

(1998) 09 MAD CK 0046

In the Madras High Court

Case No : Writ Petition No. 14431 of 1998 and W.M.P. No. 21905 of 1998

Ramasamy P.

APPELLANT

Vs

Tamil Nadu Public Service Commission

RESPONDENT

Date of Decision : 17-09-1998

Acts Referred:

Tamil Nadu State Judicial Services (Cadre and Recruitment) Rules, 1995 — Rule 5

Citation : (1998) 2 LLJ 1002 : (1999) 1 MLJ 1

Hon'ble Judges : Shivaraj Patil, J;N.V. Balasubramanian, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shivaraj Patil, J.—Heard the learned counsel for the petitioner.

2. The petitioner in this writ petition has sought for a writ of certiorarified mandamus calling for the records relating to Memorandum No.

6746/APD-CJA/98 dated September 11, 1998 on the file of the respondent, quash the same and further direct the respondent to treat the

petitioner's application as valid application as per notification dated July 2, 1998 and pass such further orders as it may deem fit.

3. The impugned memorandum reads:

TAMIL NADU PUBLIC SERVICE COMMISSION

Memorandum No. 6746/APD-CJD/98

Dated September 11, 1998

Ref: Application from Thiru P. Ramasamy.

Thiru P.Ramasamy (Appln. No. 211188) is informed that his application for direct recruitment to the post of Civil Judge (Junior Division/Judicial

Magistrate, First Class) in the Tamil Nadu State Judicial Service has been rejected for the following reason:

According to para 5 of the Commission's Notification dated July 2, 1998, the candidate must be practising as an advocate or pleader or working

as Assistant Public Prosecutor Grade I or Grade II and must have so practised/ worked for a period of not less than 4 years, as on the said date,

whereas the candidate is working as Junior Clerk, Chief Judicial Magistrate's Court, Pondicherry.

2. Requests for reconsideration of this memo will receive no attention.

A.V.SESHADRI

Deputy Secretary

Sd.- (September 11, 1998)

Section Officer.

4. The application of the petitioner was rejected on the ground that the petitioner was not a practising advocate as on July 2, 1998 and was

working as Junior Clerk on that date. According to the notification dated July 2, 1998 issued by the respondent, an advocate practising as on the

date of the said notification, having four years of practise was eligible to apply. Admittedly, the petitioner was not a practising advocate as on July

2, 1998.

5. Learned counsel for the petitioner, based on the general instructions, issued by the respondent submitted that a person in the service of Indian

Union or of a State in India or in the employment of local bodies or Universities need apply through the competent authorities with their "no

objection certificates". According to him, this instruction is an indication that the petitioner, even though was working as a Clerk as on July 2,

1998, could apply through proper channel and he had practised for about seven years before joining service. Learned counsel for the petitioner

also contended that the petitioner satisfies the requirement that he should have four years' bar experience, though he has ceased to practise as an

advocate as on July 2, 1998 in view of the fact that he has joined service in the judicial department.

6. We have considered the submissions of learned counsel for the petitioner. The notification issued by the respondent clearly states that a

candidate on the date of notification, i.e. on July 2, 1998 must be (a) practising as an Advocate or Pleader and must have so practised for a period

of not less than four years as on the said date. A plain reading of paragraph-5 of the notification does not leave any doubt whatsoever, that a

candidate must be a practising advocate as on the date of notification i.e. on July 2, 1998 and must have so practised for a period of not less than

four years. It is true that the petitioner satisfied the second part of the Clause (a) of paragraph-5, but he fails to satisfy the first part of paragraph-5

since he was not practising as an advocate as on July 2, 1998.

7. Applications are invited for recruitment by the respondent under the Tamil Nadu State Judicial Services (Cadre and Recruitment) Rules, 1995.

The relevant portion of Rule-5 of the above said Rules reads:

5. Method of appointment, Qualification and age: In respect of each category of posts specified in column (1) of the Schedule below, the method

of appointment and the qualification shall be specified in the corresponding entries in columns (2) and (3) thereof:

SCHEDULE

Category	Method of appointment	Qualification
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...	...	...
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...	...	...
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4. CIVIL	By direct recruitment on the basis of written examination conducted by the Tamil Nadu Public Service Commission in	1. Must be a holder of a JUDGE(Junior examination/and Viva Voce Examination conducted degree in Law.
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Magistrate, First	accordance with the rules specified in the annexure 2.	Must on the date of
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Class) to these rules. Notification be:-

a) Practising as an Advocate or

Pleader and must have so

practised for a period of not

less than four years as on such

date...

.....

As could be seen from Rule-5 extracted above, a candidate who was practising as an Advocate or Pleader and must have so practised for a

period of not less than four years as on such date, in the instant case as on July 2, 1998-the date on which the notification was issued, was eligible

to apply. In the Annexure to Rule-5 as per paragraph 2, a candidate along with his application has to produce a certificate from the Presiding

Officer of the Court in which he is actually practising, indicating the length of his practise.

8. Thus, the relevant rule and the instructions clearly indicate that as on the relevant date, i.e. as on July 2, 1998, the petitioner, not being a

practising advocate, was not eligible to apply. In that view, the respondent was right in rejecting his application by the impugned memorandum.

Merely because a provision is available in the general instructions issued to the candidates, that persons who are in service of either Indian Union

or State shall apply through proper channel, the contention of the learned counsel for the petitioner is not acceptable as against the express

provision relating to the very same recruitment.

9. In this view, the writ petition is rejected. No costs. Consequently, the connected W.M.P. is also rejected.