

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

**WRIT PETITION NO. 5862 OF 2019**

|                                            |   |               |
|--------------------------------------------|---|---------------|
| <b>Adv. Bhumika D/o. Durgaprasad Sarda</b> | ] |               |
| Aged about 25 years, Occ. - Advocate,      | ] |               |
| R/o. 301/sp-II, Springdale Apartments,     | ] |               |
| Raj Nagar, Nagpur-4400 013.                | ] | .. Petitioner |

**Versus**

|                                                 |   |                |
|-------------------------------------------------|---|----------------|
| 1. <b>State of Maharashtra</b>                  | ] |                |
| through Secretary Law and Judiciary,            | ] |                |
| Mumbai                                          | ] |                |
|                                                 | ] |                |
| 2. <b>Maharashtra Public Service Commission</b> | ] |                |
| through Deputy Secretary Exam Prelim,           | ] |                |
| Head Office 55/1, 8 <sup>th</sup> Floor,        | ] |                |
| Kuprej Telephone Exchange Building,             | ] |                |
| Maharshi Karve Marg, Kuprej,                    | ] |                |
| Mumbai-21,                                      | ] |                |
|                                                 | ] |                |
| 3. <b>The Registrar,</b>                        | ] |                |
| High Court of Judicature at Mumbai              | ] | .. Respondents |

Ms. Bhumika Sarda, petitioner in-person

Mr.P.P. Kakade, Government Pleader a/w. Mr.S.B.Kalel, AGP for respondent Nos.1 and 2.

Dr.Milind Sathe, Senior Advocate I/b Mr.Rahul Nerlekar for respondent No.3.

**CORAM : R. M. BORDE &  
N.J. JAMADAR, JJ.**

**DATE : 28<sup>TH</sup> JUNE 2019**

**JUDGMENT (PER N.J. JAMADAR, J.)**

1 Rule. Rule made returnable forthwith and, with the consent of the

the parties, heard finally.

2 A promising fresh law graduate, who aspires to be a member of judiciary, has invoked writ jurisdiction of this Court on the premise that the Maharashtra Judicial Service Rules, 2008 (hereinafter referred to as, 'the Rules, 2008') which, *inter-alia*, prescribe the upper age limit of 25 years for a fresh law graduate, is discriminatory and violative of the right to equality and equality of opportunity in matters of public employment guaranteed under the Constitution.

3 Shorn of superfluities, the background facts necessary for the determination of the cause sought to be urged by the petitioner, can be summarized as under :-

The petitioner claimed to be a bright student with an excellent academic record. She pursued Law as a career of choice. The petitioner completed graduation in Law in the month of July 2017. The petitioner attained the age of 25 years on 18<sup>th</sup> November 2018. On 1<sup>st</sup> February 2019, the respondent No.2-Commission published an advertisement inviting applications for the post of Civil Judge, Junior Division, and Judicial Magistrate, First Class (CJJD & JMFC). Clause 7.2 of the said advertisement provides that for fresh law graduates, the age shall not be less than 21 years and more than 25 years as of 1<sup>st</sup> February 2019. The

grievance of the petitioner is that the petitioner could not get even a single opportunity to appear as a fresh law graduate in view of the stipulation that the maximum age for a fresh law graduate shall not be more than 25 years as of 1<sup>st</sup> February 2019. Though the respondents are enjoined by Rules, 2008 to hold the examination for the post of CJJD and JMFC every year, no recruitment was held for the said post in the year 2018. The petitioner thus asserts that Rule 5(3)(c) of the Rules, 2008, which prescribes the upper age limit of 25 years for fresh law graduates is discriminatory as the advocates, who have put in not less than three years practice, are eligible upto the age of 35 years.

4 The petitioner has, thus, prayed that Rule 5(3)(c) of the Rules, 2008 be declared *ultra vires*, the impugned advertisement dated 1<sup>st</sup> February 2019 be quashed and set aside and the respondent No.2 be directed to fix 1.02.2018 or any other date as the cut-off date, so as to facilitate the petitioner to participate in the recruitment process.

5 The petition was initially presented before the Nagpur Bench of this Court. By an order dated 6<sup>th</sup> March 2009, a Division Bench of this Court directed the respondent No.2 to provisionally accept the application of the petitioner pursuant to the Notification dated 1<sup>st</sup> February 2019 and permit her to appear in the written examination, scheduled to be held on 7<sup>th</sup> April

2019. By a subsequent order dated 18<sup>th</sup> March 2019, it was directed that the result of the examination of the petitioner shall not be declared and her appearance in the examination shall be subject to the result of the petition.

6 The respondent No.3 has resisted the petition by tendering an affidavit in reply of Mr.Atul K. Shah, Registrar (Administration), High Court of Bombay, Bench at Nagpur. The respondent No.3 has controverted the assertions of the petitioner that Rule 5(3)(c) of the Rules 2008 is discriminatory. The allegation of the petitioner that she was deprived of the opportunity to appear as a fresh law graduate on account of failure of the respondents to conduct the recruitment process in the year 2018, is contested by asserting that the recruitment process for the given year is to be conducted in terms of Rule 6 of the Rule, 2008, provided there are vacancies to be filled. Since there were no vacancies in the cadre of CJJD and JMFC in the year 2018, the recruitment process was not conducted. The respondent No.3 further asserts that the petitioner cannot be permitted to seek relaxation in age limit *de-hors* the provisions of the Rules, 2008.

7 We have heard the petitioner in-person, Shri P.P. Kakade, Asst. Government Pleader for respondent Nos.1 and 2 and Dr. Milind Sathe, the learned Senior Advocate for respondent No.3.

8 At the outset, we must record that the petitioner canvassed the submissions with confidence, tenacity and finesse expected of a seasoned advocate. The petitioner submitted that there is no rational object sought to be achieved by prescribing an upper age limit of 25 years for the fresh law graduates. The prescription of a lower threshold of maximum age for fresh law graduates in contrast to the practicing advocates constitutes an invidious discrimination, and, therefore, violative of the equality clause under Article 14 of the Constitution of India, urged the petitioner. The said stipulation was also stated to be unrealistic. Amplifying the submission, it was urged that by the time a student completes the graduation in law, he is on the verge of attaining 25 years and hardly gets more than one opportunity as a fresh law graduate. This stipulation of maximum age of 25 years, according to the petitioner, violates the spirit of recommendations of the first National Judicial Pay Commission (Justice Shetty Commission) and the directions of the Supreme Court in the case of *All India Judges Association & Ors. Vs. Union of India (UOI) & Ors.*<sup>1</sup> whereby the recommendations of Justice Shetty Commission were accepted. It was further urged that the stipulation, like the one of maximum age limit for fresh law graduates, provided in the Rules, 2008, does not find place in the Recruitment Rules of the other States.

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1 (2002) 4 SCC 247

9 The petitioner endeavoured to impress upon the Court that the failure of the respondents to conduct the recruitment process for the year 2018 cost her the opportunity to compete for the post of CJJD and JMFC as a fresh law graduate. As the Rules, 2008 mandate that the recruitment process be conducted every year, the respondents do not have the liberty to hold the recruitment process to suit their convenience and thereby deny opportunity to the deserving candidates like the petitioner.

10 In opposition to this, Dr. Milind Sathe, the learned Senior Advocate for the respondent No.3, submitted that the challenge to Rule 5(3)(c) of the Rules, 2008, as being discriminatory and violative of right of equality, is devoid of any substance. It was submitted that the said rule is founded on well recognized principle of reasonable classification. It was urged that the fresh law graduates and the advocates, who have put in at least 3 years practice, form two distinct classes and the said classification has the rational relation to the object sought to be achieved. Dr. Sathe further submitted that the issue sought to be raised by the petitioner is no longer *res integra* as the validity of Rule 5(3)(c) of the Rules, 2008 has been upheld by Division Benches of this Court in the cases of ***Bar Council of Maharashtra & Goa Vs. State of Maharashtra & Anr.***<sup>2</sup> and ***Prashant P.***

***Giri & Ors. Vs. State of Maharashtra & Ors.***<sup>3</sup>.

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2 2009(4) Bom.C.R. 387

3 2010(4) Bom.C.R. 704

11 Before we advert to deal with the rival submissions, it may be apposite to extract the relevant part of Rule 5(3)(c) and Rule 6 of the Rules, 2008. They read as under :-

“

| <i>S.N.</i> | <i>Cadre</i>                 | <i>Method of Recruitment</i>                                                                                                                                                               | <i>Qualifications, age limit, etc.</i>                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-------------|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>(1)</i>  | <i>(2)</i>                   | <i>(3)</i>                                                                                                                                                                                 | <i>(4)</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|             | .....                        |                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 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. | <p>(a) Educational qualification- Must hold a degree in Law.</p> <p>(b) .....</p> <p>Must be a fresh Law Graduate who, -</p> <p>(i) has secured the degree in law by passing all the examinations leading to the degree in the first attempt;</p> <p>(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; <b>or</b></p> |
|             |                              | .....                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|             |                              |                                                                                                                                                                                            | <p>(c) Age – Not less than twenty one years and not more than,</p> <p>(i) thirty five years in the case of Advocates with three years practice,</p> <p>(ii) twenty five years in the case of fresh law graduates,</p> <p>(iii) forty five years in the case of ministerial staff.</p>                                                                                                                                                                          |

|  |  |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|--|--|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |  |  | <p><i>Provided that upper age limit in each of the above categories may be relaxed by five years in respect of candidates belonging to communities recognised as backward by the Government for the purpose of recruitment;</i></p> <p>.....</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|  |  |  | <p><b>6. Recruitment by Nomination</b></p> <p><i>(1)(a) On or before the 15<sup>th</sup> January of every year in case of the Civil Judge, Junior Division and in case of District Judges the 31<sup>st</sup> March of every year, the Recruiting Authority shall be informed of the number of existing vacancies and the vacancies that are likely to occur within one year for the post of Civil Judge, Junior Division and District Judge.</i></p> <p><i>(b) Every year the Recruiting Authority shall, by advertisement in the Official Gazette and in at least two newspapers, invite applications in such form as it may determine, for intending candidates, who possess the qualifications for filling in the vacancies.”</i></p> |

**12** Since a fact based grievance was made by the petitioner regarding the failure of the respondent No.2-Commission-the recruiting authority, to conduct the recruitment process for the year 2018, which according to the petitioner, deprived her of the opportunity, we propose to deal with the said submission first.

From a conjoint reading of Clauses (a) and (b) of Rule 6 extracted above, it becomes evident that the obligation of the recruiting authority to invite applications every year for filling up the vacancies is conditioned by, and dependent upon, the notification of the vacancies by the appointing authority. The recruiting authority cannot commence the recruitment process, unless it is armed with the requisition from the appointing

authority. Thus, we are not inclined to agree with the submission of the petitioner that Rule 6(1)(b) enjoins the recruiting authority to carry out the recruitment process every year irrespective of the vacancy position.

**13** In the case at hand, we are satisfied that the respondent No.3 has placed material on record to show that the decision of the High Court administration not to notify any vacancy for the year 2018, was based on the development which had occurred in the preceding year. In terms of the Government Resolution dated 14<sup>th</sup> July 2017, as many as 112 posts of CJJD were upgraded to the post of Civil Judge, Senior Division. In the circumstances, the decision not to hold the recruitment process for the post of CJJD and JMFC, in the year 2018, cannot be faulted.

**14** Reverting to Rule 5 of the Rules, 2008, it becomes evident that the said rule provides three distinct upper age limits for three classes :

- (1) 35 years in case of advocates with three years standing;
- (2) 25 years in case of fresh law graduates; and
- (3) 45 years in case of Ministerial Staff.

The aforesaid prescription of different upper age limits for different classes of candidates is urged by the petitioner to be arbitrary, discriminatory and in violation of the principle of equality.

**15** To appreciate this challenge to the constitutionality of Rule 5(3)(c)

of the Rule, 2008, we deem it necessary to notice the historical perspective. The condition that the Advocate must have at least three years standing to enter the judicial service was in pursuance of the directions of the Supreme Court in *All India Judges Association's case (1993)*<sup>4</sup>. Justice Shetty Commission, however, recommended that the condition of three years standing at the bar operates as a disincentive for the bright lawyers to enter the judiciary. The Supreme Court accepted the recommendations of the Justice Shetty Commission and directed the High Courts and State Governments to amend their rules so as to enable a fresh law graduate to be eligible to compete and enter the judicial service. The observations of the Supreme Court in the case of *All India Judges Association (2002)* (Supra) makes this position explicitly clear :-

*“31 In the All India Judges MANU/SC/0391/1993 : (1993)IILLJ776SC (1993)IILLJ776SC Case MANU/SC/0391/1993 : (1993)II LLJ776SC, this Court has observed that in order to enter the judicial service, an applicant must be an Advocate of at least three years' standing. Rules were amended accordingly. With the passage of time, experience has shown that the best talent which is available is not attracted to the judicial service. A bright young law graduate after 3 years of practice finds the judicial service not attractive enough. It has been recommended by the Shetty Commission after taking into consideration the views expressed before it by various authorities, that the need for an applicant to have been an Advocate for at least 3 years should be done away with. After taking all the circumstances into consideration, we accept this recommendation of the Shetty Commission and the argument of the learned amicus curiae that it should be no longer mandatory for an applicant desirous of entering the judicial service to be an Advocate of at least three years' standing. We, accordingly, in the light of experience gained after the judgment in All India Judges' case (supra), direct to the High Courts and to the*

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4 (1993) 4 SCC 288

State Governments to amend their rules so as to enable a fresh law graduate who may not even have put in even three years of practice, to be eligible to compete and enter the judicial service. We, however, recommend that a fresh recruit into the judicial service should be imparted with training of not less than one year, preferably two years.

(Emphasis supplied)

16 In the backdrop of aforesaid judgment, the Governor has framed Rules, 2008 in exercise of the powers conferred by Article 233, 234, and the Proviso to Article 309 of Constitution of India after consultation with the Maharashtra Public Service Commission and the High Court of Bombay. Evidently, the candidates, who have three years standing at the bar, and fresh law graduates constitute distinct classes. What is prohibited is class legislation and not reasonable classification. To pass the test of reasonable classification, two conditions must be satisfied. One, the classification must be founded on an intelligible differentia. Two, that differentia must have a rational relation to an object sought to be achieved.

17 On the aforesaid touchstone, the classification of candidates as fresh law graduates and advocates with three years standing at bar is clearly justifiable. It is imperative to note that the object of incorporating an enabling provision in the Rules, 2008 was to attract young and talented law graduates to the judiciary. The objective of attracting meritorious candidates is addressed by providing that fresh law graduates ought to

have secured the degree in law by passing all the examinations leading to the degree in the first attempt and, with not less than fifty five percent marks. Whereas the objective of inviting young law graduates is addressed by stipulating the maximum age limit of 25 years. Thus, the higher standard of merit and stipulation of age limit have the rational nexus with the object of attracting young and talented lawyers into judicial service.

**18** The petitioner endeavored to urge that the stipulation of 25 years deprives an aspiring and competent law graduate like her from joining the judicial service. This submission loses sight of the fact that the general channel of eligibility, i.e., after putting in three years practice remains open to the law graduates, who have crossed the upper age of 25 years (upto the age of 35 years). Moreover, if higher threshold say of 27/28 years is provided then the distinction between fresh law graduates and the practicing advocates would stand obliterated.

**19** As rightly submitted by Dr.Milind Sathe, the learned Senior Counsel, the issue is no longer *res integra*. In the case of ***Bar Council of Maharashtra and Goa*** (Supra), where the validity of Rule 5(3) was put in contest on the premise that the prescription of different age limits therein is arbitrary and discriminatory, the Division Bench of this Court negated the challenge by observing, *inter-alia*, as under :-

“4 .....

*The argument that the eligibility conditions are arbitrary and/or discriminatory is also without any merit. In consonance with the recommendations of the Shetty Commission, clear objective is sought to be achieved by the advertisement for such classification. The purpose is to capture talent from amongst fresh Law Graduates for induction into the service at the very threshold. Other classes specified under the Rules and in the advertisement is intended to let Law Graduates optionally acquire some experience at the Bar and then take up the entrance examination. To provide some age difference between these two classes thus is essential. This can neither be termed arbitrary nor discriminatory. These are classes of different persons belonging to a different class and persons of the same classes are not being treated differently. The option lies with the applicant as to which class he desires to come in, whether at the threshold or after gaining experience at the Bar. It is not only a laudable object but also squarely takes care of the practical objective and problems which may arise in appointment of Judges of the Junior Division.”*

20 The aforesaid pronouncement was followed by another Division Bench in the case of **Prashant P. Giri & Ors.** (Supra). In the said case, the argument sought to be advanced by the petitioner herein that the stipulation of maximum age of 25 years is unrealistic and operates harshly in respect of the candidates, who complete the graduation in law late, was also dealt with by the Division Bench and the following observations were made :-

*“19 Similarly the contention advanced on behalf of the Petitioners that age limit of 25 years for fresh law graduates is unrealistic as the candidates who were earlier pursuing studies in other streams like Medicine, Engineering etc but who have thereafter opted for law are debarred in view of the age limit of 25 years, in our view, in the teeth of the purport and intent of the said Rules, this argument does not commend to us. The object of the said Rule is to capture fresh talented law graduates at the threshold having an excellent academic record. The said Rule*

therefore contemplates a candidate who has taken up a career in law at the threshold and who also has an excellent academic record. We, therefore do not find the said age limit of 25 years to be unrealistic or arbitrary in any manner. It would also be pertinent to note that the second avenue of three years practice with the higher age limit of 35 years is also open to the candidates.”

(Emphasis supplied)

**21** In view of the aforesaid pronouncements by two Division Benches of this Court, which are based on well recognized principle of reasonable classification, the issue sought to be raised by the petitioner stands concluded. The petition, therefore, deserves to be dismissed.

**22** The petition stands dismissed.

**23** In view of the dismissal of the petition, the respondent No.2-Commission, need not declare the result of the petitioner. Nor the petitioner shall be entitled to appear for the further examinations in the recruitment process pursuant the advertisement dated 1<sup>st</sup> February 2019.

**24** Rule stands discharged.

**25** In view of disposal of the writ petition, civil application No. 1449 of 2019, does not survive and accordingly stands disposed of.

[ N.J. JAMADAR, J. ]

[ R. M. BORDE, J.]