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SUNIL KUMAR GOYAL

v.

RAJASTHAN PUBLIC SERVICE COMMISSION

MAY 9, 2003

B

[V.N. KHARE, C.J. AND S.B. SINHA, J.]

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Service Law: Judicial service—Appointment to—At relevant period three years practice at Bar prerequisite for appointment—Claim for appointment of Legal Assistants in Government Department—They had not completed three years practice at Bar—Their plea that as Legal Assistants they were appearing in the Court as lawyers—Cancellation of their candidature—Cancellation challenged—Held: though criteria of three years practice at Bar was not satisfied because representing Court for the employer would not amount to appearing before the Court as lawyer—However, in view of All India Judges' Association's case whereby practice was dispensed with and since Commission framed Rules to that effect, candidates eligible to appear in ensuing examination—It would not be proper to restart the selection process—Constitution of India, 1950—Article 14.

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Petitioners were working as Legal Assistants with the State Government. Prior to joining the service they practiced as lawyers but had not completed three years practice. They applied for appointment to judicial service. After *All India Judges' Association and Ors. v. Union of India and Ors.*, [1993] 4 SCC 288, prerequisite for appointment to judicial service was three years practice at Bar. Respondent-Commission cancelled the candidature of the appellants on the ground of non-completion of three years practice. Petitioners filed writ petition on the ground that their candidature could not have been cancelled on the ground of non-completion of three years practice in view of the subsequent decision in *All India Judges' Association and Ors. v. Union of India and Ors.*, [2002] 4 SCC 247; and that they had been representing their department before the Courts and Tribunal like lawyers. Dismissing the petition, the Court

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HELD: 1. The petitioners herein admittedly did not complete the period of three years of active practice at the Bar. They might have been representing their department while in service before the Tribunal but representing the employer in a Court or Tribunal would not amount to

practice at the Bar and as such the criteria laid down by this Court would not stand satisfied. [223-E, F] A

2. The rules were framed by the State pursuant to the directions of this Court in *All India Judges' Association's* case and thus as regards the question as to whether the petitioners held the requisite qualifications or not, the Commission was required to satisfy itself in that behalf on the materials placed on record. Ex-facie the decision of the Commission is not so arbitrary so as to attract the wrath of Article 14 of the Constitution of India. [224-D, E] B

All India Judges' Association and Ors. v. Union of India and Ors., [1993] 4 SCC 288, referred to. C

3. Though in *All India Judges' Association Case*, Court had directed dispensation of three years practice but since it was categorically stated that before a Judicial Officer is entrusted to decide the fate of the litigants he must undergo rigorous judicial training of one year preferably two years; and since the State of Rajasthan has amended the rules pursuant to the directions of this Court, the petitioners are now eligible to appear at the ensuing examination. [224-F, G] D

All India Judges' Association and Ors. v. Union of India, [2002] 4 SCC 247, referred to. E

4. In view of the decision of this Court alone wherein it was held that the High Court has committed an illegality in directing the Commission to dereserve the 11 posts although they were meant to be filled up by the candidates belonging to the reserved categories, this Court cannot presume that the said 11 vacancies would be dereserved and the petitioners would be eligible to fill up the vacancies wherefor they be given an opportunity to appear at the interview. [224-H; 225-A] F

Rajasthan Public Service Commission and Anr. v. Harish Kumar Purohit and Ors., [2003] 3 SCALE 571, referred to.

5. All other eligible candidates have been interviewed and select-list has been finalized. It will therefore, not be proper for this Court to reopen the selection process and direct the respondent-Commission to take the viva-voce test of the petitioners. [225-B] G

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 35 of 2002. H

A (Under Article 32 of the Constitution of India.)

WITH

W.P. (C) No. 67 of 2002.

Pallav Shishodia, Hemant Sharma and Bhava Dutt Sharma for the
Petitioner.

B Sunil Kumar Jain for the Respondent.

The Judgment of the Court was delivered by

C **S.B. SINHA, J.** The petitioners herein are aspirants of joining Rajasthan
Judicial Service. They are working as Legal Assistants in the Education
Department of the State of Rajasthan. Prior thereto they practiced as lawyers
but they had not completed three years' period as was necessary in terms of
the rules as thence existing.

D The contention of the petitioners in these Writ Petitions is that they
having been allowed to appear at the written examination and having been
called for interview, their candidature could not have been cancelled on the
purported ground of non-completion of three years' practice in terms of the
All India Judges' Association and Ors. v. Union of India, [2002] 4 SCC
247]; keeping in view the fact that they have been representing their department
before the district courts and Tribunal like lawyers in respect whereof they
had affirmed the requisite affidavits and filed certificates granted by the
E Competent Authority.

Further contention of the petitioners is that having regard to the decisions
of this Court in *All India Judges' Association and Ors.* (supra) wherein this
Court has laid down the law that practice at the Bar would not be necessary
for joining the Judicial Service; this Court should set aside the impugned
F directions issued by the respondent - Commission.

It is not in dispute that three years' minimum practice was a pre-
requisite at the relevant time for being eligible to enter in the judicial service.

G In *All India Judges' Association and Ors. v. Union of India and Ors.*,
[1993] 4 SCC 288, it was inter alia directed:

"52.(a) The legal practice of three years should be made one of the
essential qualifications for recruitment to the judicial posts at the
lowest rung in the judicial hierarchy.

H Further, wherever the recruitment of the judicial officers at the lowest
rung is made through the Public Service Commission, a representative

of the High Court should be associated with the selection process and his advice should prevail unless there are strong and cogent reasons for not accepting it, which reasons should be recorded in writing.

The rules for recruitment of the judicial officers should be amended forthwith to incorporate the above directions.”

In the said decision, this Court was inter alia considering the question as regard uniform hierarchy and designation. It was opined:

“20.....In this connection, it may be pointed out that under Article 233(2) of the Constitution, no person is eligible to be appointed a District Judge unless he has been an advocate or a pleader for not less than seven years while Articles 217(2)(b) and 124(3)(b) require at least ten years’ practice as an advocate of a High Court for the appointment of a persons to the posts of the Judge of the High Court and the Judge of the Supreme Court, respectively..”

A bare perusal of the aforementioned paragraph would leave no manner of doubt that the minimum legal practice of three years was prescribed as an essential qualification to be eligible for being appointed as Judicial Officer so as to ensure recruitment of competent, independent and honest judicial officers for the purpose of strengthening the administration of justice and the confidence of public in it.

This Court, therefore, laid down the law to the effect that a candidate must have three years’ practice at the Bar.

The petitioners herein admittedly did not complete the said period of three years of active practice at the Bar. They joined services prior thereto. They might have been representing their department while in service before the Tribunal but we fail to understand as to how they could appear before the Court like lawyers. Be that as it may, representing the employer in a Court or Tribunal would not amount to practice at the Bar and as such the criteria laid down by this Court would not stand satisfied.

Our attention was drawn to an order of this Court passed in I.A. Nos. 31, 32 of 1995 in Review Petition No. 249 of 1992 in Writ Petition No. 1022 of 1989. In that case also it was observed :

“There is no doubt in our minds that what was intended by the provision was that a candidate for appointment to judicial office should be a person who has had three years experience of practice as an advocate. He must be a lawyer in the sense that he regularly practices before a court or tribunal, who appears for his clients before the court

A or tribunal. It may be that in a given case he may do so only for a client who is his employer.”

Further, it was directed:

B “We, therefore, direct the legal Assistants who are the applicants in I.As. 7, 8, 9 and 10 to place on affidavit before the Rajasthan Public Service Commission within a period of one week from today a statement of what precisely their work as Legal Assistant involves. It is only if that work involves regularly appearing before courts or tribunals that they would fall within the requirements of the provision
C aforementioned and, being eligible, should be allowed to complete the selection process.”

It may be true that pursuant to or in furtherance of said directions the petitioners had filed affidavits but evidently the impugned order has been passed by the respondent - Public Service Commission being not satisfied as regard fulfillment of requirement of the statutory rules as then existed.
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The rules were framed by the State pursuant to the directions of this Court in *All India Judges Association's* case (supra) and thus as regard the question as to whether the petitioners held the requisite qualifications or not, the Commission was required to satisfy itself in that behalf on the materials placed on record as to whether the petitioners fulfilled the said criteria or not.
E Ex-facie we do not find the decision of the Commission to be so arbitrary so as to attract the wrath of Article 14 of the Constitution of India.

The learned counsel may be correct that in *All India Judges' Association and Ors. v. Union of India*, [2002] 4 SCC 247 this Court has directed dispensation of practice at the Bar; keeping in view of the subsequent events. However, in no uncertain terms it was categorically stated that before a Judicial Officer is entrusted to decide the fate of the litigants, he must undergo rigorous judicial training of one year preferably two years. It is not in dispute that the State of Rajasthan has amended the rules pursuant to the directions of this Court. The petitioners, therefore, are now eligible to appear at the ensuing examination.
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Our attention has, however, been drawn to a recent decision of this Court in *Rajasthan Public Service Commission and Anr. v. Harish Kumar Purohit and Ors.*, [2003] 3 SCALE 571 wherein this Court held that the High Court has committed an illegality in directing the Commission to de-reserve
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the 11 posts although they were meant to be filled up by the candidates belonging to the reserved categories. In view of the aforementioned decision alone, this Court cannot presume that the said 11 vacancies would be dereserved and the petitioners would be eligible to fill up the vacancies wherefor they be given an opportunity to appear at the interview. A

It is not in dispute that all other eligible candidates have been interviewed and select-list has been finalized. It will, therefore, not be proper for this Court to reopen the selection process and direct the respondent-Commission to take the viva-voce test of the petitioners. B

For the reasons aforementioned, we are of the opinion that there is no merit in these Writ Petitions which are, therefore, dismissed. However, in the facts and circumstances of this case, there shall be no order as to costs. C

K.K.T.

. Petitions dismissed.