

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Thursday, the Fourth day of April Two Thousand Nineteen

PRESENT

THE HON`BLE MR JUSTICE V.BHARATHIDASAN

and

THE HON`BLE MR JUSTICE V.PARTHIBAN

WMP.Nos.7053 & 7056 of 2019

in WP.No.6198 of 2019

MADRAS HIGH COURT ADVOCATES [PETITIONERS IN BOTH THE
ASSOCIATION, REP. BY ITS SECRETARY, PETITIONS]
MR.R.KRISHNA KUMAR, MADRAS HIGH COURT
COMPLEX, CHENNAI 600 104.

Vs

1 STATE OF TAMIL NADU, [RESPONDENTS IN BOTH THE
REP. BY ITS PRINCIPAL SECRETARY TO PETITIONS]
GOVERNMENT, PUBLIC (SPECIAL A) DEPARTMENT,
FORT ST.GEORGE, CHENNAI 600 009.

2 THE REGISTRAR - GENERAL,
MADRAS HIGH COURT, CHENNAI 600 104.

Petitions praying that in the circumstances stated therein
and in the respective affidavits filed therewith the High Court
will be pleased to

(i) Grant an interim order of injunction restraining the
official respondents from permitting the (a) serving Judicial
Officers (Civil Judges and Senior Civil Judges) who have seven
years of practice as Advocate and (b) serving Judicial Officers
(Civil Judges and Senior Civil Judges) who have seven years of
practice as Advocate and Judicial Officer put together in the
selection process pursuant to Notification No.1/2019 dated
13/01/2019 under the 25 percent direct recruitment quota for
the post of District Judges (entry level) (in WMP.No.7053/2019)
and

(ii) Grant an interim order of stay of Notification No.1/2019 dated 13/01/2019 in so far as clause (3) (B) (I) (D) permitting (a) serving Judicial Officers (Civil Judges and Senior Civil Judges) who have seven years of practice as Advocate and (b) serving Judicial Officers (Civil Judges and Senior Civil judges) who have seven years of practice as Advocate and Judicial Officer put together, in the selection process under the 25 percent direct recruitment quota for the post of District Judges (entry level) (in WMP.No.7056/2019) pending disposal of the above WP.No.6198/2019 respectively.

Order : These petitions coming on for orders upon perusing the petition and the respective affidavits filed in support thereof and upon hearing the arguments of M/S.P.V.S.GIRIDHAR, Advocate for the petitioner in both the respondents and of M/S.AKHIL AKBAR ALI, Government Advocate for the 1st respondent in both the petitions and of M/S.B.VIJAY, Advocate for the 2nd respondent in both the petitions on behalf of the Respondents the court made the following order:-

(i) The main writ petition has been filed by the Madras High Court Advocates' Association challenging the Clause 3 (B) I (ii) (d) of the Notification 1 of 2019 dated 13.01.2019 issued by the respondents inviting application through online for direct recruitment to the post of District Judge (Entry Level) in the Tamil Nadu State Judicial Service, under the Tamil Nadu State Judicial Service (Cadre and Recruitment), Rules 2007, as amended [hereinafter referred to as 'the Rules'].

(ii) Along with the main writ petition, the petitioner association has filed the instant miscellaneous petitions: **(A)** seeking to grant an order of interim injunction restraining the respondents from permitting the serving Judicial Officers (Civil Judges and Senior Civil Judges) who have seven years of practise as Advocate and Judicial Officer put together in the selection process pursuant to the impugned notification as against the 25 per cent direct recruitment quota to the post of District Judges (Entry Level) pending disposal of the writ petition; and **(B)** seeking to grant an interim order of stay of the subject notification pending disposal of the writ petition.

2. The clause which is sought to be impugned in the main writ petition permits the serving Judicial Officers, namely Civil Judges and Senior Civil Judges, having seven years practise as Advocate and Judicial Service, put together to compete in the recruitment process. In the notification, it is, however, made clear in the notification that the selection would be subject to the out come of SLP No.14156/2015 (Dheeraj Mor v. High Court of Delhi) pending before the Hon'ble Supreme Court of India. The relevant clause which is under challenge in the writ petition reads thus:-

(B) ESSENTIAL QUALIFICATIONS (As on 13.01.2019)		
The Applicants should possess the following qualification:		
I	For Practising Advocates/ Pleadors / Assistant Public Prosecutors/ Judicial Officers:	
		
		
		(ii) (d) Serving Judicial Officers (Civil Judges and Senior Civil Judges) having seven years practise, as Advocate and Judicial Service put together, are permitted to participate in the selection subject to the outcome of SLP No.14156/2015 pending before the Hon'ble Supreme Court of India.

3. According to the petitioner Association, as per Rule 5 of the The Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007, the eligibility for direct recruitment to the post of District Judge (Entry Level) is that candidates must be a practising Advocate and should have practised for a period of not less than seven years on the date of notification. The grievance of the petitioner Association is that under the rule 25% of the posts of the District Judge (Entry Level) have been reserved for direct recruitment only from amongst the eligible advocate, contrary to such Rules, the respondents ought not to have issued the impugned notification permitting the serving Judicial Officers to compete in the recruitment process. Further, according to the

petitioner Association, Clause 3 (B) I (ii) (d) of the notification seriously affects the right of the practising eligible advocates to compete in the direct recruitment process and therefore, the impugned clause is not only arbitrary and the same is violative of Articles 14 and 16 of The Constitution of India as well.

4. Mr.P.V.S.Giridhar, the learned counsel for the petitioner Association would contend that under the Rules, 25% of posts of District Judge (Entry Level) have been reserved for direct recruitment from amongst the eligible Advocates and the Rules do not permit the serving Judicial Officers to compete with the eligible Advocates. In absence of any specific rule, the respondents ought not to have permitted the serving Judicial Officers to compete in the direct recruitment process and therefore, the clause impugned in the notification is arbitrary and violative of Articles 14 and 16 of the Constitution of India and based on the impugned notification, if the servicing judicial officers are permitted to compete in the direct recruitment process, the right of the eligible advocate members of the petitioner Association would get defeated and therefore, the learned counsel prayed this court to grant an order of interim injunction against the respondents from permitting the serving judicial officers to compete to the post of District Judge (Entry Level) as against 25% of quota reserved for direct recruitment from amongst the eligible advocates and also to stay grant an order of interim stay of notification.

5. Per contra, Mr.B.Vijay, the learned Standing Counsel for 2nd respondent would strenuously contend that the issue involved in the writ petition pertains to the interpretation of Article 233 of the Constitution of India. Now, the issue relating to appointment of District Judges by way of direct recruitment is pending before the Constitutional Bench of the Hon'ble Supreme Court. He would further contend that the impugned notification has been issued only pursuant to the orders of the Hon'ble Supreme Court in Deeraj Mor's case, cited supra, wherein the Hon'ble Supreme Court was pleased to permit the serving Judicial Officers to compete in the Direct Recruitment method to the post of District Judges (Entry Level) in the Delhi State Judicial Services. Already the recruitment process has been started and the preliminary examination is going to be held on 06.04.2019. However, in Dheeraj Mor's case, cited supra, it was made clear by the Hon'ble Supreme Court that the selection would be subject to the outcome of the special leave petition (Dheeraj Mor's case). Therefore, according to the learned standing counsel, the eligible advocate members of the petitioner association would no way get prejudiced if the serving judicial officers are permitted to compete in the instant recruitment process.

6. At this juncture, citing a very recent judgement of the Hon'ble Supreme Court *Nitin Raj v. High Court of Delhi*, the learned counsel for the petitioner association would contend that in an identical situation, when it was brought to the notice of the Hon'ble Supreme Court referring to the specific rule position in the Rajasthan Higher Judicial Service Rules that the Judicial Officers are not permitted to appear in the exams to the Rajasthan Higher Judicial Services, the Hon'ble Supreme Court has passed an order that the results of the serving judicial officers who appear in the examinations, shall not be declared and shall be kept in a sealed cover. Therefore, the learned counsel for the petitioner Association would submit that if this court is not inclined to grant an interim order of stay of subject notification or interim order of injunction restraining the respondents from permitting the serving judicial officers to compete in the written examination to be held to the post of District Judge (Entry Level), following the case of *Nitin Raj*, cited supra, at least, an interim direction may be given to the authorities concerned not to publish the results of the serving judicial officers and the results may be ordered to be kept in a sealed cover.

7. The learned counsel for the 2nd respondent countering the contention of the learned counsel for the petitioner would contend that under Rajasthan Higher Judicial Services, there is a specific rule position prohibiting the serving Judicial Officers to compete in the direct recruitment process, but, whereas under the Delhi Higher Judicial Service Rules, there is no such restriction for the serving Judicial Officer to compete to the post of District Judge by way of direct recruitment and the Delhi Higher Judicial Service Rules are identical to that of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007. Therefore, according to him, the order in the case of *Nitin Raj*'s case relied on by the learned counsel for the petitioner Association would not in any way be helpful to their case.

8. We have given our anxious consideration to the rival submissions and also perused the available materials carefully.

9. From a careful perusal of the notification impugned in the writ petition, it could be seen that the serving judicial officers were permitted to compete in the process of direct recruitment to the post of District Judge (Entry Level) in the Tamil Nadu State Judicial Services, subject to the outcome of the special leave petition in SLP No.14156/2015 (*Dheeraj Mor*'s case cited supra) pending before the Hon'ble Supreme Court of India. Right from 12.05.2015, the Hon'ble Supreme court passed various interim orders in the above said SLP. The relevant portion of the interim order dated 31.07.2018 made by the Hon'ble Supreme Court in above said SLP reads as follows:-

"The order dated 24.07.2018 shall be applicable to all the candidates in all cases who participated in the selection for appointment to the post of ADJ.

The High Court shall conduct the selection without further delay.

All the selections will be subject to the result of these petitions.

We make it clear that since we have passed a general order, individual candidates need not approach this court and file separate applications/petitions."

10. The interpretation of Article 233 of the Constitution in matter of appointment to the post of District Judges (Entry Level) by way of direct recruitment was the issue in Dheeraj Mor's case cited supra and now the issue has been referred to a Larger Bench of the Hon'ble Supreme Court for authoritative answer. Now the SLP is pending.

11. As rightly pointed out by the learned standing counsel for the 2nd respondent, the recruitment process has already been commenced and the preliminary examination is going to be held on 06.04.2019. The subject notification was issued only based on the interim order in Dheeraj Mor's case (SLP (C) No.14156 of 2015) and in the subject notification, it was also made clear that the appointment would be subject to the outcome of the above said special leave petition. In Dheeraj Mor's case, the Hon'ble Supreme Court, by its general order dated 31.07.2018, permitted the High Courts to conduct selection without further delay. But, however, it was made clear in the order that the ultimate selection would be subject to the result of the special leave petitions. Thus, the right of the members of the petitioner association is safeguarded by the Hon'ble Supreme Court in Dheeraj Mor's case. Though the contention of the learned counsel for the 2nd respondent that under similar circumstances, very recently, on 18.02.2019, the Hon'ble Supreme Court in Nitin Raj case, had directed the authorities concerned not to publish the results of the candidates is attractive, we are not persuaded by the same for the reason, that considering the specific rule position in the Rajasthan Higher Judicial Services, the above said order was passed by the Hon'ble Supreme Court. Whereas there is no such specific rule under Tamil Nadu State Judicial Service prohibiting the serving Judicial Officers to participate in the direct recruitment process. In the event of the Hon'ble Supreme Court decides the issue against the serving Judicial Officers, the selection of the serving Judicial Officers as District Judge by way of direct recruitment would become invalid but, on the other hand, if the issue is decided in favour of the serving Judicial Officers, their appointment as

District Judge (Entry Level) by way of direct recruitment would hold good. In the light of the above factual and legal position, if the serving judicial officers are restrained from participating in the recruitment process or if the notification is ordered to be stayed, the same would cause great prejudice to the serving judicial officers. Hence, the balance of convenience is not in favour of the petitioner. Thus, we are of the considered opinion that the petitioner has failed to make out a prima facie case either to grant an order of interim injunction or stay of the subject notification and both the miscellaneous applications deserve only to be dismissed.

12. **In the result,** the miscellaneous petitions are dismissed. No costs.

-sd/-

04/04/2019

/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL SECRETARY TO
GOVERNMENT, GOVERNMENT OF TAMIL NADU,
PUBLIC (SPECIAL A) DEPARTMENT,
FORT ST.GEORGE, CHENNAI 600 009.

2 THE REGISTRAR - GENERAL,
MADRAS HIGH COURT, CHENNAI 600 104.

3 THE SECTION OFFICER,
LEGAL CELL, HIGH COURT, CHENNAI.

C.C. to M/S.P.V.S.GIRIDHAR Advocate on payment of necessary charges

C.C. to M/S.B.VIJAY, Advocate on payment of necessary charges

The Government Advocate, High Court, Madras - 104.

Order

in

WMP.Nos.7053 & 7056 of 2019

in WP.No.6198 of 2019

Date :04/04/2019

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KF(12/04/2019)