

HIGH COURT FOR THE STATE OF TELANGANA

**THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY**

WRIT PETITION Nos.7711 and 7720 of 2019

Date: 05.11.2019

WRIT PETITION No.7711 of 2019

Between:

Sri G. Prabhakar Reddy, and others

... Petitioners

and

The High Court of Judicature at Hyderabad
For the State of Telangana,
Hyderabad,
Rep. by its Registrar (Administration),
and another

...Respondents

Counsel for the petitioners: Mr. B. Vijaysen Reddy

Counsel for the respondent No.1: Mr. J. Anil Kumar, SC for TSHC

The Court made the following:

Common Order: *(per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)*

Both these writ petitions have been filed for seeking the following reliefs from this Court:

W.P.No.7711 of 2019

“to issue an order or direction more particularly one in the nature of Writ of Mandamus or any other appropriate writ (i) declare that the Senior Assistants, Junior Assistants and Typists who form category 1 to 6 of Judicial Ministerial Service Rules, 2003 shall continued to be eligible to recruitment by transfer to the post of Civil Judges (Junior Division); (ii) declare non-inclusion of the Senior Assistants, Junior Assistants and Typists of Judicial Ministerial Services in the notification No.15/2019-RC dated 08.03.2019 is illegal and arbitrary; (iii) consequently direct that the Senior Assistants, Junior Assistants and Typists of Telangana Judicial Ministerial Services are eligible for recruitment by transfer to the post of Civil Judges notified in notification No.15/2019-RC dated 08.03.2019; and (iv) pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice.”

W.P.No.7720 of 2019

“to issue an appropriate writ, order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the action of the respondent No.2 in not including the employees of Category-7 Senior Assistants, Category-8 Junior Assistants, and Category-9 Typists in Clause-III, (b) (ii) of the Notification No.15/2019-RC dated 8.3.2019 for the posts of Civil Judges, Recruitment by Transfer and consequential rejection of the representation of the petitioners dated 14.3.2018 vide proceedings Roc.No.15/2019-RC dated 28.3.2019 is illegal, arbitrary contrary to law and violation of Articles 14, 16 and 21 of the Constitution of India set aside the rejection order dated 28.3.2019 and consequently direct the 2nd respondent to include the employees of Category-7 Senior Assistants, Category-8 Junior Assistants, and Category-9 Typists in Clause-III (b) (ii) in the Notification No.15/2019-RC dated 8.3.2019 for the posts of Civil Judges, Recruitment by Transfer in the interest of justice and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

The facts are being taken from W.P.No.7711 of 2019.

The petitioners therein claim that prior to 2014, they were appointed on different posts of Senior Assistant, Junior Assistant and Typist on different dates in the composite State of Andhra Pradesh.

According to Rule 5 of the Andhra Pradesh Judicial Ministerial Service Rules, 2003 ('the Rules of 2003', for short), the ministerial services consisted of Officers belonging to different categories. For the purpose of the present writ petition, the relevant categories were as under:

"Category 1: Administrative Officers:- (Formerly designated as Sheristadars of the District Courts including posts formerly designated as Superintendents of the Civil and Criminal Courts in the City of Hyderabad Superintendents in (Telengana area).

Category 2: Superintendents: (Formerly designated as Central Nazirs, Head Clerks or District Courts and Additional District Courts and Hyderabad City Courts and Sheristadars of the Sub-Courts, Translators, Head Clerks of District Munsif Courts, U.D. Record Keepers of District Courts and Senior Superintendents of Copyists of District Courts).

Category 3: Senior Assistants: (Formerly designated as U.D.Cs, Head Clerks of Sub Court, U.D.Bench Clerks of District Courts and Sub-Courts and Deputy Nazirs of the Munsiff Magistrate Courts.)

Category 4: Junior Assistants: (Including posts formerly designated as L.D.Cs, Junior Superintendents of Copyists and Assistant Superintendents of Copyists and Assistant Nazirs.)

Category 5: Personal Assistants: (Formerly designated as Steno-Typists).

Category 6: Typists."

Thus, Senior Assistant, Junior Assistant and Typists were covered by categories 3, 4 and 6; the Stenographers (subsequently referred to as Personal Assistants) were covered by category 5.

Moreover, according to the Andhra Pradesh State Judicial Service Rules, 2007 ('the Rules of 2007', for short),

the post of Junior Civil Judge could be filled up either by 'direct recruitment', or by 'recruitment by transfer'. According to Rule 4 (2)(d)(ii)(ii) of the Rules of 2007, those persons, who were working in Categories 1 to 6 of the Andhra Pradesh Judicial Ministerial Service, would be eligible for applying to the post of Junior Civil Judge in the category of 'recruitment by transfer'. Therefore, those working on the post of Senior Assistant, Junior Assistant and Typist were, indeed, eligible for the post of Junior Civil Judge.

However, by G.O.Ms.No.100, dated 08.08.2013, certain amendments were introduced in the Rules of 2003. The most important amendment for our purpose was Rule 5 dealing with the constitution of the service. Earlier, in 2003, the post of a Stenographer was shown in Category 5. However, with the amendment, it was trifurcated into Grade-I, Grade-II and Grade-III. Thus, the posts in Categories 1 to 6 would include from (i) Administrative Officer and (ii) Stenographer (Grade-III). However, the posts of Senior Assistant, Junior Assistant and Typist were shifted from their previous category numbers and placed in Category Numbers 7, 8 and 9 respectively.

On 31.07.2017, the Telangana State Judicial (Service and Cadre) Rules, 2017 ('the Rules of 2017' for short) were promulgated. According to Rule 4(2)(d)(ii)(b) of the Rules of 2017, the categories of persons from the ministerial staff who would be eligible for the post of Junior Civil Judges were

limited to only Categories 1 to 6. Therefore, according to the Rules of 2017, those persons falling under Categories 7 to 9, namely Senior Assistants, Junior Assistants and Typists, were no longer eligible to apply for the post of Junior Civil Judge.

Furthermore, on 18.05.2018, the Telangana Judicial Ministerial and Subordinate Services Rules, 2018 ('the Rules of 2018' for short) were promulgated. Even in the said Rules, it was prescribed that only those persons who fall within Categories 1 to 6 mentioned in Rule 4(2)(d)(ii)(b) of the Rules of 2017 were eligible to apply for the post of Junior Civil Judge.

However, realizing the mistake which has crept in the Rules of 2017 with regard to the specification of categories of employees who would be entitled to apply for the post of Junior Civil Judge, by letter dated 14.05.2018, the Registrar (Recruitment), High Court for the State of Telangana, requested the Government to amend Rule 4(2)(d)(ii)(b) of the Rules of 2017. The High Court had sought the clarification that Categories 1 to 6 would also include the posts of Senior Assistant, Junior Assistant, and Typist by treating the post of Stenographer as a single post belonged to a single category despite its trifurcation.

Despite the letter written by the Registrar (Recruitment), the Government did not issue the necessary G.O. till 10.04.2019. On the basis of the letter dated 14.05.2018, an

amendment was carried out in Rule 4(2)(d)(ii)(b) of the Rules of 2017.

But, meanwhile, on 08.03.2019, the High Court issued a notification for recruitment for the post of Junior Civil Judge. According to the notification, thirteen posts were available for “recruitment by transfer”. But, as the eligibility criteria had not been amended by the said date, even the notification stipulated that only those personnel working in the Categories 1 to 6 under Rule 4(2)(d)(ii)(b) of the Rules of 2017 would be eligible to be applied for the post of Junior Civil Judge. Aggrieved by the fact that the petitioners were declared to be ineligible both by the Rules, which existed prior to the amendment, and by the eligibility criteria prescribed in the notification, certain writ petitions were filed before this Court including the present writ petitions.

As mentioned hereinabove, by G.O. dated 10.04.2019, Rule 4(2)(d)(ii)(b) of the Rules of 2017 was amended. Consequently, those working on the post of Senior Assistant, Junior Assistant and Typist were declared to be eligible to apply for the post of Junior Civil Judge.

By order dated 10.04.2019, passed in W.P.No.7720 of 2019, this Court had allowed the petitioners therein to provisionally appear in the examination to be held for the post of Junior Civil Judge.

Since Rule 4(2)(d)(ii)(b) of the Rules of 2017 was amended, and since it was felt by this Court that those

persons, who were working on the posts of Senior Assistant, Junior Assistant and Typist should not be denied their right to take the examination, by notification dated 12.04.2019, this Court gave an option to those who were working in the said posts of Senior Assistant, Junior Assistant and Typist to apply for the post of Junior Civil Judge under the Category of 'recruitment by transfer'. Since the last date for filing of the application was 15.04.2019, this Court granted ample opportunities to all the eligible personnel working on the said posts to apply for the post of Junior Civil Judge.

In compliance of the notification dated 12.04.2019, out of 107 eligible candidates, forty-four candidates applied, while sixty-three candidates did not apply despite ample opportunities being given to them by the notification dated 12.04.2019.

After going through the selection process, two persons have been found to be qualified for the post of Junior Civil Judge. However, as by order dated 10.04.2019, it was clearly held out that the results shall be subject to the result of the writ petitions, the final results have not been declared so far. Hence, the present petitions before this Court.

Mr. B. Vijaysen Reddy, the learned Senior Counsel for the petitioners, has raised the following contentions before this Court:

Firstly, the legal issues will have to be decided keeping in mind the circumstances and facts mentioned herein above in a holistic manner.

Secondly, even under the Rules of 2003, the persons who were working against the posts of Senior Assistant, Junior Assistant, and Typist were eligible to apply for the post of Junior Civil Judge. Although the post of Stenographer was trifurcated into three categories, the post of Stenographer, in fact, should be read as belonging to a single category i.e., Category 5. Realizing the mistake that had crept in the Rules of 2017, the High Court had clearly written to the Government to amend Rule 4(2)(d)(ii)(b) of the Rules of 2017. Thus, even the High Court was of the opinion that those who were eligible to apply for the post of Junior Civil Judge, and who inadvertently have been denied the eligibility for the said post, should be given equal chance to compete for the said post. In view of the request made by the High Court, a request made in the year 2018 i.e., prior to the issuance of the notification dated 08.03.2019, by G.O.Ms.No.22, dated 10.04.2019, the said amendment was carried out.

Lastly, keeping in mind that there has to be fairness in action, by notification dated 12.04.2019, this Court had allowed all those persons working on the posts of Senior Assistant, Junior Assistant and Typist to apply for the post of Junior Civil Judge under the category of “recruitment by transfer”. Thus, an even level playing field was created for all

the eligible persons working on the said posts. Therefore, those persons who have qualified for the post of Junior Civil Judge should be appointed on the said post.

On the other hand, Mr. J. Anil Kumar, the learned Standing Counsel for the High Court, submits that the relevant date for application of a law would have to be the date of notification, namely 08.03.2019. As the law stood on that date, the persons working in Categories 1 to 6 were the only eligible candidates for the post of Junior Civil Judge. Therefore, Senior Assistant (Category 7), Junior Assistant (Category 8) and Typist (Category 9) would not be eligible for being appointed for the said post.

Secondly, even if there has been an amendment, the same has come into effect on 10.04.2019. Therefore, the said amendment cannot be given retrospective effect. Moreover, even if there were a notification issued by the High Court, dated 12.04.2019, permitting the persons, who were working on the posts of Senior Assistant, Junior Assistant and Typist, to apply for the posts of Junior Civil Judge, still the benefit cannot be given to them. Therefore, even if two persons belonging to the categories of Senior Assistant, Junior Assistant and Typist, have qualified the examination and are qualified to hold the post of Junior Civil Judge, the benefit cannot be given to them by this Court.

In rejoinder, Mr. B.Vijaysen Reddy, the learned Senior Counsel, has relied on the case of **Commissioner of Income**

Tax (Central)-I, New Delhi v. Vatika Township Private

Limited¹ in order to support the plea that a particular amendment can be treated as clarificatory in nature; a clarificatory amendment can be given retrospective effect. Therefore, the amendment dated 10.04.2019 being merely clarificatory in nature can be given retrospective effect; it can be applied to the notification dated 08.03.2019. Hence applying the clarificatory amendment, those who are/were working on the posts of Senior Assistant, Junior Assistant and Typist would be deemed to be eligible for the post of Junior Civil Judge. Hence, those who have qualified for the post of Junior Civil Judge perforce should be appointed.

Heard the learned counsel for the parties, and perused the record.

Admittedly, under the Rules of 2003, the persons belonging to Categories 1 to 6, including those persons, who were working on the posts of Senior Assistant, Junior Assistant and Typist, were, indeed, eligible to apply for the post of Junior Civil Judge. Undoubtedly, by G.O.Ms.No.100, dated 08.08.2013, the post of Stenographer was trifurcated into three categories, namely Grade-I, Grade-II and Grade-III. But nonetheless, the post of Stenographer belongs to a particular category, namely Category 5. Therefore, at best, the category might have been divided as Category 5 (a), (b) and (c). Unfortunately, this was not the case. Moreover, while

¹ (2015) 1 SCC

enacting the Rules of 2017, under Rule 4(2)(d)(ii)(b) thereof, it was inadvertently mentioned that the personnel working against Categories 1 to 6 would be eligible to apply for the post of Junior Civil Judge. Thereby excluding the persons from Categories 7, 8, and 9. However, subsequently, when the mistake was discovered, in order to be fair to the persons working in category Nos. 7, 8 and 9, by letter dated 14.05.2018, the High Court had written to the Government to amend the said Rule so as to include the renumbered categories i.e., Categories 7 to 9, and to equally make these persons of Categories 7 to 9 eligible to apply for the post of Junior Civil Judge.

Since the amendment had not been brought out, obviously, while issuing the notification dated 08.03.2019, the notification perforce had to be in consonance with the Rules of 2017. Therefore, the notification made only those persons who were working against Categories 1 to 6 eligible, while denying the eligibility to those persons who were working under Categories 7 to 9. But, nonetheless, the intention always was to permit those persons, who are working against Categories 7 to 9, to apply for the post of Junior Civil Judge. Keeping in mind that inadvertently a mistake had crept in under the Rules of 2017, keeping in mind the G.O. dated 10.04.2019, by order dated 10.04.2019, this Court even permitted those who were working in

Category Nos. 7, 8 and 9 to provisionally take the examination.

The amendment dated 10.04.2019, as mentioned hereinabove, is based on the request made by the High Court by its letter dated 14.05.2018. Thus, obviously, the amendment is clarificatory in nature. Being clarificatory in nature, the amendment can be given retrospective effect. Therefore, the amendment can easily be applied to the notification dated 08.03.2019. For, the amendment merely reveals the intention of the High Court to be fair in action, and not to deny the eligibility to those who were working against Categories 7 to 9. For, after all, the very same persons were, indeed, eligible for the post of Junior Civil Judge prior to the trifurcation of the category of the Stenographer.

Keeping in mind that the action of the Judiciary has to be just, fair and reasonable, immediately after the amendment came into force on 10.04.2019, by notification dated 12.04.2019, the High Court permitted those persons who were working against the posts of Senior Assistant (Category 7), Junior Assistant (Category 8) and Typist (Category 9) to immediately apply for the post of Junior Civil Judge under 'recruitment by transfer' clause.

As mentioned above, forty-four persons had, indeed, applied for the post of Junior Civil Judge, while sixty-three persons chose not to apply despite the notification dated

12.04.2019. After having faced the selection process, out of forty-four persons, only two persons have qualified for the said post. Since the amendment dated 10.04.2019 can be given retrospective effect, those two persons, who have applied under the notification dated 08.03.2019, can, indeed, be appointed, if they have qualified for the post of Junior Civil Judge.

Therefore, this Court directs the respondent No.2 to declare the result of those two persons, who are qualified for the post of Junior Civil Judge. This Court further directs that in case the two persons are found to be suitable for the post of Junior Civil Judge, they shall be appointed to the said post.

Both the writ petitions stand disposed of accordingly. There shall be no order as to costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

(RAGHVENDRA SINGH CHAUHAN, CJ)

(A. ABHISHEK REDDY, J)

Date: 05.11.2019
va