
(1989) 03 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 1161 of 1988

Surinder Mohan Sharma

APPELLANT

Vs

State of Haryana etc.

RESPONDENT

Date of Decision : 10-03-1989

Acts Referred:

Constitution of India, 1950 — Article 32

Citation : (1989) 03 P&H CK 0017

Hon'ble Judges : Veeraswami Ramaswami, J;G.R. Majithia, J

Bench : Division Bench

Advocate : S.D. Sharma, Mr. Pardeep Gupta and Mr. Ashok Gupta, for the Appellant; S.S. Ahlawat, D.A.G. Haryana, for the Respondent No. 1, Mr. S.C. Mohunta with Mr. A. Mohunta, for the Respondent No. 2, Mr. H.S. Gill, for the Respondent Nos. 3 and 4, Mr. V.K. Bali with Mr. Rajiv Vij, for the Respondent Nos. 5 and 6 and Mr. S.S. Dalal, for the Respondent No. 7, for the Respondent

Final Decision : Dismissed

Judgement

G.R. Majithia, J.—This judgment will dispose of L.P. As. Nos. 1149 of 1988 and 1161 of 1988, as common questions of law and facts arise in these appeals.

2. These appeals are directed against the judgment of the learned Single judge whereby he had upheld the selection of Respondents Nos. 3 to 7 as Additional District and Sessions Judges in the State of Haryana. Reference to the facts and documents, unless otherwise specified, shall be made from L.P.A. No. 1161 of 1988.

3. Facts first: By notification dated December 4, 1985, Hon"ble the Chief Justice and Judges of this Court decided that applications be invited for selection of six candidates for direct recruitment from the Bar to fill six temporary posts of Additional District and Sessions Judges in the State of Haryana. These appointments were to be made keeping in view the provisions of the Punjab Superior Judicial Service Rules, 1963 (for short the Rules) as applicable to the State of Haryana. In the notification the conditions of eligibility for applying for

these posts are specified. The applicants were also required to file income tax Returns showing the gross professional income and income tax paid on the professional income during the last three Financial Years separately, i.e., for the Accounting Years 1982-83, 1983-84 and 1984-85. income from other sources not connected with the profession was not to be included. A copy of this notification was endorsed to the President, High Court Bar Association and another copy to all the District and Sessions Judges in the State of Haryana with the request that the applications be invited from the Advocates/Pleaders practising in the Sessions Division, who were eligible, and the same be forwarded to this Court with their recommendation along with a statement showing the particulars referred to in the notification so as to reach this Court by or before January 13, 1986. Pursuant thereto, 71 applications were received. The Registrar prepared a Meeting Note in which he pointed out the applications which were received by the due date, those which were incomplete and those which did not fulfil the requisite conditions and also pointed out that Surinder Mohan Sharma Appellant in L.P.A. No. 1161 of 1988 did not send his application through the District and Sessions Judge and instead sent it direct to the Registrar with a request that on his application recommendation from the District and Sessions Judge be called for. All the applications along with the Meeting Note were placed in Full Court Meeting held on January 24, 1986. The meeting resolved that candidates mentioned in the list Annexure "A" appended to the confidential proceedings of the meeting be called for interview for February 8, 1986. Only candidates were called for interview. Respondents Nos. 3 to 7 and Shri Ashok Kumar Aggarwal were selected as Additional District and Sessions Judges and the Registrar vide letter dated February 10, 1986, requested, the Chief Secretary to Government of Haryana to notify the appointment of the candidates so selected. The Appellant challenged the selection and appointment on the following grounds:

(1) This Court wrongly short-listed the candidates to be called for interview and only those candidates were called for interview who returned their income from the legal profession in their Income tax return to the tune of Rs. 54,000/- and more during the preceding three years. The candidature of these who had less income was wrongly rejected. The selection is,

therefore, violative of the rule of equity enshrined in the Constitution.

(11) The Petitioner in C.W.P. No. 1293 of 1987 had rightly addressed his application direct to the Registrar of this Court. The requirement that the applications are to be forwarded by the District and Sessions Judge of the respective districts and where the candidates were practising as Advocates/Pleader did not form part of the notification itself but was contained in the endorsements to the District and Sessions Judge in the State of Haryana. Therefore, the application addressed to the Registrar direct should have been entertained. Its rejection on the ground that it has not been routed through the District and Sessions Judge, Ambala, is ultra vires the notification and, therefore, illegal.

Written statement was filed by the Registrar on behalf of Respondent No. 2 (Punjab and Haryana High Court at Chandigarh.) In the written statement, it was pleaded that in all 71 applications were received and thereafter a preliminary scrutiny of these applications was made in a meeting of the Hon'ble Judges held on January 21, 1986 and January 31, 1986. It was orally decided in the said meeting that only those eligible Advocates/District Attorneys whose applications were complete in all respects and who had shown their total professional income as Rs. 54,000/- or above for the Accounting Years 1982-83, 1983-84 and 1984-85 be called for interview and other candidates who were either not eligible or were not recommended by the District and Sessions Judges or their applications were incomplete for want of requisite documents or received late be not called for interview even if any of them had shown the total professional income as Rs. 54,000/- or above during the said period of 3 years. The Full Court decided that 25 candidates be called for interview. Surinder Mohan Sharma was not called for interview since his professional income for the years 1982-83, 1983-84 and 1984-85 was Rs. 49,950/- as against Rs. 54,000/-, the minimum professional income determined by the meeting for the purpose. Devinder Kumar Single Appellant in L. R. A. No. 1114 of 1988 was not called for interview since his professional income for the years 1982-83, 1983-84 and 1984-85 was Rs. 51,000/- as against Rs. 54,000/- the minimum professional income determined in the Full Court meeting.

4. The learned Single Judge dismissed the writ petition on the ground of laches and also on merits. The learned Single Judge held that the Selection Committee was competent to short-list the candidates by adopting a reasonable criterion for the purpose of inviting eligible candidates for interview. It rightly decided that those candidates should be called for interview who had shown gross professional income for the last three years as Rs. 54,000/- or more. On the second ground, the learned Single Judge held that although in the notification published in the Government Gazette, it was not mentioned that the applications of the practising Advocates in the districts shall be forwarded with the recommendation of the respective District and Sessions Judges, but in the endorsements on the notification, which is an integral part, it is specified that in the case of Advocates/Pleaders practising in the Sessions Divisions, their applications were to be forwarded by the respective District and Sessions Judges with their recommendations. The learned Single Judge further held that in fact the District and Sessions Judges had circulated this notification with this endorsement to the members of the Bar in their respective districts. Thus, the learned Single Judge negated the pleas of the writ-Petitioners.

5. Before us, Mr. S.D. Sharma, learned Counsel for the Appellants made the following submissions:

(a) The learned Single Judge was in error in dismissing the writ petition on the ground of laches.

(b) This Court was in error in short-listing the candidates to be called for

interview.

(c) Respondent No. 4 Mrs. Nirmal Yadav was ineligible for appointment as Additional District and Sessions Judge.

(d) Respondent No. 5 had not shown the legal professional income in his income tax Return to the tune of Rs. 54,000/- for the proceeding three years.

(e) His clients had more merits than the candidates selected.

6. On the first ground, the learned Counsel is on sure footing. The Appellant in L. P. A. No. 1141 of 1988 filed C. W. P. No. 82 of 1986 under Article 32 of the Constitution of India in the apex Court on May 6, 1986. The writ petition came up for hearing before the apex Court on September 1, 1986. It was permitted to be withdrawn since it was pleaded that the Hon"ble Judges of the apex Court were pleased to observe that the Appellant ought to have approached this Court under Article 226 of the Constitution of India. The order of the apex Court was made available to the Appellant on September 5, 1986, and the writ petition was filed in this Court on December 1, 1986. Thus, we find that no negligence can be attributed to the Appellant for not moving this Court expeditiously. However, the other grounds urged by the learned Counsel have no legal force.

7. This Court was justified in adopting a reasonable criterion I for the purpose of calling eligible candidates for interview. To test the professional competence of a candidate, his professional income shown in the Income tax Return is a good criterion. Again, it is a process of elimination and of selection. If this principle is adopted uniformly, the Petitioner could not have any grievance. The ratio of the judgment in *The State of Haryana Vs. Subash Chander Marwaha and Others*, , also supports this view. That case arose in the following circumstances. Pursuant to an advertisement published in Government Gazette, the Haryana Public Service Commission held an examination for recruitment of candidates for 15 vacancies in the Haryana Civil Service (Judicial Branch). A list of 40 candidates who has obtained 45 per cent or more marks in the examination was forwarded by the Commission to the State Government. The State Government, which is the appointing authority, made seven appointments in the serial order of the list according to merit. The State Government did not make other appointments out of the list on the ground that the High Court had previously intimated the State Government that the candidates getting less than per cent of marks in the examination should not be appointed as Subordinate Judges in the interest of maintaining high standards of competence in the Judicial Service. The decision of the State Government to appoint seven candidates out of the list was challenged by way of writ petition. The High Court agreed with the State Government's plea that the first 15 candidates in the list had no right to be appointed to the post, but disagreed with the State Government for imposing a new standard of 55 per cent of marks for selection as that was against the rule which provided for a minimum of 45 per cent of marks and the High Court held that the candidates who fulfilled the qualifications originally fixed had a legal right to be selected

under the Rules. The State of Haryana challenged this part of the decision of the High Court in the apex Court. Before the apex Court it was contended that the Candidates who had obtained 4(Sic) per cent or more marks in the competitive examination were eligible for appointment and the State Government had no right to introduce a new rule by which they can restrict the appointment to only those who had obtained not less than 55 per cent marks. The action of the State Government in fixing 55 per cent marks as the minimum for selection was arbitrary. The apex Court while setting aside the order of the High Court, held as under:

The argument has no force. Rule 8 is a step in the preparation of a list of eligible candidates with minimum qualifications who may be considered for appointment. The list is prepared in order of merit. The one higher in rank is deemed to be more meritorious than the one who is lower in rank. It could never be said that one who tops the list is equal in merit to the one who is at the bottom of the list. Except that they are all mentioned in one list, each one of them stands on a separate level of competence as compared with another. That is why Rule 10(ii), Part C speaks of "Selection for appointment". Even as there is no constraint on the State Government in respect of the number of appointments to be made, there is no constraint on the Government fixing a higher score of marks for the purpose of selection. In a case where appointments are made by selection from a number of eligible candidates, it is open to the Government with a view to maintain high standards of competence to fix a score which is much higher than the one required for mere eligibility. As shown in the letter of Chief Secretary already referred to, they fixed a minimum of 55 per cent for selection as they had done on a previous occasion. There is nothing arbitrary in fixing the score of 55 per cent for the purpose of selection, because that was the view of the High Court also previously intimated to the Punjab Government on which the Haryana Government thought fit to act. That the Punjab Government later on fixed a lower score is no reason for the Haryana Government to change their mind. This is essentially a matter of administrative policy and if the Haryana State Government think that in the interest of judicial competence persons securing less than 55 per cent of marks in the competitive examination should not be selected for appointment those who get less than 55 per cent have no right to claim that the selections be made of also those candidates who obtained less than the minimum fixed by the State Government. In our view, the High Court was in error in thinking that the State Government had somehow contravened Rule 8 of Part C."

8. That third ground that Mrs. Nirmal Yadav was not eligible for appointment on the ground that she did not have requisite ten years' experience as an Advocate cannot be allowed to be urged since it was not so pleaded in the writ petition and the High Court had no opportunity to rebut the allegation.

9. We have perused the original income tax Returns of Respondent No. 5 and found that for the Assessment Years 1982-83, 1983-84 and 1984-85, he had

shown his gross annual income for each year as Rs. 43,800/-. Thus, the assertion made by the learned Counsel is factually incorrect.

10. The last submission that his clients had more merits than the candidates selected, cannot be legally raised in the writ petition. This question is purely for the selecting authority and cannot be the subject-matter of judicial review.

11. For the reasons stated supra, these appeals are dismissed. However, we leave the parties to bear their own costs.

Sd/- V. Ramaswami, C.J.