

A.F.R.

Reserved on 07.06.2022

Delivered on 10.06.2022

Court No. - 2

Case :- WRIT - A No. - 3747 of 2022

Petitioner :- Up Judicial Services Association Thru. Its Secy. General Harendra Bahadur Singh And 39 Others

Respondent :- State Of Up Thru. Its Add. Chief Secy. Deptt. Of Appointment Civil Secrtt. Lko And Another

Counsel for Petitioner :- Varadraj Shreedutt Ojha, Purusottam Awasthi

Counsel for Respondent :- C.S.C., Gaurav Mehrotra

Hon'ble Rajesh Singh Chauhan J.

Hon'ble Subhash Vidyarthi J.

(Delivered by Hon'ble Subhash Vidyarthi J.)

1. Heard Sri Sandeep Dixit and Sri. Sanjay Bhasin, Senior Advocates assisted by Sri V. S. Ojha, Sri. Amarjeet Singh Yadav and Sri Purushottam Advocates, the learned Counsel for the petitioners, Sri. Rajesh Tiwari, the learned Additional Chief Standing Counsel for the State-respondent and Sri Gaurav Mehrotra, the learned Counsel for the opposite party no. 2, i.e. High Court of Judicature at Allahabad.

2. The instant writ petition has been filed by the U. P. Judicial Services Association and 39 others. Briefly stated, the petitioners case is that presently the petitioner nos. 2 to 40 are working on the post of Civil Judge (Senior Division) / Additional Chief Judicial Magistrate / Chief Judicial Magistrate. The year of recruitment of each of the petitioners, the dates of their promotion on the post of Civil Judge (Senior Division) and the respective places of their present posting has been given in the petition in a tabular form. It has further been stated in the writ petition that the services of petitioner nos. 2 to 40 were confirmed on 11.08.2021.

3. On 17.12.2020, this Court had issued an advertisement inviting applications for filling up 98 vacancies of the Higher Judicial Service for the recruitment year 2020 through direct recruitment from amongst the eligible Advocates under 25% quota provided in Rule 6 (ii) of the U.P. Higher Judicial Service Rule 1975 (which will hereinafter referred to as the 'Rules of 1975'), out of which 87 were current vacancies and 11 were unfilled vacancies of reserved category of previous recruitment year. The petitioners have stated that as the quota of direct recruitment as provided in Rule 6 (ii) of the Rules of 1975 is 25%, a total of 348 vacancies would be available in the recruitment year 2020 for U. P. Higher Judicial Services and, therefore, after deducting 11 posts of backlog quota from 65% of posts i.e. 226 posts, a total of 215 posts out of 348 vacancies of Higher Judicial Services, which occurred in the recruitment year 2020, are to be filled up by promotion from amongst the Civil Judges (Senior Division).

4. The U.P. Judicial Services Association (the petitioner no.1) claims to have submitted a representation on 21.01.2021 to the Registrar (Selection and Appointment) of this High Court stating that the Judicial Officers in the Civil Judge (Senior Division) Cadre falling in the Zone of consideration (three times of number of vacancies advertised) who have completed more than two years of service in the Civil Judge (Senior Division) Cadre, be permitted to appear in the suitability test for promotion to the Higher Judicial Service Cadre to maintain the quota for promotion as per the Rules of 1975 and to fill the current vacancies, which will increase by the year 2022 due to retirements in the Higher Judicial Service Cadre.

5. On 30.05.2022, a notice has been issued by this Court stating that the suitability test – 2020 for promotion of officers in U.P. Nyayik Seva to U.P. Higher Judicial Services will be held on 11.06.2022. The admit cards of suitability tests may be downloaded by the officers –

candidates. A list of 150 officers, who have completed three years' service as on 31.12.2021 in the cadre of Civil Judge (Senior Division), including the names of the officers who are working as Additional District Judge (FTC), and are eligible to appear in the suitability test 2020 under Rule 22 (3) of the Rules of 1975 has been annexed with the aforesaid notice. The petitioners have stated that there are 215 vacancies in the Higher Judicial Service for the recruitment year 2020 available for being filled up by promotion of Civil Judges (Senior Division) under Rule 5 (a) of the Rules of 1975 but the list issued on 30.05.2022 contains the names of only 150 eligible officers, which is not in consonance with the provisions of Rule 20 (2) of the Rules of 1975. As per the petitioners, the fixation of the cut of date as 31.12.2021 and imposition of the condition of having completed three years' service as on 31.12.2021 in the cadre of Civil Judge (Senior Division) for eligibility to appear in the U. P. Higher Judicial Service Suitability Test 2020 violates Rule 5 (a) of the Rules of 1975, as the condition of having completed three years' service in the cadre of Civil Judge (Senior Division) has not been provided as an eligibility condition in the aforesaid Rule. The promotions are to be made from amongst the Civil Judges (Senior Division) on the basis of merit – cum – seniority and passing the suitability test under Rule-5 (a) of the Rules of 1975, without any reference to the length of their service.

6. The petitioners have further stated that on 18.05.1985, a Full Court Resolution had been passed by this Court providing that “*no officer of the Nyayik Seva shall be appointed to any post in any capacity in the Higher Judicial Service unless he has held the post of Civil Judge / Chief Judicial Magistrate at least for three years and his work and conduct has been satisfactory in all respect.*” The petitioners have submitted that at the time of passing of the aforesaid Resolution on 18.05.1985, there were only two sources of recruitment of Higher Judicial Service; (I) 15% direct recruitment from amongst the Advocates

and (II) 85% by promotion and no suitability test was provided for promotion of any service candidates. As per the petitioners, this Resolution has lost its efficacy and applicability since the Rules of 1975 were amended in the year 2007 and the aforesaid Resolution violates of Rule 5 (a) of the Rules of 1975.

7. The petitioners have further submitted that they have completed more three years' service as Civil Judges (Senior Division) as on 30.05.2022 and they have wrongly been left out from the list published on 30.05.2022 against the provision contained in Rule 20 (2) of the Rules of 1975 as the number of officers to be included in the list for suitability test ought to have been four times of the number of vacancies earmarked for being filled up by promotion from the officers of U. P. Nyayik Seva. As per the petitioners, the eligibility list published on 30.05.2022 should consist of 860 candidates in view of Rule 20 (2) of Rules of 1975.

8. The petitioners have prayed for quashing of the aforesaid Resolution No. 2-B passed in the meeting of the Full Court held on 18.05.1985 as also quashing of the Resolution, if any, passed by the Selection and Appointment Committee of this Court to the extent of holding the petitioners no. 2 to 40 to be ineligible for being considered for promotion under rule 22 (1) of the Rules of 1975 for the reason that they have not completed three years of service on the post of Civil Judge (Senior Division) as on 31.12.2021 and they have prayed for a direction to the opposite parties to hold all the remaining Civil Judges (Senior Division), including the petitioners, as eligible for appearing in U. P. Higher Judicial Service Suitability Test 2020. The petitioners have further prayed for issuance of a direction to the opposite parties to modify the notification dated 30.05.2022 so as to include the names of the petitioners no. 2 to 40 as suitable for appearing for U.P. Higher Judicial Services Suitability Test 2020.

9. Per contra, Sri Gaurav Mehrotra, the learned counsel appearing for the opposite party no. 2 – the Hon’ble High Court of Judicature at Allahabad, has raised three-fold preliminary objections against the maintainability of the writ petition. The first objection raised by Sri Mehrotra is that the petitioner no.1 is an Association and the writ petition filed by an Association seeking relief for its members is not maintainable. To fortify his submission, he has placed reliance on a Full Bench decision of this Court in the case of **Umesh Chand Vinod Kumar and others vs. Krishi Utpadan Mandi Samiti, Bharthana and another**, AIR 1984 All 46 wherein the question “whether an Association or persons, registered or unregistered, can maintain a petition under Article 226 of the Constitution of India for the enforcement of the rights of its members as distinguished from the enforcement of its own rights,” was answered in the following words: -

“The position appears to be that an association of persons, registered or unregistered, can file a petition under Article 226 for enforcement of the rights of its members as distinguished from the enforcement of its own rights—

(1) In case members of such an association are themselves unable to approach the court by reason of poverty, disability or socially or economically disadvantaged position (“little Indians”).

(2) In case of a public injury leading to public interest litigation; provided the association has some concern deeper than that of a wayfarer or a busybody, i.e., it has a special interest in the subject-matter.

(3) Where the rules or regulations of the association specifically authorise it to take legal proceedings on behalf of its members, so that any order passed by the court in such proceedings will be binding on the members.

In other cases an association, whether registered or unregistered, cannot maintain a petition under Article 226 for the enforcement or protection of the rights of its members, as distinguished from the enforcement of its own rights.”

9. Sri Mehrotra submits that in the entire writ petition, there is no pleading as to what is the legal character of the petitioner no. 1 Asso-

ciation indicating whether it is a juristic person or not; there is no plea indicating that members of the petitioner no.1 – Association are unable to approach this Court themselves by reason of poverty, disability or socially or economically disadvantageous position; on the contrary the members of the petitioner no.1- Association are holding the post of Civil Judges (Senior Division) and they cannot claim to fall in any disadvantageous position. Sri Mehrotra submits that it is not a case in which there is any allegation of a public injury. Neither the Rules or Regulations of the Association have been brought on record nor is there any pleading to the effect that the Rules or Regulations of the Association authorize it to take legal proceedings on behalf of its members. Sri Mehrotra has submitted that as per the Full Bench decision in the case of **Umesh Chand Vinod Kumar (supra)**, the petitioner no. 1 Association cannot maintain a petition under Article 226 of the Constitution of India for enforcement or protection of any of the alleged rights of its members.

10. Sri Sandeep Dixit, the learned Senior Advocate appearing for the petitioners could not rebut the aforesaid submission of Sri Mehrotra and he proceeded to make submissions regarding the merits of the claim of the petitioners.

11. Keeping in view the law laid down by the Full Bench of this Court in the case of **Umesh Chand Vinod Kumar (supra)**, we are of the considered opinion that the petitioner no.1 – Association has no right to maintain the writ petition which has been filed for ventilating the grievances of a class of its members.

12. However, as there are 39 other petitioners also, who have approached this Court by joining in filing of the writ petition, we proceed to consider the other submissions made by the contesting parties.

13. Sri Gaurav Mehrotra has raised the second preliminary objection against maintainability of the writ petition on the ground that it seeks issuance of a writ of Mandamus directing the opposite parties to hold all the remaining Civil Judges (Senior Division), including the petitioners, as eligible to appear in U.P. Higher Judicial Services Suitability Test 2020. The learned counsel representing the High Court has submitted that only the petitioner no. 2 to 40 have approached this Court for redressal of their grievances and the remaining Civil Judges (Senior Division) have not joined in filing the writ petition and, therefore, the writ petition so far as the same relates to the other Civil Judge (Senior Division), who have not approached this Court by filing the writ petition, is not maintainable.

14. We find substance in this objection as the petitioner numbers 2 to 40 cannot represent the remaining Civil Judges (Senior Division), who have chosen not to file a Writ Petition and the petitioner numbers 2 to 40 have rightly not filed this Writ Petition in a representative capacity. Therefore, no relief can be sought in this Writ Petition on behalf of the remaining Civil Judges (Senior Division), who have chosen not to file a Writ Petition.

15. A further preliminary objection of Sri Mehrotra is that the writ petition seeking issuance of a writ of mandamus in respect of the petitioner nos. 2 to 40 is also not maintainable for the reason that for maintaining a petition for issuance of a writ of mandamus, it is a precondition that the person seeking issuance of a writ should have first approached the authority concerned by making a demand of redressal of his grievances by submitting a suitable representation and he can approach this Court only after the demand is refused or no decision is taken in respect of the demand. As the petitioner nos. 2 to 40 have approached this Court directly by filing a writ petition under Article 226 of the Constitution of India for seeking issuance of a writ of man-

damus without submitting any representation for redressal of their grievances, the writ petition filed by them, is not maintainable.

16. Refuting this preliminary objection, Sri. Sandeep Dixit, the learned Senior Advocate representing the petitioners, has submitted that the petitioners have prayed for issuance of a Writ of Certiorari quashing the Resolution No. 2-B passed in the meeting of the Full Court held on 18.05.1985 as also quashing of the Resolution, if any, passed by the Selection and Appointment Committee of this Court to the extent of holding the petitioners no. 2 to 40 to be ineligible for being considered for promotion under rule 22 (1) of the Rules of 1975 for the reason that they have not completed three years of service on the post of Civil Judge (Senior Division) as on 31.12.2021 and they have sought issuance of a Writ of Mandamus to the opposite parties to hold all the remaining Civil Judges (Senior Division), including the petitioners, as eligible for appearing in U. P. Higher Judicial Service Suitability Test 2020 only as a consequence of issuance of the Writ of Certiorari and in such circumstances, the bar pleaded by the learned Counsel for the High Court would not apply.

17. We find force in the aforesaid submission of Sri. Dixit and this preliminary objection raised by Sri. Mehrotra that the Writ Petition for the relief of issuance of a writ of Mandamus is not maintainable for the reason that the petitioner numbers 2 to 40 have not first approached the authority concerned by making a representation, cannot be accepted. A Writ of Mandamus can be claimed as a consequential relief to issuance of a Writ of Certiorari and absence of a prior demand and its refusal by the authority concerned would not be a bar against the maintainability of the Writ Petition in such circumstances.

18. Now we proceed to examine the further submissions made by the learned Counsel for the petitioners. Sri. Sandeep Dixit has submitted that originally Rule 5 of the Rules of 1975 provided as follows: -

5. Sources of recruitment – *The recruitment to the service shall be made-*

(a) by direct recruitment of pleaders and advocates of not less than seven years' standing on the first day of January next following the year in which the notice inviting applications is published;

(b) by promotion of confirmed members of the Uttar Pradesh Nyayik Sewa (hereinafter referred to as the Nyayik Sewa), who have put in not less than seven years service to be computed on the first day of January next following the year in which the notice inviting application is published.....

19. In the case of **All India Judges' Association and others vs. Union of India and others**, (2002) 4 SCC 247, the Hon'ble Supreme Court had issued the following directions for recruitment to the Higher Judicial Service i.e. the cadre of District Judges: -

“28. As a result of the aforesaid, to recapitulate, we direct that recruitment to the Higher Judicial Service i.e. the cadre of District Judges will be:

(1)(a) 50 per cent by promotion from amongst the Civil Judges (Senior Division) on the basis of principle of merit-cum-seniority and passing a suitability test;

(b) 25 per cent by promotion strictly on the basis of merit through limited competitive examination of Civil Judges (Senior Division) having not less than five years' qualifying service; and

(c) 25 per cent of the posts shall be filled by direct recruitment from amongst the eligible advocates on the basis of the written and viva voce test conducted by respective High Courts.

(2) Appropriate rules shall be framed as above by the High Courts as early as possible.”

20. Sri. Dixit has submitted that the Rules of 1975 were amended after passing of the aforesaid judgment in All India Judges Association case by means of a notification dated 09.01.2007 so as to provide as follows: -

5. Source of recruitment- *The recruitment to the service shall be made (a) by promotion from amongst the Civil Judges (Senior Divi-*

sion) on the basis of principle of merit-cum-seniority and passing a suitability test.

(b) by promotion strictly on the basis of merit through limited competitive examination of Civil Judges (Senior Division) having not less than five years qualifying service;

(c) by direct recruitment from amongst the Advocates of not less than seven years standing as on the last date fixed for the submission of application forms.

21. He has submitted that although Sub-rule (b) and (c) of Rule-5 of the Rules of 1975 make a reference to a minimum period of experience as an eligibility condition, Sub-rule (a) which contains the provision for making recruitment by promotion from amongst the Civil Judges (Senior Division) on the basis of merit cum seniority and passing a suitability test, does not contain any reference to any number of years put in service as an eligibility condition and he has further submitted that after the amendment made in Rule 5, the Resolution dated 18.05.1985 passed by the Full Court providing that no officer of the Nyayik Seva shall be appointed to any post in any capacity in Higher Judicial Service unless he has held the post of Civil Judge / Chief Judicial Magistrate at least for three years, has lost its efficacy as the same runs contrary to the provision contained in Rule 5 (a) of Rules of 1975.

22. On the contrary Sri Gaurav Mehrotra has submitted that Sub-rule (3) of Rule 20 of the Rules of 1975 provides that “the Selection Committee shall, after examining the record of the officers included in the list prepared under Sub-rule (2) of the Rules of 1975 **make a preliminary selection of the Officers who in its opinion are fit to be appointed on the basis of merit-cum-seniority.** In assessing the merit of a candidate the Selection Committee have due regard to his service record, ability, character and seniority.....”. (Emphasis supplied)

23. On the basis of written instructions received, Sri. Gaurav Mehrotra has submitted that the Hon'ble Selection and Appointment Committee of this Court in its meeting held on 30.05.2022 has been pleased to resolve as under: -

".....in light of earlier resolution dated 18.05.1985 of Full Court resolved to fix the cut off date for determining the qualifying service as 31.12.2021. The Committee deliberated over the matter and is of the view that since the determination of vacancies for recruitment of U.P. H.J.S.-2020 accounts for vacancies occurring from 01.01.2020 to 31.12.2021, there is no occasion to go beyond that date to fix any date to determine the qualifying service in Civil Judge (Senior Division) cadre for consideration of their promotion to Higher Judicial cadre. Moreover, any relaxation in the determination of qualifying service of three years would result in higher number of vacancies in the Civil Judge (Senior Division) who possess the requisite qualification qualifying service in that cadre to be considered for promotion to the cadre of Civil Judge (Senior Division). Such a scenario would bring about a situation where the cadre of Civil Judge (Senior Division) will collapse owing to huge number of vacant Courts. Thus, the Committee resolves to reject the request made in the representation."

24. Sri. Mehrotra has further submitted that in paragraph 40 of the judgment in the case of **All India Judges' Association** (Supra), the Hon'ble Supreme Court categorically directed that: -

"40. Any clarification that may be required in respect of any matter arising out of this decision will be sought only from this Court. The proceedings, if any, for implementation of the directions given in this judgment shall be filed only in this Court and no other court shall entertain them."

25. The scope of interference by this Court while deciding the petition for issuance of Certiorari is limited to examining the decision

making process by examining as to whether the decision making process suffers from any illegality or infirmity. The correctness of the decision cannot be examined by this Court while deciding a petition for issuance of a writ of Certiorari. The decision can only be examined on the touchstone of reasonableness and arbitrariness but the sufficiency or correctness of the reasons cannot be gone into by this Court. A writ of Certiorari cannot be issued where there can be two opinions about the correctness of the decision.

27. After giving a careful consideration to submissions advanced on behalf of the contesting parties, we find that the list of only those Civil Judges (Senior Division) who have completed three years' service has been prepared treating them eligible to appear in the Suitability Test 2022 under Rule 22 (3) in furtherance of decision of the Selection and Appointment Committee which has formed a reasoned opinion in exercise of its power under Rule 20 (3) that only those officers are fit to be considered for appointment on the basis of merit-cum-seniority who have completed a minimum period of three years on the post of Civil Judge (Senior Division). This decision has been taken by the Selection and Appointment Committee keeping into consideration that the vacancies had occurring up to 31.12.2021 and it was felt not to be proper to go beyond that date to fix any date to determine the qualifying service in Civil Judge (Senior Division) cadre for consideration of their promotion to Higher Judicial cadre. The Committee was also of the opinion that by inclusion of Civil Judges (Senior Division) who have not completed three years on the said post would result in higher number of the Courts of Civil Judge (Senior Division) falling vacant and this would create a situation where the cadre of Civil Judge (Senior Division) will collapse owing to huge number of vacant Courts. Therefore, the list of officers prepared under Rule 22 (3) of the Rules of 1975 consequent to the aforesaid decision, needs no interference by this Court in exercise of its Writ jurisdiction.

28. Moreover, so far as the submission of the petitioners that the decision is violative of Rule 5A of the Rules 1975 which was framed in furtherance of the judgment of the Hon'ble Supreme Court in the case of All India Judges Association (**supra**), it is significant to mention that in the same judgment, the Hon'ble Supreme Court had directed “any clarification that may be required in respect of any matter arising out of this decision will be sought only from this Court. The proceeding if any for implementation of the directions given in this judgment shall be filed only in this Court and no other Court shall entertain them.”

29. The petitioners are in effect seeking implementation of the directions issued by the Hon'ble Supreme Court contained in paragraph 28 (1) (a) of the judgment in the case of All India Judges Association (**supra**). In view of the prohibition contained in paragraph 40 of the aforesaid judgment, this Court has been restrained from entertaining the proceedings for implementation of directions given in the judgment and, therefore, we are of the considered opinion that this Court cannot entertain the present writ petition.

30. Accordingly, the writ petition is not maintainable before this Court and is **dismissed** as such. However, there shall no order as to costs.

(Subhash Vidyarthi J.) (Rajesh Singh Chauhan J.)

Order Date - 10.06.2022
Ashish pd.