

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

Delivered on: 27-04-2017

Coram:

**The Honourable Mr. Justice V.RAMASUBRAMANIAN
and
The Honourable Ms. Justice J.UMA DEVI**

Writ Petition No.7705 of 2013

Between:

Md. Sultana Basha, S/o Shajahan, aged about 40 yrs
Occ: Advocate, R/o H.No.7-132/3/9/1, Durga Nagar
Colony, Behind Moula Ali, Railway Quarters,
Hyderabad – 500 040.

... Petitioner

Vs.

1. The State of Andhra Pradesh, Law (LA & SC.F),
Department, represented by its Chief Secretary
To Government, Secretariat, Hyderabad.
2. The Hon'ble High Court of Andhra Pradesh,
Represented by its Registrar General,
High Court Buildings, Hyderabad.
3. The Hon'ble High Court of Andhra Pradesh,
Represented by its Registrar (Recruitment),
High Court Buildings, Hyderabad.
4. Acharya Nagarjuna University, represented by its
Registrar, Nagarjuna Nagar, Guntur District
5. Shaik Intiyaz Ahmad, S/o Johnahamed, aged
About 38 years, R/o D.No.15-14-18, RTC Colony,
5th Lane Extension, Guntur.

.. Respondents

For Petitioner : Mr. Vedula Venkataramana

For Respondents : Mr. G. Vidyasgar, learned senior
counsel for R-5

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE MS. JUSTICE J. UMA DEVI

Writ Petition No.7705 of 2013

ORDER: (V. Ramasubramanian, J)

The petitioner, who narrowly missed (or perhaps escaped) the chance of getting selected for appointment to the post of District Judge (Entry Level), has come up with the present writ petition challenging the selection and appointment of the 5th respondent.

2. Heard Mr. Vedula Srinivas, learned counsel for the petitioner and Mr. G. Vidyasagar, learned senior counsel appearing for the 5th respondent.

3. The short ground on which the petitioner challenges the selection of the 5th respondent is that to be eligible for selection to the post of District Judge, a candidate should have had at least 7 years of standing at the Bar. The notification for recruitment in this case was issued on 15-04-2012 and 7 years of standing at the Bar was required as on 01-04-2012. The 5th respondent was enrolled as an Advocate in the Bar Council on 08-07-2004 and hence claimed to have completed 7 years of standing at the Bar as on 01-04-2012.

4. But it appears that the 5th respondent studied L.L.M. during the period 2004-2006 and thereafter registered himself for Ph.D. as an Extra-mural candidate. As per the stipulations of the Standing Committee of the Academic Senate dated 17-05-2006 of the Acharya Nagarjuna University, a person must have had 5 years of

service before he could be allowed to register for a Ph.D. Therefore, the short contention of the petitioner is that a person, who did Post Graduate Degree in Law from 2004-2006 and who registered himself for Ph.D. in 2008, could not have practiced as a Lawyer during this period and that therefore this period cannot be counted for the purpose of reckoning 7 years of standing at the Bar.

5. But in so far as the pursuit of L.L.M. course is concerned, it appears that a Division Bench of this Court has already taken a view in ***Tirumala Devi Eada v. State of Andhra Pradesh and others***¹ that the pursuit of Post Graduate qualification in Law, cannot stand in the way so long as the candidate continued to be on the rolls of the Bar Council.

6. In any case, the petitioner claims to have studied a Post Graduate Degree in Law under the Distance Education mode through the Centre for Distance Education of the University. Therefore, unless it is shown that without discontinuing practice a candidate cannot undergo L.L.M. Course, the 5th respondent cannot be taken to be disqualified.

7. It is true that the 5th respondent does not appear to have indicated in his application form the acquisition of his Post Graduate Degree in Law. Therefore, it is claimed in the counter affidavit filed by the Registry of this Court that if the 5th respondent had disclosed this fact, his application would have been rejected. It is stated in Paragraph 7 of the counter affidavit filed by the Registry that a

¹ 2012 (6) ALD 98

Committee of Judges of this Court constituted for the purpose of recruitment process specifically resolved that the candidates, who have pursued Post Graduation in Law after enrolment with the Bar Council, will not be permitted to count the period spent in pursuing Post Graduation, as part of the qualifying experience at the Bar.

8. But on the basis of the counter affidavit of the Registry, we cannot set aside the appointment of the 5th respondent. What is reflected in Para-7 of the counter affidavit of the Registry, is a policy decision. The application of the same to the facts of the present case should be done only by the Registry. It may be open to the Registry, on the basis of the disclosure made in the present proceedings, to initiate action against the 5th respondent. But it is not possible to set aside his appointment, without the High Court going into the issue on the administrative side, on the basis of documents and after allowing an opportunity of hearing to the 5th respondent.

9. In so far as the pursuit of Ph.D. is concerned, the University has filed a counter affidavit almost supporting the case of the 5th respondent. The University has stated in Para-4 of the counter affidavit that the 5th respondent completed Post Graduation in Law through the Centre for Distance Education. In so far as Ph.D. is concerned, the University has taken a stand that the 5th respondent was admitted to the programme as an extra-mural candidate under the category of practicing advocate having completed 2 years of practice. The relevant portion of the counter affidavit of the University reads as follows:

“It is further submitted that under the research admission rules that existed during the academic year 2007-2008, the 5th respondent was given Ph.D. admission as an extra-mural candidate under the category of practicing advocate having completed 2 years of practice. His application was processed as per the rules and procedure that existed then which permitted advocates with 2 years of practice, Officers etc., to join Ph.D. in law as extra mural candidates. Several Advocates, Police Officers and others joined Ph.D. in law during 2007-2008 as extra-mural candidates.....”

10. It is contended by Mr. Vedula Srinivas, learned counsel for the petitioner that the stand taken by the University in the counter affidavit runs contrary to the minutes of the meeting of the Academic Senate of the University, which prescribed 5 years of experience as a prerequisite for an admission to Ph.D. programme.

11. But the above contention does not take the petitioner anywhere. Assuming that the University has taken a contradictory stand, the only result that could be arrived at is that the admission granted to the 5th respondent for the Ph.D. programme is unlawful. We are not concerned in this case with the validity of the admission granted to the 5th respondent for the Ph.D. programme. We are concerned in this case only with one question as to whether the petitioner had 7 years of standing at the Bar, as on 01-04-2012. On the basis of the pursuit of L.L.M. in the Distance Education mode, it cannot be concluded that there was a break in the practice of the 5th respondent as a Lawyer. Hence, the writ petition is devoid of merits. Therefore, it is dismissed. However, we clarify that this decision will not preclude the Registry of the High Court from taking any action, if

they so desire, on the ground that the 5th respondent did not disclose his pursuit of L.L.M. There will be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

Date: 27-04-2017

Ksn



HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE MS. JUSTICE J. UMA DEVI

Writ Petition No.7705 of 2013
(Judgment of the DB
prepared by VRS, J.)



27th April, 2017.
(Ksn)