



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-02-2024

CORAM

**THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM
And
THE HONOURABLE MR. JUSTICE K.RAJASEKAR**

**WP No.21169 of 2023
And
WMP No.20574 of 2023**

T.Sekar

.. Petitioner

-VS-

1.The State of Tamil Nadu,
Represented by its Secretary,
Public (Special-A) Department,
Fort St. George,
Chennai-600 009.

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

.. Respondents



Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to forthwith accept the application of the petitioner to the post of District Judge (Entry Level) in the Tamil Nadu State Judicial Services by Direct Recruitment vide Notification No.1/2023 dated 01.07.2023 without reference to clause 4(B) in so far as it prescribes - “Must be practicing on the date of Notification as an Advocate” and to permit the petitioner to take part in the sequence of examination thereto.

For Petitioner : Mr.L.Chandrakumar
For Respondent-1 : Ms.P.Raja Rajeshwari,
Government Advocate.
For Respondent-2 : Mr.B.Vijay

ORDER

[ORDER OF THE COURT WAS MADE

BY S.M.SUBRAMANIAM, J.]

The issues raised in the present writ petition are no more *res integra*. The essential qualification as per the Recruitment Notification for



selection to the post of District Judge (Entry Level) in Notification No.01/2023, which is under challenge in the present writ petition, reads as under:-

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**“(B) EDUCATIONAL AND OTHER
QUALIFICATIONS**

The Applicants should possess the following qualification: (i) Must possess a Degree in Law of a University in India established or incorporated by or under a Central Act or a State Act or an Institution recognized by the University Grants Commission, or any other equivalent qualification and got enrolled in the Bar Council of Tamil Nadu or in the Bar Council of any other State. 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. (ii) With regard to Assistant Public Prosecutor-Grade I or Assistant Public Prosecutor Grade-II, they must be having not less than seven years of experience as an Advocate and / or Assistant Public Prosecutor on the date of this notification.”



2. The term 'Practising Advocates/Pleaders/Assistant Public Prosecutors' are interpreted by the Supreme Court of India in the case of **Dheeraj Mor vs. High Court of Delhi [(2020) 7 SCC 401]**, wherein in paragraphs 88 and 89, it has been held as under:-

“88. This Court is of the opinion that the decision in Vijay Kumar Mishra [Vijay Kumar Mishra v. High Court of Patna, (2016) 9 SCC 313 : (2016) 2 SCC (L&S) 606] , as far as it makes a distinction between consideration, of a candidate's eligibility, at the stage of selection, and eligibility reckonable at the time of appointment, is incorrect. There is clear authority to the proposition that eligibility of any candidate is to be reckoned, not from the date of his or her selection, but in terms of the rules, or the advertisement for the post. In Ashok Kumar Sharma v. Chander Shekhar [Ashok Kumar Sharma v. Chander Shekhar, (1997) 4 SCC 18 : 1997 SCC (L&S) 913] , a three-Judge Bench of this Court held as follows : (Ashok Kumar Sharma case [Ashok Kumar Sharma v. Chander Shekhar, (1997) 4 SCC 18 : 1997 SCC (L&S) 913] , SCC pp. 21-22, para 6)



“6. ... The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for application constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the person had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority Judgment. This



is also the proposition affirmed in Rekha Chaturvedi v. University of Rajasthan [Rekha Chaturvedi v. University of Rajasthan, 1993 Supp (3) SCC 168 : 1993 SCC (L&S) 951] . The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview.”

This reasoning is similar to other decisions, such as U.P. Public Service

Commission v. Alpana [U.P. Public Service Commission v. Alpana, (1994) 2 SCC 723 : 1994 SCC (L&S) 742] and Bhupinderpal Singh v. State of Punjab [Bhupinderpal Singh v. State of Punjab, (2000) 5 SCC 262 : 2000 SCC (L&S) 639] .

Therefore, the observation in Vijay Kumar Mishra [Vijay Kumar Mishra v. High Court of



Patna, (2016) 9 SCC 313 : (2016) 2 SCC (L&S) 606] that : (SCC p. 320, para 7)

“the right of such a person to participate in the selection process undertaken by the State for appointment to any post in public service (subject to other rational prescriptions regarding the eligibility for participating in the selection process such as age, educational qualification, etc.) and be considered is guaranteed under Articles 14 and 16 of the Constitution.” is not correct. With respect, the distinction sought to be made, between “selection” and “appointment” in the context of eligibility, is without foundation. A selection process begins with advertisement, calling for applications from eligible candidates. Eligibility is usually defined with reference to possession of stipulated qualifications, experience, and age, as on the last date (of receipt of applications, or a particular specified date, etc.). Anyone fulfilling those eligibility conditions, with reference to such date, would be ineligible (sic eligible). Therefore, the observation that the right to participate in the selection process, without possessing the prescribed eligibility conditions, is guaranteed, is not correct; the right is guaranteed only if the



candidate concerned fulfils the requisite eligibility criteria, on the stipulated date. As pointed out by the three-Judge Bench decision, if the contrary is correct, one acquiring the stipulated qualifications subsequent to the prescribed date cannot be considered. Also, one not fulfilling the conditions cannot be allowed to participate, because, as held in Ashok Kumar Sharma [Ashok Kumar Sharma v. Chander Shekhar, (1997) 4 SCC 18 : 1997 SCC (L&S) 913] , if it were known, that such ineligible candidates can be considered, those who do not apply, but are better placed than the ineligible candidates who are allowed to participate, would be left out. Moreover, the authority publishing the advertisement/notification represents to the members of the public that it is bound by such representation.

89. As a result of the above discussion, it is held that Vijay Kumar Mishra [Vijay Kumar Mishra v. High Court of Patna, (2016) 9 SCC 313 : (2016) 2 SCC (L&S) 606] , to the extent that it is contrary to Ashok Kumar Sharma [Ashok Kumar Sharma v. Chander Shekhar, (1997) 4 SCC 18 : 1997 SCC (L&S) 913] , as regards participation in the selection process, of candidates who are



members of the judicial service, for appointment to the post of District Judge, from amongst the quota earmarked for advocates with seven years' practice, was wrongly decided. To that extent, Vijay Kumar Mishra [Vijay Kumar Mishra v. High Court of Patna, (2016) 9 SCC 313 : (2016) 2 SCC (L&S) 606] is hereby overruled.”

3. Admittedly, the writ petitioner was not a practising Advocate. As on the date of Notification, he was holding the post of Presiding Officer, District Consumer Forum.

4. That being so, the petitioner was found ineligible to participate in the process of selection.

5. In view of the judgment of the Supreme Court, cited supra, we do not find any infirmity in respect of the impugned Notification No.01/2023 of the second respondent dated 01.07.2023.



6. Accordingly, the present writ petition stands dismissed.

However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

(S.M.SUBRAMANIAM,J.) (K.RAJASEKAR,J.)

20-02-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

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

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

WP No.21169 of 2





WEB COPY

WP No.21169 of 2



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WP 21169 of 2023

20-02-2024