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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 12.09.2018

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Pronounced on: 29.10.2018

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W.P.(C) 2828/2010 and CM No.677/2018

SURENDER PAL SINGH CHAUHAN Petitioner

Through: Mr. R.K. Saini, Adv. along with
petitioner in person.

versus

STATE AND ANR

..... Respondents

Through: Mr. Bhanu Gupta, Adv. for Mr. Ankur
Chhibber, Adv. for R-1.
Mr. Viraj R. Datar, Adv. for R-2.
Mr. P.P. Khurana, Sr. Adv. with Ms.
Tamali Wad, Adv.
Mr. Nitin Mishra and Mr. Sudhir,
Advs. for R-5.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

S. RAVINDRA BHAT, J.

1. The petitioner has challenged the process of selection of appointment to the post of the Additional District Judge under Article 233(2) of the Constitution of India (hereafter as "Constitution"); the vacancies were part of the cadre of the Delhi Higher Judicial Service which is governed by the Rules framed under Article 235/309 of the Constitution.

2. The petitioner had not initially impleaded any third party but subsequently during the pendency of the proceedings, the respondent nos.3 to 7 (successful candidates, referred to as “*contesting respondents*” hereafter) were impleaded and arrayed as party respondents. In September, 2009, the Delhi High Court issued a notification for recruitment to vacancies in the Delhi Higher Judicial Service (DHJS) in terms of Rules framed in that regard in 1970. The petitioner applied under the “*scheduled caste*” category (SC category) on 15.10.2009. He was allowed to appear in the examination, held on 13.12.2009. He claims that he fared well in the Part-I (objective) as well as Part-II (Descriptive) papers and was hopeful of being declared successful. On 13.01.2010, the High Court declared the result of Part-I examination. The petitioner complains that the list of successful candidates contained those who were shortlisted on the basis of performance in Part-I for evaluation of their answer sheets in Part-II, though they did not fulfill the eligibility criteria. It is alleged that some candidates were in permanent employment of the Union or of the States and ceased to be the Advocates in terms of Rule 49 of the Bar Council of India Rules, 1975 (“BCI Rules” hereafter) and were ineligible for consideration and in the case of others, the basic eligibility to claim benefits of SC/ST did not exist. The petitioner relies upon a judgment of the Supreme Court in *Subhash Chandra & Anr v. Delhi Subordinate Service Selection Board*, (2009) 15 SCC 458, which had stated that SC/ST benefits could not be given to the category of SC/ST applicants, who did not belong to the particular State or Union Territory on account of their not fulfilling the residential criteria. The petitioner

thus complains that the inclusion of some candidates in the SC/ST category – notable of the fifth respondent, as well as inclusion of those whose candidature was impermissible under Rule 49 of the BCI Rules, vitiated their selection. He therefore, sought for appropriate directions to quash the selection and consequent appointment.

3. The petitioner – as stated earlier, had initially not even impleaded any party other than the official respondents. However, during the pendency of the proceedings and having regard to the result of the examinations which culminated in the appointment of the candidates whose eligibility was questioned, the contesting respondents were allowed to be impleaded. Their appointments were made expressly subject to the outcome of the proceedings.

4. The petitioner, besides relying upon *Subhash Chandra* (supra), also relies upon the fact that the DHJS Rules do not contain any provisions for reservations vis-à-vis SC/ST candidates. It is argued that the reliance on Rule 27, by the Establishment of the High Court and Government of NCT of Delhi is of no consequence because Judicial Service is not a Civil Service and the analogy of reservations, circulars and notifications governing the Civil Service or All India Services, therefore, is inappropriate. It is argued besides that Rule 27 cannot be resorted to when an express reservation rule i.e. Rule 22 exists.

5. The second main submission argued by the petitioner through his counsel, Mr. R.K. Saini, is that the basic eligibility condition of 7 years practice, necessitates that the candidate should have continuous practice, as on the date of the application for recruitment to the post. Ld. counsel relies upon Article 233 (2) of the Constitution, which spells out three

conditions: firstly, that the individual should not be in the service of Union or the State and that he “*has been for not less than 7 years an Advocate*” and that his name is recommended by the relevant High Court. Ld. counsel submitted that the doubt with respect to the meaning of the expression “*has been an Advocate*” on account of judicial interpretation in *Satish Kumar Sharma v. Bar Council of Himachal Pradesh*, 2001 (2) SCC 365 and *Mallaraddi H. Itagi v. High Court of Karnataka*, (2013) 5 SCC 332, which were resorted to by a three Judge Bench decision in *Deepak Aggarwal v. Keshav Kaushik & Ors.*, (2013) 5 SCC 277 which held that the 7 years condition with respect to the practice and the other eligibility criteria had to be fulfilled, keeping in mind the 7 year period immediately preceding the date of the application. In these circumstances, the appointments made of the contesting respondents, were plainly illegal.

6. Rule 22 of the Delhi Higher Judicial Service Rules, 1970 provides as follows:

“22. The reservation of posts for the Schedule Castes and Schedule Tribes shall be in accordance with the orders issued by the Central Government from time to time.”

7. The petitioner’s argument that Rule 27 does not mean that Central Government instructions are inapplicable, in the opinion of the court is without merit, given that Rule 22 clearly states that posts in the DHJS cadre would be subjected to reservation, in accordance with orders of that Government.

8. As to the main issue- relating to reservation, which the petitioner agitated, i.e that only Delhi notified casts (i.e in the list of Schedule Caste communities of Delhi, notified by the President of India) are entitled to

the benefit, the issue is now concluded by a five judge Bench decision of the Supreme Court in *Bir Singh v Delhi Jal Board*, (2018) SCC OnLine SC 1241 where it was held that:

“34. It is an unquestionable principle of interpretation that interrelated statutory as well as constitutional provisions have to be harmoniously construed and understood so as to avoid making any provision nugatory and redundant. If the list of Scheduled Castes/Scheduled Tribes in the Presidential Orders Under Article 341/342 is subject to alteration only by laws made by Parliament, operation of the lists of Scheduled Castes and Scheduled Tribes beyond the classes or categories enumerated under the Presidential Order for a particular State/Union Territory by exercise of the enabling power vested by Article 16(4) would have the obvious effect of circumventing the specific constitutional provisions in Articles 341/342. In this regard, it must also be noted that the power Under Article 16(4) is not only capable of being exercised by a legislative provision/enactment but also by an Executive Order issued Under Article 166 of the Constitution. It will, therefore, be in consonance with the constitutional scheme to understand the enabling provision Under Article 16(4) to be available to provide reservation only to the classes or categories of Scheduled Castes/Scheduled Tribes enumerated in the Presidential orders for a particular State/Union Territory within the geographical area of that State and not beyond. If in the opinion of a State it is necessary to extend the benefit of reservation to a class/category of Scheduled Castes/Scheduled Tribes beyond those specified in the Lists for that particular State, constitutional discipline would require the State to make its views in the matter prevail with the central authority so as to enable an appropriate parliamentary exercise to be made by an amendment of the Lists of Scheduled Castes/Scheduled Tribes for that particular State. Unilateral action by States on the touchstone of Article 16(4) of the Constitution of India.

61. Accordingly, we answer the question referred in terms of

the views expressed in para 34 of this opinion. We further hold that so far as the National Capital Territory of Delhi is concerned the pan India Reservation Rule in force is in accord with the constitutional scheme relating to services under the Union and the States/Union Territories.”

9. In the light of the law declared, therefore, it is held that the petitioner's argument that only those communities treated as SC in the list of reserved (SC) candidates are entitled to reservation in the DHJS is unmerited; it is rejected.

10. The second ground of attack to the recruitment process, for filling the 25% quota of direct recruit vacancies was that the contesting respondents did not possess actual 7 years' preceding practice, but had such cumulative, overall practice. The respondents had urged that the cumulative number of years practice in terms of the then understanding, was considered as a norm and the selection was finalized. Moreover, it was argued that the petitioner did not qualify in the test and therefore, this ground cannot be substantial; in other words, even if the selected candidates were to be considered as ineligible, the petitioner would not be entitled to selection on account of his performance in the test.

11. The judgment of the Supreme court in *Deepak Aggarwal* (supra) held that the 7 years condition with respect to the practice and the other eligibility criteria had to be fulfilled. However, equally, this court is of opinion that selection is merit based; unless a candidate can show that his or her grievance (on account of wrongful inclusion in the selection list of an ineligible individual) would, if relief is granted, result in the aggrieved party's selection, in judicial review, the court would not set aside the selection in question. On this count too, the petition must fail.

12. For the foregoing reasons, there is no merit in the writ petition; it is therefore, dismissed without order on costs.

S. RAVINDRA BHAT
(JUDGE)

A.K.CHAWLA
(JUDGE)

OCTOBER 29, 2018

