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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **DECIDED ON: 03.09.2015**

+ **WP (C) 4867/2014, CM 9713/2014**

RAVINDER KUMAR ATRI & ORS. Appellant
Through: Mr. Sudhanshu Batra, Sr. Advocate with
Mr. Arvind Kumar Gupta and Mr. Abhishek
Goyal, Advocates.

versus

THE REGISTRAR GENERAL, DELHI HIGH COURT Respondent
Through: Mr. Viraj R. Datar with Mr. Vikram
Pradeep, Advocates for Resp-1.
Mr. C. Hari Shankar, Sr. Advocate with Mr. S.
Sunil, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA
S.RAVINDRA BHAT, J. (ORAL)

1. The petitioners' grievance in these proceedings under Article 226 of the Constitution is that the amendment notified to the Delhi High Court Establishment (Appointment and Conditions of Service) Rules 1972 - hereafter referred to as ("the rules") that changed the conditions of service for promotion to the post of Judicial Assistant, is arbitrary. As against the pre-existing rules, which required-as a condition of eligibility (for promotion), graduates with 5 years service or in the alternative high school or metric passed employees with 10 years service in Categories 21 and 22 of the posts (in the Schedule to the Rules), to be considered eligible for

promotion, the impugned rules reduced the eligibility to 3 years and 5 years respectively.

2. The petitioners joined the Delhi High Court as Junior Judicial Assistants (JJA) - a post listed at Serial number 19 of the Rules. JJAs are filled up through two channels, - 80% by direct recruitment and 20% by promotion. This process of direct recruitment involves the qualification in a preliminary test, written test, a typing test and an interview. The balance 20% is by promotion from amongst posts described in serial numbers 24A-32 of Schedule to the Rules. This category of candidates have to possess matriculation or equivalent with 5 years service in any of the listed categories of posts, knowledge of English and a speed of not less than 35 words per minute in the typewriting test. This latter specification was deemed desirable though not essential. Likewise identical conditions of service for direct recruitment to the post of Restorer, listed in Sl. No. 20 of the Schedule to the Rules, was prescribed.

3. By the impugned amendment of 03.07.2014, the higher post of judicial Assistant was to be filled in the following manner: -

“for members of the establishment of the High Court: graduate with 3 years service or High school/ metric with 5 years experience in categories 21 and 22 of posts mentioned in the Schedule”

The pre-existing rules applicable for filling up of the post of Judicial Assistant were however different and read as follows

“for members of the establishment of the High Court: graduate with 5 years service or High school/ metric with 10 years experience in categories 21 and 22 of posts mentioned in the Schedule”

4. The petitioners complain that the change in the rules is arbitrary and treats unequals, equally. It is contended on their behalf by Mr. Sudhanshu Batra, learned senior counsel that all along a distinction was made between graduates on the one hand and non-graduates on the other. By one stroke the entire classification that existed previously on the basis of which some posts had been filled just before the amendment, was changed. It is argued that this has acted in detriment to the promotional chances of the petitioners. Learned counsel argued that the rules are arbitrary to the extent of the amendment, because they departed from the conditions of service, which existed when the petitioners were recruited. It is urged that the petitioners were entitled to insist that the Rules which existed upon their entry into the High Court ought to be continued as an essential part of the conditions of service and could not have been altered to their disadvantage. By liberalizing the Rules as it were, lowering the required or prescribed experience from 10 years to 5 years, the classification made sharply by the previous rules had been obliterated. Consequently for the higher post of Judicial Assistant, those categories of employees who are not equal to the petitioners are treated almost at par because they now have to possess merely 5 years experience and the lower qualification. This harms and adversely impacts the petitioners' chances of promotion.

5. It was argued on behalf of the petitioners that the decision of the Supreme Court in *Y.V. Rangaiah vs J. Sreenivasa Rao*, (1983) 3 SCC 284 applies. Learned counsel contended that as against the vacancies which existed at the time of the commencement of the new amendments, the old rules had to be applied. Learned counsel took the Court through the decision in *Rangaiah* to say that this is the true state of affairs. Such being

the case the petitioners have to be appointed and promoted as Judicial Assistant on the basis of the old rules and not the new rules.

6. It is quite evident from the above controversy that the petitioners claim to be aggrieved by the amended rules. Now as explained and noticed earlier, the post of JJA can be filled through two sources: by internal candidates from different categories i.e. 8 categories in the Schedule, at Sl. No. 24A-32. The balance 80% are to be filled through direct recruitment. The petitioners entered the JJA in the 80 % direct recruitment quota. Significantly under the pre-existing or old rules they would have been eligible for consideration to the higher post of Judicial Assistant only after they completed 5 years in the post of JJA. However the amended rules have brought down the minimum eligibility experience from 5 years to 3 years. Now this is, in the opinion of the Court a distinct advantage, inasmuch as the petitioners would acquire the eligibility sooner than they would have earlier.

7. Their grievance however, is that as against the other category i.e. eligible candidates from serial Nos. 21 and 22, even though the pre-existing rules as regards qualification i.e. minimum 10 years with qualification of a High school or matriculation completion is retained, the real distinction was in the nature of the minimum experience. Earlier it was 10 years; it has been reduced to 5 years. This reduction, the petitioners complain hurts them because more people would be eligible to the post as compared to the earlier process thereby affecting the petitioners' chances of promotion.

8. This Court is of the opinion that the grievance made out is not one that can be addressed in proceedings under Article 226 of the Constitution; there is no violation of Article 14 or discrimination as is urged. Firstly the minimum experience for eligibility i.e. 5 years, which existed under the rule

old rules as far as the petitioner graduates are concern, has been reduced to 3 years. The petitioners are not aggrieved by this; rather they urge that the reduction from 10 years to 5 years of the other category affects them. It is difficult to conceive the tenability of this submission without an understanding of the operation of the rules. As between the petitioners,- who are graduates having entered under the 80% quota for JJA and the non-graduates or high school and matriculate completed employees, there is no parity. The latter continue in the same way as they did earlier in the sense that they cannot claim parity with the petitioners. Upon *their* completing 3 years of service, they do not acquire eligibility for promotion to Judicial Assistant. They have to complete 5 years as JJAs. No doubt their eligibility and terms of experience has been reduced from 10 years to 5 years; at the same time the Court notices that such candidates would enter the 20% JJA's promotion quota (to which the petitioners were inducted as direct recruits) after fulfilling the requisite experience in the lower Category of posts in serial numbers 24A-32 of the Schedule to the Rules. In other words these candidates would have been employed in the High Court for a considerable period of time - may be even more than 10 years. If this reality is taken into account, the determination by the rule making authority that 5 years experience is realistic and reasonable - for the said category of promotees, who do not possess graduation, (as the minimum residency qualification in the lower post JJA), cannot be faulted. This aspect is a matter of pure policy. Without anything more the mere reduction of the number of years of service as a condition for eligibility of a category of eligible candidates to which the petitioners do not belong, cannot amount to treating unequals equally as is being complained by the petitioners.

9. As far as the decision in *Rangaiah* and the contention that it is applicable in the present case is concerned, in the Court's opinion that argument lacks merit. The said judgment is a clear authority for the proposition that any changes to recruitment rules or policies made, would not apply to selection in the course of an ongoing selection. However, new rules clearly have to apply from the date they are published and brought into force. In this case there is no dispute that they were brought into force on 03.07.2014. Consequently they clearly apply. The petitioners' argument is therefore unsound.

10. For the above reasons the Court is of the opinion that there is no merit in this writ petition. It is, consequently dismissed without any order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

SEPTEMBER 03, 2015