position of law while interpreting various rules in respect of appointment in similar posts, the present petitioners appear to have due qualification for the purpose of participation in selection. In the writ petition the nature of duties performed by Assistant Public Prosecutors have been narrated and there is no effective denial by the respondents in respect of the same in the counter affidavit filed.

12. In view of aforesaid, we are of the opinion that the petitioners as Assistant public Prosecutors are having requisite qualification for participation in the selection process under the said Rule 12 (1) (b).

13. In this writ petition by an interim order dated 13-2-1998 the respondent No. 2, State of Uttar Pradesh was directed to accept the application of the petitioners if filed within time and completed in all respects making it clear that such acceptance will be provisional and shall not affect the right and contentions of the parties in the writ petition.

14. In view of the aforesaid and in view of our findings as recorded herein above, the respondents are directed to declare expeditiously the result of such selection treating the petitioners' qualification as Assistant Public Prosecutors satisfying the requirement of Rule 12 (1) (b) of U. P. Nyayik Sewa Niyamawali, 1951.

15. With the aforesaid directions this writ petition stands allowed.