

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
* HON'BLE SRI JUSTICE G. SHYAM PRASAD

+ WRIT PETITION No.33974 of 2016

% Date: 27-12-2016

Between:

1. p. Chandra Sekhara Prasad, S/o. Satyanarayana, XVIII Additional Judge, City Civil Court, Hyderabad.
2. A. Narasimha Murthy, S/o. Ram Mohan Rao, Secretary, District Legal Service Authority, Eluru, West Godavari District.
3. K. Sudarshan, S/o. K. Buchaiah, XXII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad.
4. Mohd Abdul Rafi, S/o. M.A. Hameed, I Additional Chief Metropolitan Magistrate, Vijayawada, Krishna District.
5. V. Bala Bhaskar Rao, S/o. V. Madhava Rao, II Additional Senior Civil Judge, L.B. Nagar, Ranga Reddy District.

Petitioners

Vs.

1. The High Court of Judicature at Hyderabad for the State of Telangana and State of Andhra Pradesh, rep. by the Registrar (Vigilance) Hyderabad.
2. The State of Telangana, rep. by Legal Affairs, Legislative Affairs and Justice.
3. The State of Andhra Pradesh rep. by Legal Affairs, Legislative Affairs and Justice.
4. The State of Telangana, rep. by its Principal Secretary, Home (Courts-A) Department, Secretariat, Hyderabad.
5. The State of Andhra Pradesh, rep. by its Principal Secretary, Home (Courts-A) Department, Secretariat, Hyderabad.

Respondents

! Counsel for the petitioners : Mr. Srinivasa Rao Madiraju

^ Counsel for respondent No.1 : Mr. S. Sri Ram

^ Counsel for respondents 2 to 5 : G.P. for Law & Legislative Affairs

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? Cases referred

1. (2008) 17 SCC 703
2. (2010) 2 SCC 637
3. (1997) 8 SCC 488
4. 2016 (5) ALD 530

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ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

The petitioners, who are now working as Civil Judges (Senior Division) have come up with the above writ petition seeking appropriate directions to the respondents to notify the correct number of vacancies to be filled up under the 65% quota reserved for recruitment by transfer to the post of District Judges and to prepare the select list, in accordance with the law laid down by the Supreme Court.

2. Heard Mr. M. Surender Rao, learned Senior Counsel appearing for the petitioners and Mr. S. Sri Ram, learned Standing Counsel appearing for the Registry of the High Court.

3. By a notification dated 31.03.2016, the High court notified 30 vacancies in the cadre of District Judges (Entry Level) to be filled up under the 65% quota by the method of recruitment by transfer from the cadre of Civil Judges (Senior Division) for the year 2016. It was indicated in the notification that out of those 30 vacancies, 2 were existing vacancies and 28 were anticipated future vacancies.

4. Since 30 vacancies were notified, the High Court invited 90 eligible Civil Judges (Senior Division) for participation in the process of selection. Under the Andhra Pradesh State Judicial Service Rules, 2007, the 65% quota to be filled up by recruitment by transfer, should be on the basis of merit-cum-seniority and by conducting a suitability test, as prescribed by the Supreme Court, in order to ascertain and examine the legal knowledge of the candidates and to assess their continued efficiency with adequate knowledge on case laws.

5. From the affidavit filed by the petitioners in the present writ petition, it appears that all the petitioners were appointed as Junior Civil Judges on 16.05.1998 and they were promoted as Senior Civil Judges in March and December, 2010. But unfortunately, other than these two pieces of information, there is no other information available in the affidavit in support of the writ petition as to whether the petitioners have come within the zone of consideration, viz., out of the 90 candidates, who have been invited for participation in the process of selection. Though there is a reference in paragraph-21 of the affidavit to the general procedure adopted, by calling upon the officers coming within the zone of consideration to submit five civil judgments and five criminal judgments, there is no positive averment that these petitioners come within the zone of consideration. However, we go by what was stated across the bar by Mr. M. Surender Rao, learned Senior Counsel for the petitioners that these petitioners have come within the zone of consideration and have also been invited for participation in the suitability test.

6. The petitioners, as we have stated earlier, seek two modifications to the notification dated 31.03.2016. The first modification is that the number of vacancies that ought to have been notified are more than 30. On a rough calculation, the petitioners have claimed in paragraph-16 of the affidavit that the vacancies could be around 61 and not 30. The second improvement that the petitioners want in the process of selection, though not necessarily to the notification, is that as per the directions issued at serial No.5 ((b) in the Table-B under Paragraph-7 of the decision of the Supreme Court in *Malik Mazhar Sultan v. U.P.*

*Public Service Commission*¹ the select list be published in the order of merit and should contain double the number of vacancies notified.

7. We shall take up for consideration the second contention first. It is true that the Supreme Court prepared a schedule in Table-B under Paragraph-7 of its decision in *Malik Mazhar Sultan*. In Table-B, it was indicated under Column No.5 (b) that a select list be published in the order of merit and should be double the number of vacancies notified.

8. But even admittedly, the process of subjecting the candidates within the zone of consideration commenced only on 26.12.2016. Admittedly, no select list has so far been prepared by the High Court. What the petitioners are seeking today is to direct the High Court to prepare the select list as per the directions contained in the decision in *Malik Mazhar Sultan*.

9. But since the stage for preparation of select list has not come so far, the second prayer sought by the petitioners, is obviously premature.

10. Though it is contended by Mr. M. Surender Rao, learned Senior Counsel for the petitioners that in the past three years, the High Court prepared only a select list containing equal number of candidates as there are vacancies, and that therefore, a necessity has arisen for the petitioners to seek such a direction, we do not think that past practice is an indication that an institution will continue to defy law if there are any defiance of law.

11. In any case, the question as to whether the select list should contain double the number of vacancies or only as many candidates as there are vacancies, is a larger question that requires consideration. As

¹ (2008) 17 SCC 703

seen from paragraph-7 of the decision in Malik Mazhar Sultan, the schedule drawn up by the Supreme Court in paragraph-7 was actually more or less by consent of parties. It is no doubt true that it was a direction under para-7, which is binding on all the High courts. But nevertheless, such a direction was passed on the basis of the consent of all the High courts.

12. It is well settled that a judgment of a Court cannot be read like a statute. The object behind the requirement to prepare a select list containing double the number of vacancies notified is to ensure that a huge process of selection involving significant time, energy and the finance of the institution do not go a waste, by the select list falling short of the vacancies that may suddenly arise in future. If total number of candidates more than the vacancies available are included in the select list, the candidates who are found to be in excess, in case of vacancies getting filled up, would naturally become the candidates either in the waiting list or in the reserved list, though such a terminology was not used in the decision in Malik Mazhar Sultan.

13. Therefore, Mr. S. Sri Ram, learned counsel for the respondents is right in contending that the question as to what happens to persons, who were found to be excess, but included in the select list on account of such a dicta, has already been considered, though with reference to direct recruitment, in *Rakhi Ray v. High Court of Delhi*², which followed the dictum laid down in *Surinder Singh v. State of Punjab*³.

14. It does not require a great deal of imagination or interpretation to come to a conclusion that if more number of candidates

² (2010) 2 SCC 637

³ (1997) 8 SCC 488

than the number of vacancies available are included in the select list, those in excess of the number of vacancies cannot be called as persons, who are selected for recruitment, but can only be called as persons waiting in the wings for addressing the need that may arise out of any contingency.

15. In any case, as we have pointed out earlier, except the past record of the High court, there is nothing to show that the High Court will not prepare a select list containing the names of double the number of candidates. Therefore, we do not wish to speculate at this juncture on what the High court would do or would not do to answer the second contention of the petitioners.

16. Coming to the first contention, the petitioners claim in paragraph-16 of the affidavit in support of the writ petition that the number of vacancies that ought to have been notified are around 61. The relative portion of paragraph-16 of the affidavit is as follows.

“I humbly submit that on a proper calculation the number of vacancies of District Judges to be notified for filling under 65% quota (for promotion of Senior Civil Judges) will be as follows:

- a. Existing vacancies as given in notification dated 31.03.2016;
- b. Future vacancies under 65% quota as notified by the High Court;
- c. 10% of the posts of District Judges as directed by the Hon'ble supreme Court (For 234 posts 23 vacancies, and under 65% quota 15 vacancies (as 10% of the unforeseen vacancies would be in respect of sanctioned posts and not vacancies occurring in a particular year);
- d. 65% of 13 posts sanctioned vide G.O.ms.No.36 dated 8.06.2015 of Telangana Government (G.O.Ms.No.96, dated 03-07-2015 of Government of Telangana for approval of budget for capital expenditure)/
- e. 65% of 13 posts sanctioned vide G.O.ms.No.48, dated 21-04-2016 of Government of Andhra Pradesh (G.O.Ms.No.130, dated 26.08.2015 of Government of Andhra Pradesh for approval of budget for capital expenditure)

Thus, the total number of vacancies to be notified are 61.”

17. But in the course of arguments, Mr. M. Surender Rao, learned Senior Counsel agreed that the calculation under clause-C above, cannot be taken as correct, in view of the amended order passed by the Supreme Court on 24.03.2009, to the Schedule given in Malik Mazhar Sultan. What is claimed in paragraph-16 by the writ petitioners is based upon column No.1 (c) of the Table-B under para-7 of the decision in Malik Mazhar Sultan. But this column No.1 (c) was removed by the Supreme Court by its subsequent orders dated 24.03.2009.

18. Coming to what is claimed in para D and E, the stand taken by the Registry is two fold. The first is that the notification was dated 31.03.2016. The 13 posts that probably would arise on account of G.O.Ms.No.48, dated 21.04.2016 of the State of A.P., were obviously subsequent to the notification. While anticipated and future vacancies are to be understood as those vacancies within the cadre strength, any posts created in addition to the existing cadre strength may not fall within the category of anticipated or future vacancies. Therefore the Government Order in G.O.Ms.No.48, dated 21.04.2016, and the number of vacancies that may arise on account of sanctioning of additional special Courts, may not improve the vacancy position as on 31.03.2016. These vacancies may have to be taken into account when a notification is issued on 31.03.2017.

19. Coming to the 13 Special Courts created by the State of Telangana, under G.O.Ms.No.36, Law (L.A & J Home Courts-A) Department, dated 08.06.2015, it is pointed out in para-4 of the counter affidavit filed by the Registry that these posts have been created excessively in the State of Telangana and that the notification of the same through a common recruitment drive, may not be possible.

20. It is needless to point out that A.P. Re-organization Act, 2014 came into effect from 02.06.2014. There has been spate of litigation, which we can take judicial note of, even with regard to additional seats created in Post Graduate Medical Courses. The question as to whether the Presidential Order would continue to apply and the question as to whether those additional seats in Post Graduate Medical Courses could be categorized as Statewide Educational Institutions or not, has been engaging the attention of this Court.

21. In addition, the allocation of judicial officers to be made in terms of Section 77 and 78 of the Andhra Pradesh Re-Organization Act, 2014 itself is hanging fire for various reasons. As a matter of fact, the previous notification of recruitment of Civil Judges (Junior Division) became the subject matter of litigation in *Sarasani Satyam Reddy v. Union of India*⁴. When this Court was unable to adhere to the time schedule due to bifurcation, an application was filed before the Supreme Court for extension of time, but the same was rejected by the Supreme Court. It appears that thereafter a few matters are pending before the Supreme Court at the instance of the judicial officers.

22. Today, by virtue of the proviso to sub-section (2) of Section 77, the officers working in the successor State could not be transferred and posted to the other State. Therefore, the legal issue as to whether the posts created by one State after bifurcation, can be included in the cadre strength of the combined judicial service, is a larger question. If on the administrative side this larger question has been addressed to, judicial resolution of the legal dispute will have to wait. Therefore, the decision taken on the administrative side to keep these posts away from

⁴ 2016 (5) ALD 530

the common recruitment, despite the fact that as on date there is only one State Judicial Service, cannot be taken to be violative of the dicta of the Supreme Court. The decision in Malik Mazhar Sultan never contemplated a situation of this kind. Therefore, the petitioners have not been able to establish that the vacancies were wrongly arrived at. Hence the writ petition is devoid of merits and the same is dismissed.

23. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

JUSTICE V. RAMASUBRAMANIAN

JUSTICE G. SHYAM PRASAD

27th December, 2016
Js.



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