



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 21-07-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.21185 of 2023

B.Jeevan Kumar

...

Petitioner

-VS-

1.The Principal Secretary,
Home Department,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.

2.The Additional Chief Secretary to Government,
Home Department,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.

3.The Secretary to Government,
Public (Special-A) Department,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.

4.The Registrar General,
High Court of Judicature, Madras,
Chennai-600 104.

...

Respondents



Petition under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to accept the petitioner's resignation w.e.f. 20.04.2023 and to formally relieve the petitioner from service as Civil Judge (Junior Division) and to direct the respondents to accept the application of the petitioner pursuant to Notification No.01/2023, dated 01.07.2023, for the post of District Judge (Entry Level) – Direct Recruitment for Tamil Nadu State Judicial Service, by relaxing Clause (3) of the qualification prescribed under Rule 8 pertaining to District Judge (Entry Level) at Sl.No.3 and to permit him to participate in the selection process as per Notification No.01/2023, dated 01.07.2023.

For Petitioner : Mr.S.R.Rajagopal

For Respondents 1 to 3 : Mrs.V.Yamuna Devi,
Spl.Govt.Pleader.

For Respondent 4 : Mr.B.Vijay,
Standing Counsel.

ORDER

(By *S.Vaidyanathan,J.*)

Petitioner, who was enrolled as an Advocate in the year 2005, joined the post of Junior Civil Judge in Tamil Nadu State Judicial Service on 19.06.2019, pursuant to the Notification of the year 2018. On 19.01.2023, he submitted his resignation to the first respondent - Principal Secretary, Home Department, through the fourth respondent - Registrar General. Thereafter, Notification No.01/2023, dated 01.07.2023, was issued by the Government for recruitment to the post of District Judge (Entry Level) in Tamil



Nadu State Judicial Service. As he is eligible to apply for the said post, he has filed this Writ Petition.

2. On 28.04.2023, the fourth respondent – Registrar General, addressed a communication to the Government, stating that permission to resign from service may be accepted and the petitioner be relieved. Pursuant to the said letter, today, the respondents have produced a Government Order vide G.O.(D) No.834, Home (Courts-I) Department, dated 20.07.2023, accepting the resignation of the petitioner.

3. Mr.B.Vijay, learned counsel for the fourth respondent – Registrar General, has vehemently contended that in the light of Sub-clause (2) of Column (4) of Serial No.3 of the Schedule in Rule 5 of Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules,2007, pertaining to method of Appointment, Qualification and Age, a person must be practising on the date of notification as an advocate and must have so practised for a period of not less than seven years as on such date. He would also submit that since the petitioner is not a practising advocate on the date of Notification, his candidature cannot be considered and that in terms of Article 233 (2) of the Constitution of India, the petitioner is not eligible for making any application.

4. We have heard the learned counsel for the parties and also gone through the material available on record.



5. For the sake of convenience, Article 233 of the Constitution of India, Rule 41-A of Tamil Nadu State and Subordinate Services Rules, in short, "the Rules", and the relevant paragraphs of the decision of the Apex Court in *Dheeraj Mor v. High Court of Delhi*, 2020 (7) SCC 401, are extracted below :

Article 233 of the Constitution of India :

(1) Appointments of persons to be, and the posting and promotion of, District Judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a District Judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

Rule 41-A of Tamil Nadu State and Subordinate Services Rules :

41-A. Acceptance of resignation (a) - A Government servant may resign his appointment by giving notice of not less than three months in writing direct to the appointing authority with a copy marked to his immediate superior officer. The period of three months notice shall be reckoned from the date of receipt of such notice by the appointing authority.



(b) The Government servant may withdraw the notice of his resignation before its acceptance. Withdrawal of resignation will not be permitted after its acceptance by the appointing authority.

(c) The appointing authority shall issue orders on the notice of resignation before the date of expiry of notice, either accepting the resignation from a date not later than the date of expiry of the notice or rejecting the same, giving the reasons therefor. If no such order is passed, the resignation shall be deemed to have been accepted on the expiry of the period of notice.

(d) Notice of resignation given by the Government servant shall be accepted by the appointing authority, subject to the condition:—

(i) that not disciplinary proceeding is contemplated or pending against the Government servant concerned under sub-rule (b) of rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules;

(ii) that a report from the Director of Vigilance and Anti-corruption has been obtained to the effect that no enquiry is contemplated or pending against the Government servant concerned;

(iii) that no dues are pending to be recovered by the Government from the Government servant concerned:

(iv) that there is no contractual obligation of any kind including contractual obligation to serve the Government during the period in which the Government servant concerned seeks to resign.

(e) Notwithstanding anything contained in clauses (i) and (ii) of sub-rule (d), where a Government servant, under suspension or against whom disciplinary or criminal action or vigilance enquiry is pending,



seeks to resign, the appointing authority shall examine the nature and gravity of the case and may accept the resignation, if the case is not such as would warrant rejection of the notice of resignation.

Dheeraj Mor v. High Court of Delhi, 2020 (7) SCC 401 :

1. A Division Bench of this Court has referred the matters. The question involved in the matters is the interpretation of Article 233 of the Constitution of India as to the eligibility of members of the subordinate judicial service for appointment as District Judge as against the quota reserved for the Bar by way of direct recruitment. The petitioners who are in judicial service, have claimed that in case before joining judicial service a candidate has completed 7 years of practice as an advocate, he/she shall be eligible to stake claim as against the direct recruitment quota from the Bar notwithstanding that on the date of application/appointment, he or she is in judicial service of the Union or State. Yet another category is that of the persons having completed only 7 years of service as judicial service. They contend that experience as a judge be treated at par with the Bar service, and they should be permitted to stake their claim. The third category is hybrid, consisting of candidates who have completed 7 years' by combining the experience serving as a judicial officer and as advocate. They claim to be eligible to stake their claim against the above quota.

xxxxxxx

45. We are of the opinion that for direct recruitment as District Judge as against the quota fixed for the advocates/pleaders, incumbent has to be practicing advocate and must be in practice as on the cu-off date



and at the time of appointment he must not be in judicial service or other services of the Union or State. For constituting experience of 7 years of practice as advocate, experience obtained in judicial service cannot be equated/combined and advocate/pleader should be in practice in the immediate past for 7 years and must be in practice while applying on the cut-off date fixed under the rules and should be in practice as an advocate on the date of appointment. The purpose is recruitment from bar of a practicing advocate having minimum 7 years' experience.

46. In view of the aforesaid interpretation of Article 233, we find that rules debarring judicial officers from staking their claim as against the posts reserved for direct recruitment from bar are not ultra vires as rules are subservient to the provisions of the Constitution.

47. We answer the reference as under :-

47.1. The members in the judicial service of the State can be appointed as District Judges by way of promotion or limited competitive examination.

47.2. The Governor of a State is the authority for the purpose of appointment, promotion, posting and transfer, the eligibility is governed by the Rules framed under Articles 234 and 235.

47.3. Under Article 232(2), an Advocate or a pleader with 7 years of practice can be appointed as District Judge by way of direct recruitment in case he is not already in the judicial service of the Union or a State.



47.4. 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 or having combined experience of 7 years as lawyer and member of judiciary, are not eligible to apply for direct recruitment as a District Judge.

47.5. 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.

47.6. The decision in Vijay Kumar Mishra (supra) providing eligibility, of judicial officer to compete as against the post of District Judge by way of direct recruitment, cannot be said to be laying down the law correctly. The same is hereby overruled.

6. The extracts mentioned supra and the letter of resignation submitted by the petitioner on 19.01.2023 would make it very clear that the resignation will come into effect after expiry of three months, provided the same has not been rejected. In the case on hand, it has not been rejected. Hence, it has deemed effect of coming into force. The Notification for submitting application to the post of District Judge (Entry Level) is dated 01.07.2023.

7. A reading of Paragraph 45 of the order of the Supreme Court in *Dheeraj*



Mor, cited supra, would make it clear that the incumbent has to be a practising advocate and must be in practice as on the cut-off date and at the time of appointment he must not be in judicial service or other services of the Union or State. (emphasis supplied)

8. In the above said case, the Supreme Court has considered a case pertaining to an in-service candidate. In view of the deeming provision with regard to acceptance of resignation, the petitioner herein could not be treated as a Judicial Officer after expiry of three months from the date of submission of resignation, as the same has not been rejected. Issuance of G.O. is only a formality and resignation will take effect only on and from the date of expiry of three months. Because of the pendency of acceptance of resignation, even though it is not required in the present case in view of the deeming provision, the petitioner could not have renewed his practice.

9. A perusal of the Notification in this case would make it manifest that the candidate must be a practising advocate on the date of Notification. Firstly, this is not possible, as stated above, because of the pendency of acceptance of resignation. In view of this, the Bar Council of Tamil Nadu & Puducherry has not renewed his licence to practise. The second limb of contention in the Notification is that the candidate must have so practised for a period of not less than seven years as on such date. On the date of Notification, the petitioner has put in more than 14 years of service, as he had such practice when he applied for the post of Junior Civil Judge. There is a vast difference between the observation made by the Supreme Court in Paragraph 45 in the case of



Dheeraj Mor, mentioned above, and the present Notification. The second portion of the Notification mentioned in this case was not available before the Supreme Court, which considered only about the in-service candidates as to whether seven years of practice will have to be taken into account by clubbing the practice period and the service period in the Subordinate Judiciary in order to consider the case of the candidate to appear for the examination to the post of District Judge. In addition, in this case, the Government has also accepted the resignation of the petitioner vide G.O.(D) No.834, Home (Courts-I) Department, dated 20.07.2023, and the resignation is deemed to have been accepted on completion of three months' period, as contemplated under Rule 41-A of the Rules.

10. As the instant case is distinguishable, we are of the view that the petitioner is entitled to make an application under the Notification to the post of District Judge (Entry Level) and the same shall be accepted.

11. Bar Council of Tamil Nadu & Puducherry is expected to renew the practice of the petitioner on or before 27.07.2023 without waiting for any further clarification and to avoid any technical objection that may be made by the respondents.

With regard to selection, we do not express any opinion on merit.

12. Writ Petition is allowed. No costs. Consequently, the connected W.M.P.No.20595 of 2023 stands closed.

Index : Yes/No

(S.V.N.,J.)

(K.R.S.,J.)



11/12



W.P.No.21103/2023

Internet : Yes/No
dixit

21-07-2023

WEB COPY

Note to Office :

Issue Order Copy on 26.07.2023

To

- 1.The Principal Secretary,
Home Department,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.
- 2.The Additional Chief Secretary to Government,
Home Department,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.
- 3.The Secretary to Government,
Public (Special-A) Department,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.
- 4.The Registrar General,
High Court of Judicature, Madras,
Chennai-600 104.



WEB COPY

12/12



W.P.No.21185/2023

S.VAIDYANATHAN,J.
AND
K.RAJASEKAR,J.

dixit

W.P.No.21185 of 2023

21-07-2023