

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

+ WRIT PETITION Nos. 18002, 18842, 18880 and
19179 of 2023

% Date:27.12.2023

Bodugula Brahmaiah and others

... Petitioners

v.

\$ State of Telangana, rep.
by its Chief Secretary, Secretariat Buildings, Hyderabad
And others.

... Respondents

! **Counsel for the petitioners in**
in W.P.No.18002 of 2023 : Mr. C.Ramachandra Raju

Counsel for the petitioners in
in W.P.No.18442 of 2023 : Mr. R.Vishnu Vardhan Reddy

Counsel for the petitioners in
in W.P.No.18880 of 2023 : Mr. S.R.Sanku

Counsel for the petitioners in
in W.P.No.19179 of 2023 : Mr. P.Bhaskar

^ **Counsel for the respondent No.2** : Mr. G.Vidya Sagar,
learned Senior Counsel representing
Mr.Swaroop Oorilla, learned counsel

< GIST:

➤ HEAD NOTE:

? CASES REFERRED:

1. (2002) 4 SCC 247
2. AIR 1963 SC 268
3. (2001) 6 SCC 89
4. AIR 2018 SC 5510
5. AIR 1961 SC 816 : (1961) 2 SCR 874
6. (1997) 6 SCC 623
7. (2013) 5 SCC 277
8. 2019 (1) Mh.L.J. 190 : 2018 SCC OnLine Bom 2248
9. (2006) 1 SCC 368
10. (2022) 4 SCC 643
11. AIR 1984 SC 161
12. AIR 2003 SC 1329
13. (2022) 12 SCC 696
14. 1995 Supp (2) SCC 348
15. (2007) 4 SCC 685
16. AIR 1952 SC 75
17. (1974) 4 SCC 3
18. (2007) 1 SCC 732
19. AIR 1964 SC 1135
20. (1972) 1 SCC 421
21. (2007) 5 SCC 447
22. (2004) 12 SCC 673
23. (2006) 1 SCC 368

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WRIT PETITION Nos.18002, 18842, 18880 and
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COMMON ORDER: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

In this batch of writ petitions, some of the petitioners who are practising as advocates and some others as Additional Public Prosecutors in the State of Andhra Pradesh, seek quashment of order dated 03.07.2023 by which applications submitted by them seeking recruitment to the post of District Judge in the State of Telangana have been rejected. Alternatively, the petitioners have sought a declaration that Rule 5(1)(a) of the Telangana State Judicial (Service and Cadre) Rules, 2023 (hereinafter referred to as '2023 Rules') be struck down as arbitrary and discriminatory. The petitioners have sought a consequential direction to respondents to permit them to appear in written examination of District Judge.

(i) BACKGROUND FACTS:

2. Facts giving rise to filing of these writ petitions in nutshell are that the Government of Telangana issued notification dated 12.04.2023 for direct recruitment to eleven posts of District Judges (Entry Level) in Telangana State Judicial Service. The last date of submission of applications was 01.05.2023. The dates of examination tentatively were fixed as 24.06.2023 and 25.06.2023. Paragraph 3 of the aforesaid advertisement provides that recruitment to the posts shall be made in accordance with 2023 Rules. Paragraph 4 of the aforesaid notification dealt with the eligibility criteria and *inter alia* provides that a practising advocate in the High Court or Courts working under the control of High Court for not less than seven years as on the date of notification shall be eligible to appear in the aforesaid examination.

3. In the light of decision of Supreme Court in **All India Judges' Association vs. Union of India**¹ and in exercise of powers conferred under Articles 233 to 235, Article 237

¹ (2002) 4 SCC 247

read with proviso to Article 309 and proviso to clause (3) of Article 320 of the Constitution of India, the State Government in consultation with the High Court for the State of Telangana by a notification dated 10.06.2023 has framed the Rules, namely 2023 Rules. Rule 1.3 provides that the Rules shall be deemed to have come into force with effect from 01.01.2023. Rule 5 deals with eligibility for direct recruitment and recruitment by transfer. Rule 2(k) of the Rules defines the expression 'High Court' to mean and include the High Court for the State of Telangana with effect from 02.06.2014. Rule 5(1)(a) provides that a person shall be eligible for appointment by direct recruitment to the post of District Judge who has been practising as an advocate in High Court or the Courts working under the control of High Court for not less than seven years as on the date of notification.

4. The High Court by an order dated 03.07.2023 rejected the candidature of the petitioners *inter alia* on the ground that they do not fulfil the eligibility criteria as laid down in Rule 5(1)(a) of the 2023 Rules. The petitioners,

thereupon, have filed these writ petitions seeking the reliefs as stated supra.

5. A Bench of this Court by an interim order dated 12.07.2023 permitted the petitioners to appear in the written examination which was scheduled to be held on 22.07.2023 and 23.07.2023. It is not in dispute that the petitioners in pursuance of the aforesaid interim order have appeared in the written examination and the result of the said examination is awaited. In the aforesaid factual background, these writ petitions arise for consideration.

(ii) SUBMISSIONS OF PETITIONERS:

6. Learned counsel for the petitioners submitted that the State Government does not have power to amend the Rules with retrospective effect i.e., with effect from 01.01.2023. It is further submitted that the Rules cannot be amended in such a manner so as to render the petitioners ineligible from consideration. It is also submitted that Rule 2(k) defines the expression 'High Court' to mean and include the High Court for the State of

Telangana which includes the other High Courts as well. It is further contended that in other States like Delhi and Haryana, the post of District Judges by way of direct recruitment were sought to be filled up on pan-India basis. The attention of this Court has also been invited to notification dated 16.04.2022 and it has been submitted that in the previous year, the advocates from the State of Andhra Pradesh were also considered eligible for appointment to the post of District Judge in the State of Telangana.

7. It is submitted that Rule 5(1)(a) of the 2023 Rules is discriminatory and violative of Article 14 of the Constitution in as much as it makes advocates practising in the State of Andhra Pradesh ineligible for consideration to the post of District Judge in the State of Telangana. It is contended that there appears to be no rational basis for differentiating the advocates belonging to the State of Telangana as well as the advocates practising in other parts of the country. In support of the aforesaid submissions, reliance has been placed on the decisions of

the Supreme Court in **J.Pandurangarao vs. the Andhra Pradesh Public Service Commission**², **Ganga Ram Moolchandani vs. State of Rajasthan**³ and **Telangana Judges' Association vs. Union of India**⁴.

8. Learned counsel for the petitioners in W.P.No.18842 of 2023 submitted that the right in the petitioner accrued to him cannot be taken away by the Rules made with retrospective effect. It is further submitted that Rule 5(1)(a) of the Rules is in contravention of Article 233 of the Constitution of India as the same only prescribes for requirement of practice as an advocate or pleader for a period of not less than seven years. It is also urged that the Rule has to conform with the requirement contained in Article 233 of the Constitution of India. In support of the aforesaid submissions, reliance has been placed on the decisions of the Supreme Court in **Rameshwar Dayal vs. State of Punjab**⁵; **Chairman, Railway Board vs.**

² AIR 1963 SC 268

³ (2001) 6 SCC 89

⁴ AIR 2018 SC 5510

⁵ AIR 1961 SC 816 : (1961) 2 SCR 874

C.R.Rangadhamaiah⁶ and Deepak Aggarwal vs. Keshav Kaushik⁷.

(iii) SUBMISSIONS OF RESPONDENTS:

9. Learned Senior Counsel for respondents contended that 2023 Rules is in conformity with Article 233 of the Constitution of India, which confers the power to frame Rules. While inviting attention of this Court to the decision of Supreme Court in **All India Judges' Association** (supra), it is submitted that other conditions of eligibility for recruitment to the post in question can be prescribed under the Rules and the Rules can be made with retrospective effect. It is further submitted that even under the unamended Rules, the petitioners were ineligible for consideration for recruitment to the post of District Judge as the expression 'High Court' used therein means High Court for the State of Telangana. It is further submitted that the condition of eligibility in Rule 5(1)(a) has been prescribed with the object that a person who is recruited to

⁶ (1997) 6 SCC 623

⁷ (2013) 5 SCC 277

the post of District Judge is acquainted with the practice in the Court of State of Telangana. It is urged that the decisions in the case of **J.Pandurangarao** (supra) and **Ganga Ram Moolchandani** (supra) were rendered in the peculiar facts of the cases and have no application to facts of cases in hand.

10. It is contended that the *pari materia* provision was challenged before the Division Bench of the Bombay High Court in **Shobhit Gaur vs. State of Maharashtra**⁸. It is pointed out that the judgment delivered by the Division Bench of Bombay High Court has attained finality as S.L.P., preferred against the said order has been dismissed vide order dated 24.08.2018 passed in S.L.P. (C) No.27341 of 2018. In support of the aforesaid submissions, reliance has been placed on the decisions of the Supreme Court in **Union of India vs. Major Bahadur Singh**⁹ and **High Court of Delhi vs. Devina Sharma**¹⁰.

⁸ 2019 (1) Mh.L.J. 190 : 2018 SCC OnLine Bom 2248

⁹ (2006) 1 SCC 368

¹⁰ (2022) 4 SCC 643

(iv) ANALYSIS:

11. We have considered the submissions made on both sides and have perused the record. Chapter VI of the Constitution of India deals with Subordinate Courts. Article 233 provides for appointment of District Judges. Article 233(1) prescribes that appointment 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. Article 233(2) mandates that a person not already in service of the Union or of the State shall only be eligible to be appointed as a District Judge if he has been for not less than seven years as advocate or a pleader and is recommended by the High Court for appointment. Article 234 empowers the Governor of a State to make appointments of persons other than District Judges to the judicial service of a State in accordance with the rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.

Article 235 provides for Control over the Subordinate Courts.

(v) ISSUES:

12. Having noticed the relevant provisions of the Constitution, we may state the issues which arise for consideration in these writ petitions, which are as follows:

(i) Whether 2023 Rules are in contravention of Article 233 of the Constitution of India?

(ii) Whether 2023 Rules can be enacted on 10.06.2023 from 01.01.2023, i.e. with retrospective effect?

(iii) Whether under Rule 2(k) of 2023 Rules, High Court means and includes High Court other than High Court for the State of Telangana? and

(iv) Whether Rule 5(1)(a) of 2023 Rules is discriminatory, arbitrary and is violative of Article 14 of the Constitution of India as advocates as well as public prosecutors practising in States other than State of Telangana are ineligible for recruitment to the Post of District Judge in the State of Telangana?

13. In exercise of powers conferred under Articles 233, 234, 235 and 237 read with proviso to Article 309 and proviso to clause (3) of Article 320 of the Constitution of India, the Governor of Telangana had framed Special Rules in respect of Telangana State Judicial Service, namely the Telangana State Judicial Service Rules, 2017. Rule 2(i) defines the expression 'High Court' to mean the High Court of Judicature at Hyderabad. Thereafter, vide G.O.Ms.No.3, dated 06.01.2020, amendments were made to 2017 Rules and the amended Rule 3(i) provided that 'High Court' means High Court for the State of Telangana.

14. Before proceeding further, it is apposite to take note of relevant clauses of Notification dated 12.04.2023. A recruitment Notification was issued by Government of Telangana on 12.04.2023 inviting applications from the eligible candidates for appointment to eleven posts of District Judge (Entry Level) by Direct Recruitment. Para 3 of the Notification reads as under:

3. The recruitment to the said posts shall be made in accordance with the Telangana State Judicial (Service and Cadre) Rules, 2023.

15. Para 4 of the Notification deals with Eligibility. The relevant extract of para 4 reads as under:

4. Eligibility:

The applicant for the above said post shall be,

- a) A practicing Advocate in the High Court or Courts working under the control of the High Court for not less than 7 years as on the date of notification.

Note: Full time salaried Law Officer in the employment of the Central Government or State Government or any Public Corporation or Body constituted by statute, shall not be eligible.

Thus, para 4(a) of the Notification, if read in conjunction with Rule 2(i) of the Telangana State Judicial (Service and Cadre) Rules, 2017, makes it clear that only advocates practising in the High Court of Telangana or under the Courts working under the control of High Court for the State of Telangana for not less than seven years on the date of notification i.e., 12.04.2023 alone were eligible for consideration for recruitment to the post of District Judge in the State of Telangana.

16. Thereafter, G.O.Ms.No.36, dated 10.06.2023 was issued by which 2023 Rules came into force with effect from 01.01.2023.

17. We may now proceed to deal with the issues at *seriatim*.

Issue No.(i): Whether 2023 Rules are in contravention of Article 233 of the Constitution of India?

18. Article 233 of the Constitution of India reads as under:

233. Appointment of district judges:-

(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.

19. The High Court of Delhi prescribed minimum age of 35 years for appearing for Higher Judicial Service examination. In the Rules framed under Article 233 of the Constitution of India, the validity of the aforesaid Rule

prescribing minimum age of 35 years was challenged before a Division Bench of High Court of Delhi, which by interim orders dated 04.03.2022 and 08.03.2022 postponed the examination held for recruitment for higher judicial service. The validity of the aforesaid interim orders were challenged before the Supreme Court in the case of **High Court of Delhi** (supra), wherein the Supreme Court in paras 25 and 26 held as under:

25. The submission of the appellants, to the effect that the prescription of a minimum age would be contrary to the constitutional provision contained in Article 233 of the Constitution cannot be accepted. Article 233(2) of the Constitution stipulates that a person not already in the service of the Union or of a State shall only be eligible to be appointed a District Judge if he has been, for not less than 7 years, an advocate or a pleader and is recommended by the High Court for appointment. Clause (1) of Article 233 stipulates that appointments of persons, posting and promotion of District Judges shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to the State. Article 235 entrusts to the High Court control over the district courts and courts subordinate thereto including the posting and promotion of and the grant of leave to persons belonging to the judicial service to the State and holding any post inferior to the post of District Judge. The Constitution has prescribed the

requirement to the effect that a person shall be eligible for appointment as a District Judge only if he has been an advocate or a pleader for at least seven years. What this means is that a person who has not fulfilled the seven year norm is not eligible. The Constitution does not preclude the exercise of the rule making power by the High Courts to regulate the conditions of service or appointment.

26. The silences of the Constitution have to be and are supplemented by those entrusted with the duty to apply its provisions. The Constitution being silent in regard to the prescription of a minimum age, the High Courts in the exercise of their rule making authority are entitled to prescribe such a requirement. Direct recruitment to the Higher Judicial Service is intended to be from members of the Bar who have sufficient experience. The post of a District Judge is at a senior level in the cadre. Age is not extraneous to the acquisition of maturity and experience, especially in judicial institutions which handle real problems and confront challenges to liberty and justice. The High Courts are well within their domain in prescribing a requirement which ensures that candidates with sufficient maturity enter the fold of the higher judiciary. The requirement that a candidate should be at least 35 years of age is intended to sub-serve this. Except for a short period when the requirement of a minimum age of thirty-five was deleted, the Delhi High Court has followed the norm.

20. Thus, from aforesaid enunciation of law, it is evident that if Constitution is silent with regard to qualification/condition, Rule Making Authority is entitled to prescribe such a qualification/condition. The qualification that a candidate must have practised as an advocate in the High Court or the Courts working under the control of High Court for not less than seven years as on the date of notification for recruitment to the post of District Judge (entry level) is not prescribed under Article 233, however, the same can be prescribed by the Rule Making Authority. Therefore, the contention that the aforesaid requirement is in contravention of Article 233 is misconceived. The first issue is therefore answered in the negative.

Issue No.(ii): Whether 2023 Rules can be enacted on 10.06.2023 from 01.01.2023, i.e. with retrospective effect?

21. It is trite law that Union Parliament and State Legislature have plenary powers of legislation within the fields assigned to them and subject to certain constitutional and judicially recognized restrictions can

legislate prospectively as well as retrospectively (see **State of Gujarat vs. Ramanlal Keshavlal Sons**¹¹ and **National Agricultural Cooperative Marketing Federation of India vs. Union of India**¹²). In **G.Mohan Rao vs. State of Tamil Nadu**¹³, it was held that constitutional scheme and decisions of the Supreme Court untangle a settled position that power to legislate includes power to legislate retrospectively. Therefore, contention that State Government did not have the power to make Rules with retrospective effect is misconceived. Para 3 of Notification dated 12.04.2023 issued for recruitment for the post of District Judge (Entry Level) provided that the recruitment shall be made in accordance with the 2023 Rules, which came into force on 10.06.2023 with effect from 01.01.2023. Even otherwise on the date of issuance of notification dated 10.04.2023, the petitioners were not eligible for consideration for recruitment to the post of District Judge. Therefore, no right had accrued to them for consideration for the post of District Judge even prior to amendment of

¹¹ AIR 1984 SC 161

¹² AIR 2003 SC 1329

¹³ (2022) 12 SCC 696

the Rules. Therefore, on enactment of 2023 Rules, no right of the petitioners has been affected. On this ground also, the petitioners cannot make any grievance with regard to retrospective operation of the Rules. The second issue is answered in the affirmative by stating that the Rules can be enacted with retrospective effect.

Issue No.(iii): Whether under Rule 2(k) of 2023 Rules, High Court means and includes High Court other than High Court for the State of Telangana?

22. Rule 2(k) of the 2023 Rules defines the expression 'High Court'. Rule 2(k) is extracted below for the facility of reference:

2(k) High Court means and includes High Court
for the State of Telangana with effect from 02.06.2014.

23. In the definition clause, Rule 2(k) uses the expression 'means and includes'. It is well settled rule of statutory interpretation that when a particular expression is defined by the legislature by using the word 'means and includes', the use of word 'means' that the definition is hard and fast definition and no other meaning can be assigned to the expression that is put down in the notification. The word

‘includes’ when used enlarges the meaning of the expression defined, so as to comprehend not only such things as they signify according to their natural import but also things which the clause declares that they shall include. It is equally well settled in law that expression ‘means and includes’, on the other hand, indicate “an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions (See **P.Kasilingam vs. P.S.G.College of Technology**¹⁴). The aforesaid principle of statutory interpretation was re-affirmed by a three Judge Bench of Supreme Court in **Bharat Cooperative Bank (Mumbai) Limited vs. Cooperative Banks Employees’ Union**¹⁵.

24. In the backdrop of aforesaid well settled legal principles of statutory interpretation, we may refer again to Rule 2(k) of the Rules. The erstwhile State of Andhra Pradesh was bifurcated into two successor States, namely State of Telangana and State of Andhra Pradesh with effect from 02.06.2014. The High Court for the State of

¹⁴ 1995 Supp (2) SCC 348

¹⁵ (2007) 4 SCC 685

Telangana was established with effect from 01.01.2019. The Rule requires that an advocate must have put in seven years of practice. In case the aforesaid requirement of seven years would have been counted from the date of establishment of the High Court, no candidate would have been eligible. Therefore, the Rule Making Authority has used the expression 'includes' to mean High Court for the State of Telangana with effect from 02.06.2014 so that the advocates practising before the erstwhile High Court for the then State of Andhra Pradesh as well as the High Court for the State of Telangana would be eligible for consideration for recruitment to the post of District Judge. The contention that the expression 'High Court' used in Rule 2(k) of the 2023 Rules includes other High Courts as well is misconceived and the same is therefore negated. The third issue is answered accordingly.

Issue No.(iv): Whether Rule 5(1)(a) of 2023 Rules is discriminatory, arbitrary and is violative of Article 14 of the Constitution of India as advocates as well as public prosecutors practising in States other than

State of Telangana are ineligible for recruitment to the Post of District Judge in the State of Telangana?

25. The relevant extract of Rule 5 of the 2023 Rules which has been challenged in these writ petitions, is extracted below for the facility of Reference.

5. Eligibility for Direct Recruitment and Recruitment by transfer:

5.1 District Judges (Entry Level) Direct Recruitment:

(a) One who has been practicing as an advocate in the High Court or Courts working under the control of the High Court for not less than seven years as on the date of the notification;

Provided that a full time salaried Law Officer in the Employment of the Central Government or State Government or any Public Corporation or Body constituted by statute shall not be eligible for the post of District Judge.

26. A seven Judge Bench of the Supreme Court in **State of West Bengal vs. Anwar Ali**¹⁶ held that principles underlying the guarantee in Article 14 only mean that persons similarly circumstanced should be treated alike both in privileges conferred and liabilities imposed. It was further held that in making a classification, the Legislature

¹⁶ AIR 1952 SC 75

cannot be expected to provide “abstract symmetry”. In **E.P.Royappa vs. State of Tamil Nadu**¹⁷, a Constitution Bench of the Supreme Court held that State action must be based on valid principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Article 14 prohibits dissimilar treatment to similarly situated persons, provided such classification is based on intelligible differentia and is otherwise legal, valid and permissible (see **Arun Kumar vs. Union of India**¹⁸).

27. It is trite law that a party invoking protection of Article 14 has to make an averment with details to sustain such a plea and has to adduce the material to establish allegations made and the burden is on the party to plead and prove that its right under Article 14 of the Constitution of India has been infringed. The ground of challenge must be based on factual foundation and for attracting Article 14, necessary facts are required to be pleaded (see **State of**

¹⁷ (1974) 4 SCC 3

¹⁸ (2007) 1 SCC 732

Uttar Pradesh vs. Kartar Singh¹⁹, Dantuluri Ram Raju vs. State of Andhra Pradesh²⁰ and Southern Petrochemical Industries Company Limited vs. Electricity Inspector²¹). It is equally well settled legal proposition that in the absence of any pleading, the challenge to the constitutional validity of a provision has to be rejected *in limine* (See **State of Haryana vs. State of Punjab²²**).

28. In W.P.No.18002 of 2023, the validity of Rule 5(1)(a) of 2023 Rules has been challenged on the following averments:-

11. I submit that the action of the 2nd respondent debarring the Advocates practicing in High Court of Andhra Pradesh and in its Subordinate Courts from applying to the posts of District Judge in the State of Telangana, is highly biased and discriminatory being violative of Articles 14 and 21 of the Constitution of India and liable to be set aside.

¹⁹ AIR 1964 SC 1135

²⁰ (1972) 1 SCC 421

²¹ (2007) 5 SCC 447

²² (2004) 12 SCC 673

29. In W.P.No.18842 of 2023, the validity of Rule 5(1)(a) of 2023 Rules has been challenged on the following averments:-

12. It is submitted that Rule 5(1)(a) of the Telangana State Judicial Service Rules, 2023 is in derogation of the Fundamental Rights enshrined in the Constitution of India. There is no any constitutional backing for the said rule. The above Rule is a bad provision in law and the same shall be rendered as void and invalid by this Hon'ble Court.

30. In W.P.No.18880 of 2023, the validity of Rule 5(1)(a) of 2023 Rules has been challenged on the following averments:-

3 (g). In fact several Telangana advocates are working in Andhra Pradesh Judicial Service and vice versa. In fact, in *Chebrolu Leela Prasad Rao vs. State of Andhra Pradesh* ((2021) 11 SCC 401) as well as in *Satyajit Kumar vs. State of Jharkhand* (2022 Live Law SC 651), the Hon'ble Supreme Court held that local domicile reservation can be provided only through a law enacted by the Parliament and the State Legislature has no power to do so, which violates Article 16(1), 16(2) and 16(3) and that even the Governor of the State does not have the power to violate the fundamental rights.

31. In W.P.No.19179 of 2023, the validity of Rule 5(1)(a) of 2023 Rules has been challenged on the following averments:-

11. I submit that the action of the 2nd respondent debarring the Advocates practicing in High Court of Andhra Pradesh and in its Subordinate Courts from applying to the posts of District Judge in the State of Telangana, is highly biased and discriminatory being violative of Articles 14, 16(2) and 21 of the Constitution of India and liable to be set aside.

32. Thus, no factual foundation has been laid in the pleadings with regard to challenge to validity of Rule 5(1)(a) of 2023 Rules. Even otherwise, the Rule has been enacted to ensure suitable and proper persons in the judicial service with a view to secure fair and efficient administration of justice and the Rule Making Authority is competent to prescribe qualifications for eligibility for appointment. The object of enactment of the aforesaid Rule is to recruit suitable candidates to Telangana State Judicial Service who are acquainted with the practice of local Courts in Telangana and have the knowledge of local

laws. The practice in subordinate courts or in the High Court is also a relevant test to prescribe.

33. It is pertinent to note that validity of a *pari materia* provision, namely Rule 5(3)(b) of Maharashtra Judicial Service Rules, 2008 was challenged before a Division Bench of High Court of Bombay in **Shobhit Gaur** (supra). Relevant portion of Rule 5(3)(b) is extracted for the facility of reference:

5(3)(b) Experience- Must have practiced as an Advocate in the High Court or Courts subordinate thereto for not less than three years on the date of publication of Advertisement; or Must be a fresh law Graduate who – (i) has secured the degree in law by passing all the examinations leading to the degree in the first attempt;

34. The said Rule was challenged on the touchstone of Article 14 of the Constitution of India on the ground that it unfairly discriminates between the advocates who are practising in Maharashtra and the advocates who are practising outside. The Division Bench of Bombay High Court held that the petitioner in the said case was an Advocate practising in Delhi. The Bombay High Court by

Judgment in **Shobhit Gaur** (supra) upheld the validity of Rule 5(1)(b) of Maharashtra Judicial Service Rules, 2008. It is also pertinent to note that a Special Leave Petition preferred against the Judgment dated 24.08.2018 passed by the Division Bench of Bombay High Court in **Shobhit Gaur** (supra) was dismissed by the Supreme Court vide order dated 09.12.2021 passed in S.L.P. (C) No.27341 of 2018.

35. Admittedly, the petitioners are not practising advocates in the High Court for the State of Telangana or the Courts subordinate thereto for a period of seven years. For the aforementioned reasons, Rule 5(1)(a) of 2023 Rules does not suffer from any infirmity. Accordingly, the fourth issue is answered.

36. It is trite law that Court should not place reliance on the decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance took place. Observations of the Court are neither to be read as Euclid's Theorems nor as provisions of the statute, that too taken out of their context. The

observations made in a judgment must be read in the context of which they appeared to have stated and cannot be treated as statute (See **Union of India vs. Major Bahadur Singh**²³).

37. In the backdrop of aforesaid legal principles, we may refer to the decision in **Pandurangarao** (supra). The petitioner therein was an advocate practising in District Court in Guntur in the erstwhile State of Andhra Pradesh, who was disqualified on the ground that he was not practising in the erstwhile Andhra Pradesh High Court. The Supreme Court dealt with Rule 12(h) of the Andhra Pradesh Judicial Service Rules, which is extracted below:

That at the time when the petitioner applies:-

- (1) he is practising as an Advocate of the High Court;
- (2) he has been actually practising in Courts of Civil or Criminal jurisdiction in India for a period not less than three years;

While interpreting the aforesaid Rule, it was noticed that advocates practising in Subordinate Courts in any part of India were eligible under Rule 12(h)(2) and the same did not serve the requirement of knowledge of local

²³ (2006) 1 SCC 368

knowledge, whereas under Rule 12(h)(1) only Advocates practising in Andhra Pradesh High Court alone were held to be eligible. Therefore, the aforesaid Rule was struck down. However, in paragraph 8 of the Judgment, it was held as under:

8. The object of the rule is to recruit suitable and proper persons to the Judicial Service in the State of Andhra with a view to secure fair and efficient administration of justice, and so, there can be no doubt that it would be perfectly competent to the authority concerned to prescribe qualifications for eligibility for appointment to the said Service. Knowledge of local laws as well as knowledge of the regional language and adequate experience at the bar may be prescribed as qualifications which the applicants must satisfy before they apply for the post. In that connection, practice in subordinate Courts or in the High Court may also be a relevant test to prescribe. The respondents contend that the impugned rule seeks to do nothing more than to require the applicant to possess knowledge of local laws and that being so, the validity of the rule cannot be impeached on the ground of discrimination. In support of this argument, reliance is placed on the decision of the Andhra High Court in *Nallanthighal Bhaktavatsalam Iyengar v. Secretary, Andhra Public Service Commission, Kurnool* [AIR 1956 Andhra 14] in which the validity of the impugned rule has been upheld.

38. In **Ganga Ram Moolchandani** (supra), the Supreme Court dealt with Rules 8(ii) and 15(ii) of Rajasthan Higher Judicial Service Rules, 1969 which dealt with Recruitment to the post of District Judge. The Rules prescribed for requirement of knowledge of regional language, i.e., Hindi and practice in the High Court of Rajasthan or subordinate court of Rajasthan. However, for recruitment to the post of Munsiff in the State of Rajasthan, no such requirement was prescribed. The Supreme Court therefore held that prescription of requirement of knowledge of local laws or regional language only in respect of post of District Judge is discriminatory and is violative of Article 14 of the Constitution of India.

39. The judgments rendered in **Pandurangarao** (supra) and **Ganga Ram Moolchandani** (supra) have no application in the fact situation of these cases as the Rules in the said cases are not *pari materia* to Rule 5(1)(a) and are differently worded. It is pertinent to note that for recruitment to the post of Civil Judge also, the requirement of practice of an advocate or pleader in the High Court for

the State of Telangana or Courts working under the control of High Court for the State of Telangana is prescribed. Rule 5.3 of 2023 Rules also require the candidates for the post of District Judge and Civil Judge to speak and write Telugu language fluently and to pass such test as may be prescribed by the High Court. Therefore, the aforesaid decisions are of no assistance to the petitioners in the instant cases.

(vii) CONCLUSION:

40. In view of preceding analysis, we do not find any merit in these writ petitions. The same fail and are accordingly dismissed.

Miscellaneous applications, pending if any, shall stand closed. There shall be no order as to costs.

ALOK ARADHE, CJ

T.VINOD KUMAR, J

27.12.2023

Note: LR copy to be marked.

(By order)

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