
(2010) 12 AP CK 0095

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 30512 of 2008 and 30485 of 2010

Somi Reddy Chandra Mohan Reddy

APPELLANT

Vs

The Govt. of A.P. and Others

RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Constitution of India, 1950 — Article 233

Criminal Procedure Code, 1973 (CrPC) — Section 24

Citation : (2011) 2 ALT 55

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : B. Sriram Kartik and Syed Khader Mastan, for the Appellant; G.P. for Home, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The State Level Police Recruitment Board (for short "the Board"), Government of Andhra Pradesh, issued notification dated 12-11-2010, inviting applications for recruitment of 4 Additional Public Prosecutors Grade II (Post Code No. 41), and 113 Assistant Public Prosecutors (Post Code No. 42) in the A.P. State Prosecution Service. In paragraph 8-B of the notification, the educational qualifications are prescribed, as a Bachelor's Degree in any subject along with Bachelor's Degree in Law, awarded by any University in India. Paragraph 8-C prescribes the qualification as to experience. For the post Additional Public Prosecutor, experience of not less than 7 years, as an Advocate, as on the date of notification, is prescribed. So far as the post of Assistant Public Prosecutor is concerned, experience as an Advocate for not less than 3 years in Criminal Courts in the State is prescribed.

2. The Petitioners in both the writ petitions are Law Graduates, and are enrolled with Bar Council of Andhra Pradesh. They however do not have three years of active practice in the Criminal Courts. They challenge the Clause 8 C(ii) of the conditions appended to the notification, which mandates that an applicant must

be a practicing advocate in Criminal Courts with not less than three years of standing.

3. The Petitioners contend that the standing at the Bar is irrelevant for the purpose of recruitment of Assistant Public Prosecutors, and the ability or competence of an applicant can be tested by conducting a written test and subjecting him to interview, as contemplated in the notification itself. It is also urged that the Supreme Court in *All India Judges' Association v. Union of India* 2002 (3) SCC 180 took the view that experience as an advocate, is not at all necessary for selection of candidates to the post of Junior Civil Judges, and there cannot be any justification on the part of the Board, in incorporating such a condition for the post of Assistant Public Prosecutor.

4. Sri B. Sriram Kartik and Sri Syed Khader Mastan, learned Counsel for the Petitioners submit that the selection is based upon the performance of a candidate in the written test and interview, and thereafter rigorous training is imparted for quite a long time, for the selected candidates. They submit that, in view of this, the experience of an applicant, as an advocate, is totally irrelevant. They further submit that when the State has done away with the requirement as to experience at Bar for the purpose of recruitment of Junior Civil Judges, there is absolutely no basis for incorporating such a condition for recruitment of Assistant Public Prosecutors.

5. Learned Government Pleader for Home, on behalf of the Respondents, submits that the Code of Criminal Procedure mandates that a candidate, to be appointed as Public Prosecutor or Additional Public Prosecutor, must have standing of 7 years at Bar; and it is in this context, that the experience of three years is prescribed for the post of Assistant Public Prosecutors. He submits that an Assistant Public Prosecutor is required to conduct cases in Courts of Judicial First Class Magistrate, and in some cases, the Courts of Assistant Sessions Judge, and unless they gain at least some experience, at Bar, it would not be possible for them to discharge the functions effectively. Learned Government Pleader further submits that no applicant can question the freedom of an employer in the matter of prescribing the qualifications, and this Court would not interfere in such matters, unless it is established that the prescription of qualifications is discriminatory or irrelevant.

6. The Petitioners intend to apply for the posts of Assistant Public Prosecutors, in response to the notification. The qualification and experience prescribed for the posts, under the notification, are as under:

B. Minimum Educational Qualification: The candidate must possess, as on the date of notification, i.e., 12-11-2010, a Bachelor degree in any subject along with a Bachelor's Degree in Law awarded by the University in India, established or incorporated by or under a Central Act, Provincial Act or a State Act or of any Institution recognized by the University Grants Commission or any other equivalent qualification. The candidates who have passed five year course in law

after Intermediate are also eligible.

C. Experience:

i) For post code No. 41: The candidate must have practiced as an advocate for not less than seven (7) years as on date of notification i.e., 12-11-2010.

ii) For post code No. 42: The candidate must have practiced as an advocate for not less than three (3) years active practice in Criminal Courts in the State as on date of notification i.e., 12-11-2010

7. A note is added, through which reference is made to Section 24 of Code of Criminal Procedure In addition to holding a Bachelor's Degree in Law, a candidate must have practiced as an Advocate for a period of not less than 7 years, if the application is for the post of Additional Public Prosecutor, and must have not less than three years active practice, in Criminal Courts, if it is for the post of Assistant Public Prosecutor.

8. The grounds raised by the Petitioners are broadly that, 1) experience at Bar is irrelevant, in the context of assessing the merit, particularly when the selection is on the basis of performance in a written examination and the interview, 2) there is an inherent conflict between Clauses (B) and (C) of para 8; and 3) when the Supreme Court has done away with the requirement as to three years of standing at Bar for selection to the posts of Junior Civil Judges, there is no basis for the State in stipulating such a condition, for the post of Assistant Public Prosecutors.

9. It is true that the Respondents conduct a written examination and subject the candidates to interview for the purpose of selection. The experience at the Bar, that is stipulated for the post, is an important qualification, which must be held by a candidate. This has nothing to do with the manner in which the Respondents propose to select the candidates. Just as the minimum qualification of pass in a Bachelor's Degree is prescribed under Clause (B), experience of three years is stipulated in Clause(C)(ii).

10. It needs to be borne in mind that the Courts concede adequate freedom to an employer to prescribe the qualifications, as regards the posts, for which the recruitment is undertaken. An employer would be the best Judge to assess the needs of the posts and to prescribe the qualifications, which a candidate must hold. An applicant cannot challenge the freedom of an employer to prescribe the qualifications. It is only when the same employer exhibits discrimination or incorporates a condition, which is totally irrelevant for the post, that the Court would make an effort to examine it.

11. It may sound attractive when the Petitioners urge that a meritorious student of law, who just completed the course would fare well in the examination, proposed to be conducted for selection of Assistant Public Prosecutors, compared to an Advocate of average wisdom, with three years of practice, behind him. However, exceptions cannot dilute a rule. The experience, which a person has

behind him, has its own significance. This is particularly so, when the appointment is to the post, which needs discharge of duties, akin to that of an advocate. Active practice in Criminal court would make him to understand the traits of prosecution, the significance of steps, that are involved at various stages of investigation by Police and trial, before the Court, the manner in which the prosecution must conduct its case. He would also be acquainted with the manner in which a Law Officer, whether in the capacity of a Public Prosecutor, or a defence counsel must conduct himself with the Court, with the fellow practitioners, with the Prosecuting Agencies, with the public in general, etc. These can be acquired only through keen observation and active practice in the Court of Law.

12. An example, which may not be too remote, can drive home the comparison, or the point, involved. By any standard, that rain water is pure. However, it cannot be consumed directly. It has to flow up to some distance on the earth before it merges into a stream or river or percolates into the earth. It is only then, that becomes potable, on account of it's interaction with various minerals.

13. It is trite that an Assistant Public Prosecutor plays an important role in conducting the cases on behalf of the State. He is an Officer of the Court, entrusted with the duties of protecting the interests of the society, at large, and does not represent any particular side. For all practical purposes, he is the representative of the society, entrusted with duty to ensure that the culprits are punished. Howsoever a brilliant student of law may be, he cannot be entrusted with such functions, soon after he leaves the college. His standing at the Bar would refine him, apart from making him acquainted with the tenets or traits of the profession.

14. There is another way of testing the relevance of "three years practice in the Criminal Court" for the post of Assistant Public Prosecutor. It is not in dispute that for the post of Public Prosecutor and Additional Public Prosecutors, the Code of Criminal Procedure mandates that a candidate must have not less than 7 years of standing at the Bar. Additional Public Prosecutor is a post, immediately superior to Assistant Public Prosecutor in the A.P. State Prosecution Service. When 7 years of experience is prescribed under a central legislation, for an immediately superior post, prescription of three years for the inferior post, cannot be said to be, either irrelevant, or arbitrary. Hence, the contention on the first aspect cannot be accepted.

15. The second ground urged by the Petitioners is that there is some incongruity between Clause (B) and (C). It is stated that when Clause (B) stipulates that a candidate must have completed Bachelor Degree course in Law, as on the date of notification, i.e. 12-11-2010, the requirement under Clause (C), that the candidate must possess three years of experience in Courts; would lead to absurdity. Though one may feel the existence of such a situation, the issue becomes clear, if both the Clauses (B) and (C) are read together. 12-11-2010 is stipulated as the relevant date, not only for acquisition of Bachelor's Degree, but

also completion of three years practice in Criminal Courts. A combined reading of both the clauses would suggest that, apart from holding a Degree in Law, one must have completed three years of active practice in Criminal Courts by 12-11-2010. In a way, the Respondents could have avoided mention the date 12-11-2010 in Clause (B). However, mere mentioning of the same does not, in any way, bring about any illegality.

16. The last submission is referable to the one of discrimination, though not strictly so. According to them, when the requirement of three years standing at Bar was dispensed with by the Supreme Court in *All India Judges' Association v. Union of India* (supra), there is no reason why the same is needed for the posts of the Assistant Public Prosecutors. The contention, indeed merits deep and meritorious consideration.

17. Article 233 of the Constitution of India deals with the appointment, posting and promotion of District Judges. Clause (2) thereof is to the effect that a person must have not less than 7 years of standing as an Advocate, or Pleader, for being appointed as District Judge. Almost similar requirement is prescribed u/s 24 of Code of Criminal Procedure for appointment of Public Prosecutors. Parliament thereby recognized the importance of standing of an advocate at the Bar, as qualification, for being considered for appointment to the post of District Judge, or Public Prosecutor, by way of direct recruitment. The post of District Munsif or Junior Civil Judge happens to be at the lowest in the hierarchy of Subordinate Judiciary. The relevant Service Rules provided for 3 years of standing at Bar as one of the qualifications, for a candidate, for submission of application, to that post.

18. In *All India Judges* case (supra), the Hon"ble Supreme Court examined the various aspects of Subordinate Judicial Service in the country and appointed a Commission headed by a retired Judge of the Supreme Court to make recommendations. One of the references of the Commission was, as to whether it is necessary to continue the condition of three years experience at the Bar for appointment as a Junior Civil Judge. The Committee framed the question viz., "whether there is need to prescribe three years standing in the Bar for appointment to the posts of Junior Civil Judges". Six High Courts, viz., High Courts of Patna, Madhya Pradesh, Orissa, Punjab & Haryana, Allahabad and Calcutta and three State Governments viz., Goa, Meghalaya, Uttar Pradesh, favoured deletion of the condition. Taking that into account, the Committee recommended deletion of the condition by suggesting that intensive training must have given to selected candidates. The Supreme Court in its judgment in *All India Judges* case (supra), held as under:

Para 32: ... In order to enter the Judicial Service, an applicant must be an Advocate of at least three years" standing. Rules were amended accordingly. 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 3 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 an applicant to have been an Advocate for at least 3 years should be done away with. After taking all the circumstances into consideration, we accept this recommendation of the Shetty Commission and 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 of at least three years" standing. We, accordingly, in the light of experience gained after the judgment in All India Judges" 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 even have put in even three years of practice, 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

19. There by, the condition which was incorporated in the Recruitment Rules in the State of Andhra Pradesh was deleted. The Petitioners cannot draw analogy from this. It may sound a bit hard, that though a student of law who just completed the course, but without any experience at Bar can be appointed as a Junior Civil Judge, he would be ineligible to be appointed as Assistant Public Prosecutor. The logic however has its own limitations, when it is to be applied to law. The nature of functions, that are to be discharged by a Judge, on the one hand and the Assistant Public Prosecutor, on the other hand, are different.

20. It is true that even this reason may not be so strong as to repel the contention of the Petitioners, outright. However this Court is not persuaded to extend the same analogy to the Petitioners. The reason is that the experience in the recent past with the recruitments, that are made to the posts of Junior Civil Judges, after deletion of the stipulation of three years, is not encouraging. Complaints are pouring from the advocates and Judicial Officers in the Subordinate Judicial Service, as to the functioning of the officers who are appointed before they gained any experience in the Bar. The art of writing an order or judgment and the manner in which a Judge must conduct himself with the Bar, the fellow judicial officers, the prosecution agencies; with the public in general, the administration of the Court, etc., are much remulated from the experience of the Bar, than in a training class. With the hope that the service would attract meritorious candidates, the views expressed by six High Courts and a miniscule minority of States, were accepted by the Commission, and the said view ultimately became the law. Obviously, on account of the magnitude of complaints or dissatisfactions expressed at various levels, the Hon"ble Supreme Court in the recent past invited opinions from all High Courts, as to whether it is necessary to reconsider the decision, as regards dispensing with the requirement of three years experience for appointment to the posts of Junior Civil Judges. It is a different matter as to what future developments would take place, in this regard. The Law Commission may also make useful contribution in this regard. This much however can be said that the insistence on experience at Bar, for the post of Assistant Public Prosecutor, cannot be said to be irrelevant.

21. For the foregoing reasons, the writ petitions are dismissed. There shall be no order as to costs.