

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.06.2017
CORAM

THE HON'BLE MR.JUSTICE NOOTY. RAMAMOHANA RAO
and
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos. 43279 and 39466 of 2016

The Pondicherry Bar Association (Reg.No.84/92)
Rep. by the General Secretary L.Danassegarane,
Integrated Court Complex, Cuddalore Road,
U.T. of Puducherry, Puducherry - 1.

...Petitioner in W.P.No.43279 of 2016

J.Kumaran

...Petitioner in W.P.No.39466 of 2016

Vs.

1. The Chief Secretary,
U.T. of Puducherry,
Puducherry.
2. The Secretary to Government (Law)
Law Department, Chief Secretariat,
Puducherry.
3. The High Court of Judicature at Madras,
Rep. by the Registrar General,
Madras High Court buildings,
Chennai - 104.
4. Mr.Swarnam Natarajan,
Principal Sub-Judge Thiruvannamalai,
Thiruvannamalai District.
5. Mrs.G.T.Ambika,
X Assistant Judge,
City Civil Court, High Court Campus,
Chennai.
6. Mr.S.Isvarane,
Sub-Judge, Kallakurichi,
Villupuram District.

..Respondents
(in W.P.No.43279 of 2016)

1. Union of India rep. by
The Chief Secretary to Government,
Government of Puducherry,
Puducherry.
 2. The Under Secretary to Government (Law),
Government of Puducherry,
Puducherry
 3. The Registrar General
High Court of Judicature at Madras,
Chennai - 600 104
 4. The Pondicherry Advocates Bar Association
Rept. By its General Secretary,
District Court Complex,
Mudaliarpet, Puducherry
 5. Thiru.Swarnam Natarajan,
Principal Sub-Judge Thiruvannamalai,
Thiruvannamalai District.
 6. Tmt.G.T.Ambika,
X Assistant Judge,
City Civil Court, High Court Campus,
Chennai.
 7. Thiru.S.Isvarane,
Sub-Judge, Kallakurichi,
Villupuram District.
- ... Respondents (in W.P.No.39466 of 2016)

Prayer in W.P.No.43279 of 2016: This Writ Petition filed under Article 226 of the Constitution of India, for the issue of a writ of mandamus forbearing the respondents 1 to 3 from filling the two vacant posts of District Judges by promotion which falls under 25% reserved for direct recruitment under Rule 8 of the Puducherry Judicial Services (Cadre and Recruitment) Rules, 2008 pending disposal of the representation dated 03.11.2016.

Prayer in W.P.No.39466 of 2016: This Writ Petition filed under Article 226 of the Constitution of India, for the issue of a writ of mandam directing the respondents 1 to 3 to initiate the selection process for existing 2 (two) vacancies in the cadre of District Judge (entry level) at Puducherry Judicial Services which vacancies falls under 25% direct recruitment quota prescribed by rule 8 of Puducherry Judicial Services (Cadre and Recruitment) Rules, 2008 which was framed in pursuance of directions of Apex Court in All India Judges Association case 2002 (4) SCC 247.

For petitioner: Mr.K.S.Ilangovan(in W.P.No.43279 of 2016)

: Mr.E.Anbarasan
(in W.P.No.39466 of 2016)

For RR1 & R2: Mr.R.Syed Mustafa
Government Pleader
(in both the petitions)

For R3 : R.Vijayakumar (in both the petitions)

For RR4 to R6: Mr.Edwin Prabhakar
(in W.P.No.43279 of 2016)

For R5 : M/s. S.Yamuna Devi
(in W.P.No.43279 of 2016)

For R4 : Mr.K.S.Ilangovan
(in w.p.no.39466 of 2016)

For RR5 & R7: Mr.Edwin Prabhakar
(in w.p.no.39466 of 2016)

For R6 : M/s. Yamuna Devi
(in w.p.no.39466 of 2016)

COMMON ORDER

(Order of the Court was made by Nooty. Ramamohana Rao,J.,)

Both these writ petitions can be dealt with and decided by a common order. Hence they were listed for hearing together and accordingly they were heard.

2. W.P.No.39466 of 2016 is instituted by a practising Advocate of Puducherry seeking a writ of mandamus directing the respondents 1 to 3 to initiate the selection process for existing two vacancies in the cadre of District Judge (Entry Level) in Puducherry Judicial Services by the method of direct recruitment. Whereas W.P.No.43279 of 2016 is instituted by the Pondicherry Bar Association seeking a writ of mandamus forbearing the respondents 1 to 3 from filling the two vacant posts of District Judges (Entry Level) by way of promotion. As

those two vacancies fall within the 25% direct recruitment quota. Thus, in effect and substance, the relief prayed for in both the writ petitions is one and the same.

3. They seek initiation of the process of direct recruitment against the vacancies meant for direct recruitment of District Judge (Entry Level) cadre in Puducherry Higher Judicial Services.

4. The Puducherry Judicial Services (Cadre and Recruitment) Rules, 2008, henceforth referred to as "the rules", have been notified on 08.04.2008. Rule 2 defined various expressions found mentioned in the Rules. The expression 'cadre post' has been defined in the following terms:

"Cadre Post" means any post specified in the Schedule and includes temporary posts carrying the same designation as that of any of the posts specified in that Schedule and any other temporary post declared as cadre post by the Administrator in consultation with the High Court, Madras.

5. Rule 3 dealt with the Constitution of the Puducherry Judicial Services. Of them, District Judge (Entry Level) is found mentioned in category 3. Rule 4 dealt with the strength of the service, by declaring that the posts specified in the schedule represent the strength of the service. Rule 8 dealt with the method of appointment, qualifications and age. From the table appended thereto, it emerges that two methods have been identified as the sources of recruitment, one being by way of promotion from among the Civil Judges (Senior Division) and the second being by way of direct recruitment from amongst the eligible practising advocates of not less than 7 years standing as on the date of notification.

6. For the purpose of direct recruitment, the candidates are not supposed to have attained 45 years of age. In case of all others and in case of members belonging to Scheduled Caste and Scheduled Tribes, 48 years as on the 1st July of the year in which the selection for appointment is sought to be made.

7. The writ petitions are now concerned with the filling up of posts of District Judge (Entry Level) through this second source of recruitment, namely, the direct recruitment. In the schedule to these Rules, the District Judge-cum-Sessions Judges' permanent strength of the cadre has been shown as 4, but however, we understand that same has risen to 8 now.

8. However, in the counter affidavit filed by the Registrar General of this Court, in Paragraph no.5, it is brought out that the following six District Judges posts are available in Puducherry Judicial Services:-

1. Principal District Judge, Puducherry
2. II Additional District Judge, Puducherry
3. III Additional District Judge, Puducherry
4. District Judge, Karaikal
5. Presiding Officer, Industrial Tribunal cum Labour Court, Puducherry
6. Judge, Family Court, Karaikal.

9. In the absence of any material to the contra, we can only assume that the statement made by the Registrar General of this Court, in paragraph no.5 of the counter affidavit filed by him, reflects the true and correct position. Therefore, the question that emerges is, whether for 25% of the direct recruitment quota one post or more than one becomes available. 25% of six is only 1.5. Hence, the fraction has to be ignored and it has to be rounded off to one. Otherwise, if the fraction of 0.5 is not to be ignored and it is rounded off to one, in such a case the direct recruitment vacancies will become one plus one, equal to two ($1 + 1 = 2$). Two out of six will amount to 33-1/3%, which is higher than 25% fixed in the rules as the quota for direct recruitment.

10. In the given circumstances, we approve the statement in the Counter Affidavit that there is only one post of District Judge (Entry Level) in Puducherry Judicial Services which can be filled in by direct recruitment. The counter affidavit in paragraph no.7, has made it further clear that there are two ex-cadre posts viz., (i) Member Secretary, Union Territory of Puducherry Legal Services Authority and (ii) Judge, Family Court, Puducherry. As per the definition of the expression 'cadre posts', defined in rule 2(b), two posts namely (i) Member Secretary, Union Territory of Puducherry Legal Services Authority and (ii) Judge, Family Court, Puducherry cannot be counted as cadre posts. Accordingly, we have no hesitation to approve the statement made by the Registrar General of this Court, in the counter affidavit filed in this case that for direct recruitment, there is only one cadre post of District Judge (Entry Level) as an accurate statement of fact.

11. The counter affidavit further makes it clear that the five posts of District Judges (Entry Level) have been filled up by promotee officers and hence there is only one post which can be filled up by taking recourse and resort to the method of direct recruitment as laid down in Rule 8. In paragraph no.11 of the counter affidavit, it was further set out that the exercise of direct recruitment to the one post of District Judge (Entry Level) to the Puducherry Judicial Services will be undertaken and would be completed in due course, after consultation with the Government of Pondicherry.

12. In this view of the matter, all we need to direct the respondents herein is to take all necessary and appropriate steps for filling up the one cadre post of District Judge (Entry Level) by the method of direct recruitment in terms and in accordance with Rule 8 of the Puducherry Judicial Services (Cadre and Recruitment) Rules, 2008 as expeditiously as possible and preferably let this exercise be completed before the end of this year.

13. The writ petitions stand disposed of in the above terms. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cgi/svn

To

1. The Chief Secretary,
U.T. of Puducherry,
Puducherry.
2. The Secretary to Government (Law)
Law Department, Chief Secretariat,
Puducherry.
3. The Registrar General
The High Court of Judicature at Madras,
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7. Mr.S.Isvarane,
Sub-Judge, Kallakurichi,
Villupuram District.

+1 cc to Mr.Achari and Antoni Associates sr 44139
+1 cc to Government Pleader sr 44350, 44351
+1 cc to Mr.S.Mohanavadivelan Advocate sr 44305
+1 cc to Mr.E.Anbarasan Advocate sr 43952
+2 ccs to Mr.K.S.Elangovan Advocate sr 43953

W.P.Nos. 43279 and 39466 of 2016

sks (co)
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