

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION STAMP NO.15084 OF 2018
ALONG WITH
CIVIL APPLICATION NO.1264 OF 2018
IN
WRIT PETITION STAMP NO.15084 OF 2018**

**Shobhit Gaur of Delhi]
Indian Inhabitant,]
Aged about 30 years]
and residing at]
B/3, 460, Ground Floor,]
Deendayal Upadhyay Road,]
Paschim Vihar, Delhi – 110063]..... Petitioner.**

Versus

- 1] State of Maharashtra]
Through : The Secretary,]
Law and Judiciary Department,]
Madam Cama Road, Hutatma Rajguru Chowk]
Mantralaya, Mumbai – 400 032 (Maharashtra)]
]**
- 2] Maharashtra Public Service Commission,]
Through : The Principal Secretary,]
5 ½, 7th & 8th Floor,]
Cooperage Telephone Corporation Building]
Maharshi Karve Marg, Cooperage,]
Mumbai – 400021 (Maharashtra)]
]**
- 3] The Registrar General,]
Bombay High Court,]
Fort, Bombay.]..... Respondents.**

Mr. Samir A Vaidya a/w Mr. Kuldeep Singh Khamare I/by Mr. Amit Atul Tungare for the Petitioner in Writ Petition and for the Applicant in Civil Application No.1264 of 2018.

Mr. A I Patel, Addl. GP a/w Mr. R S Pawar, AAGP for the Respondent/State.

Mr. S R Ganbavale for the Respondent No.2.

Mr. Amit B Borkar for the Respondent No.3.

**CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.
Reserved on : 09th AUGUST 2018
Pronounced on : 24th AUGUST 2018**

JUDGMENT [PER R M SAVANT, J]

1 Rule, with the consent of the learned counsel for the parties made
returnable forthwith and heard.

2 The above Writ Petition filed under Article 226 of the Constitution
of India challenges the communication/order dated 09/04/2018 issued by the
Respondent No.1 herein declaring the Petitioner as “not suitable” for the post
of Civil Judge Junior Division and Judicial Magistrate First Class which was
advertised by the Respondent No.2 herein.

3 The facts giving rise to the filing of the above Writ Petition can in
brief be stated thus :-

The Petitioner herein has completed his law from Bhartiya
Vidyapeeth, Pune, Maharashtra in the year 2010 and, the Petitioner has
thereafter enrolled himself with the Bar Council of Delhi as an advocate in the
same year. The Petitioner has been practicing as an advocate in the Courts in
Delhi.

4 The Respondent No.1 herein is the State of Maharashtra. The

Respondent No.2 herein is the Maharashtra Public Service Commission (for short “MPSC”). The Respondent No.2 issued an advertisement on 23/03/2016 for 131 posts of Civil Judge Junior Division and Judicial Magistrate First Class (for short “CJJD & JMFC”) in the State of Maharashtra. The Petitioner applied for the said post. The Petitioner was thereafter called to appear for the preliminary examination. The Petitioner cleared the said preliminary examination upon which the Petitioner was called for the main examination which was scheduled to be held on 09/10/2016. The Petitioner cleared the main examination. The Petitioner was thereafter called for interview vide letter dated 10/02/2017 issued by the Principal Secretary of the Respondent No.2. The Petitioner accordingly appeared for the interview. After the said process was completed, the Respondent No.2 which is the recruiting authority published a list of 131 candidates amongst whom was the Petitioner at Sr.No.128. The Petitioner was informed vide letter dated 12/04/2017 of his name appearing in the select list. The Petitioner was called for verification of his documents on 29/04/2017 and for medical examination on 08/05/2017. The Petitioner accordingly appeared before the concerned authority for the purpose of verification of the documents. The Petitioner also underwent the medical examination at Government Hospital in Pune. It seems that the verification through the police also took place at his local residence in Delhi. In so far as the select list of 131 candidates was concerned, out of 131 candidates, names of first 40 candidates in the select list were notified for appointment by

notification issued in that behalf. The names of the rest of the candidates were kept in abeyance till further requisition made by the State Government. The Petitioner's case was considered for being included in the notification for appointment along with balance candidates remaining in the select list. The Petitioner was however informed by the letter dated 09/04/2018 of the Respondent No.1 that the Petitioner has been found "not suitable" for the appointment to the post of CJJD & JMFC.

5 It seems that the Petitioner made a representation on 21/04/2018 to the Respondent No.3 i.e. the learned Registrar General of this High Court against he being found "not suitable". The said representation came to be rejected. The Petitioner thereafter applied under the Right to Information Act on 27/04/2018 to the Respondent No.3 seeking the reasons for the rejection of his case on the ground of unsuitability.

6 The Petitioner had simultaneously filed Writ Petition being No.451 of 2018 under Article 32 of the Constitution of India before the Apex Court. The Apex Court was of the view that the Petitioner should approach the High Court and accordingly granted liberty to the Petitioner to approach the High Court vide its order dated 15/05/2018 by which order the said Writ Petition was disposed of by the Apex Court.

7 In so far as the Application under Right to Information Act was concerned, the Respondent No.3 vide its reply dated 08/05/2018 informed the Petitioner that the Petitioner has been found “not suitable” on the application of Rule 2(f) read with Rule 5(3)(b) of the Maharashtra Judicial Service Rules 2008 (for short “the MJ Service Rules of 2008”).

8 The Petitioner pursuant to the liberty granted by the Apex Court has thereafter filed the instant Writ Petition challenging the communication/order dated 09/04/2018 on the grounds mentioned in the instant Writ Petition. The Petitioner has thereafter amended the above Writ Petition so as to lay a challenge to the constitutional validity of the said Rule 2(f) read with Rule 5(3)(b) of the MJ Service Rules of 2008. The said averments are contained in paragraphs 11 (a) to 11 (h). However, pertinently no prayer has been incorporated so as to seek a declaration that the said Rules be declared as unconstitutional, and the only relief sought in the above Writ Petition as indicated herein above is the setting aside of the said communication/order dated 09/04/2018.

9 On behalf of the Respondent No.3 i.e. the High Court of Bombay an affidavit in reply has been filed by the Registrar (Legal and & Research), High Court, Appellate Side, Bombay. In the said affidavit the challenge to the MJ Service Rules of 2008 is questioned on the ground that the Writ Petition is

bereft of pleadings and also lacks factual foundation. It is further stated that the grounds in respect of challenge to validity of the MJ Service Rules of 2008 are vague. It is further stated that a challenge to the Rules could only be done by placing material before the Court by way of scientific analysis. The entitlement of the Petitioner to the appointment is questioned on the ground that it is well settled principle of law that the select candidate has no vested right to appointment. It is further stated that the Petitioner had submitted his registration certificate of Bar Council of Delhi and Certificate of Practice and having sufficient knowledge of Marathi issued by the District Sessions Judge, KKD District Court, Delhi. It is further states that the Respondent No.2 allowed the Petitioner for interview after taking an undertaking from him and with a direction to law and judiciary Department to verify the certificates of the Petitioner before giving the appointment to him. The classification which results on the application of Rule 5(3)(b) is justified on the ground that the same is based on an intelligible differentia. The object of Rule 5(3)(b) has been mentioned in the affidavit and the eligibility condition of 3 years practice as an advocate in the High Court and the Courts subordinate thereto is justified on the basis that it has a reasonable nexus with the object sought to be achieved as three years practice will enable a person to be recruited to secure sufficient knowledge of local laws, local conditions as well as the regional language. Thereafter the scheme as comprised in Articles 233, 234 and 235 of the Constitution of India has been stated. It is further stated that Article 309 of

the Constitution of India would not dilute the mandate of Articles 233 to 235 of the Constitution of India. It is further stated that if the scheme contained in the Articles is considered, then in the recruitment of persons in judicial service, the High Court has the absolute authority in matters covered by the said Articles. It is further stated that Articles 233 and 234 represent a will-knit and complete scheme regulating the appointments at the apex level of the District Judiciary, namely, District Judges on the one hand and Subordinate Judges at the grass-root level of the judiciary subordinate to the District Court. It is further stated that both Articles 309 and 245 will have to be read subject to Articles 233 and 234 as provided in the said Articles. It is lastly submitted that the State Legislature has no role to play in the matter of appointments of District Judges under Article 233 or appointment of Civil Judges to the Subordinate Judiciary at grass-root level under the District Judiciary and it is only the Governor who is entrusted with the said task which he has to undertake after consultation with the High Court and by framing appropriate rules for recruitment to the judiciary at grass-root level as enjoined by Article 234 of the Constitution of India. It is lastly submitted that there is no substance in the grounds (a) and (b) which are urged in support of the constitutional challenge.

10 Heard the learned counsel for the parties.

11 **SUBMISSIONS OF THE LEARNED COUNSEL SHRI SAMIR
VAIDYA APPEARING ON BEHALF OF THE PETITIONER.**

- A] That Rule 2(f) read with Rule 5(3)(b) results in an unreasonable classification between Advocates who are similarly situated;
- B] That the classification is not based on any intelligible differentia and therefore results in violation of Article 14 of the Constitution of India. In support of the said submission, reliance is sought to be placed on the judgments of the Apex Court reported in **Pandurangrao etc. v/s. The Andhra Pradesh Public Service Commission, Hyderabad and another** reported in **AIR 1963 SC 268** and in **Ganga Ram Moolchandani v/s. State of Rajasthan and others** reported in **(2001) 6 SCC 89**.
- C] That there is no rationale in disqualifying an Advocate who has practiced outside Maharashtra when even ministerial staff working in the Courts in Maharashtra have been given an opportunity to compete for the post of CJJD & JMFC;
- D] That implicit in the fact of permitting the Petitioner to appear for the preliminary examination, thereafter the main examination and viva-voce and thereafter for the medical test is the fact that the

Petitioner was found eligible for the post of CJJD & JMFC.

E] That having selected the Petitioner and the Petitioner's name appearing in the list of 131 candidates, the Respondents are now estopped from cancelling his selection.

12] **SUBMISSIONS OF THE LEARNED COUNSEL SHRI AMIT B BORKAR APPEARING FOR THE RESPONDENT NO.3.**

I] That the above Writ Petition as filed is not maintainable as there is no foundation laid in so far as violation of Article 14 of the Constitution of India is concerned and that there is no declaration sought as regards constitutionality of the Rules in question. In support of the said contention, reliance is placed on the judgment of the Apex Court in **Joint Secretary, Political Department, State of Meghalaya, Main Secretariat, Shillong v/s. High Court of Meghalaya through its Registrar, Shillong** reported in **(2016) 11 SCC 245.**

II] That the Writ Petition contains vague pleadings and is therefore required to be dismissed on the said ground;

III] That the object of the Rules in question is to recruit suitable and

appropriate persons to the subordinate judicial service in the State so as to secure an efficient administration of justice in the State.

- IV] That the requirement of knowledge of the local language is one of the recommendation of the Law Commission of India in so far as the posts in the subordinate judiciary are concerned. Reliance is placed on the 118th Report of the Law Commission of India.
- V] That the Respondent No.3 was entitled to consider the suitability of the Petitioner under Rule 8. The said power can be said to be a part of the constitutional scheme embedded in Articles 234 and 235 of the Constitution of India;
- VI] That the certificate in respect of knowledge of Marathi produced by the Petitioner also does not meet the requirement of Rule 5(3) (d) of the MJS Rule 2008.
- VII] That the requirement of Marathi which is postulated by the Rules has received the imprimatur of a Division Bench of this Court in *Prashant P Giri and others v/s. State of Maharashtra and others* reported in *2010(5) MH.L.J.206*;

VIII] That merely because the name of the Petitioner appears in the select list does not create any indefeasible right in him for being appointed. In support of the said contention, reliance is placed on the judgment of the Apex Court in Kulwinder Pal Singh and another v/s. State of Punjab and others reported in (2016) 6 SCC 532.

13 **SUBMISSIONS OF THE LEARNED COUNSEL SHRI S R GANBAVALE FOR THE RESPONDENT NO.2.**

The learned counsel appearing on behalf of the Respondent No.2 Shri S R Ganbavale adopted the submissions of the learned counsel appearing for the Respondent No.3 Shri Amit B Borkar but in addition would submit that the power under Rule 8 is a power which can be exercised even after selection. The unsuitability, according to the learned counsel, may not be confined to the unsuitability on the application of the Rules but even material dehors the Rules can be taken into consideration.

CONSIDERATION

14 Having heard the learned counsel for the parties, we have given our anxious consideration to the rival contentions. At the outset it would be necessary to address the issue of maintainability of the above Writ Petition which has been raised by the learned counsel Shri Amit Borkar and Shri S R

Ganabavale appearing on behalf of the Respondents. It is required to be noted that after the Petitioner received the information under the Right to Information Act, that the reason for the Petitioner's unsuitability became known viz. That the Petitioner has not fulfilled the requirement of Rule 5(3)(b) read with Rule 2(f) of the MJ Service Rules of 2008, hence it would be necessary to reproduce the relevant Rules i.e. Rule 2(f), 5(3)(b), 5(3)(d) and 8 of the MJ Service Rules of 2008

“2 Definitions :- In these Rules, unless the context requires otherwise-

(f) “High Court” means the High Court of Judicature at Bombay.”

“5 Method of Recruitment, Qualification and Age Limit :- In respect of each category of posts specified in Column (2) of the TABLE `C” below, the method of recruitment and minimum qualification, age limit, etc., shall be as specified in the corresponding entries in columns (3) and (4), thereof namely :-

S.N. (1)	Cadre (2)	Method of Recruitment (3)	Qualifications, age limit etc. (4)
3	Civil Judge, Junior Division	(A) By nomination on the basis of aggregate marks obtained in a competitive examination conducted by the Commission in terms of the Examination Scheme as may be framed by the High Court.	(a)..... (b) Experience – Must have practised as an Advocate in the High Court or Courts subordinate thereto for not less than three years on the date of publication of Advertisement; or Must be a fresh Law

			Graduate who - (i) has secured the degree in law by passing all the examinations leading to the degree in the first attempt; (ii) has secured in the final year examination of the degree in Law or in the case of candidates holding Master's Degree in Law in final year exam, not less than fifty five percent marks; or Must be working or must have worked as Public Prosecutor or Government Advocate for not less than three years in the post or posts. In computing the period of three years, the period during which the candidate has worked as an Advocate shall also be included; or Must be a member of Ministerial Staff - (i) of High Court or Courts subordinate thereto; or (ii) of Offices of the Government Pleaders attached to those Courts; or (iii) working as Legal Assistant and above in the Legal Section of Law and Judiciary Department in Mantralaya provided such employee has put in minimum three years of service after obtaining Degree in Law. (c).....
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			(d) Knowledge of Marathi:-- Candidate must have sufficient knowledge of Marathi so as to enable him to speak, read and write in Marathi and to translate with facility from Marathi into English and vice versa. Such knowledge must be certified,- (i) in case of an Advocate by the Principal District Judge of the District where he practices; (ii) in case of a fresh law graduates, by Principal or Head of the College or University department where the candidate was enrolled for LL.B or LL.M Degree; (iii) in case of members of Staff, by the Head of the Office under whom such candidate is working. (iv) in special circumstances, by re-employment of retired Civil Judges (Junior Division); (e) the candidates must pass Marathi language test within six months as
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			per Government Rules.
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“8 Conditions relating to Suitability, Fitness and Character :-

(1) No person selected for nomination shall be appointed, -

(i) unless the Appointing Authority is satisfied that he is of good character and is in all respects suitable for appointment to the service;

(ii) unless he is certified by the medical authority specified by the High Court that he is medically fit to discharge the duties of the post for which he is selected.”

15 The Petitioner has challenged the said Rule 5(3)(b) on the touchstone of Article 14 of the Constitution of India on the ground that it unfairly discriminates between the advocates who are practicing in Maharashtra and the advocates who are practicing outside, and the classification carved out amongst the said advocates results in hostile discrimination which has ultimately resulted in the Petitioner being held to be “not suitable” meaning thereby to be “unsuitable”. In the said context it would be useful to refer to the judgment of the Apex Court in *Joint Secretary, Political Department, State of Meghalaya, Main Secretariat, Shillong's* case (supra). The said judgment lays down the requirement in so far as a Petition challenging the constitutional validity of a provision on the touchstone of Article 14 is concerned. It would be apposite to refer to paragraphs 17 to 21 of

the said judgment which are reproduced herein in under :-

“17. In the instant case, as is evident, the High Court has compared the provisions pertaining to appointment of Chairperson and Members under the Act with the provisions of other Acts enacted by different legislatures. The legislature has passed the legislation in its wisdom. There was no challenge to the constitutional validity of the provisions of the Act. The suo motu petition was registered for giving effect to the Act by bringing the institutions into existence. This may be thought of in very rare circumstances depending on the nature of legislation and the collective benefit but in that arena also the Court cannot raise the issue relating to any particular provision and seek explanation in exercise of jurisdiction under [Article 226](#) of the Constitution. In the case at hand, as is manifest, the Division Bench of the High Court has, with an erroneous understanding of fundamental principle of law, scanned the anatomy of the provision and passed an order in relation to it as if it is obnoxious or falls foul of any constitutional provision. The same is clearly impermissible. A person aggrieved or with expanded concept of locus standi some one could have assailed the provisions. But in that event there are certain requirements and need for certain compliances.

18. In *State of U.P. v. Kartar Singh*, while dealing with the constitutional validity of Rule 5 of the Food Adulteration Rules, 1955, it has been opined as follows: (AIR p. 1138, para 15)

“15..... if the rule has to be struck down as imposing unreasonable or discriminatory standards, it could not be done merely on any a priori reasoning but only as a result of materials placed before the Court by way of scientific analysis. It is obvious that this can be done only when the party invoking the protection of Article 14 makes averments with details to sustain such a plea and leads evidence to establish his allegations. That where a party seeks to impeach the validity of a rule made by a competent authority on the ground that

the rules offend Article 14 the burden is on him to plead and prove the infirmity is too well established to need elaboration.”

19. In *State of A.P. V. K Jayaraman* it has been ruled thus:- (SCC p. 739, para 3)

“3. It is clear that, if there had been an averment, on behalf of the petitioners, that the rule was invalid for violating Articles 14 and 16 of the Constitution, relevant facts showing how it was discriminatory ought to have been set out.”

20. In *Union of India V. E.I.D. Parry (India) Ltd.* , a two- Judge Bench of this Court has expressed thus:- (SCC p.225, para 4)

“4... There was no pleading that the Rule upon which the reliance was placed by the respondent was ultra vires the Railways Act, 1890. In the absence of the pleading to that effect, the trial Court did not frame any issue on that question. The High Court of its own proceeded to consider the validity of the Rule and ultimately held that it was not in consonance with the relevant provisions of the Railways Act, 1890 and consequently held that it was ultra vires. This view is contrary to the settled law...”

21. In *State of Haryana V. State of Punjab*, the Court emphasizing on the facet of pleading, has opined that:- (SCC p. 706, para 82)

“82..... It is well established that constitutional invalidity (presumably that is what Punjab means when it uses the word “unsustainable”) of a statutory provision can be made either on the basis of legislative incompetence or because the statute is otherwise violative of the provisions of the Constitution. Neither the reason for the particular enactment nor the fact

that the reason for the legislation has become redundant, would justify the striking down of the legislation or for holding that a statute or statutory provision is ultra vires. Yet these are the grounds pleaded in sub-paragraphs (i), (iv), (v), (vi) and (vii) to declare Section 14 invalid. Furthermore, merely saying that a particular provision is legislatively incompetent [ground (ii)] or discriminatory [ground (iii)] will not do. At least prima facie acceptable grounds in support have to be pleaded to sustain the challenge. In the absence of any such pleading the challenge to the constitutional validity of a statute or statutory provision is liable to be rejected in limine.”

16 Hence as can be seen from the above, the essential requirement in a Petition alleging discrimination or unreasonableness or discriminatory standards is concerned, material has to be placed before the Court by way of scientific analysis and it cannot be done on a priori reasoning. The Petitioner has to plead prima facie acceptable grounds in support of the said challenge. The consequence of not pleading such grounds is that the challenge to the constitutional validity of a statute or a statutory provision is liable to be rejected in limine.

It is in the light of the aforesaid requirements laid down in the judgment of the Apex Court that the pleadings in the instant case would have to be considered. The said pleadings can be found in paragraphs 11(a) to 11(h) of the Petition. The averments as contained in paragraphs 11(a) to 11(h) are reproduced herein under for the sake of ready reference :-

“11(a) That the Rules i.e. Maharashtra Judicial Services Rules, 2008 (as amended) up to 31.12.2012 could not have been framed by this Hon'ble Court in exercise of the powers conferred under Articles 233, 234 and 309 of the Constitution of India since powers to be isolate is visited with the legislature as per the 3 lists under the Constitution and therefore the privacy to legislate always vests with legislature.

11(b) That the Rules i.e. MJSR cannot be acted upon or for that matter judicial services cannot be constituted through a rule making power of the High Court, without the actual exercise of legislature or by legislative function.

11(c) That Rule 5(c)(b) as framed in the MJSR is ambiguous inasmuch as the said Rule is ultra-vires the Constitution of India since the said Rules creates a class as well as there is hostile discrimination amongst the existing class of Advocates which in any event impermissible in law and therefore the said Rule held to be unconstitutional on the face of it.

11(d) That upon perusal of Rule 5(c)(b), which stipulates that a person desirous of being selected as a subordinate judicial office ought to have 3 years experience as a practicing Advocate at the High Court whereas if an Advocate is a P.P., Government Pleader, Law Officers of Central/State/Public bodies is automatically entitled to appointment as a Judicial Officer and therefore the said rule is discriminatory and in all probabilities struck down as unconstitutional.

11(e) Upon perusal of Rule 2(f) of the definition as per MJSR and upon interpretation of Rule 3(c) the same in itself is discriminatory for the reasons that 2(f) categorically specifies High Court as the High Court at Judicature at Bombay, whereas Rule 5(c), 3(A)(6) specifies that Advocate would be eligible for the post of CJJD if he has a degree in law and possess an experience of not less than 3 years in the High Court or Court subordinate thereto on the date of publication of advertisement or member of Ministerial staff provided such employee has at least 3

years after obtaining law Degree.

11(f) That the said Rule (5) on one hand stipulates that person seeking eligibility as a CJJD must have the knowledge of Marathi and such knowledge must be certified on the other hand an Advocate must be obtain such certificate from the Principal District Judge of the District where he practices, in other words if a person has acquired the law degree from a reputed University from a State could be disqualified if he obtains a certificate from the District where he practices and therefore the said rule is arbitrary, discriminatory, unconstitutional and liable to be struck down.

11(g) That whilst framing the Rules such rule it classified on the basis of intelligible differentia the same would be permissible however, in the absence of any differentia on the basis of such intelligible differentia.

11(h) That that object in framing the Rules seems to be recruitment of Judicial Officers in the subordinate judiciary however, upon perusal of the rules, so framed the object and the nexus in respect of the said object is completely missing and dehorse the basic concept of recruitment by creating hostile discrimination and therefore the said Rule being discriminatory and violative of Article 16 held to be ultra-vires of the Constitution of India”

17 A reading of the grounds comprised in paragraphs 11(a) to 11(h) indicate that they are vague and do not contain any material on the basis of which the allegation of discrimination is sought to be brought home. As indicated above, the prayer clause does not contain any prayer for declaration that the said Rules 5(3)(b) and 2(f) are unconstitutional. The pleadings as contained in the Writ Petition would therefore hardly satisfy the tests laid down by the Apex Court in *Joint Secretary, Political Department, State of*

Meghalaya, Main Secretariat, Shillong's case (supra) and therefore the Petition is liable to be dismissed on the ground of absence of pleadings.

18 However, though we have arrived at the aforesaid conclusion, we deem it appropriate to consider the challenge of the Petitioner on merits. As indicated above the object of Rule 5(3)(b) is to recruit suitable candidates to the subordinate judiciary in the State of Maharashtra so as to provide an efficient administration of justice in the State. The Law Commission of India has recognized the importance of the knowledge of the local language and hence the same finds a place in its 118th Report. The relevant paragraph from the report of the Law Commission of India is reproduced herein under for the sake of ready reference :-

“LANGUAGE

2.6 Knowledge of local language has assumed considerable importance in recent times, more so in view of section 2 of the Official Language Act and section 272 of the Code of Criminal Procedure, 1973 and section 137(2) of the Code of Civil Procedure, 1908 Eleven States have prescribed knowledge of local language as an essential qualification. In the rules of some States, a provision is found requiring proficiency in one more language. At least in one State, power is conferred on the concerned authority to prescribe knowledge of a third language too.”

19 The emphasis in respect of the knowledge of Marathi has also received the imprimatur of a Division Bench of this Court in **Prashant P Giri and others's** case (supra), where the Rules of 2008 were under challenge in

the said Writ Petition. The relevant paragraphs of the said judgment are paragraphs 21, 23 and 24 which are reproduced herein under :-

21 The contention advanced on behalf of the Petitioners that since the Petitioners were allowed to appear for preliminary examination and thereafter main examination, the Respondents ought not to have cancelled their interviews is, in our opinion, mis-founded. If a particular candidate is not entitled to participate in the selection process as he is not eligible for the same, the mere fact that he/she was allowed to appear in the selection process would not confer any right on such candidate and, in our view, therefore the action of the Respondents in cancelling the interview of the Petitioners was justified.

23 The contention of the Petitioners that considering the present selection process the knowledge of Marathi has been compromised, in our view, is mis-placed. As can be seen from the Rules, the said Rules prescribe that a candidate has to obtain certificate from the Authorities mentioned in the said Rule. The said Authorities are the responsible persons who have had an occasion to observe the candidate at close quarters viz. the District Judges of the concerned District Courts, Principals of the Colleges, Heads of the Departments etc. It would therefore have to be presumed that the said power of issuing certificate would be exercised by the said authorities with due caution and care, keeping in mind the post to which the candidate is seeking appointment viz. that of the CJJD and JMFC. We, also for the aforesaid reason, do not find any merit in the contention of the Petitioners that in the absence of any guidelines or criteria which the authorities have to adopt for issuing the said certificate, the said certificate would be issued in an arbitrary manner and in the process the knowledge of Marathi would be compromised.

24 As regards the contention of the Petitioners that though it is prescribed that a candidate would have to pass the examination in Marathi within six months, the consequences of not passing the said

examination are not mentioned. In this respect it is required to be noted that the candidates are appointed on probation and the six months period would be within the probationary period, the appointing authority would therefore be entitled to take an appropriate decision in respect of a candidate who does not pass the said examination in Marathi within the stipulated time. In our view therefore the Petitioners apprehension is misfounded.

20 It is an undisputed position that the Petitioner is not practicing in Maharashtra but is practicing in Delhi. Hence in terms of Rule 5(3)(b) read with Rule 2(f) the Petitioner does not fulfill the eligibility condition. The Petitioner to challenge the requirements imposed by Rule 5(3)(b) has placed reliance on the judgments of the Apex Court in *Pandurangarao's* case (supra) and *Gangaram Moolchandani's* case (supra).

In *Pandurangarao's* case (supra) the Apex Court was concerned with Rule 12(h) of the Andhra Pradesh Judicial Service Rules which read thus :-

“That at the time when the petitioner applies :-

- (1) he is practising as an Advocate of the High Court;
- (2) he has been actually practising in Courts of Civil or Criminal jurisdiction in India for a period not less than three years”

The Petitioner therein was an advocate practicing in the District Court Guntur in Andhra Pradesh. The Petitioner therein was disqualified on the ground that

he was not practicing in the Andhra Pradesh High Court. The Apex Court in the context of the said Rules where the advocates practicing in the subordinate Courts in any part of India were eligible held that the said Rule does not serve the purpose of the requirement of knowledge of local language. The Apex Court found an anomaly in the said rule inasmuch as though only the advocates practicing in Andhra Pradesh High Court were held to be eligible in terms of the first part of the said Rule. In so far as the second part of the said Rule is concerned, the advocates practicing in the subordinate Courts in any part of India were held to be eligible. The Apex Court therefore struck down the Rule as being discriminatory as the classification was not based on any intelligible differentia. Paragraphs 11 to 15 of the said report are material and are reproduced herein under for the sake of ready reference:-

11. Does the impugned rule serve the object of requiring the applicant to possess knowledge of local law ? That is the next question to consider. It is urged by the respondents that since actual practice for three years which is the other condition prescribed, is practice in Courts of Civil or Criminal jurisdiction in India, it follows that even lawyers practising in courts outside the State of Andhra Pradesh would satisfy that test and that means that the satisfaction of the said test would not meet the requirement that the applicant should have knowledge of local laws. That is why, it is urged, the impugned condition requires that the applicant must be practising as an Advocate of the Andhra High Court. An Advocate of the Andhra High Court would generally have had the benefit of apprenticeship for one year in the Chambers of a senior Advocate and may have passed the apprenticeship examination in different subjects prescribed by the Bar Council. It is in that way that he

would have acquired the knowledge of local laws which he would have to administer if he is appointed to the post of a District Munsif.

12. It is not clear that the impugned rule can effectively meet the alleged requirement of the knowledge of local laws. If the object intended to be achieved is that the applicant should have adequate knowledge of local laws, the usual and proper course to adopt in that behalf is to prescribe a suitable examination which candidates should pass, or adopt some other effective method. No material has been placed before us to show that the alleged requirement about the knowledge of local laws can be met on the two grounds suggested in support of the validity of the rule. Besides, study of general laws prevailing in the country as a whole, and the study of important local laws are generally included in the curriculum prescribed for the law Degree, and obtaining a Law Degree which would entitle a person to be enrolled as an Advocate, in substance, meets the requirement of the knowledge of important local Laws.

13. There is another aspect of the problem which is very important. It is common ground that under rule 1(ii) of the Andhra Bar Council Rules, an advocate entered on the roll of Advocates of a High Court established by law in India, other than the High Court of Andhra, is entitled to practise as an Advocate of the Andhra High Court, provided there is reciprocity between the Andhra High Court on whose roll he has been entered as an Advocate. This rule is subject to the further proviso that where any person had been admitted as an advocate of such High Court without undergoing a course of study in the chambers of a practising advocate for a period of one year, he shall be of not less than one year's standing as an advocate of such High Court. It is thus clear that an Advocate enrolled in any other High Court who is entitled to the benefit of rule 1(ii) would be eligible to practise in the Andhra High Court and as such, would satisfy the test of the impugned rule; and in such a case, the theory that

the impugned rule serves the purpose of requiring the applicant to possess knowledge of local laws completely break down. By operation of rule 1(ii) which is, doubt, based on the health convention of reciprocity between the different High Court in this country, Advocate who can have no knowledge of the local laws prevailing in Andhra would satisfy the test of the impugned rule, therefore, the main argument that the object intended to be achieved by the impugned rule is that the applicant should possess knowledge of local laws, cannot be sustained.”

14. Then it is urged that a person who has been enrolled as an Advocate of the Andhra High Court would have feelings of attachment for the institution of the Andhra High Court and would be subject to the disciplinary jurisdiction of the said High Court and that would afford a rational basis for differentiating the class of advocates of the Andhra High Court from the rest of the Advocates in this country. In our opinion, neither of the two grounds can be said to have any nexus with the object intended to be achieved by the rule. What is relevant and more important in the matter of recruiting persons to judicial Service is not only the applicant ? Loyalty and attachment to the institution of a particular High Court but their loyalty and a sense of dedication to the cases of judicial administration and this feeling and sense of dedication would be present in the minds of persons enrolled as Advocates in the Andhra High Court as much in the minds of other persons enrolled as Advocates in other High Court. The test of disciplinary jurisdiction is hardly relevant because advocates of other High Courts would likewise be subject to the disciplinary jurisdiction of their High Courts; and if a person who continues to be on the roll of the Andhra High Court can be presumed to be a person worthy to belong to the profession of law and so, eligible for the judicial post, so can a person who continues on the roll of any other High Court be entitled to claim the same status. Therefore, in our opinion, there does not appear to be any rational basis for differentiating the advocates belonged to the Andhra High Court from the rest as the impugned rule purports to do.

15. In this connection, it may be permissible to point out that the second condition in regard to three years' actual practice might more appropriately have required that the said three years' practice should be in the Civil or Criminal Courts subordinate to the jurisdiction of the Andhra High Court. That would have more effectively secured the object of requiring the applicants to have knowledge of local laws and to have experience in the matter of the administration of the said laws. As it happens, the said condition under the relevant rule enables advocates practising in Civil or Criminal Courts all over India to apply, and so, the requirement about the knowledge of local laws cannot invariably be satisfied by the said condition. But as we have just pointed out, the said test cannot be said to be satisfied by the impugned rule as well.

However, the Apex Court in paragraph 8 of the said Judgment has observed that it would be perfectly competent to the authority concerned to prescribe qualifications for eligibility for appointment to the said service. Knowledge of local laws as well as knowledge of the regional language and adequate experience at the bar may be prescribed as qualifications which the applicants must satisfy before they apply for the post. The Apex Court further observed that the practice in subordinate Courts or in the High Court may also be a relevant test to prescribe. Paragraph 8 is reproduced herein under for the sake of ready reference :-

“8. The object of the rule is to recruit suitable and proper persons to the Judicial Service in the State of Andhra with a view to secure fair and efficient administration of justice, and so, there can be no doubt that it would be perfectly competent to the authority

concerned to prescribe qualifications for eligibility for appointment to the said Service. Knowledge of local laws as well as knowledge of the regional language and adequate experience at the bar may be prescribed as qualifications which the applicants must satisfy before they apply for the post. In that connection, practice in subordinate Courts or in the High Court may also be a relevant test to prescribe. The respondents contend that the impugned rule seeks to do nothing more than to require the applicant to possess knowledge of local laws and that being so, the validity of the rule cannot be impeached on the ground of discrimination. In support of this argument, reliance is placed on the decision of the Andhra High Court in *Nallanthighal Bhaktavatsalam Iyenger v. Secretary, Andhra Public Service Commission, Kurnool* (A.I.R. 1956 Andhra 14), in which the validity of the impugned rule has been upheld.

In *Gangaram Moolchandani's* case (supra) the Apex Court was concerned with Rule 8(ii) and 15(ii) of the Rajasthan Higher Judicial Service Rules, 1969. In the said case also there was a requirement of knowledge of regional language i.e. Hindi. The appointment in the said case was to the post of District Judge. The eligibility for the same was practice in the High Court of Rajasthan or subordinate Courts in Rajasthan, the said eligibility condition was sought to be justified on the basis that it has reasonable nexus to the knowledge of local laws and regional language. In so far as the post in the subordinate judiciary i.e. the post of Munsif in the State of Rajasthan is concerned, the same did not require knowledge of local laws nor regional language and therefore the Apex Court held that the Rule requiring such experience only in respect of the Higher Judicial Officer i.e. the District Judge

is discriminatory. Paragraph 14 of the said report is material and is reproduced herein under for the sake of ready reference :-

“14 In the present case, the attack to the Rule has been resisted on the sole ground that the classification, confining Advocates practising in the Rajasthan High Court or courts subordinate thereto for being eligible for consideration to Rajasthan Higher Judicial Service, has reasonable nexus that they have knowledge of local laws and regional language. Question is whether, in fact, this ground, exists or not? Rule 11 of the Rajasthan Judicial Service Rules which relates to appointment in subordinate Judicial Service in Rajasthan lays down that any Advocate who has practised in any court throughout the territory of India is eligible for the post of Munsif. For the post of Munsif, knowledge of local law and regional language is much more required. The said Rule 11 further lays down that a candidate must possess a thorough knowledge of Hindi written in Devnagri Script. Thus for recruitment to the post of Munsif, there is no requirement that a person should have knowledge of local laws and regional language. If for appointment in subordinate judicial service, neither there is any requirement of knowledge of local laws nor regional language, we really fail to understand how the same is required for higher judicial service in the very same State, i.e., in the State of Rajasthan. Thus, we find that the ground taken by respondent No.2, that purpose of framing such a rule is knowledge of local law and regional language in order to stand the test of Article 14 of the Constitution, is fallacious.”

In our view the said judgments would have no application as they are clearly distinguishable on facts. In so far as *Pandurangarao's* case (supra) is concerned, the Rule was differently worded than the Rule in the instant case. The Apex Court has in terms in paragraph 8 of the said report has observed

that the knowledge of regional language as well as practice in subordinate Courts can be a condition which can be prescribed and which a candidate would be required to fulfill, such a condition has been prescribed in the instant case by the Rule in question. In so far as *Gangaram Moolchandani's* case (supra) is concerned, it is required to be noted that the requirement of practicing in the High Court or subordinate Courts was not a condition prescribed for the post at the lowest rank i.e. the post of the CJJD & JMFC in the State of Rajasthan whereas in the instant case the said requirement is for the post at the entry point i.e. the post of CJJD & JMFC.

Hence in our view, the said judgments would not further the case of the Petitioner in any manner. In our view Rule 5(3)(b) satisfies the tests laid down by Article 14 of the Constitution of India and therefore the challenge to the said Rule would have to be repelled.

21 It would have to be considered whether the Petitioner has satisfied the requirement of Rule 5(3)(d) of the MJ Service Rules of 2008, namely regard to the certificate of knowledge of Marathi produced by the Petitioner is concerned. The Petitioner to fulfill the said requirement has produced the certificate issued by the learned District and Sessions Judge, KKD Court, Delhi. The said certificate reads thus :-

“CERTIFICATE FOR PRACTICE

This is to certify that, Shri Shobhit Gaur, B.A. LL.B. is enrolled as an Advocate on the roll of the Bar Council of Delhi bearing enrollment No.D/1742/2010 dated 09/07/2010 and since then he is practicing in Civil and Criminal Courts in Delhi.

Certified that Shri. Shobhit Gaur, B.A. LL. B. has sufficient knowledge of Marathi, Hindu to enable him to speak, read, write and translate in to English and vice versa, as claimed by the candidate”

The said certificate therefore makes an interesting reading. It discloses that it is not issued by the authority as contemplated by Rule 5(3)(d) as the certificate has not been issued by the learned Principal District Judge. The certificate is not based on the personal knowledge of the learned Judge who has issued the said certificate, but is as per the claim made by the Petitioner. The learned District Judge and Sessions Judge, KKD Court, Delhi obviously would not be expected to have knowledge of Marathi. Such a certificate would therefore negate the purpose for which such a certificate is required to be produced. Hence the Petitioner cannot be said to have fulfilled the requirement imposed by Rule 5(3)(d).

22 Since the Petitioner has been found to be “unsuitable” for appointment, it is necessary to refer to Rule 8 of the MJ Service Rules of 2008. The said Rule mandates that no person selected for nomination shall be appointed unless the appointing authority satisfies that he is of good character

and is in all respects suitable for appointment. Hence in terms of the said Rule the authority can go into the suitability of a candidate for appointment even after his name appears in the select list. In the instant case the Petitioner's case was considered for appointment and at the said stage having regard to Rule 5(3)(b) of the MJ Service Rules of 2008, it was found that the Petitioner was “unsuitable” for appointment. In so far as Rule 8 of the MJ Service Rules of 2008 is concerned, the unsuitability of a candidate on a reading of the said Rule is not restricted to non-fulfillment of the eligibility condition but even matters dehors the Rules but which are germane can be taken into consideration. In the instant case apart from the fact that in terms of Rule 5(3)(b) the Petitioner is not eligible. In our view, the Petitioner has also not satisfied the condition of sufficient knowledge of Marathi as the certificate produced by the Petitioner is not in terms of Rule 5(3)(d). Since the Petitioner is found “unsuitable” on account of non-fulfillment of the requirement imposed by the Rules, the rule of estoppel would not be attracted. Hence no question of giving rise to any legitimate expectation would arise.

In our view no fault can be found with the appointing authority in coming to a conclusion that the Petitioner was “unsuitable” for appointment.

23 As indicated above, the Petitioner has amended the above Writ Petition so as to incorporate grounds 11(a) to 11(h). Though no submissions

were advanced based on grounds 11(a) to 11(b), the said grounds have been dealt with in the affidavit in reply filed on behalf of the Respondent No.3. The said grounds impinge upon the authority of the High Court to regulate the recruitment and appointments to the posts of CJJD which has been done by the MJ Service Rules of 2008. As indicated above, the MJ Service Rules of 2008 have been framed pursuant to the power conferred by Article 233, 234 and the proviso to Article 309 of the Constitution of India. The said Rules are in the nature of subordinate legislation. Article 233 deals with the appointments of District Judges whereas Article 234 deals with recruitment and appointments other than the District Judges to the Judicial Service in the State. By Article 235 of the Constitution of India the absolute control over the subordinate Courts is vested in the High Court. In so far as Articles 233, 234 and 235 are concerned, the same are not subject to any other provisions of the Constitution of India. However, Article 309 is concerned, it opens with the words “subject to the provisions of the Constitution of India”. Hence Article 309 would be subject to the provisions of Article 233 to 235 of the Constitution of India. The said Articles encompass a complete code in respect of the appointments to the District as well as subordinate judiciary and therefore Article 309 has to be read subject to the said complete code. In so far as Article 245 is concerned, the same in its express terms is made subject to the other provisions of the Constitution of India which would include Articles 233 and 234, since the said Articles cover the entire field regarding recruitment and appointments of the

District Judges and Judges of the subordinate judiciary, the legislative power of State Legislature gets excluded in view of the scheme encompassed in Articles 233, 234 and 235 of the Constitution of India. Hence both Article 309 and Article 245 will have to be read subject to Articles 233 and 234 of the Constitution of India. The matter can be looked at from another perspective namely the independence of the judiciary. The process of recruitment and appointment of the District Judges is therefore insulated from outside legislative interference by enacting a complete code by way of Articles 233 and 234 of the Constitution of India. As indicated above Article 235 postulates that the High Court has absolute authority in matters covered by the said Article. In our view, therefore, having regard to the aforesaid constitutional scheme, there is no substance in the said grounds 11(a) and 11(b) of the Writ Petition.

24 The question that remains is whether on account of the Petitioner's name being in the select list, he is entitled to be appointed. It is trite that merely because a candidate's name appears in the select list, he has no indefeasible right for appointment. Reliance placed on behalf of the Respondents on the judgment of the Apex Court in *Kulwinder Pal Singh's* case (supra) is apposite. In the said case the decision of the State Government not to give appointment against the posts meant for the reserved category to the Appellants who were on the select list was upheld by the Apex Court. In the

said judgment, the Apex Court has relied upon its earlier judgment in State of Orissa & Anr. V/s. Rajkishore Nanda and ors, reported in (2010) 6 SCC 777 wherein it is held that vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate, and in Manoj Manu and Anr. V/s. Union of India & ors, reported in (2013) 12 SCC 171 wherein it is held that it is always open to the government not to fill up the vacancies, however such decision should not be arbitrary or unreasonable.

In our view in the facts of the present case where the Petitioner has not satisfied the eligibility conditions, the decision of the Respondents cannot be said to be unreasonable or arbitrary.

25 For the reasons afore-stated we do not find any merit in the above Writ Petition, the same is accordingly dismissed. Rule to accordingly stand discharged with parties to bear their respective costs.

26 In view of the disposal of the above Writ Petition, the above Civil Application No.1264 of 2018 does not survive and the same to accordingly stand disposed of as such.

[REVATI MOHITE-DERE, J]

[R.M.SAVANT, J]

Laxmikant
Gopal
Chandan

Digitally signed by lgc
Laxmikant Gopal
Chandan
Date: 2018.08.24
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