
(2002) 06 AP CK 0153

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9711 of 2002

Shaik Mohiuddin Sohail and Others

APPELLANT

Vs

Government of A.P. and Another

RESPONDENT

Date of Decision : 13-06-2002

Acts Referred:

Citation : (2002) 4 ALD 728 : (2002) 4 ALT 278

Hon'ble Judges : Ar. Lakshmanan, C.J; Ghulam Mohammed, J

Bench : Division Bench

Advocate : V.V.L.N. Sharma, for the Appellant; C.V. Nagarjuna Reddy, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Ar. Lakshmanan, C.J.—The petitioners are practising advocates. They filed the writ petition with the following prayer:

".....to issue a writ of mandamus or any other appropriate writ, order or direction declaring the action of the respondents in not considering the case of the petitioners for selection and appointment to the post of Junior Civil Judge pursuant to the Notification issued by the 2nd respondent dated 29-1-2002 as illegal, arbitrary etc., if necessary by holding that the insistence of having three years of minimum practice in any Court of Civil or criminal jurisdiction in India for not less than three years for appointment by direct recruitment as provided under Rule 12 of the Andhra Pradesh State Judicial Service Rules framed through G.O. Ms. No. 2207, Home (Personnel-A) Department, dated 4-11-1962 as illegal, arbitrary etc., in view of the decision rendered by the Hon'ble Supreme Court in All India Judges Association and Ors. v. Union of India and Ors. dated 21-3-2002....."

2. In the affidavit filed in support of the writ petition, the petitioners averred that they have enrolled as advocates in the year 2001 and have been practising as such and that they are qualified for selection and appointment as Junior Civil

Judges pursuant to the Notification dated 29-1-2002 of the 2nd respondent excepting the qualifying practice of three years. It is also averred that in view of the decision of the Apex Court referred to above, their cases for appointment as Junior Civil Judges may be considered even without putting the three year practice as an advocate. It is also averred in paragraph -6 of the writ affidavit that:

".....Taking into consideration the present scenario in the matter of recruitment to the Judicial Services, the Hon''ble Supreme Court in a writ petition filed by All India Judges'' Association and others, has delivered judgment, which came to be published in the Deccan Chronicle dated 22-4-2002 clearly holding that it is not necessary that one should have three years of practice at Bar to be eligible to enter the judicial service. The Hon''ble Supreme Court is pleased to hold:

With the passage of time, experience has shown that the best talent which is available is not attracted to the judicial service. A bright young law graduate after three years of practice, finds the judicial service not attractive enough. It has been recommended by the Shetty Commission after taking into consideration the views expressed before it by various authorities that the need for applicant to have been an advocate for at least three years should be done away with. After taking all the circumstances into consideration, we accept the argument of the learned amicus curiae that it should be no longer mandatory for an applicant desirous of entering the judicial service to be an advocate at least three years standing. We accordingly in the All India Judge''s case direct to the High Courts and to the State Governments to amend their rules so as to enable a fresh law graduate, who may not have even put in even three years of service to be eligible to complete and enter the judicial service. We, however, recommend that a fresh recruit into the judicial service should be imparted with training of not less than one year, preferably two years."

3. Mr. V.V.L.N. Sarma, the learned Counsel for the petitioners, submits that the law declared by the Supreme Court shall be binding on all Courts in terms of Article 141 of the Constitution of India and the law declared in the above case by the Apex Court shall be regarded as the law governing the recruitment of State Judicial Service also. He would further submit that in view of the mandate given by the Apex Court in the above decision, all the State Governments in the country, including the Government of Andhra Pradesh, are bound to amend to rules so as to enable a fresh Law Graduate, who may not have even put in three years of practice, to be eligible to compete and enter the judicial service and it is a formality and that since the Apex Court has now declared the law on the subject, the writ petition is filed seeking the aforementioned prayer.

4. We are unable to countenance the argument advanced by the learned Counsel for the petitioners for the present. It is true that the Hon''ble Supreme Court in the judgment extracted above, has directed all the High Courts and the State Governments to amend their rules so as to enable a fresh law graduate, who may not have even put in three years of practice, to be eligible to compete and

enter the judicial service. The Supreme Court, however, recommended that a fresh recruit into the judicial service should be imparted with training of not less than one year and preferably two years.

5. In our opinion, the directions given by the Hon''ble Supreme Court are only prospective in operation. The notification has already been issued by the 2nd respondent on 29-1-2002, Therefore, the petitioners cannot be permitted to compete for selection to the posts of Junior Civil judges pursuant to the above notification. The petitioners, in our opinion, would be entitled to claim the benefit of the order passed by the Supreme Court only after the amendment of the rules, which has to be made by the State Government and the High Court. Therefore, the petitioners cannot now claim the benefit of the order of the Apex Court and have to wait till the relevant rules are amended.

6. Accordingly, the writ petition is dismissed at the admission stage.