IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPs No. 882 & 907 of 2019

Decided on: 25.02.2020

CWP No. 882 of 2019

Dhiru Thakur …Petitioner

Versus

The High Court of Himachal Pradesh and others …Respondents

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CWP No. 907 of 2019

Mohit Bansal …Petitioner

Versus

The High Court of Himachal Pradesh and another …Respondents

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The Hon'ble Mr. Justice L. Narayana Swamy, Chief Justice.
The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?[1]

For the petitioner(s): Mr. Devender K. Sharma, Advocate.

For the respondent(s): Mr. Bipin C. Negi, Senior Advocate, with Ms. Komal Chaudhary, Advocate, for respondent No. 1 in both the writ petitions.

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[1] *Whether reporters of the local papers may be allowed to see the judgment?*

Mr. Ashok Sharma, Advocate General, with M/s. J.K. Verma, Adarsh K. Sharma, Ritta Goswami and Nand Lal Thakur, Additional Advocates General, for respondent No. 2 in both the writ petitions.

Mr. K.D. Shreedhar, Senior Advocate, with Ms. Shreya Chauhan, Advocate, for respondent No. 3 in CWP No. 882 of 2019.

L. Narayana Swamy, Chief Justice. *(Oral)*

Respondent No. 1-High Court of Himachal Pradesh issued Notification, dated 16th April, 2019 (Annexure P-1), inviting applications from the eligible candidates, namely members of the Bar (Advocates), for appointment as Additional District and Sessions Judges in H.P. Judicial Service in the cadre of District Judges/Additional District Judges.

2. Pursuant to the said Notification, the petitioners, considering themselves eligible in view of the total period spent by them in the legal profession and judicial service, submitted their respective applications,

3. The grouse of the petitioners is that they have been working as Senior Sub Judges/Additional Chief Judicial

Magistrate and Central Project Co-ordinator, respectively, since 22nd April, 2019 and having more than seven years of experience as Judicial Officers and also as Advocates before becoming Judicial Officers, and in terms of Article 233 (2) of the Constitution of India, the time spent as an Advocate in the Bar and also in the service is to be computed for the said purpose for the requirement of seven years experience in the Bar. Hence, the instant writ petitions have been filed seeking directions to respondent No. 1 to accept the petitioners' candidatures for H.P. Higher Judicial Services Examination, 2019. A writ in the nature of mandamus has also been sought directing respondent No. 1 to amend Rule 5 (c) of the H.P. Higher Judicial Services Rules, 2004 and also the Notification dated 16th April, 2019 for the direct recruitment of District Judges-2019, being inconsistent with Article 233 (2) of the Constitution of India and violative of Articles 14, 16 and 21 of the Constitution.

4. The applications filed for interim directions have been considered by this Court and interim orders have been passed in favour of the petitioners directing respondent No. 1

to accept their applications provisionally, subject to the final outcome of the writ petitions.

5. It is apt to record herein that a batch of similar matters, being **Civil Appeal No. 1698 of 2020,** titled as **Dheeraj Mor versus Hon'ble High Court of Delhi,** arising out of SLP (C) No. 14156 of 2015, alongwith other connected matters, was pending adjudication before the Hon'ble Supreme Court and the same came to be disposed of vide judgment, dated 19th February, 2020, wherein it has been held in para 47 that the members of judicial service having combined experience of seven years as lawyer and member of judiciary, are not eligible to apply for direct recruitment as a District Judge. It is profitable to reproduce relevant portion of para 47 of the judgment herein:

> *"47. … … …*
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> *(iv) For the purpose of Article 233 (2), an Advocate has to be continuing in practice for not less than 7 years as on the cut-off date and at the time of appointment as District Judge. Members of judicial service having 7 years' experience of practice before they have joined the service of having combined experience of 7 years*

as lawyer and member of judiciary, are not eligible to apply for direct recruitment as a District Judge.

(v) The rules framed by the High Court prohibiting judicial service officers from staking claim to the post of District Judge against the posts reserved for Advocates by way of direct recruitment, cannot be said to be ultra vires and are in conformity with Articles 14, 16 and 233 of the Constitution of India."

6. In view of the judgment (supra), the prayers made by the writ petitioners do not survive for consideration. Accordingly, both the writ petitions are dismissed, so also the pending miscellaneous applications, if any.

7. In view of the dismissal of the writ petitions, respondent No. 1 is directed to proceed further for issuance of necessary orders, in accordance with law. Copy **dasti.**

(L. Narayana Swamy)
Chief Justice

(Jyotsna Rewal Dua)
Judge

February 25, 2020
(rajni)