

A ORISSA JUDICIAL SERVICES ASSOCIATION, CUTTACK  
v.  
STATE OF ORISSA AND ANR.

NOVEMBER 26, 1990

B [K. N. SINGH AND K. RAMASWAMY, JJ.]

*Orissa Superior Judicial Service Rules, 1963—Rule 7—Constitutional validity of—Government to fix the quota for promotees and direct recruits.*

C Petitioners, the Association of the inservice employees of the Orissa Superior Judicial Service, in their petition under Article 32 challenged the constitutional validity of Rule 7 of the Orissa Superior Judicial Service Rules, 1963 and prayed for quashing the Notification dated 24.2.1987 inviting applications from members of the Bar for direct recruitment to the Orissa Judicial Service. It was contended that  
D most of the Judicial officers have been stagnating for many years on account of lack of promotional avenues, and that direct recruitment of the members of the Bar was not permissible under the law, and that the State Government and the High Court were acting contrary to law in making the direct recruitment.

E Dismissing the writ petition, this Court,

**HELD:** 1. Article 233(1) and (2) contemplates recruitment to the post of District Judge in the Superior Judicial Service of the State by promotion from the Subordinate Judicial Service as well as by direct recruitment from the members of the Bar. The recruitments are made  
F by the Governor of the State in consultation and on recommendation of the High Court. [350G-H]

2. The Constitution as well as the statutory rules framed under Article 309 provide for recruitment to the Senior Branch of Service by direct recruitment from the members of the Bar. The Constitutional mandate can not be challenged merely because it might adversely effect the chances of promotion of the Junior Branch of Judicial Service. [351C-D]

3. The plea of frustration and stagnation raised on behalf of the petitioners was wrong and incorrect and their grievance against the  
H direct recruitment was unjustified. The members of the Judicial Service

should not indulge in this kind of frivolous litigation as it does not bring credit to the Judicial Administration. [351E-G; 352A] A

4. Though Rule 7 does not prescribe quota for the two sources of recruitment, but the State Government and the High Court of Orissa have fixed the quota of 25% for direct recruitment and 75% for promotion by administrative orders. On the material placed before the court it is clear that recruitment by promotion to the service has been made in excess of 75 per cent quota. Therefore, the petitioner's grievance relating to discrimination against the members of the Junior Branch of Judicial Service is without any substance. [352D-F] B

5. Statutory rules can be supplemented by administrative instructions. In the absence of Statutory provision, the State Government in consultation with the High Court is competent to prescribe quota for the two sources of recruitment to the service by administrative orders. It would, however, be desirable and proper to prescribe quota for recruitment to the service in the Rules. Absence of statutory provision in the Rules fixing the quota for the two sources of recruitment, results into a state of uncertainty leading to suspicion and litigation. The State Government should therefore take immediate steps in consultation with the High Court for amending the Rules by prescribing quota to remove the uncertainty. [352F-H] C D

ORIGINAL JURISDICTION: Writ Petition (C) No. 485 of 1987. E

(Under Article 32 of the Constitution of India).

P. Chidambaram, P.N. Misra and P.K. Jena for the Petitioner. F

N. S. Hegde, Additional Solicitor General and Raj Kumar Mehta for the Respondents.

The Judgment of the Court was delivered by

**SINGH, J.** The Orissa Judicial Services Association has filed this petition under Article 32 of the Constitution challenging the constitutional validity of Rule 7 of the Orissa Superior Judicial Service Rules, 1963 and for quashing Notification dated 24.2.1987 inviting applications from members of the Bar for direct recruitment to the Orissa Superior Judicial Service. G H

- A The petitioner-Association, which represents the members of the Judicial Service of the State of Orissa has raised grievance that the Subordinate Judicial Service in the State continues to be in a pitiable condition and most of the judicial officers have been stagnating for many years for lack of promotional avenues. Though the members of
- B the Subordinate Judicial Service have avenue of promotion to the Superior Judicial Service but since the Orissa Superior Judicial Service Rules, 1963 (hereinafter referred to as 'the Rules') provide for direct recruitment to the Superior Judicial Service from members of the Bar, it adversely affects the chances of promotion of the members of the Subordinate Judicial Service resulting into stagnation and frustration. Their grievance is that there should be no direct recruitment to the
- C Superior Judicial Service and in that view they have challenged the Notification dated 24.2.1987 issued by the High Court inviting applications from the members of the Bar for direct recruitment to the Superior Judicial Service. The petitioner has further challenged validity of Rule 7 which confers power on the Government to decide as to which vacancy shall be filled up by direct recruitment or promotion. It
- D is urged that Rule 7 is violative of Articles 14, 16 and 233(2) of the Constitution of India. The State Govt. as well as the High Court both have filed counteraffidavits contesting the petition.

- E After hearing learned counsel for the parties, we do not find any merit in the petition. The petitioner's grievance that direct recruitment of the members of the Bar is not permissible under the law and that the State Government and the High Court are acting contrary to law in making direct recruitments to the Superior Judicial Service is devoid of any merit. Article 233 provides for appointment of District Judges. Clause (1) lays down that appointment of persons to be District Judges
- F in any State shall be made by the Governor of the State in consultation with the High Court and Clause (2) of the Article provides, for appointment of a person not already in the service of the Union of the State as District Judge, provided, he has been for not less than seven years as an Advocate or a pleader and is recommended for appointment by the High Court. These two clauses of Article 233 contemplate
- G recruitment to the post of District Judge included within Superior Judicial Service of the State by promotion from the Subordinate Judicial Service as well as by direct recruitment from the members of the Bar. These recruitments are made by the Governor of the State in consultation and on recommendation of the High Court. The Governor of Orissa has in consultation with the High Court, in exercise of powers
- H under Article 309 read with Article 233 of the Constitution, framed the

Orissa Superior Judicial Service Rules, 1963 regulating the recruitment and conditions of service of persons appointed to the Orissa Superior Judicial Service. Rule 5 provides for recruitment to the service by two methods, namely, by direct recruitment and by promotion of officers from Junior Branch of the Service. Rule 7 provides that when a vacancy occurs in the Senior Branch of the Service, Government shall decide in consultation with the High Court whether the same may be filled by direct recruitment or promotion. Rule 8 provides that direct recruitment to the Senior Branch of Service shall be made from the Bar. Rule 9 provides that whenever vacancy in the Senior Branch of Service is decided to be filled up by promotion the Government shall fill up the same on the recommendation of the High Court. It is not necessary to refer to other rules for the purposes of the present case. It is apparent that the Constitution as well as the statutory rules framed under Article 309 provide for recruitment to the Senior Branch of Service by direct recruitment from the members of the Bar. The Constitutional mandate cannot be challenged merely because it may to certain extent adversely affect the chances of promotion of the Junior Branch of Judicial Service.

On the material placed before the Court it is amply clear that the plea of frustration and stagnation raised on behalf of the petitioner is wrong and incorrect. In the counter affidavit filed on behalf of the State Government and the High Court the particulars of the direct recruitment and promotees have been placed before the Court which disclose that during the period 1961 to 1987 only 12 members of the Bar were recruited directly to the Senior Branch of the Superior Judicial Service whereas 100 persons have been recruited by promotion from the Junior Branch of the Judicial Service. It is noteworthy that the members of the Junior Branch of Judicial Service have been holding exclusively the ex-cadre posts which are 10 in number, and those posts have not been taken into account in calculating the number of posts to be filled by direct recruitment on the basis of 25 per cent quota fixed for the direct recruitment. Thus the members of the Junior Branch of Judicial Service have been holding posts in the Senior Branch of Superior Judicial Service in excess of 75 per cent of the substantive posts for which there is no justification having regard to the quota fixed for the purposes of recruitment to the service. These facts in our opinion lead us to the conclusion that the petitioner's grievance against the direct recruitment is unjustified. The members of the Judicial Service should not in our opinion indulge in this kind of

- A frivolous litigation as it does not bring credit to the Judicial Administration.

As regards the petitioner's challenge to the validity of Rule 7, we find no merit in that contention. Rule 7 is as under:

B

“Rule 7—When a vacancy occurs in the Senior Branch of the Service, Government shall decide in consultation with the High Court whether it may be filled up by direct recruitment or promotion.

- C It is urged that the above Rule confers power on the State Government to decide as to which of the vacancy shall be filled up by direct recruitment or promotion, but the Rule does not provide quota for recruitment from the two sources nor it prescribes any procedure or guideline for deciding the question as to which vacancy should be filled up by direct recruitment or promotion. In this view, it is urged that Rule 7 is arbitrary and violative of Articles 14 and 16 of the Constitution. No doubt Rule 7 does not prescribe quota for the two sources of recruitment but it is conceded by the parties that the State Government and the High Court have fixed the quota of 25% for direct recruitment and 75% for promotion by administrative orders. There is further no dispute between the parties that the quota of 25 per cent and 75 per cent for direct recruitment and promotees has been followed and in actual practice the State Government in consultation with the High Court has ensured that the quota of 75 per cent fixed for promotees has been maintained. In fact recruitment by promotion to the Service has been made in excess of 75 per cent quota, therefore, the grievance relating to discrimination against the members of the Junior Branch of Judicial Service is without any substance.
- F

- While it is true that statutory rules can be supplemented by administrative instructions and the State Government in consultation with the High Court is competent to prescribe quota for the two sources of recruitment to the service by administrative orders but it would be desirable and proper to prescribe the quota for recruitment to the Service in the rules themselves. Absence of statutory provision in the Rules fixing the quota for the two sources of recruitment, results into a state of uncertainty leading to suspicion and litigation. We are, therefore, of the opinion that the State Government should take immediate steps in consultation with the High Court for amending the Rules by prescribing the quota to remove the uncertainty. If the statu-
- G
- H

tory rules prescribe quota fixed for the two sources of recruitment, it would eliminate the exercise which the State Government and the High Court have to undergo every time whenever a vacancy arises for determining the question whether it should be filled up from which of the two sources. It is, therefore, necessary that provision for quota be made in the Rules.

A

B

In the result, we find no merit in the petition, it is accordingly dismissed, but there will be no order as to costs.

V.P.R.

Petition dismissed.