

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

Writ Petition Nos.23658, 23659, 5284 & 5285 of 2019

and

34953, 35166, 35195 & 35978 of 2018

05.11.2019

Between:

R. Anitha and others

...Petitioners

and

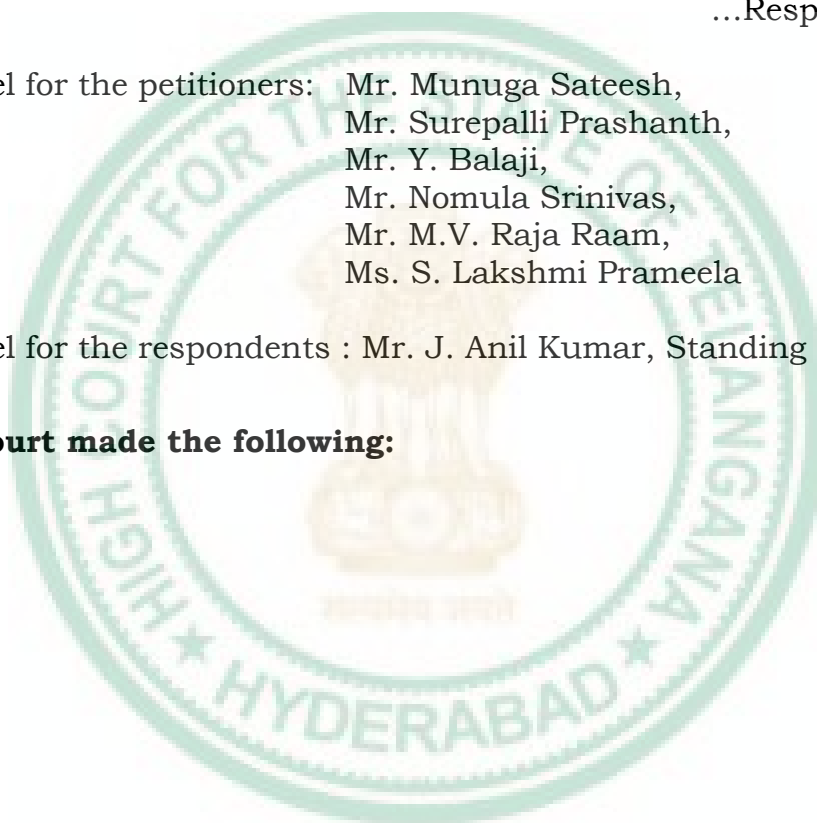
The State of Telangana and others

...Respondents

Counsel for the petitioners: Mr. Munuga Sateesh,
Mr. Surepalli Prashanth,
Mr. Y. Balaji,
Mr. Nomula Srinivas,
Mr. M.V. Raja Raam,
Ms. S. Lakshmi Prameela

Counsel for the respondents : Mr. J. Anil Kumar, Standing Counsel

The Court made the following:



COMMON ORDER: (Per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)

Aggrieved by the imposition of the pre-requisite condition that a candidate appearing for direct recruitment for the post of Junior Civil Judge shall have three years of experience as an Advocate to be eligible for the said post, as prescribed by the Rule 5(2)(a)(i) of the Telangana State Judicial Service Rules, 2017 ("the Rules", for short), also aggrieved by the imposition of the same condition in the Notification dated 08.03.2019, issued by the Registrar (Administration) of the High Court for the State of Telangana, the petitioners have approached this Court for challenging the constitutional validity of both Rule 5(2)(a)(i) of the Rules, and of the Notification dated 08.03.2019.

Since all these writ petitions challenge the same Rule, and the same Notification, since similar arguments have been raised by both the parties, all these writ petitions are being decided by this common order.

The facts are being taken from W.P.No.23658 of 2019.

According to the petitioners, they have graduated from the Osmania University, and have earned the Degree of L.L.B. in different years. After having completed their legal studies, they were eager to join the judicial service of the State. By notification dated 08.03.2019, the High Court had declared the existence of fifty four vacancies for direct recruitment. However, in the said notification, Clause III prescribes the qualifications. According to Clause III(a), *"a person who has been practicing for not less than three(3) years as an Advocate, as on the date of publication of the notification/advertisement in the news papers, shall be eligible to apply for the post of Civil Judge under Direct Recruitment"*. Even

Rule 5(2)(a)(i) of the Rules, clearly stipulate that “one, who has been practicing for not less than 3 years as an Advocate as on the date of publication of the advertisement in the news papers shall be eligible for appointment to the category of Civil Judges”. Thus, a pre-requisite condition has been imposed on the candidates desiring to enter the lowest post of the judicial service that they must have three years of practice at the Bar. Since the petitioners do not have the said qualification, and since the petitioners are aggrieved by the said eligibility criteria, they have approached this Court as aforementioned, for challenging both the impugned Rules and the impugned Notification.

By order dated 14.03.2019, this Court had permitted the petitioners to appear provisionally in the written examination held on 17.08.2019 and 18.08.2019. However, this Court had also made it amply clear that merely because they pass the examination, they cannot claim any equity in their favour. By order dated 01.10.2019, a provisional selection list has been declared by High Court. However, the final selection list cannot be declared, till these writ petitions are decided by this Court.

The learned counsel for the petitioners have vehemently pleaded that the issue whether a pre-requisite of experience at the Bar can be imposed upon a candidate desiring to enter the judicial service or not is no longer *res integra*, as the said issue has already been settled by the Hon’ble Supreme Court in the case of **All India Judges’ Association and others vs. Union of India [(2002) 4 SCC 247]**. According to the Hon’ble Supreme Court, such a pre-requisite cannot be prescribed in the Service Rules. Therefore, the Hon’ble Supreme Court had directed the High Court and the State

Government to amend the Judicial Service Rules and to delete the imposition of such a pre-requisite condition.

Secondly, once such a direction has been given by the Hon'ble Supreme Court, under Article 141 of the Constitution of India, the High Courts are legally bound to implement the direction. According to the learned counsel for the petitioners, since Rule 5(2)(a)(i) of the Rules is contrary to the direction of the Hon'ble Supreme Court, obviously, it is an unconstitutional provision. Therefore, in the light of the unconstitutional provision, the Notification dated 08.03.2019 could not have imposed this unreasonable condition upon the petitioners. Hence, the prayer by the petitioners is that not only the Rule and the Notification should be declared as unconstitutional, but the results of the petitioners should equally be declared and those who are found eligible and suitable, according to the performance in the written examination and viva-voce, should be selected and appointed as Junior Civil Judges.

On the other hand, Mr. J. Anil Kumar, the learned Standing Counsel for the respondent No.2, has pleaded that according to Article 235 of the Constitution of India, the control over the subordinate courts vests with the High Court. Therefore, any direction issued by the Hon'ble Supreme Court can neither dilute, nor adversely affect the control of the High Court over the subordinate courts. Therefore, the High Court is not bound by the "direction" issued by the Hon'ble Supreme Court in the case of **All India Judges' Association and others** (supra). Moreover, since the High Court has the power of supervision and control, sufficient freedom at the joints would have to be given to the High Court to

prescribe the eligibility conditions for recruitment. Hence, the High Court was justified in prescribing the pre-requisite of three years of experience at the Bar.

Secondly, the direction issued by the Hon'ble Supreme Court in the case of **All India Judges' Association and others** (supra) is not in perpetuity.

In order to buttress his pleas, the learned Standing Counsel has relied on the cases of **K.H. Siraj vs. High Court of Kerala and others [(2006) 6 SCC 395]** and **Rakhi Ray and others vs. High Court of Delhi and others [(2010) 2 SCC 637]**. Thus, the learned Standing Counsel has supported the constitutional validity of both the impugned Rules, and of the impugned Notification.

Heard the learned counsel for the parties.

Article 141 of the Constitution of India is as under:-

"Law declared by Supreme Court to be binding on all courts:- *The law declared by the Supreme Court shall be binding on all courts within the territory of India."*

A bare perusal of the said provision clearly reveals that the Article uses the word "*shall*", which obviously gives a mandatory colour to the said Article. Therefore, once the law has been declared by the Apex Court, it becomes the law of the land. The said law is binding on all the Courts within the territory of India.

In the case of **All India Judges' Association and others** (supra), in paragraph 32 at page No.272, the Hon'ble Supreme Court held as under:

In All India Judges' Assn. case [(1992) 1 SCC 119] (at p. 314) 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 atleast three years' standing. We, accordingly, in the light of experience gained after the judgment in All India Judges case direct to the High Courts and to the State Governments to amend their rules so as to enable a fresh law graduate who may not even have put in 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 training of not less than one year, preferably two years.

A bare perusal of the said paragraph clearly reveals that the Apex Court has “directed the High Courts and the State Governments to amend the Rules, so as to enable a fresh law graduate, who may not have any experience at the Bar, to be eligible to compete and to enter the judicial service”. Once the word “*direct*” has been used, obviously the High Courts and the State Governments have no other option, but to amend the Judicial Service Rules and to bring them in consonance with “the direction” issued by the Apex Court.

A bare perusal of the above paragraph also reveals that the Apex Court has used the word “*recommend*”, as far as the duration of the training is concerned. Thus, the duration of the training has

been left to the discretion of the High Courts. Although the recommendation clearly states that “for the fresh recruits, the training should not be less than one year and preferably for two years”, however, the Apex Court has still left the duration of the training period, to be prescribed, to the discretion of each High Court.

However, as far as the imposition of the pre-requisite of experience of three years at the Bar is concerned, obviously the imposition of such a condition would be contrary to “the direction” issued by the Apex Court in paragraph 32 mentioned hereinabove. Therefore, the imposition of such a condition would also be in violation of Article 141 of the Constitution of India.

Undoubtedly, Article 235 of the Constitution of India does bestow the power of control and supervision on the High Court over the District Courts. However, merely because the High Court has the power of control and supervision over the subordinate courts does not deviate from the fact that the Article 141 of the Constitution of India creates a binding effect upon the decision of the Supreme Court. The High Courts are constitutionally duty bound to follow a “direction” issued by the Hon’ble Supreme Court. Therefore, the contention raised by the learned counsel for the respondent No.2 is clearly unacceptable.

While relying on the case of **Rakhi Ray** (supra), the learned Standing counsel has relied on paragraph 20, and specifically on the sentence that “*of course, in absence of statutory rule to deal with a particular issue, the High Courts are bound to give effect to the directions issued by this Court*”. But, even the said observation of the Apex Court does not permit the High Courts to forget or to

ignore the mandatory nature of Article 141 of the Constitution of India. Therefore, the case of **Rakhi Ray** (supra) does not come to the rescue of the respondents.

In the case of **K.H. Suraj** (supra), the Apex Court has observed as under:-

“In addition, further requirements are necessary for assessment of suitability of the candidate and that is why power is vested in a high-powered body like the High Court to evolve its own procedure as it is the best judge in the matter. It will not be proper in any other authority to confine the High Court within any limits and it is, therefore, that the evolution of the procedure has been left to the High Court itself. When a high-powered constitutional authority is left with such power and it has evolved the procedure which is germane and best suited to achieve the object, it is not proper to scuttle the same as beyond its powers. Reference in this connection may be made to the decision of this Court in Union of India vs. Kali Dass Batish [(2006) 1 SCC 779] wherein an action of the Chief Justice of India was sought to be questioned before the High Court and it was held to be improper.”

The principle stated by the Apex Court cannot be questioned. However, the said principle was stated by the Hon'ble Supreme Court in a different factual matrix. The issue before the Apex Court was whether the High Courts are empowered to prescribe the minimum pass marks in written and oral examination in order to get the best available talent or not? Therefore, the observations made by the Apex Court are inapplicable to the present case.

Since in the case of **All India Judges' Association and others** (supra), the Apex Court had “directed” the High Courts to amend the Service Rules and to delete any imposition of a pre-requisite of three years experience at the Bar, and since Rule 5(2)(a)(i) of the Rules and the Notification dated 08.03.2019 are

contrary to the said “direction”, obviously Rule 5(2)(a)(i) of the Rules is unconstitutional. Hence, the impugned Notification, which is based on Rule 5(2)(a)(i) of the Rules, is equally unsustainable. Therefore, the imposition of the said condition by Notification dated 08.03.2019 cannot be read as an obstacle to the eligibility of those who are freshly out of the law colleges. Even such fresh candidates would be deemed to be eligible to apply for the post of Junior Civil Judges in the State.

Therefore, this Court directs that the cases of the petitioners should be considered for the post of Junior Civil Judges, and if they are found to be eligible and suitable, and are above the cut-off marks, their results should be declared by the High Court.

All these writ petitions are, hereby, allowed. There shall be no order as to costs.

The miscellaneous petitions pending, if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, CJ

A. ABHISHEK REDDY, J

05th November, 2019

Note: L.R. copy to be marked.

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