

Prasanth U vs Department of Prosecution Service, Represented by Its Secretary, Government Secretariate, Thiruvananthapuram

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Court : Kerala

Decided On : Mar-17-2023

Judge : Honourable Mr.Justice N.Nagaresh

Appeal No. : WP(C)/5279/2023

Appellant : Prasanth U

Respondent : Department of Prosecution Service, Represented by Its Secretary, Government Secretariate, Thiruvananthapuram

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE N.NAGARESH FRIDAY,
THE 17TH DAY OF MARCH 2023 / 26TH PHALGUNA, 1944 WP(C) NO.
5279 OF 2023 PETITIONER: PRASANTH.U, AGED 31 YEARS, S/O.
PREMARAJAN M.C., RESIDING AT UNDODIYIL HOUSE, PERUVAYAL
P.O., KOZHIKODE, PIN - 673008 BY ADVS. SAYED MANSOOR
BAFAKHY THANGAL R.ANUPAMA RESPONDENTS:

1 DEPARTMENT OF PROSECUTION SERVICE, [*CORRECTED] REPRESENTED BY ITS SECRETARY, GOVERNMENT SECRETARIATE, THIRUVANANTHAPURAM - 695001. *KERALA STATE PROSECUTION SERVICE, DIRECTORATE OF PROSECUTION, KOMBARA, KACHERIPADY, KOCH-18 IS CORRECTED AS PER ORDER DATED 17.03.2023 IN I.A. NO.1 OF 2023 2 KERALA PUBLIC SERVICE COMMISSION, REPRESENTED BY ITS SECRETARY PSC OFFICE, PATTOM, THIRUVANANTHAPURAM - 695004 3 THE SECRETARY, KERALA PUBLIC SERVICE COMMISSION PSC OFFICE, PATTOM, THIRUVANANTHAPURAM - 695004 4 DEPARTMENT OF HOME AFFAIRS, REPRESENTED BY ITS SECRETARY, GOVERNMENT SECRETARIATE, THIRUVANANTHAPURAM-695001 BY ADV. SMT.SAROJINI.K.V. SRI. P.C. SASIDHARAN-R2 AND R3 THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON

17.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 17th day of March, 2023 The petitioner is an aspirant for the post of Assistant

Public Prosecutor Grade-II. The petitioner states that as per Ext.P1 notification, a candidate who has applied for the post of Assistant Public Prosecutor Grade-II should hold a Degree in Law and should be a member of Bar Council of Kerala. The candidate should also have three years of active practice as on 01.01.2022.

2. The petitioner states that Ext.P1 notification was

published on 31.12.2022. As on that date, the petitioner has more than three years of active practice. Therefore, the petitioner should be treated as eligible to appear in the examination.

3. The petitioner urged that Rule 7(ii) of Ext.P4 Government Notification is arbitrary and unsustainable. If a

candidate has three years active practice as on the date of notification, such candidate need not be excluded for the reason that as on the first day of the year of the notification, he has not completed three years active practice. In the case of the petitioner, in effect, the respondents are insisting for four years active practice for appearing in the examination. This is highly arbitrary and illegal.

4. Counsel for the petitioner urged that Rule 7 of

Ext.P4 Government Notification which stipulates that an Advocate must have had not less than three years of active practice in Criminal Courts on the first day of January of the year, is highly arbitrary and irrational. Ext.P1 notification is issued without proper understanding of the provisions of law, contends the petitioner.

5. I have heard the learned counsel for the petitioner, the learned Standing Counsel representing respondents 2 and 3 and the learned Government Pleader representing respondents 1 and 4.

6. Admittedly, Rule 7(ii) of Ext.P4 Special Rules for the post of Director of Prosecution (Administration), Deputy Director of Prosecution and Senior Assistant Public Prosecutor, Assistant Public Prosecutor (Senior Grade),

Assistant Public Prosecutor Grade-I, Assistant Public Prosecutor Grade-II, 2018 stipulates that for appointment as Assistant Public Prosecutor, the candidate should have a Degree in Law conferred or recognised by the University in Kerala, must be a member of the Bar and must have had not less than three years of active practice in Criminal Courts on the first day of January of the year in which the applications are invited.

7. The petitioner has completed three years of active

practice as on 31.12.2022, the date of notification. Therefore, the petitioner urged that the petitioner should be permitted to participate in the selection process.

8. Ext.P4 is statutory Rules framed by the Government of Kerala in exercise of the powers under Section

2(1) of the Kerala Public Services Act, 1968 and in supersession of the Special Rules for the post of Director of Prosecution (Administration), Deputy Director of Prosecution and Senior Assistant Public Prosecutor, Assistant Public Prosecutor (Senior Grade), Assistant Public Prosecutor Grade-I, Assistant Public Prosecutor Grade-II, 2018. Rules themselves provide that for the post of Assistant Public Prosecutor, a candidate must have three years of active practice in Criminal Courts on the first day of January of the year in which applications are invited.

9. In this case, Ext.P1 notification was published on

31.12.2022. Any candidate aspiring to appear in the selection process should satisfy the condition of three years active practice as on 01.01.2022. Admittedly, the petitioner does not have three years practice as on that day.

10. I do not find any arbitrariness in Ext.P4 Rules. Ext.P4 Rules have been made in exercise under the powers under the Kerala Public Services Act, 1968. Rule 7(ii) cannot

be said to be arbitrary or discriminatory. In the circumstances, the petitioner is not entitled to relief. The writ petition is accordingly dismissed. Sd/- N.NAGARESH JUDGE spk APPENDIX OF WP(C) 5279/2023 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE NOTIFICATION IN CATEGORY NO.659/2022 DATED 31-12-2022 ISSUED BY THE 3RD RESPONDENT Exhibit P2 A TRUE COPY OF THE CERTIFICATE OF PRACTICE DATED 23-01-2023, ISSUED BY THE BAR ASSOCIATION OF KOZHIKODE, TO THE PETITIONER Exhibit P3 A TRUE COPY OF THE NOTIFICATION IN CATEGORY NO.326/2017 DATED 30-08-2017 ISSUED BY THE 2ND RESPONDENT Exhibit P4 A TRUE COPY OF THE G.O. (P) NO. THE 4TH RESPONDENT

Exhibit P5 THE TRUE PHOTOSTAT COPY OF COMMON
THIRUVANANTHAPURAM, (ADDITIONAL BENCH AT ERNAKULAM)