

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.22062 of 2017 (O&M)

Date of decision: February 26, 2018

Dr. Rajni Nanda

.....Petitioner

Versus

Punjab and Haryana High Court and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr. K.S. Dadwal, Advocate for the petitioner.

Mr. Sanjeev Sharma, Senior Advocate with
Mr. Vikas Chatrath, Advocate, Ms. Shalini Verma, Advocate,
Mr. Rajanjeet Singh, Advocate
for the respondents-High Court.

A.B. CHAUDHARI, J

By the present petition, petitioner-Dr. Rajni Nanda has sought quashing of communication dated 12.09.2017 (Annexure P-12) by respondent No.2 rejecting her candidature and with a further prayer to declare the petitioner eligible and to permit her to participate in the *viva voce* for the post of Additional District Judge.

FACTS

The petitioner is having qualification of B.Com (Hons), LL.B, LL.M, UGC Net Qualified and Ph.D in law and was thus, eligible for being considered for the post of Additional District Judge. She was appointed as Assistant Professor in Law at Swami Sarwa Nand Giri Regional Center, Hoshiarpur against vacant post on purely temporary basis, vide appointed letter dated 10.09.2010. She served as such till 01.12.2014. Vide notification No.92 dated 16.07.2015, 10 posts of

Haryana Superior Judicial Services by way of direct recruitment were notified. She did not apply pursuant to the said notification, but then respondents issued a corrigendum dated 17.08.2016 postponing the main examination and inviting of publication. Having noticed the said corrigendum, the petitioner submitted her application dated 09.09.2016 received on 12.09.2016 by the office of respondent No.2. Thereafter, she noticed on 12.10.2016, a list of rejected applications and the name of the petitioner was at Sr. No.9 in the said list and in so far as the petitioner is concerned, it was mentioned that there was gap in experience which was required to be explained. She accordingly, submitted an affidavit (Annexure P-5) explaining the gap. Respondent No.2, thereafter, on 24.12.2016 issued a list of candidates who were allowed to appear provisionally in the written exam that was scheduled to be held on 10.02.2017 and she was named at Sr. No.316. The petitioner was allowed to appear for written examination. Thereafter, on 01.02.2017, a notice was issued by respondent No.2 for submission of certain documents on or before 21.03.2017 for determining the eligibility under clause 2(bb) of the notification dated 16.07.2015. It was mentioned in the notice that in-service candidates who have completed 3 years service and are otherwise eligible are exempted from submitting the income tax returns and list of number of court cases. The petitioner had submitted an affidavit dated 16.03.2017 (Annexure P-9) regarding list of cases. The petitioner was declared successful, but it was mentioned that the candidates who were found eligible were subject to removal of certain discrepancies. In so far as the petitioner is concerned, discrepancy was

noted at Sr. No.1181 stating therein that ITRs showing Gross Professional Income of ₹5 lakhs or more for three years and data regarding requisite number of court cases for the three years preceding to application was required to be furnished. The petitioner however, relied on the stipulation contained in the notice dated 01.03.2017 (Annexure P-8) wherein, in Para 3, it was mentioned that in-service candidates who have completed 3 years' service and are otherwise eligible, are exempted from submitting the income tax returns and lists of number of court cases. The petitioner, then found that her candidature was rejected for non-submission of the required information. The petitioner again submitted application/representation dated 13.09.2017 (Annexure P-13). Thereafter, an order was passed on 22.09.2017 served on the petitioner on 23.09.2017 that her representation dated 13.09.2017 was ordered to be rejected as the benefit of exemption to the in-service candidate is not admissible to her as she could not be treated as in-service candidate.

ARGUMENTS

In support of the petition, learned counsel for the petitioner vehemently argued that the petitioner had removed all the anomalies and the discrepancies pointed out for submission of gap certificate and the data of number of Court cases. Admittedly, the petitioner was in-service during certain period and she being thus, in-service candidate, the criteria regarding clause 2(bb) about 3 years income tax returns would not apply in her case. According to the learned counsel for the petitioner, as a matter of fact, by virtue of the corrigendum dated 17.08.2016 that was issued by respondents itself, the petitioner was exempted from the

requirement regarding income tax returns and data of court cases being in-service candidate. The petitioner was entitled to the benefit of the judgment of the Apex Court in the case of **Vijay Kumar Mishra and another versus High Court of Judicature at Patna and others**, civil appeal No.7358 of 2016 (arising out of SLP (C) No.17466 of 2016) and therefore, her candidature could not have been rejected. The reason given by respondent No.2 for rejection of her candidature for want of certain documents regarding eligibility criteria is absolutely false and that she had already furnished those documents. She could be treated as a candidate from Advocate's category. Learned counsel therefore, submitted that this petition deserves to be allowed.

Per contra, learned counsel for the respondents opposed the petition and submitted that the petitioner cannot be said to be in-service candidate in the first place. Once she is held to be not inservice candidate, the exemption claimed by her in respect of income tax returns and data of number of court cases, in no case can be extended to her. The petitioner did not complete 7 years, the minimum required practice on the date of her application and that is an admitted position because in her application itself, she has mentioned the period of practice, at Sr. No.VIII as from September 2003 to September 2010 and thereafter, from December 2014 to the date of application. The period that could be counted is obviously after December 2014 till her application which does not show completion of 7 years of practice. Counsel for the respondents, however, agreed that the committee did not consider the aspect regarding the standing practice of 7 years. He, therefore, prayed for dismissal of the

writ petition.

CONSIDERATION

We have gone through the entire record and we have also heard learned counsel for the rival parties at length. The crux of the submission and the point that arises for consideration is challenge to the following rejection order (Annexure P-14) made by the committee, which we quote hereunder:-

“You are hereby informed that your representation dated 13.09.2017 has been considered by the Hon'ble Recruitment Committee and decided as under:-

“.....Benefit of exemption to the 'in service' candidates is a admissible to the candidates covered by the decision of Hon'ble Supreme Court in 'Deepak Aggarwal vs. Keshav Kaushik and others' and in 'Vijay Kumar Mishra and another Vs. High Court of Judicature at Patna and others'

Accordingly, Law officers like public Prosecutor/District Attorney/Judicial Officers are entitled to this exemption.

Since service rendered by you as Assistant Professor cannot be counted towards eligibility, you cannot be counted towards eligibility, you cannot be treated as 'in service candidate' for the purpose of income criteria and cases conducted. Hence, the representation is declined.”

Perusal of the above reasons recorded by the committee show that the petitioner was not treated as in-service candidate for the purpose of income criteria and the cases conducted and that is the reason why representation has been declined.

In the light of the above, the question of law that arises for

consideration is whether the petitioner would be treated as in-service candidate. Admittedly, the petitioner claimed exemption on her own in the application claiming herself to be in-service candidate. Now she cannot be allowed to approbate and reprobate to say that she would fall in the category of Advocate seeking direct recruitment. The case of the petitioner was specific that she wanted to seek exemption from submission of income tax returns and data of court cases being Assistant Professor in Law at Swami Sarwa Nand Giri Regional Center, Hoshiarpur. We are, therefore, not prepared to accept the submission made by learned counsel for the petitioner that her case could be considered as an Advocate as she completed 7 years of practice. At any rate, the said submission would not help the petitioner as then she would not be entitled to claim any exemption in respect of income criteria and the cases conducted. We are, therefore, of the firm opinion that the case of the petitioner was for claiming exemption as in-service candidate. It is in that context, now we proceed to decide the question raised before us.

The question before us is whether her service at Swami Sarwa Nand Giri Regional Center, Hoshiarpur as Assistant Professor would be said to be “in-service” for the purpose of appointment in the Haryana Superior Judicial Services?

The question is no more *re integra* and has been answered categorically in the case of **Deepak Aggarwal versus Keshav Kaushik and others**, 2013 (2) SCC (Cri) 978. Instead of expressing in our own words, it would be appropriate to quote the relevant paragraphs from the said judgement, which we do hereunder:-

“Explaining the meaning of the expression, “the service”, this is what this Court said in para 20 of the Report in Chandra Mohan.

“Though Section 254(1) of the said Act was couched in general terms similar to those contained in Article 233(1) of the Constitution, the said rules did not empower him to appoint to the reserved post of District Judge a person belonging to a service other than the judicial service. Till India attained Independence, the position was that District Judges were appointed by the Governor from three sources, namely, (i) the Indian Civil Service, (ii) the Provincial Judicial Service, and (iii) the Bar. But after India attained Independence in 1947, recruitment to the Indian Civil Service was discontinued and the Government of India decided that the members of the newly created Indian Administrative Service would not be given judicial posts. Thereafter District Judges have been recruited only from either the judicial service or from the Bar. There was no case of a member of the executive having been promoted as a District Judge. If that was the factual position at the time the Constitution came into force, it is unreasonable to attribute to the makers of the Constitution, who had so carefully provided for the independence of the judiciary, an intention to destroy the same by an indirect method. What can be more deleterious to the good name of the judiciary than to permit at the level of District Judges, recruitment from the executive departments? Therefore, the history of the services also supports our construction that the expression ‘the service’ in Article 233(2) can only mean the judicial service.”

44. *The Constitution Bench in Chandra Mohan has thus*

clearly held that the expression “the service” in Article 233 (2) means the judicial service.

.....

46. *From the above, we have no doubt that the expression, “the service” in Article 233(2) means the “judicial service”. Other members of the service of the Union or State are as it is excluded because Article 233 contemplates only two sources from which the District Judges can be appointed. These sources are: (i) judicial service; and (ii) the advocate/pleader or in other words from the Bar. The District Judges can, thus, be appointed from no source other than judicial service or from amongst advocates. Article 233 (2) excludes appointment of District Judges from the judicial service and restricts eligibility of appointment as District Judges from amongst the advocates or pleaders having practice of not less than seven years and who have been recommended by the High Court as such.”*

In the light of the *ratio decidendi* as laid down by the Apex Court, we have no manner of doubt that the petitioner cannot claim to fall in the category of in-service candidate for claiming exemption. Testing the second submission regarding completion of 7 years as an Advocate in practice that the petitioner had completed 7 years of practice upto September 2010 and therefore, the same should be counted for the purpose in question, we find, it unacceptable. Admittedly, on the date preceding filing of the application, the petitioner had legal practice from December 2014 and therefore, she had completed the period of only one year preceding the date of application. The submission that 7 years standing at in any time in the past should be considered as sufficient has been categorically answered by the Apex Court in Paragraph-88 of the

judgment in **Deepak Aggarwal's case** (supra), which we quote hereunder:-

“88. As regards construction of the expression, “if he has been for not less than seven years an advocate” in Article 233(2) of the Constitution, we think Mr Prashant Bhushan was right in his submission that this expression means seven years as an advocate immediately preceding the application and not seven years any time in the past. This is clear by use of “has been”. The present perfect continuous tense is used for a position which began at sometime in the past and is still continuing. Therefore, one of the essential requirements articulated by the above expression in Article 233(2) is that such person must with requisite period be continuing as an advocate on the date of application.”

We thus, find that there is no merit in the present petition. In the result, we make the following order:-

ORDER

- (i) CWP No.22062 of 2017 stands dismissed.

(A.B. CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

February 26, 2018

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No