
(1997) 01 DEL CK 0089

In the Delhi High Court

Case No : Civil Writ Petition No's. 286, 353 and 314 of 1997

Sushma Suri

APPELLANT

Vs

National Capital Territory of Delhi

RESPONDENT

Date of Decision : 31-01-1997

Acts Referred:

Constitution of India, 1950 — Article 223(2)

Delhi Higher Judicial Services Rules, 1970 — Rule 7

Citation : (1997) 2 AD 737 : (1997) 66 DLT 290(1) : (1997) 41 DRJ 147

Hon'ble Judges : Dalveer Bhandari, J

Bench : Single Bench

Advocate : Gopal Subramaniam, S.C. Dhanda, D.R. Nigam and Surat Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Dalveer Bhandari, J.

(1) This judgment shall dispose of the aforementioned civil writ petition, namely, Cwp Nos. 286/97, 353/97 & 314/97.

(2) The petitioners have applied for recruitment to the Delhi Higher Judicial Services in pursuance of the advertisement, issued by the High Court of Delhi, inviting applications from the candidates who have practiced as Advocates for not less than seven years.

(3) The case of the petitioner is that the respondent. The High Court of Delhi has called for candidates who have less experience than the petitioners for an interview, but the petitioners have been wrongly denied the opportunity of being considered for the appointment to the Delhi Higher Judicial Service.

(4) The Petitioner Mrs. Sushma Suri in Civil Writ Petition No. 286/97 passed her L.L.B. examination in the year 1977. In 1982 she also passed the examination of "Advocate on Record" conducted by the Supreme Court of India and in 1986 she was appointed as Assistant Government Advocate. Thereafter she was promoted

to the post of Additional Advocate in the Supreme Court.

(5) The petitioner, Jit Ram Kasana in Writ Petition No. 314/97 was enrolled as a member of the Bar on 12.9.1982, and on 8.12.89 he joined as an Assistant Public Prosecutor in the Central Bureau of Investigation later he become public prosecutor in the Cbi on 2.4.1996. He has also applied for the post of Delhi Higher Judicial Service but was not called for the interview.

(6) The petitioner Smt. Reeta Dulla in the Writ Petition No-353/97 was enrolled with the Bar Council of Delhi on 26.10.1976 and after completing nine years of practice she was selected by the Dpsc to the post of Assistant Public Prosecutor attached to the Directorate of Prosecution, Tis Hazari Court, Delhi, She has also applied for the post of the Delhi Higher Judicial Services in pursuance of the advertisement of the High Court of Delhi. She has also not received an interview call on the ground that the Public Prosecutors and Additional Public Prosecutor cannot be considered for the appointment to the Delhi Higher Judicial Services.

(7) The Civil Writ Petition No. 286/97 was listed on 24.1.97 and notice was made returnable on 27th January, 1997 because of urgency. The other two petitioners are being disposed of since questions involved are identical. The short question that arises in these petition is regarding the interpretation of Article 233 of the Constitution of India. Article 233 reads as order :

"APPOINTMENT Of District JUDGES: (i) Appointments of persons to be, and the posting and promotion of District Judges, in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. (ii) A person not already in the service of the Union or of the State shall only be eligible to be appointed a District Judge if he has been for not less than seven years as Advocate or a pleader and is recommended by the High Court for appointment."

(8) Mr. Gopal Subramaniam, and Dr. Surat Singh, learned counsel who appeared for the petitioners, submitted that these petitioners fulfill all the requisite qualifications for the appointment to the Delhi Higher Judicial Service and still they have not been considered for the appointment.

(9) It was submitted by the learned counsel for the petitioners that the petitioners are Advocates and Members of the Bar, Merely because of their appointment as Additional Government Advocate in the Supreme Court on the Public Prosecutor, they do not cease to be Advocates and/or Members of the Bar and the High Court, was not justified in not even considering them for the appointment:

(10) The learned counsel for the petitioner submitted that on plain interpretation of Article 233 of the Constitution the petitioners are entitled to be considered for the said appointments. According to them the crux of the matter is that the candidates must not be in the service of the Union or the State and he must have at least seven years of experience as an Advocate.

(11) The learned counsel for the petitioners and respondents have placed reliance on Chander Mohan Vs. Union of India Air 1966 Sc 1987 and on Satya Narain Singh and Others Vs. High Court of Judicature at Allahabad and Others, . According to the learned counsel for the petitioners, the service in Clause 2 of Article 233 has been interpreted as Judicial Service by their lordships of the Supreme Court. The Learned Counsel for the petitioners submitted that the petitioners are not in judicial service and they have more than seven years experience at the Bar, Therefore, they are fully eligible and ought to be considered for the appointment and the High Court of Delhi was not justified in not considering them for the appointment.

(12) Mr. Subramaniam, the learned counsel for the petitioner, Mrs. Sushma Suri, urged that an Advocate on record cannot cease to be a Member of the Bar just because he or she has been appointed as an Assistant Government Advocate in the Supreme Court. He further submitted that an Advocate on record has a special status in the Supreme Court. Only those Advocates can be appointed as Advocates on record who are successful in the rigorous written examination conducted by the Supreme Court. Only Advocates on Record are allowed to act and plead before the Supreme Court of India. The rigorous examination is conducted to ensure that Advocates with implacable calibre and merit would only act and plead before the Supreme Court. The Senior Advocates, the Law Officers including the Attorney General for India and the Solicitor General for India can argue the cases only on the basis of instructions given to them by the Advocates on record in the Supreme Court. The Advocates on record do not cease to be the members of the bar just because he or she was accepted the post of the Government Advocate.

(13) Mr. Subramaniam submitted that the Supreme Court Rules have been framed under Article 145 of the Constitution and referred to various provisions of the Rules to demonstrate that the Advocates on record do not cease to be Members of the Bar on their appointment as Government Advocate. All through Advocates on Record function as the Members of the Bar. He also pointed out that by no stretch of imagination they can be denied the status of the Members of Bar just because they have accepted the assignment of the Additional Government Advocate.

(14) Mr. Subramaniam also submitted that the suspension of an Advocate would automatically mean his suspension as Advocate on Record according to the Rule 8 of the Supreme Court Rules, 1966. In this view of the matter, it is impossible even to comprehend that advocates on Records are not the Members of Bar.

(15) Mr. Subramaniam further submitted that the Additional Government Advocate are permitted to appear for the Union of India and for all the States. Since the Government of India is the biggest litigant, Therefore, the Government Advocates, handling their brief have very diversified and comprehensive experience. They function as very active legal practitioners. It would be unfair to say that they cease to be Members of the Bar just because they have been

appointed as Government Advocates. He also submitted that with this analogy, even the Advocates General of various states and Law Officers of the Union of India will also not be the Members of Bar.

(16) Dr. Surat Singh also submitted that the Public Prosecutors do not cease to be the Members of the Bar on their appointment as the Public Prosecutors. They are governed by the same discipline. They are also officers of the court. They also have to maintain same professional ethics and standards. For any breach they are as much liable for action under the Act as much as any Member of Bar. He further submits that the petitioners fulfill all the requirements indicated in the advertisement and the respondent High Court was in error in not considering them for the appointment to the Delhi Higher Judicial Service.

(17) Mr. Subramaniam placed reliance on the order/judgment passed by the Supreme Court in the review petition filed in "All India Judges Association Vs. Union of India on 10.5.1985. In this case the Supreme Court was concerned with the notification dated. 13.5.94 issued by the State of Rajasthan amending the Rajasthan Judicial Service Rules, 1983. By the said amendment the Assistant Public Prosecutors have been debarred from further competing in the selection process. The Supreme Court in the said case observed that "there can be no doubt that an Assistant Public Prosecutor Practices as a Lawyer and is eligible for selection to the judicial service provided he has not less than three years practice as a lawyer." In this judgment the Supreme Court has also observed that :

"THERE is no doubt in our minds that what was intended by the provision was that a candidate for appointment to judicial office should be a person who had three years experience of practice as an advocate. He must be a lawyer in the sense that he regularly practices before a court or tribunal, who appears for his clients before the court or tribunal. It may be that in a given case he may do so only for a client who is his employer."

(18) Mr. Subramaniam submitted that in view of the later judgment of the Supreme Court the petitioners who are Additional Government Advocate and Public Prosecutors are clearly eligible for selection to the Delhi Higher Judicial Service. He also submitted that in the said case Court interpreted Rajasthan Judicial Service Rules but the same interpretation must be applicable for the Delhi Higher Judicial Service Rules. Mr. Subramaniam submitted that the view taken by the Division Bench of this Court and the Supreme Court in Om Prakash Sharma Vs. Delhi Administration is clearly erroneous. According to the petitioners there is clear inconsistency in the two orders/judgments of the Hon'ble Supreme Court mentioned above. I see some force in this submission. The petitioners would be at liberty to seek clarification from the Apex Court.

(19) Mr. Arun Jaitely, the learned counsel appearing for the respondent. High Court of Delhi submitted that the question which is raised in these petitions stands concluded by the judgment of the Division Bench of this Court in the case of Oma Shanker Sharma and Another Vs. Delhi Administration and Another, . He

also submitted that the judgment of the Division Bench was affirmed by the Apex Court vide its order dated 28.4.1988. He further submitted that in view of the cases of Chander Mohan and Satya Narain Singh (supra) the petitioner are not entitled to be considered for the appointment. Mr. Jaitley also submitted that the petitioners cannot be said to be belonging to the bar as envisaged in Rule 7 of the Delhi Higher Judicial Services Rules, 1970. From the Bar has to be understood in the larger sense of self employed professionals engaged in the service of law.

(20) I have heard the learned counsel for the parties at length and perused the judgments cited at the Bar. On careful consideration of the entire facts and circumstances of these cases, there is no iota of doubt that as far as this Court is concerned, it is bound by the judgment delivered by the Division Bench in Om Prakash Sharma Vs. Delhi Administration (supra) which has been affirmed by the Supreme Court.

(21) In this view of the matter, the writ petitions have to be rejected. In the facts and circumstances of this case, I direct the parties to bear their own costs.