

(2005) 05 PAT CK 0016
In the Patna High Court
Case No : CWJC No. 12220 of 2002

Prabhat Trivedi

APPELLANT

Vs

Patna High Court and Others

RESPONDENT

Date of Decision : 19-05-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 233, 233(2)

Citation : (2005) 3 PLJR 223

Hon'ble Judges : I.P. Singh, J;C.M. Prasad, J

Bench : Division Bench

Advocate : Sanjay Kumar Verma and Sada Nand Deo, for the Appellant;
Jainendra Kumar Singh, R.K. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

1. This writ application has been filed for issuance of a writ in the nature of mandamus or any other writ or writs order/orders quashing the order dated 25.10.2002 vide letter of this date whereby the petitioner was directed to appear in the interview for direct recruitment to the post of Additional District Judge to be held on 31.10.2002 only after resigning from his present post as Judicial Magistrate, Second Class, Jehanabad and also for the direction that the petitioner may be allowed to appear in the interview on 31.10.2002 for this post. From the facts of this case it would appear that while the petitioner was practicing as an Advocate in Patna High Court had applied for the post of Additional District and Sessions Judge on 5.3.1999. Later on in 1999 applications were also invited for the post of Bihar Judicial Service to which also the petitioner applied. He was finally selected for the appointment as Probationary Munsif, a service, which he joined on 12.12.2001. On 14.7.02 the petitioner received the admit card for appearing at the written examination for the post of Additional District Judge. He also submitted an application to the Registrar General of this Court for permission to appear in this examination to which no reply was received. However, in anticipation of approval the petitioner appeared in the said

examination. He received a letter to appear in the interview fixed for 31.10.2002 for this post.

2. However, on 26.10.2002 the petitioner received a letter No. 2510 of 2002 dated 25.10.2002 from the Vacation Judge, Jehanabad, directing him to appear for the interview only after resigning the present post as will appear from Annexure-1. The direction contained in this letter (Annexure-1) is illegal and violative of Articles 14 and 16 of the Constitution of India. It may be mentioned here that the advertisement for the post of Munsif was subsequent to the advertisement for the post of Additional District Judge. However, the procedure for the appointment of Munsif was completed earlier than the appointment of Additional District Judge as a result of which he joined as Munsif on 12.12.2001. Subsequently he also qualified for the post of Additional District Judge and sought the permission of this Court for appearing in the interview. In reply he received Annexure-1 directing him to firstly resign his post before he could appear in the interview for the post of Additional District Judge. This direction to the petitioner is against his fundamental right to employment. Hence he has prayed for the issue of Rule Nisi calling upon the respondents as to why the reliefs claimed by him in paragraph 1 of this writ application be not granted.

3. A counter affidavit has been filed on behalf of respondent No. 1 (Patna High Court), respondent No. 3 (The Registrar General, Patna High Court) and respondent No. 5 (The Joint Registrar, Establishment, Patna High Court) in which it has been stated that after receiving the call letter for appearing in the objective written test for the Bihar Superior Judicial Service the petitioner had made a representation on 6.7.2002 seeking permission to appear in the same. This letter was received in Patna High Court on 14.7.2002 and, therefore, no reply to this letter could be given before he appeared in the examination on 14.7.2002. The matter was placed before the Standing Committee of the Patna High Court and subsequently before the Full Court for consideration of the fact whether in view of the provisions of Article 233(2) of the Constitution of India can the petitioner be allowed to appear at the interview without firstly resigning from the post of the Munsif. It was observed that Judicial Officers who had applied for the post of the Additional District Judge could not be considered as eligible candidate in view of the provisions of Article 233 of the Constitution of India. This view was affirmed by the meeting of the Full Court as will appear from Annexures-A and B to the counter affidavit.

4. The petitioner has filed a rejoinder to this counter affidavit according to which he has contended that at the time when he had applied for the post of Addl. District Judge he was not in service of the State as Munsif. Since he fulfilled the necessary qualification of seven years practice as an Advocate as required under Article 233 of the Constitution he was eligible for this post on the date on which he applied. His subsequent joining the service on the post of Musif will make no difference so far as his eligibility is concerned. His main thrust appears to be that since on the date he had applied for the post of the Addl. District Judge and since

on that date he was eligible for the post his subsequent joining as Munsif will not make any difference and the bar of Article 233 of the Constitution of India will not stand in his way.

5. The parties have been heard in detail so far as this case is concerned. In this connection I will firstly refer to Article 233 of the Constitution of India which runs as follows:--

"233(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment."

6. From Article 233 of the Constitution of India as noticed above it is clear that a person to claim to be eligible for appointment as a District Judge under this clause he should have been a person not already in the service of the Union or of the State. In other words if a person is in the service on the State or the Union he cannot claim eligibility under clause (2) of Article 233 of the Constitution of India. Clause (2) has no application where a person is in service under Union or a State in some other capacity at the time when he is appointed as a District Judge. In the case of any such person clause (1) of this Article is the only provision to be complied with. In the case of Rameshwar Dayal Vs. The State of Punjab and Others, it has clearly been held that clause (2) of Article 233 has no application when a person is already in service under the Union or a State in some capacity or the other. Similarly in the case of Chandra Mohan vs. State of Uttar Pradesh and others (A.I.R. 1966 S.C. 1987) it has been held that in case of a person who is service in State or the Union Clause (1) of Article 233 is the only provision to be complied with. Services in Clause (2) also means and includes the judicial service, as has been held in the case of Chandra Mohan (supra).

7. A close examination of Article 233 of the Constitution of India will clearly show that while Clause (1) will apply to the persons already in the service of the State, Clause (2) will only apply in the cases of those persons who are not already in service of the Union or the State. Only when a person is not in service of the Union or the State that he shall be held to be eligible to be appointed as District Judge under this clause if he has been for not less than seven years an Advocate or a Pleader and is recommended by the High Court for the appointment. Thus under this Article there are well defined two compartments. One is only for those persons who are in service of the State while Clause (2) will apply only to such person who are not in service of Union or the State. The position of law so far as this Article is concerned is perfectly clear.

8. On behalf of the petitioner it has been submitted that on the date when he had applied for the post of the Additional District Judge he was not in service as

a Munsif rather on the same date he was practicing as an Advocate and had more than seven years practice to his credit and, therefore, on the said date he was perfectly eligible for the appointment as a District Judge as per Clause (2) of Article 233 of the Constitution of India. As against it the learned counsel appearing on behalf of the respondents has seriously contended that the crucial date for consideration would not be the date on which the person puts in an application for appointment. According to him the crucial date would be the date on which he has to join the post of the District Judge or the Additional Judge. Obviously eligibility has to be determined with respect to the date on which candidate is being appointed as a District Judge and not with respect to the date on which he applies for the post. The provision of law is quite clear in this regard and does not admit of any ambiguity.

9. So far as the present petitioner is concerned it is not in dispute that on the date on which he applied for the post of Additional District Judge he was not in service of a State. However, when the time came for his appearing in the interview for appointment to the post of the Additional District Judge obviously he was in service of the State and was acting as a Munsif. Under this circumstance the obvious course left open to him in order to bring his case under Article 233 of the Constitution of India was firstly to resign from his post and then to face the interview. It is only after he would have resigned from the post which was accepted that he could claim to be a person not already in the service of the Union or of a State. In the present case this was not so. If we look into the impugned letter (Annexure-1) it is clear that the petitioner was simply advised to the effect that he could participate in the interview conducted for direct recruitment of A.D.Js. only after he resigned from his present post as a Judicial Magistrate. This appears to be totally in conformity with the requirement of Article 233 of the Constitution of India. It cannot be disputed that his case does not fall under Article 233 of the Constitution of India. For the reasons stated above we do not find any merit in this application which is accordingly rejected.