

(1996) 02 KAR CK 0064

In the Karnataka High Court

Case No : WP. No's. 5138/96, 4962 and 5490/96

Ramangouda Hanumantha Patil

APPELLANT

Vs

High Court of Karnataka

RESPONDENT

Date of Decision : 29-02-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 233, 234, 309

Citation : (1996) ILR (Kar) 1730

Hon'ble Judges : R.V. Raveendran, J;H.L. Dattu, J

Bench : Division Bench

Advocate : Jayakumar S. Patil and Vagdevi, Associates and Ashok Patil, for the Appellant; H.B. Datar, for M.H. Datar, for the Respondent

Final Decision : Dismissed

Judgement

Raveendran, J.—The petitioners in these three Writ Petitions are applicants for the post of District Judges in response to the notification dated 5.9.1995 issued by the respondent (High Court of Karnataka) under Article 233 of the Constitution of India read with the provisions of the Karnataka Judicial Services (Recruitment) Rules 1983 ("Rules" for short) inviting applications for the purpose of recommending the appointment of 11 members of the Bar, by direct recruitment. The said notification specifies the following minimum qualification for such direct recruitment, in accordance with Article 233 and Rule 2 (Category 2) of the Rules:

- a) The applicant must be a holder of a degree in law from any recognised university.
- b) The applicant must be practicing on the last date fixed for submission of application as an Advocate and must have so practised for not less than seven years as on such date.
- c) The applicant must not have attained the age of 48 years on the last date fixed for submission of applications.

The notification instructs those who are desirous of being considered for appointment to these posts, to furnish the particulars in the prescribed form of application and that those who are called for interview, will have to appear before the interview committee in the High Court of Karnataka, Bangalore.

2. The petitioners claim that they fulfil the eligibility criteria specified in the said notification. They, therefore, contend that they ought to have been called for interview. Their common grievance is that while several other applicants have been called for interview, they have not been called for interview. They contend that once they fulfil the criteria specified in the notification, their applications cannot be ignored or rejected; nor can they be eliminated from the process of selection without being subjected to an interview which is the only method/procedure specified for selection in the notification; and that if other criteria had been applied for eliminating them, such a process would be illegal as such criteria were neither notified nor intimated to the applicants. It is also contended that the authority entrusted with selection cannot prescribe any condition other than those prescribed in Article 233 and the Rules. Hence, they have filed these petitions seeking a direction to the respondent to consider their applications by calling them for interview for selection to the post of District Judges. The petitioner in Writ Petition No. 4962/1996 has also sought a declaration that non-consideration of his application is arbitrary and illegal.

3. The facts and contentions set out in the objections of the respondent are briefly as follows:

3.1. The Rules have been framed by the High Court in exercise of its power conferred under Article 233, 234 and proviso to Article 309. The minimum qualifications specified in the notification for recruitment of District Judges are in accordance with said Rules. The note to the Rule relating to method of recruitment and minimum qualifications for District Judges provides that the High Court may, subject to the said Rules, adopt such procedure as it deems fit, for selecting the candidates by direct recruitment. This gives liberty to settle the procedure for the purpose of selecting the candidates.

3.2. By notification dated 5.9.1995, applications for the post of District Judges were invited. The prescribed application form requires the candidates to give the annual income (both gross and taxable) from the profession during the preceding three years. If the applicant is an income tax assessee, he is required to submit the income tax returns and assessment orders for the preceding three years; and if no assessment order is passed, a declaration to that effect. After the last date for receipt of applications (16.10.1995), the Full Court at its meeting on 9.11.1995, authorised the Hon'ble Chief Justice to constitute a committee of Judges. Accordingly, a Recruitment Committee was constituted on 14.11.1995.

3.3. In response to the notification, inviting applications, 564 applications were received, for the 11 posts for which recommendations had to be made. Hence, the District Judges Recruitment Committee met on 16.1.1996 to consider the

number of candidates to be called for interview. On scrutiny of the applications, the Committee found that 461 applicants were not paying income tax and 185 applicants had put in practice of less than ten years. Having regard to the number of applications received, the pay scale for the post of District Judges and the importance of the Office and responsibilities required to be discharged by a District & Sessions Judge belonging to the Higher Judicial Service, it was decided that candidates who were not paying income tax (excluding however women candidates and candidates belonging to SC/ST) and who have not practised for a period of ten years should not be called for interview. All candidates who were shortlisted as per the said guidelines have been called for interview. Thus, what has been done is shortlisting the applicants to be interviewed by adopting a common, uniform and just procedure, having due regard to the high office to which applications have been invited. There is no question of prescription of any additional Rule or condition regarding eligibility, by the Committee. There is no need that all applicants who satisfy the minimum eligibility conditions should be interviewed, as eligibility to apply and to be considered does not include a right to be interviewed or selected.

3.4. The authority is free to segregate the applications, classify them into various categories and eliminate those who do not satisfy the norms and guidelines adopted for shortlisting and call only those who fall within such norms and guidelines. Interviewing all applicants will take several months, The Supreme Court has repeatedly deprecated the procedure of calling all the applicants for interview. Adopting the professional income criterion to shortlist the applicants to be called for interview is not something new and the full Court had, as long back in 1987 decided that persons whose income was less than Rs. 45,000/- would not be eligible for interview.

4. The learned counsel for the respondent also contended that the application of the petitioner in W.P.No. 5138/1996 is incomplete as he did not give the gross and taxable income even though he mentioned his annual income as Rs. 50,000/- to Rs. 60,000/- nor did he produce copies of any Income Tax returns or assessment orders or a declaration as required by Note 4 in the application form. The petitioner in W.P.No. 4992/1996 has stated in his affidavit that his total income is below taxable limit and that he has neither submitted any returns nor paid any income tax. The petitioner in W.P.5490/1996 had also shown that his income was less than the taxable limit and had not produced any returns or Assessment Orders. Hence as per the shortlisting procedure adopted by the Committee, they were not called for interview. He contended that the shortlisting procedure was proper and there was no discrimination and therefore the petitions were liable to be rejected.

5. The petitioners contend that as the eligibility criteria in accordance with Article 233 and the Rules were already prescribed in the notification dated 5.9.1995, the applicants could not be required to meet the two additional criteria, that they should be Income Tax assesseees and have a minimum of ten years practice, that

too by a subsequent decision of the Committee and such additional criteria violated Articles 233 and the Rules. It is contended that no condition other than those provided in the Rules, can be the basis for elimination of any applicant from the interview process, unless such condition or criteria is specified either in the Rules or at least in the Notification calling for applications. It is next contended that note in the Rules enabling the High Court to adopt such procedure as it deems fit does not confer any power to prescribe any conditions of eligibility or norms for elimination, but only enables the High Court to regulate the procedure and process of selection from out of the eligible applicants by prescribing written test or viva voce or interview or a combination of all or some of them for the purpose of selection. It is alternatively contended that the two requirements relating to payment of Income tax and ten years practice have no nexus or relevance to the selection of District Judges and are irrational and violative of Articles 14 and 16 and also violative of Article 233; and therefore non-compliance with those requirements will not render them ineligible for interview.

6. The questions that therefore arise for consideration are (a) Whether the procedure adopted by the Committee in considering only those candidates who pay Income Tax and completed ten years of practice amount to prescription of new eligibility conditions in addition to what is contained in the Rules or whether it is only a method of shortlisting the applicants for interview; (b) Even if consideration of the applications by adopting the said two criteria is only a shortlisting procedure, whether the two criteria adopted are irrelevant and irrational and also violative of Article 233.

Point (a):

7. It is no doubt well settled that every eligible person is entitled to apply for and to be considered for selection, provided he satisfies the prescribed qualifications vide *Krishan Chander Nayar Vs. The Chairman, Central Tractor Organisation and Others*, and *J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc.*, . It is equally well settled that there is no obligation to call for interview all candidates who satisfy the minimum eligibility requirement Where the number of applicants is high, unless any Statute or Rule specifically provide otherwise, the number of candidates to be called for interview, has necessarily to be in a reasonable proportion to the number of vacancies to be filled in and all the candidates should not be called for interview, vide - *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, and the decision of the Punjab & Haryana High Court in *SUBASH CHANDER v. STATE OF HARYANA 1984 (1) SLR 165*.

8. Where there are a large number of candidates eligible for selection to a few posts, a process of elimination, to shortlist the candidates for interview, is permissible. In fact such process of shortlisting is necessary to avoid waste of public time and in the interests of effective and meaningful interviewing and to avoid selection by interview becoming a farce. This process of shortlisting is a matter to be settled by the selection Committee, which can evolve any rational

and reasonable method, to effectively reduce the number of candidates to be interviewed to manageable and well accepted limits, so that the interviews can be held effectively. The criteria for such shortlisting will depend on the number of applications received, the number of applicants to be called for interview in reasonable proportion to the number of posts to be filled and the nature of posts for which selection is to be made. In the absence of Rules governing the matter, such procedure for shortlisting may be evolved by the Selection Committee, after ascertaining the number of applications received or after initial scrutiny of the applications. In fact, only after knowing the total number of applications received, the Committee will be in a position to devise a suitable procedure for shortlisting. Hence, it is not necessary to specify the criteria for shortlisting, in the notification inviting applications. Nor is it necessary to notify such criteria for shortlisting, to the candidates. The criteria adopted for shortlisting should, however, be rational and reasonable, having a clear nexus with the object sought to be achieved. They should also be non-arbitrary and non-discriminatory. The right to apply for a post and the right to be considered for a post cannot be extended to claim a right to be called for interview. The provision that selection will be by interview, does not require that all applicants must necessarily be interviewed; nor does failure to call a candidate for interview amount to non-consideration of his application, if he has been eliminated by due process. So long as the criteria adopted for shortlisting the candidates to be called for interview is rational and reasonable, the exclusion of other applicants from the list of persons to be called for interview, cannot be attacked as being discriminatory or as amounting to denial of opportunity in relation to employment. We are fortified in this view by the decision of this Court in *V. SRIKANTHA v. STATE OF MYSORE* 1970 (1) Mys.LJ. 312, and the decision of the Madhya Pradesh High Court in *JAYANT KUMAR CHAUHAN v. PUBLIC SERVICE COMMISSION MP* 1979(1) SLR 31 and the decision of the Rajasthan High Court in *SHASHI KUMAR PUROHIT v. STATE OF RAJASTHAN* 1990 Lab.I.C. 1143. The principle is effectively stated by a Full Bench of the Madhya Pradesh High Court in *OMPRAKASH v. STATE OF MP* 1976 MP.L.J. 136, extracted in Jayant Kumar's case:-

"Once the Public Service Commission is asked by the Government to make a selection, it is entirely in the wisdom and discretion of the commission what mode or method it would adopt. This is subject to statutory provision, if any. Where minimum qualification for eligibility are prescribed by a statute or by the Government, the Public Service Commission cannot select a candidate who does not possess those qualifications. However, the Public Service Commission is free to screen the applicants, classify them in various categories according to their plus qualifications and/or experience and call for interview only those candidates who fall within those categories, eliminating others who do not satisfy those criteria. Such classification does not tantamount to any hostile discrimination. Practicability may also require such categorisation, For instance, if for three posts there are 3000 applicants, all eligible, the Commission cannot afford to spend

months together in selecting three out of 3000."

9. We will examine the question in the light of the said principles. The proceedings of the meeting of the District Judges Recruitment Committee held on 16.1.1996 is made available. The said proceedings discloses that the Committee processed and considered all the 564 applications received. It decided to reject the applications which were defective as detailed in para 4(ii), (iii) and (iv) of the said proceedings. Having received 564 applications for 11 posts, it was found impractical to call all the applicants for interview, which would mean calling candidates equal to 50 times the number of posts. The Committee noted that normally the rule is to call applicants five times the number of vacancies for interview; but taking into consideration the large number of applications received, it was decided to call approximately ten times the posts available and also taking into consideration the importance of the post and the pay scales available, the committee decided that those candidates who are not paying income tax and who have not put in 10 years service will not be called for interview. What has been done is to evolve a process of shortlisting or reducing the number of candidates to be called for interview, after due scrutiny of the applications having due regard to the number of applications received, the number of posts available and the importance and nature of the post. This does not amount to altering the eligibility conditions. In view of the above, we hold that the procedure adopted, i.e., calling upon only those candidates who pay income tax and who have completed ten years of practice, does not amount to a prescription of fresh eligibility condition, contrary to Article 233 or the Rules, but only amounts to shortlisting the applicants for the purpose of interview.

Point (b):

10. The applications are for selection to the higher judicial service, who exercise judicial power of the State and who are holders of Public Office. Having regard to the importance of the post and the nature of duties to be discharged on being selected as District Judges, and the experience and knowledge required, the Committee's decision to call only those candidates who have put in ten years of practice cannot be said to be unreasonable or irrational. Article 233 of the Constitution of India and the Rules merely prescribe the minimum period of practice for being appointed as District Judges. They do not prohibit the Committee interviewing only those with a longer period of practice.

11. The second criterion regarding income, ensures that only persons with a sufficiently reasonable practice are called for interview. Income from profession is a clear indication of volume of practice. Merely being an advocate for several years, without active and adequate practice, cannot entitle an applicant to be selected to higher judicial service. Legal knowledge and experience as a legal practitioner are absolutely necessary for being selected to the higher judicial service. Normally income from profession is linked to practice and practice is linked to knowledge and experience. It may be true that quantum of income need not necessarily always show that calibre and capacity of a practicing

advocate; but it cannot be doubted that it will normally indicate a reasonable amount of practice as an Advocate.

12. Thus, there is a clear, rational and reasonable nexus between the criteria prescribed and the object sought to be achieved i.e., selection of the best candidates. It is possible that prescription of the income criterion, may result in a good candidate being ignored in some exceptional cases. While drawing guidelines or norms, it is impossible to provide for all contingencies. But that does not make the criterion adopted unreasonable or irrational. The question is not whether better alternative criteria should be employed, but whether the criteria employed are reasonable and rational, and whether they are uniformly applied to all. In this case, these tests are satisfied, as the two criteria together will ensure that only persons with experience and knowledge in the field of law are called for interview. The criteria adopted by the Committee is neither contrary to Articles 14 and 16 nor violative of Article 233 and the Rules.

13. In the view we have taken, it is unnecessary to consider the further contention that the applications of petitioners in W.P.No. 5138/ 1996 and W.P. 4962/1996 are defective.

14. Before parting, we feel it necessary to make a suggestion. If notifications in future, indicate that possession of prescribed minimum qualification will not automatically entitle a candidate to be called for interview and that the High Court or the Committee Constituted by the High Court may place a limit on the total number of candidates to be called for interview by adopting such criteria as they deem fit, having regard to the number of applications received and other circumstances, it may avoid unnecessary litigation.

In view of the above, these petitions are rejected.