



2023/KER/42085

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT**

THE HONOURABLE MR.JUSTICE N.NAGARESH

FRIDAY, THE 26TH DAY OF MAY 2023 / 5TH JYAISHTA, 1945

WP(C) NO. 3572 OF 2023

PETITIONERS:

- 1 RAHIB.K.Y
AGED 27 YEARS, S/O. YACOOB, KIZHAKKEKKARA HOUSE, PALAD,
MANIMOOLY P.O, MALAPPURAM DISTRICT, PIN - 679 333
- 2 RINOOJA P.A
AGED 27 YEARS, D/O. ABDUL AZEEZ, PADINJAKKARA HOUSE,
KUNNATHERY, THAIKKATTUKARA P.O, ALUVA, ERNAKULAM
DISTRICT, PIN - 683 106
BY ADVS.
B.RENJITHKUMAR
CLARA SHERIN FRANCIS

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY, DEPARTMENT OF HOME,
GOVERNMENT SECRETARIAT, MAIN BLOCK, THIRUVANANTHAPURAM,
PIN - 695 001
- 2 KERALA PUBLIC SERVICE COMMISSION
REP. BY SECRETARY, THULASI HILLS, PATTOM PALACE P.O,
THIRUVANANTHAPURAM., PIN - 695 004

BY ADV
SRI.PREMCHAND.R.NAIR - G.P,
SRI.P.C.SASIDHARAN - S.C

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
26.05.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**CR****JUDGMENT**Dated this the 26th day of May, 2023

The petitioners are Advocates enrolled by the Bar Council of Kerala and are actively practising Law in courts. They have approached this Court seeking to quash the stipulation of three year Bar experience as Advocates for applying to the post of Assistant Public Prosecutor Grade-II, under Exts.P3 and P4 notifications.

2. The petitioners state that they are having active practice of two years and seven months in criminal courts in Kerala. On 31.12.2021, the Kerala Public Service Commission issued Ext.P3 notification for recruitment to the post of Assistant Public Prosecutor Grade-II. The notification stipulated that the applicants should hold a Degree in Law conferred or recognized by Universities in Kerala, must be members of Bar and must have had not less than three years practice in Criminal



Courts as on 01.01.2022.

3. The petitioners would urge that the requirement of experience prescribed in Ext.P3 notification is discriminatory since for appointment as Presiding Officers of the Courts to which the Assistant Public Prosecutor candidates intend to prosecute cases, no such Bar experience is prescribed. Therefore, the stipulation of three years experience in Bar as mandated in Ext.P3 is in violation of Articles 14 and 16 of the Constitution of India.

4. It is further contended that the Union Public Service Commission, for recruitment to the post of Assistant Public Prosecutor, Central Bureau of Investigation (CBI), is not prescribing any Bar practice as eligibility condition. Therefore, the respondents cannot take a different yardstick.

5. The Code of Criminal Procedure makes a distinction in qualification between the posts of Assistant Public Prosecutors and Public Prosecutors. When the Criminal Procedure Code mandates 7 years Bar practice for appointment



as Public Prosecutors, the Code does not prescribe any minimum qualification for the post of Assistant Public Prosecutors. For all the above reasons, Ext.P3 and Rule 7 of Ext.P4 Special Rules for the post of Director of Prosecution (Administration), Deputy Director of Prosecution and Senior Assistant Public Prosecutor, Assistant Public Prosecutor (Senior Grade), Assistant Public Prosecutor Grade-I and Assistant Public Prosecutor Grade-II, 2018 are liable to be quashed.

6. Counsel entered appearance on behalf of the 2nd respondent and submitted that the State has a right to prescribe qualifications for appointment to the post of Assistant Public Prosecutor. The Assistant Public Prosecutors are expected to prosecute criminal cases in the Magistrate Courts. Therefore, the stipulation of a minimum Bar practice of three years cannot be said to be arbitrary.

7. The Standing Counsel for the 2nd respondent further pointed out that the issue came up for consideration before a



Division Bench of this Court in OP(KAT) No.176/2014. This Court considered the matter and rejected similar arguments of the petitioners therein.

8. I have heard the learned counsel for the petitioners, the learned Government Pleader representing the 1st respondent and the learned Standing Counsel for the 2nd respondent.

9. The arguments of the petitioners for impugning the Bar practice prescribed in Exts.P3 and P4 are two pronged. Firstly, the petitioners would contend that the Cr.P.C. does not prescribe a minimum period of practice in Section 25 for appointment as Assistant Public Prosecutors. Therefore, the 1st respondent is not justified in stipulating a minimum Bar practice of three years for appointment to the post of Assistant Public Prosecutor.

10. The second ground is that the Presiding Officers of the Courts, in which the Assistant Public Prosecutors are proposed to be appointed, do not require any actual Bar



practice for appointment as Presiding Officers. Therefore, the imposition of a condition of Bar practice on the Assistant Public Prosecutors would infringe Article 16 of the Constitution of India.

11. Section 25 of the Code of Criminal Procedure, 1973 reads as follows : -

“25. Assistant Public Prosecutors. - (1) The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates.

[(1-A) The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.]

(2) Save as otherwise provided in sub-section (3), no police officer shall be eligible to be appointed as an Assistant Public Prosecutor.

(3) Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case:

Provided that a police officer shall not be so appointed -

(a) if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; or

(b) if he is below the rank of Inspector.”

Section 25 enables the State Government to appoint Assistant Public Prosecutors for conducting prosecution in the Courts of



Magistrate in every District.

12. Section 25 of the Code of Criminal Procedure, 1973 does not speak about the educational qualifications or experience requirements of the Assistant Public Prosecutors to be appointed. It is true that Section 24, which deals with the appointment of Public Prosecutors, prescribe a 7 years minimum practice for appointment as Public Prosecutors. But, that by itself would not imply that the Assistant Public Prosecutors to be appointed as mandated by Section 25 of the Code of Criminal Procedure, 1973 need not have any Bar practice at all.

13. In any appointment, it is for the appointing authority to decide and fix qualifications of candidates for appointment. In this matter, the State Government is the appointment authority and as per Ext.P4 Special Rules for the post of Director of Prosecution (Administration), Deputy Director of Prosecution and Senior Assistant Public Prosecutor, Assistant Public Prosecutor (Senior Grade), Assistant Public Prosecutor Grade-I



and Assistant Public Prosecutor Grade-II, 2018, the Government has prescribed three years Bar practice in Criminal Courts as an essential condition for appointment as Assistant Public Prosecutors. The power to prescribe qualifications entirely vests with the employer. Rule 7 of Ext.P5 cannot be said to be arbitrary or unreasonable. The Assistant Public Prosecutors are expected to prosecute criminal cases and aid the delivery of criminal justice in the State. Prescription of a three year active practice in Criminal Courts therefore cannot be said to be arbitrary.

14. It is further argued that the Presiding Officers, who are manning the Magistrate's Court, are appointed without any Bar practice. Therefore, imposing a condition of minimum Bar practice in Criminal Courts on the Assistant Public Prosecutors cannot stand the scrutiny of law. It is a well known fact that a Magistrate selected for appointment is given intensive training in the Judicial Academy. The training includes inside seminars and classes as also training given in various Courts in the State.



Magistrates are deputed to discharge their duties after subjecting them to rigorous and intensive training. There is no system of giving training for Assistant Public Prosecutors before their appointment. Therefore, the arguments raised by the petitioner based on the qualification of Presiding Officers of the Magistrate Courts, cannot stand legal scrutiny.

15. Public Prosecutors and Assistant Public Prosecutors serve as State's representatives tasked with upholding the interest of the State and of the general public. They have to carry out prosecutions on behalf of the State effectively. They have a duty to ensure that false accusations against any accused do not result in unfair punishment. It is their prime duty to ensure that justice is served. They have to help the Court to identify relevant facts. They are Officers of the Court who assist in the administration of justice. They must be unbiased, just and truthful. A high level of competency is expected from Public Prosecutors and Assistant Public Prosecutors. The Government therefore will be justified in insisting that they



should have a minimum Court experience in conducting cases.

In the circumstances, I find no merit in the writ petition.

Accordingly, the writ petition is dismissed.

Sd/-

**N.NAGARESH
JUDGE**

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APPENDIX OF WP(C) 3572/2023

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE CERTIFICATE OF PRACTICE ISSUED BY THE BAR COUNCIL OF KERALA TO THE 1ST PETITIONER
- EXHIBIT P2 TRUE COPY OF THE ENROLLMENT CERTIFICATE ISSUED BY THE BAR COUNCIL OF KERALA TO THE 2ND PETITIONER
- EXHIBIT P3 TRUE COPY OF THE NOTIFICATION DATED 31.12.2022 ISSUED BY THE 2ND RESPONDENT
- EXHIBIT P4 TRUE COPY OF THE SPECIAL RULES FOR THE POST OF DIRECTOR OF PROSECUTIONS(ADMINISTRATION), DEPUTY DIRECTOR OF PROSECUTION AND SENIOR ASSISTANT PUBLIC PROSECUTOR, ASSISTANT PUBLIC PROSECUTOR, ASSISTANT PUBLIC PROSECUTOR (SENIOR GRADE), ASSISTANT PUBLIC PROSECUTOR GRADE I AND GRADE II, 2018
- EXHIBIT P5 TRUE COPY OF THE NOTIFICATION OF UNION PUBLIC SERVICE COMMISSION (UNDATED)
- EXHIBIT P6 TRUE COPY OF THE JUDGMENT DATED 30.1.2023 ON O.A. (EKM) NO. 183/2023 IN THE FILE OF KERALA ADMINISTRATIVE TRIBUNAL AT THIRUVANANTHAPURAM (ADDL. BENCH, ERNAKULAM)