

Vijaya Kumar Vs. The State of Karnataka

Vijaya Kumar Vs. The State of Karnataka

SooperKanoon Citation : sooperkanoon.com/1194555

Court : Karnataka

Decided On : Dec-07-2017

Judge : B.V.Nagarathna

Appeal No. : WP 54733/2017

Appellant : Vijaya Kumar

Respondent : The State of Karnataka

Judgement :

-:

1. :- R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE07H DAY OF DECEMBER, 2017 BEFORE THE HON'BLE MRS.JUSTICE B.V.NAGARATHNA WRIT PETITION NO.54733/2017 (S-RES) BETWEEN: VIJAYA KUMAR AGED ABOUT39YEARS, S/O. SRI MAHIPAL DESAI, NO.1444, 1ST MAIN, 1ST CROSS, JUDICIAL LAYOUT, BENGALURU - 560 065. ... PETITIONER (BY SRI: JAYAKUMAR S. PATIL, SENIOR ADVOCATE FOR SMT. SADHANA DESAI, ADVOCATE) AND:

1. ... RESPONDENTS (BY SRI: VIJAYA KUMAR A. PATIL, ADDL. GOVT. ADVOCATE) ***** THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI AND STRIKE DOWN CLAUSE [3]. OF RULE5OF THE KARNATAKA JUDICIAL SERVICE [RECRUITMENT]. RULE 2004 VIDE

ANNEXURE-A PASSED BY R-1 DECLARING IT THE STATE OF KARNATAKA THROUGH ITS PRINCIPAL SECRETARY, DEPARTMENT OF LAW AND JUSTICE, VIDHANA SOUDHA, BENGALURU - 01. THE HIGH COURT OF KARNATAKA REP. BY THE REGISTRAR GENERAL, VIDHANA VEEDHI, BENGALURU - 560 001. 2.-:

2. :- AS BEING ULTRA VIRES AND VIOLATIVE OF ARTICLES 14, 16 AND 21 OF THE CONSTITUTION OF INDIA AND ETC., THIS PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, COURT MADE THE FOLLOWING:

ORDER

Petitioner has assailed sub-clause (3) of Rule 5 of the Karnataka Judicial Service (Recruitment) Rules, 2004 (Annexure-A) (hereinafter referred to as the Rules for the sake of brevity) as being ultra vires and violative of Articles 14, 16 and 21 of the Constitution of India. 2. Petitioner is stated to be an applicant having applied for the post of District Judge, under the provisions of the said Rules pursuant to Notification at Annexure-B, dated 13/04/2017 pertaining to direct recruitment of candidates to the posts of District Judges. The last date for receipt of online applications was 30/04/2017. The said Notification has prescribed the eligibility criteria or qualification, the method of selection, disqualification for appointment and such other allied matters. Petitioner's application was scrutinized. It was found to be valid. He was permitted to appear in the preliminary examination. Being successful in the said examination, he appeared in -:

3. :- the written examination held on 17/09/2017. According to the petitioner he has secured 74 marks out of 150 in Civil Law and 83 marks out of 150 in Criminal Law and total of 157 marks out of 300. He further states that a note is appended in the marks sheet, which reads as under: Though the candidate passed in the examination, not eligible for Viva voce. As per Karnataka Judicial Service (Recruitment) Rules, 2004 and Amended from time to time, such number of candidates as is equal to three times the number of vacancies notified, having regard to the number of vacancies in each reserved category, selected in the order of merit, shall be called for Viva Voce. Learned Senior Counsel appearing for the petitioner submits that although the said note is in accordance with Rule 5(1)(3) of

the Rules, the said sub-clause(3) restricting the number of candidates to be called for viva voce to only three times the number of vacancies notified is irrational. He would submit that, earlier the number of candidates called for viva voce was five times the number of vacancies notified, having regard to the number of vacancies in each reserved category, selected in order of merit, but by virtue of the amendment made to Rule 5 -:

4. :- with effect from 26/04/2016, what was previously in the ratio of 1:5, is now reduced to 1:3. As a result of the said Rule, petitioner although was eligible for being called for viva voce, had the Rule been in the ratio of 1:5, has now become ineligible as the Rule now reads as 1:3. It is submitted that the recruitment is with regard to vacancies to the post of District Judges. The number of persons who would be eligible to the said post is limited having regard to the eligibility criteria pertaining to their experience at the Bar and such other criteria. He submits that in fact, not many aspirants are there for such posts. Further, the filtering of candidates for viva voce is at two stages: firstly, by conducting preliminary examination and thereafter, by a written examination by only those candidates who are successful in the preliminary examination. Drawing my attention to the Rules, learned Senior Counsel submits that many candidates are eliminated after the preliminary examination and the number of candidates who are eligible to write the main examination are very few. From that minimal number, the rule restricts only candidates three times of the number of vacancies in each reserved category to be called for the interview; that the reduction -:

5. :- from five times to three times would affect eligible candidates who have been successful in the written examination, but not being able to attend the interview on account of the aforesaid restriction. In the above premise, learned Senior Counsel submits that the said Rule is violative of Articles 14 and 16 of the Constitution as the number of the eligible candidates is restricted and the petitioner has not been called for the viva voce on account of the said sub-rule. In that regard, his contention is that, the earlier Rule of calling candidates five times the number of notified vacancies must be restored.

3. Per contra, learned Addl. Government Advocate appearing on advance notice for the respondents at the outset drew my attention to an order passed by this Court in W.P.No.111083/2017, dated 23/11/2017, by a learned single Judge of this Court at Dharwad Bench. He submits that the candidate who has participated in the selection process cannot be permitted to challenge the Rule at an advanced stage of the selection process. He also submitted that the aforesaid order has been affirmed by the Honble Supreme Court in SLP.No.33403/2017 and that the special leave petition has been dismissed by order -:

6. :- dated 05/12/2017. Learned Addl. Government Advocate also submitted that the viva voce is ending on 08/12/2017 and at the fag end of the process of recruitment, the petitioner cannot seek interference at the hands of this Court when there is no merit in the writ petition.

4. Having heard learned Senior Counsel for the petitioner and learned Addl. Government Advocate for the respondents, it is noted that the eligibility criteria for an applicant to the post of District Judge under the aforesaid Rules is stated in Rule 4(1), which also pertains to appointment by direct recruitment. The manner of recruitment is by a competitive examination which is stated at Rule 5(1), which reads as under: 5. Competitive Examination.- (1) The Competitive Examination for recruitment of District Judges shall consists of 3 stages namely (a) Preliminary Examination; (b) Main Examination; and (c) Viva voce.- (a) Preliminary Examination- The Preliminary Examination shall be conducted by way of Objective Type Question Paper with multiple choices of 1 hours (Ninety minutes) duration consisting of 100 marks.-.:

7. :- The syllabi for the said examination shall be the following, namely.- Part A Civil Law. Part B Criminal Law. Part C General Knowledge. (Test of reasoning and mental aptitude) (b) Main Examination.- The Competitive Written examination for recruitment of District Judges shall consist of.- (i) Written examination of two papers each of three hours duration with 150 maximum marks for each paper- one in Civil Law and another in Criminal Law. (ii) It is compulsory for all candidates to answer atleast one of the paper in English language and insofar as the other paper is concerned, it shall be optional for the candidates to answer the same

either in English or in Kannada in which event the said paper shall be answered entirely in the language in which option is exercised. (c) Viva voce.- (i) The viva voce shall carry maximum 50 marks. (ii) The candidates General knowledge, grasp on principles of law and suitability for appointment as District Judge shall be tested.-.:

8. :- (1) Minimum marks for pass in the Preliminary Examination shall be 50 for candidates belonging to Scheduled Castes and Scheduled Tribes and 60 for others. (2) The minimum marks for pass in each paper of the written examination carrying 150 marks, shall be 50 marks in each paper for candidates belonging to the Scheduled Castes or Scheduled Tribes and 60 marks for others. However, total marks to be secured for pass in the written examination shall be 120 marks out of 300 for the Scheduled Castes Scheduled Tribes and 150 marks out of 300 for others. In order to be considered under General Category, a candidate belonging to the Scheduled Castes or Scheduled Tribes has to secure the minimum marks prescribed for General Category in the Preliminary Examination, Main Written Examination and viva voce. (3) From among the candidates who are eligible for viva voce as per clause (2), as far as may be, such number of candidates as is equal to three times the number of vacancies notified, having regard to the number of -:

9. :- vacancies in each reserved category, selected in the order of merit, shall be called for viva voce. (4) Candidate belonging to a Scheduled Caste or a Scheduled Tribe who obtains minimum of forty per cent and a candidate not belonging to a Scheduled Caste or Scheduled Tribe, who obtains a minimum marks of fifty per cent in the viva voce shall be eligible to be considered for selection to the posts. (5) Selection of candidates shall be made in the order of merit on the basis of aggregate of the marks obtained in the Written Examination and viva voce test, subject to the Government Orders relating to reservation of posts for the Scheduled Castes, Scheduled Tribes and other Backward Classes: Provided that no candidate who has secured less than the minimum marks specified above: (i) in any paper of the Written Examination shall be eligible for viva voce. (ii) in any paper of the Written Examination or in viva voce shall be eligible for appointment as District Judge. -:

10. :- The offending portion of said Rule according to the petitioner is sub-rule (3). After a candidate clears the preliminary examination as well as main examination, he would become eligible for viva voce, which is for 50 marks. But the candidates who are eligible for viva voce are selected on the basis of sub-rule (3) from the candidates who are eligible for viva voce as per clause (2), as far as may be, such number of candidates as is equal to three times the vacancies notified, having regard to the number of vacancies in each reserved category, selected in the order on merit, shall be called for viva voce. The manner in which the viva voce is to be held is in Rule 5(1)(c), which is extracted above.

5. Thereafter, the manner in which the aggregate of the marks is arrived at is given in sub-rule (5), which states that selection of candidates shall be made in the order of merit, on the basis of aggregate of the marks obtained in the written examination and viva voce test, subject to the Government Orders relating to reservation of posts for the Scheduled Caste, Scheduled Tribes and other Backward Classes. The proviso is with regard to -:

11. :- candidates who secured minimum marks in the written examination and in the viva voce which is not relevant for the controversy raised in this writ petition.

6. Therefore, ultimately, the posts have to be filled in accordance with the Government Orders relating to reservation of posts for the Scheduled Castes, Scheduled Tribes and other Backward Classes apart from purely on the basis of merit. While filling up of such posts, the candidates who have to be called for viva voce would necessarily have to be in consonance with or in accordance with the vacancies to be filled up reserved as per the reservation criteria. The candidates who are to be called for viva voce cannot be on the basis of the merit list prepared without having regard to the reservations meant for the various categories of candidates. After the preparation of the list purely on the basis of merit i.e., in accordance with the marks obtained in the written examination, the merit list is prepared in accordance with the Government Orders relating to reservation of posts for the Scheduled Castes, Scheduled Tribes and other Backward Classes even at the time of calling candidates for the viva voce. After preparation of the said list in -:

12. :- accordance with the Government Orders meant for the aforesaid purpose and by bearing in mind the number of vacancies available in each category, three times the number of vacancies in each category are computed and such number of candidates are invited for viva voce. It may be that on certain occasions, sufficient number of candidates may not be available in a particular category or there may be excess number of candidates available in a particular category who could be called for viva voce based on their merit, but the rule making authority has thought it fit that if three times the number of candidates to the number of vacancies are called for interview, that would be in accordance with the principle equal opportunity to be provided to the candidates. It may be that earlier, the number of candidates to be invited was five times the number of vacancies. The rule making authority reduced it to three times the number of vacancies on the basis of past experience, the nature of posts to be filled, the nature of selection process or the method of recruitment and the practical aspect of the entire process.

7. One could recall that, at one point of time, in this State District Judges were being appointed purely on -:

13. :- the basis of viva voce. After becoming conscious of the judgments of the Honble Supreme Court that viva voce test is fraught with several pitfalls, appointment of District Judges only on that basis has been given up. This court considered written examination to be followed by viva voce as a better procedure, so as to make the selection more stringent and to get the best candidates for the posts by reducing subjectivity and arbitrariness. Later, preliminary examination in the form of multiple choice questions was introduced. Therefore, at present there is a three level test that is adopted in the competitive examination to fill up the posts of District Judges by direct recruitment, namely preliminary examination, main examination or written test and viva voce. When such a stringent method of competitive examination has been introduced by the rule making authority by making amendments to the rule, the said authority thought it fit to also reduce the number of candidates to be called for the interview or viva voce from five times to three times the number of vacancies. The precise reason as to why it may have been done is on account of candidates being filtered at two levels, at the stage of

preliminary examination and at the stage of -:

14. :- written examination. The said prescription made by the rule making authority cannot be objected upon on merits in a petition under Article 226 of the Constitution as it is on the basis of the wisdom of the said authority to ascertain as to how the candidates have to be tested, the manner in which they have to be tested and ultimately, the way in which the recruitment must be made.

8. But learned Senior Counsel for petitioner contended that when there are not many number of candidates who participate in such a selection process and having regard to the stringent filtering that is made in the competitive examination and ultimately when there are only a few candidates who are successful after the main examination, the restriction of calling candidates for viva voce to only three times the number of vacancies notified is improper.

9. It may appear so to a person, such as the petitioner who although was qualified was not called for the interview. But that is purely because of inter se merit of candidates in each category i.e., Scheduled Caste, Scheduled Tribe, OBC or for that matter general merit -:

15. :- category which has to be taken into consideration even when they have to be called for the viva voce test. There may be more number of meritorious candidates in the general merit category to which the petitioner belongs than the petitioner and having regard to that fact, the petitioner has been eliminated at the stage of the written test only and is considered as not eligible for viva voce as only candidates equal to three times the number of vacancies only in the general merit category could be called for viva voce. In fact, this fact is made known to the petitioner in the Note mentioned in the marks card which is extracted above although he has cleared the written examination. Therefore, petitioner is also notified about the same in the statement of marks so as to reveal the reason as to why he is not being called for the viva voce, which is an aspect of transparency in the recruitment process.

10. Further, there are decisions of the Honble Supreme Court as well as this Court to the effect that exercising jurisdiction under Article 226 of the Constitution, the

High Court cannot sit in judgment over the method or manner of recruitment, prescription of -:

16. :- eligibility criteria or the manner in which candidates are to be called for viva voce as that is best left to the experts in the field i.e., the rule making authority in the instant case. The said decisions are as under: (i) In *Sanjay Kumar Manjul vs. The Chairman, UPSC and others* [AIR 2007 SC254, it is elucidated as under: 24. The statutory authority is entitled to frame statutory rules laying down terms and conditions of service as also the qualifications essential for holding a particular post. It is only the authority concerned who can take ultimate decision therefore.

25. The jurisdiction of the superior courts, it is a trite law, would be to interpret the rule and not to supplant or supplement the same.

26. It is well-settled that the superior courts while exercising their jurisdiction under Articles 226 or 32 of the Constitution of India ordinarily do not direct an employer to prescribe a qualification for holding a particular post. (ii) In *Madras Institute of Development Studies vs. K. Sivasubramanian* [(2016) 1 SCC454, it has been observed that challenge to selection -:

17. :- process/procedure, when candidate consciously takes part in selection process, not permissible. Decision of experts about suitability of a candidate, generally, cannot be examined under writ jurisdiction in absence of mala fides, bias or arbitrariness. Where aspirant takes part in selection process without any demur, he cannot question it later. Unless the prescription is so irrational or unreasonable or arbitrary, which is not so in the instant case, this Court would not interfere with the vires of this rule. Merely because the rule making authority reduced the number of candidates to be called for viva voce from five times to three times the number of notified vacancies, it cannot be held that the same is arbitrary or in violation of Articles 14 and 16 of the Constitution.

11. There being no merit in the writ petition, it is dismissed. Sd/- JUDGE S*

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com