
(2018) 12 MAN CK 0001
In the Manipur High Court
Case No : Writ Petition (c) No. 225 Of 2017

S. Pfokrelo And Others

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 20-12-2018

Acts Referred:

Constitution Of India, 1950 — Article 16(4), 233, 234, 235, 309, 335
Manipur Judicial Service Rules, 2005 — Rule 8 1(A)
Rights Of Persons With Disabilities Act, 2016 — Section 4

Citation : (2018) 12 MAN CK 0001

Hon'ble Judges : Ramalingam Sudhakar, CJ;Kh. Nobin Singh, J

Bench : Division Bench

Advocate : S.T. Kom, N.Kumarjit, A.Bimol, M.Hemchandra

Final Decision : Disposed Off

Judgement

R.S., CJ

The two reliefs sought for in this case are as follows:-

"i) to set aside/quash the portion of the Manipur Judicial Service Rules, 2005 at Annexure- A/3 which restricts the reservation in appointment to Manipur Judicial Service Grade-I only i.e. the words "except Grade-I" at Rule 8 1(A) of the said Rules along with the Advertisements/ Notices at Annexure-A/4, A/5 & A/6 ;

ii) to direct the respondents to reserve and advertise 1 (one) post of MJS Grade-I (regular basis) to be filled up by direct recruitment from the Bar, for the ST category;"

Learned counsel for the petitioner, Mr. S.T.Kom pointed out that issue which is raised in the present writ petition is the fall out of the decision of the Hon'ble Supreme Court in the case of State of Bihar & anr. vs. Bal Mukund Shah & ors. reported in (2000) 4 SCC 640 and followed in another decision of the Hon'ble Supreme Court reported in Nawal Kishore Mishra & ors. vs. High Court of Judicature of Allahabad through its Registrar General & ors., (2015) 5 SCC 479.

Learned counsel for the petitioner, while reserving his right to challenge the Manipur Judicial (1st Amendment) Rules, 2016, pleads that in terms of para Nos. 32, 36 and 38 of Bal Mukund Shah & ors., which are quoted as under the High Court may kindly reconsider the amendment made to 2005 Rules i.e. 2016.

In Bal Mukund Shah & ors., para Nos. 32, 36 and 38 read as follows:-

"32. It is true, as submitted by learned senior counsel Shri Dwivedi for the appellant-State that under Article 16(4) the State is enabled to provide for reservations in Services. But so far as Judicial Service is concerned, such reservation can be made by the Governor, in exercise of his rule making power only after consultation with the High Court. The enactment of any statutory provision dehors consultation with the High Court for regulating the recruitment to District Judiciary and to Subordinate Judiciary will clearly fly in the face of the complete scheme of recruitment and appointment to Subordinate Judiciary and the exclusive field earmarked in connection with such appointments by Articles 233 and 234. It is not as if that the High Courts being constitutional functionaries may be oblivious of the need for a scheme of reservation if necessary in appropriate cases by resorting to the enabling provision under Article 16(4). The High Courts can get consulted by the Governor for framing appropriate rules regarding reservation for governing recruitment under Articles 233 and 234. But so long as it is not done, the Legislature cannot, by an indirect method, completely bypassing the High Court and exercising its legislative power, circumvent and cut across the very scheme of recruitment and appointment to District Judiciary as envisaged by the makers of the Constitution. Such an exercise, apart from being totally forbidden by the Constitutional scheme, will also fall foul on the concept relating to separation of powers between the legislature, the executive and the judiciary as well as the fundamental concept of an independent judiciary. Both these concepts are now elevated to the level of basic structure of the Constitution and are the very heart of the Constitutional scheme."

**** *

***** *

"36 It becomes, therefore, obvious that no recruitment to the post of a District Judge can be made by the Governor without recommendation from the High Court. Similarly, appointments to Subordinate Judiciary at grass-root level also cannot be made by the Governor save and except according to the rules framed by him in consultation with the High Court and the Public Service Commission. Any statutory provision bypassing consultation with the High Court and laying down a statutory fiat as is tried to be done by enactment of Section 4 by the Bihar Legislature has got to be held to be in direct conflict with the complete Code regarding recruitment and appointment to the posts of District Judiciary and Subordinate Judiciary as permitted and envisaged by Articles 233 and 234 of the Constitution. Impugned Section 4 , therefore, cannot operate in the clearly

earmarked and forbidden field for the State Legislature so far as the topic of recruitment to District Judiciary and Subordinate Judiciary is concerned. That field is carved out and taken out from the operation of the general sweep of Article 309. "

**** *

**** *

"38.. However, so far as the question of exercising that enabling power under Article 16(4) for laying down an appropriate scheme of reservation goes, as seen earlier, we cannot be oblivious of the fact that the High Court, being the high Constitutional functionary, would also be alive to its social obligations and the Constitutional guideline for having scheme of reservation to ameliorate the lot of deprived reserved categories like the SC, ST and Other Backward Classes. But for that purpose, the Governor can, in consultation with the High Court, make appropriate rules and provide for a scheme of reservation for appointments at grass-root level or even at the highest level of the District Judiciary, but so long as this is not done, the State Legislature cannot, by upsetting the entire apple-cart and totally bypassing the Constitutional mandate of Articles 233 and 234 and without being required to consult the High Court, lay down a statutory scheme of reservation as a road roller straight jacket formula uniformly governing all State Services, including Judiciary....."

Emphasis supplied.

This issue was laid to rest by the Hon'ble Supreme Court in the above mentioned cases giving independence to the judiciary in the matters of appointment to the District judiciary. In para No.58 of the same case, it has been stated that the issue of consultation with the High Court and Governor and the Executive for providing appropriate reservation has been indicated in so far as in the post of direct recruitment to District Judge is concerned. Para No.58 of Bal Mukund Shah's case is as follows:-

" 58. It is now time for us to take stock of the situation. In the light of the Constitutional scheme guaranteeing independence of Judiciary and separation of powers between the executive and the judiciary, the Constitutional makers have taken care to see by enacting relevant provisions for the recruitment of eligible persons to discharge judicial functions from grass-root level of the Judiciary up to the apex level of the District Judiciary, that rules made by the Governor in consultation with the High Court in case of recruitment at grass-root level and the recommendation of the High Court for appointments at the apex level of the District Judiciary under Article 233, remain the sole repository of power to effect such recruitments and appointments. It is easy to visualise that if suitable and competent candidates are not recruited at both these levels, the out turn of the judicial product would not be of that high level which is expected of judicial officers so as to meet the expectations of suffering humanity representing class of litigants who come for redressal of their legal

grievances at the hands of competent, impartial and objective Judiciary. The Presiding Officer of the Court if not being fully equipped with legal grounding may not be able to deliver goods which the litigating public expects him to deliver. Thus, to ensure the recruitment of the best available talent both at grass-root level as well as at apex level of District Judiciary, Articles 233 and 234 have permitted full interaction between the High Court which is the expert body controlling the District Judiciary and the Governor who is the appointing authority and who almost carries out the ministerial function of appointing recommended candidates both by the Public Service Commission and the High Court at the grass-root level and also has to appoint only those candidates who are recommended by the High Court for appointment at the apex level of District Judiciary. Any independent outside inroad on this exercise by legislative enactment by the State Legislature which would not require consultation with an expert agency like the High Court would necessarily fall foul on the touchstone of the Constitutional scheme envisaging insulation of judicial appointments from interference by outside agencies, bypassing the High Court, whether being the Governor or for that matter Council of Ministers advising him or the Legislature. For judicial appointments the real and efficacious advice contemplated to be given to the Governor while framing rules under Article 234 or for making appointments on the recommendations of the High Court under Article 233 emanates only from the High Court which forms the bed- rock and very soul of these exercises. It is axiomatic that the High Court, which is the real expert body in the field in which vests the control over Subordinate Judiciary, has a pivotal role to play in the recruitments of judicial officers whose working has to be thereafter controlled by it under Article 235 once they join the Judicial Service after undergoing filtering process at the relevant entry points. It is easy to visualise that when control over District Judiciary under Article 235 is solely vested in the High Court, then the High Court must have a say as to what type of material should be made available to it both at the grass-root level of District Judiciary as well as apex level thereof so as to effectively ensure the dispensation of justice through such agencies with ultimate object of securing efficient administration of justice for the suffering litigating humanity. Under these circumstances, it is impossible to countenance bypassing of the High Court either at the level of appointment at grass- root level or at the apex level of the District Judiciary. The rules framed by the Governor as per Article 234 after following due procedure and the appointments to be made by him under Article 233 by way of direct recruitment to the District Judiciary solely on the basis of the recommendation of the High Court clearly project a complete and insulated scheme of recruitment to the Subordinate Judiciary. This completely insulated scheme as envisaged by the founders of the Constitution cannot be tinkered with by any outside agency de hors the permissible exercise envisaged by the twin Articles 233 and 234. It is a misnomer to suggest that any imposition of scheme of reservation for filling up vacancies in already existing or created sanctioned posts in any cadre of district judges or Subordinate Judiciary will have nothing to do with the concept of recruitment and appointment for filling up such vacancies.

Any scheme of reservation foisted on the High Court without consultation with it directly results in truncating the High Courts power of playing a vital role in the recruitment of eligible candidates to fill up these vacancies and hence such appointments on reserved posts would remain totally ultra vires the scheme of the Constitution enacted for that purpose by the founding fathers. It is also to be noted that the concept of social justice underlying the scheme of reservation under Article 16(4) read with Article 335 cannot be said to be one which the High Court would necessarily ignore being a responsible Constitutional functionary. In fact what is required is that the right decision should be arrived at in the right manner. In the facts of the present case, it is an admitted position that the High Court of Patna has already consented to have 14% reservation for SC candidates and 10% reservation for ST candidates in recruitment of Munsiffs and Magistrates at grass-root level of Subordinate Judiciary and rules framed under Article 234 by the Governor of Bihar in consultation with the High Court have permitted such reservation. Thus, it is not as if the purpose of reservation cannot be achieved without reference to the High Court. But as the saying goes you can take a horse to the water but cannot make it drink by force . Thus what is expected of the executive and the Governor is to have an effective dialogue with the High Court so that appropriate reservation scheme can be adopted by way of rules under Article 234 and even by prescribing quota of reservations of posts for direct recruits to District Judiciary under Article 233 if found necessary and feasible. That is the Constitutional scheme which is required to be followed both by the High Court and by the executive represented through the Governor. But this thrust of the Constitutional scheme cannot be given a go-bye nor can the entire apple-cart be turned topsy-turvy by the legislature standing aloof in exercising its supposed independent Legislative power dehors the High Courts consultation."

Emphasis supplied

On the same page, the decision in the case of Nawal Kishore Mishra & ors. (supra) reiterates the power of the High Court to decide the issue on reservation. There is no dispute from either side that the High Court alone is the authority to decide the issue of reservation and one aspect which has been highlighted is that no provision has been made for persons with disabilities under the Rights of Persons with Disabilities Act, 2016.

The respondents, at best, can only object to the challenge to the amendment to 2016 Rules. That is now given up. As far as the alternate prayer now sought for by the petitioner that the High Court can revisit the issue in the light of the decisions of the Hon'ble Supreme Court, there can be no grievance from any quarter in the light of the decisions of the Hon'ble Supreme Court cited supra. The representations already given will be duly considered.

The writ petition stands disposed of.