



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.NO.4205 OF 2020
AND

W.M.P.NOS.4973 AND 4969 OF 2020

Narasimmabalan

.. Petitioner

.Vs.

1. Union of India,
Rep. by The Chief Secretary to Government,
Government of Puducherry,
Puducherry.
2. The Secretary to Government,
Department of Law,
Government of Puducherry,
Puducherry.
3. The Registrar (District Judiciary),
High Court, Madras,
Chennai 600 104.
4. The Pondicherry Advocate
Bar Association,
District Court Complex,
Mudaliarpet, Puducherry,
Rep. by its President,
Thiru.S.Moultouvel.
5. Union of India,
Rep. by its Deputy Secretary
to Government,
Ministry of Law and Justice,
4th Floor, A-Wing,
Shastri Bhawan,
New Delhi 110 001.



6. The Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi 110 069.

(RR5 and 6 impleaded vide order
dated 17.3.2020 made in
W.M.P.No.8060 of 2020)

.. Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for records of the 2nd respondent in relation to the Government of Puducherry, Law Department (Director in the Directorate of Prosecution) Recruitment Rules, 2003 published in G.O.Ms.No.50/2003/LD, dated 18th December, 2003 and the consequential official memorandum issued by the 3rd respondent in R.O.C.No.95436/2019/B2 dated 04.12.2019 and quash the same as unconstitutional and illegal and consequently direct the respondents Nos.1 to 3 to appoint an Advocate who has been in practice for not less than ten years as the Director of Prosecution as enumerated under Section 25-A of Criminal Procedure Code.

For Petitioner : Mr.M.R.Thangavel

For Respondents : Mr.Syed Mustafa
Additional Government Pleader (P)
for RR 1 & 2

: Mr.V.Vijay Shankar for R3

: No appearance for R4

: Mr.S.S.Pajaniradja
SPCCG, for R5

: Mr.V.Chandarasekaran for R6

ORDER

(Order of the Court was made by
the Hon'ble Chief Justice)

By this writ petition, a challenge is made to the G.O. dated 18.12.2003 notifying the Government of Puducherry, Law Department (Director in the Directorate of Prosecution) Recruitment Rules, 2003.



2. The challenge to the Rules has been made mainly in reference to the qualification for appointment on the post of Director of Prosecution. According to the petitioner, it is not in conformity with Section 25-A of the Code of Criminal Procedure, 1973 as amended by the notification dated 23.06.2006. The amended provision reads as under:-

"25A. Directorate of Prosecution.-(1) The State Government may establish a Directorate of Prosecution consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit.

(2) A person shall be eligible to be appointed as a Director of Prosecution or a Deputy Director of Prosecution, only if he has been in practice as an advocate for not less than ten years and such appointment shall be made with the concurrence of the Chief Justice of the High Court.

(3) The Head of the Directorate of Prosecution shall be the Director of Prosecution, who shall function under the administrative control of the Head of the Home Department in the State.

(4) Every Deputy Director of Prosecution shall be subordinate to the Director of Prosecution.

(5) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (1), or as the case may be, sub-section (8), of section 24 to conduct cases in the High Court shall be subordinate to the Director of Prosecution.

(6) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (3), or as the case may be, sub-section (8), of section 24 to conduct cases in District Courts and every Assistant Public Prosecutor appointed under sub-section (1) of section 25 shall be subordinate to the Deputy Director of Prosecution.

(7) The powers and functions of the Director of Prosecution and the Deputy Directors of Prosecution and the areas for which each of the Deputy Directors of Prosecution have been appointed shall be such as the State Government may, by notification, specify.



(8) The provisions of this section shall not apply to the Advocate General for the State while performing the functions of a Public Prosecutor."

3. As per the amended provision, a person would be eligible only if he has been in practice as an advocate for not less than ten years and such appointment to be made in concurrence with the Chief Justice of the High Court. It is submitted that despite the amendment in the Code, Rules of 2003 were not amended to make it in consonance with the amended provision quoted above. The post aforesaid has been allowed to be filed by way of promotion/deputation/absorption from and amongst even who is not having ten years of practice as an advocate. The prayer is to struck down the Rules being in conflict with the statutory provision. A challenge to the official memorandum dated 04.12.2019 has also been made, but the same does not survive as it was subsequently withdrawn by the respondents.

4. The learned Additional Government Pleader appearing for the State of Puducherry submits that they have taken process of amending the Rules of 2003. The objections against the draft rules have already been invited. It is going to be sent to the Union Public Service Commission as the State of Puducherry is a Union Territory.

5. We are at present not addressing the draft rules by which the Rules of 2003 is going to be amended, but addressing the Rules under challenge. The qualification given thereunder with hierarchy for filling the post is quoted hereunder for ready reference:-

11.Method of recruitment, whether by direct recruitment or by promotion or by deputation/absorption and percentage of the posts to be filled by various methods.	Deputation/promotion
12.In case of recruitment by promotion/ absorption, grades from which promotion/ deputation/absorption is to be made	Deputation: I.Officers under the Central/State Governments/ Union Territories: (a)(i)holding analogous post on regular basis in the parent cadre/department; or



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(ii)with five years' service in the grade rendered after appointment thereto on a regular basis in the scale of pay of Rs.8,000-13,500 or equivalent in the parent cadre/department; or

(iii)with seven years' service in the grade rendered after appointment thereto on a regular basis in the scale of pay of Rs.7,450-11,500 or equivalent in the present cadre/ department; or

(iv) with eight years' service in the grade rendered after appointment thereto on a regular basis in the scale of pay of Rs.6,500-10,500 or equivalent in the present cadre/department; and

(b)possessing the following educational qualifications and experience:-

(i)Degree in Law of a recognised University or equivalent;

(ii) Five years' experience as Public Prosecutor or equivalent experience in the Law/Legal Department of Central/State/Union Territory Administration;

(iii) knowledge of Tamil.

II.The Departmental Deputy Director of Prosecution with seven years' regular service in the grade shall also be considered alongwith outsiders. In case he is selected for appointment to



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	the post, the same shall be deemed to have been filed by promotion
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6. The Rules of 2003 for the post of Director of Prosecution are not only in conflict with regard to the mode of filling up the post but the qualification also as it is not in pace with the provisions of the Code of 1973 and accordingly, the Rules of 2003 providing the qualification for the post of Director of Prosecution is held to be illegal so as the mode of recruitment by promotion, deputation or even absorption.

The writ petition is allowed with the aforesaid, however, it will not preclude the respondents to come out with the new Rules to make it in consonance with Section 25-A of the Code of Criminal Procedure, 1973. No costs. Consequently, W.M.P.Nos.4969 and 4973 of 2020 are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sra

To

1. The Chief Secretary to Government,
Union of India,
Government of Puducherry,
Puducherry.
2. The Secretary to Government,
Department of Law,
Government of Puducherry,
Puducherry.
3. The Registrar (District Judiciary),
High Court, Madras,
Chennai 600 104.
4. The Deputy Secretary to Govt.,
Union of India,
Ministry of Law and Justice,
4th Floor, A-Wing,
Shastri Bhawan,
New Delhi 110 001.



5. The Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi 110 069.

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+1cc to Mr.C.Anbu, Advocate, S.R.No.15444
+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.15334
+2cc to Mr.V.P.Chamuraj, Advocate, S.R.No.15707
+1cc to the Government Pleader,Puducherry. S.R.No.15128

W.P.No.4205 of 2020

NRL (CO)
CT 18/03/2022