

Manjula Devi Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Jun-14-1979

Reported in : (1980)IILLJ370Kant

Judge : Kedambady Jagannatha Shetty and ;M.P. Chandrakantaraj, JJ.

Acts : High Court Act - Sections 7; Commonwealth Conciliation and Arbitration Act, 1904-1952; Karnataka Munsiffs (Special Recruitment) Rules, 1978; Karnataka Munsiffs (Recruitment) Rules, 1975; Karnataka Recruitment of Gazetted Probationers (Class I and Class II Posts Appointment by Competitive Examinations) Rules, 1966 - Rule 19; [Constitution of India](#) - Articles 14, 229, 233, 234 and 235

Appeal No. : P.W. 11420 to 11425 and 11771 of 1978

Appellant : Manjula Devi

Respondent : State of Karnataka and ors.

Judgement :

Jagannatha Shetty, J.

1. The petitioners are advocates practising at Bangalore. They applied for the posts of Munsiffs in the subordinate judicial service the selection of which was regulated by the Karnataka Munsiffs (Special Recruitment) Rules, 1978 (called

shortly as 'the Rules'). In the selection made by a Committee constituted for the purpose, respondents 4 to 57 were selected as Munsiffs, but not the petitioners.

The petitioners have challenged the legality of the selection of the said respondents and also the validity of the rules.

2. The circumstances that led to the promulgation of the Rules may now briefly be stated : Article 234 of the Constitution provides for recruitment of the members of the judicial service of the State, other than District Judges. It states that appointments of persons other than District Judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court. The Governor in exercise of the powers conferred by this Article, made the rules called the Karnataka Munsiffs (Recruitment) Rules, 1975'. Under these rules, the candidates have to be selected by the Karnataka Public Service Commission on the basis of the marks secured in the written examination and also at viva voce examination. As per these rules the Public Service Commission was selecting candidates from time to time. But that selection did not meet the requirements of the judiciary. In 1976, hardly 5 candidates were selected as against a large number of vacancies. The result was that as many as sixty posts in the cadre of Munsiffs had to be kept vacant for want of presiding officers. The situation at one stage became almost alarming causing great inconvenience to the litigant public and threatening the very existence of those lawyers who were exclusively practising in such Courts. The Law Commission of India after noticing this state of affairs said in its seventy seventh report on 'Delay and Arrears in Trial Courts' as follows :

(at para 9. 11)

'This was a perturbing revelation. Apart from the inadequacy in the strength of the subordinate judiciary to deal with the arrears and the fresh institutions, the failure to fill up the vacancies immediately they arise will inevitably contribute to the accumulation of more arrears; it will also bring about a sense of frustration and helplessness among the litigant public, which for no fault of its own, is prevented from getting appropriate redress from the Courts in time. This must shake the

public confidence in the judiciary and undermine the image of the Courts. It must be ensured that such a state of affairs does not recur in future.'

The State Government upon realising the gravity of this situation wanted to change the mode of recruitment of Munsiffs so that an adequate number may be recruited without delay. The High Court was consulted in the matter and it also agreed with the proposal. The Governor, then promulgated 'the Rules' by Notification dated 15th May, 1978 published in the Karnataka Gazette (Extraordinary) of the same date.

3. The questions that arise in these petitions can best be understood if the Rules are first set out hereunder :

'1. Title, commencement and application. - (1) These rules may be called the Karnataka Munsiffs (Special, Recruitment) Rules, 1978.

(2) They shall come into force on the date of their publication in the official Gazette.

(3) These rules shall apply to the recruitment of seventy persons to the cadre of Munsiffs.

(2) Method of recruitment, etc. - The method of recruitment of seventy persons under these rules to the cadre of Munsiffs and the qualification therefor, shall be as specified below, namely :

----- - Method of recruitment			
Minimum	qualification,	probation,	etc. 1
2-----	- By direct recruitment - (1)		
Must be holder of a Degree in Arts Science or Commerce, a Degree in Law of a University established by Law in India, and Selection of candidates shall (2) Must be practising be made by a committee consisting on the last date fixed of three Judges than four years on such date. of the for submission of High Court of Karnataka application as an nominated by the advocate, Chief Justice of Karnataka. An Officer of the High Court Advocate in Court of Civil nominated by the Selection and Criminal Jurisdiction in Committee shall be the India and must have			

Secretary of the so practiced for not less Selection Committee. Selection shall be made by the Must have attained the age of Section Committee on the basis of 23 years and must not of Marks obtained in the viva have attained the age of 35 vice examination. years on the last date fixed for submission of application. Probation : A candidate finally selected will be appointed on probation Maximum marks shall be 100. for a period of two years and the provisions of the Karnataka Civil Services (Probation) Rules, 1977 shall, mutatis mutandis, apply to persons so appointed, During the period of probation the candidate shall -(a) undergo such training as may be prescribed by the High Court. (b) pass the Kannada Language Examination conducted by the Karnataka Public Service Commission in accordance with 'the Karnataka Civil Service (Service and Kannada Language

Examinations) Rules, 1974.----- Note :- (1) The Selection Committee shall invite applications indicating the probable number of vacancies available.

(2) A candidate shall, along with his application. -

(a) Produce from the presiding officer of the Court in which he is actually practising a certificate indicating the length of his practice and his suitability for appointment as Munsiff.

(b) produce certificate of good character from the Principal of the College or of the Institution in which he was last studying and from a Gazetted Officer or other, responsible person, not being related to him but who is well acquainted with him in private life :

(c) remit such fee and in such manner as may be specified by the Selection Committee. Applications received with out such fee shall be rejected. Fee once paid shall not be refunded :

(d) produce such other documents or certificates as the Selection Committee may specify.

3. The Selection Committee may conduct the viva vice examination in such place or places as it may determine.

4. The Selection Committee shall, subject to the orders in force relating to reservation of posts to Schedule Castes. Scheduled Tribes and other Backward Classes prepare a list containing the names in the order of merit, of such number of successful candidates as is equal to the number of vacancies notified.

5. The list of successful candidates shall be in operation till all candidates included in the list are appointed.

6. Subject to these rules the Selection Committee shall, for making selection, adopt such procedure as it may consider appropriate.

(7) Viva vice examination shall be to test the candidate's general knowledge, grasp of the principles of law and suitability in all respects for appointment as Munsiff.

The Selection Committee may obtain confidential reports about the conduct, character, integrity, temperament, behaviour and such other matters as it considers relevant in respect of all candidates and take them into consideration while awarding marks.'

4. The Committee constituted by the Chief Justice for selection of candidates invited applications from eligible persons by issuing a notification. In response to that notification, there were as many as 230 valid applications. In respect of all those candidates, the Committee called for confidential reports under a form prescribed by it from the presiding officers before whom those candidates were ordinarily practising. After receipt of such confidential reports, the Committee met on 3rd July, 1978 and passed the following resolutions :

'Whereas, further the said rules are silent in regard to secure a pass at the viva vice examination and become eligible for selection and whereas Note 6 to the said Rules have left the matter of prescribing its own procedure to the Selection Committee, it was, after a consideration of all the relevant aspects, resolved that in order to become eligible for selection, a candidate should secure not less than 40 out of the 100 marks prescribed.

The Committee thereafter interviewed all the candidates.

5. In the viva vice examination, each member of the Committee awarded consolidated, lump sum marks to every candidate on the basis of the candidate's performance thereat, taking into consideration the general knowledge grasp of the principles of law, conduct, character, integrity, temperament, behaviour including the confidential report of the candidate. On the basis of the average marks obtained at the viva vice, the Committee selected in the order of merit only 54 candidates as against 70 posts for which the Rules as aforesaid were made.

6. The selection has been attacked mainly on the following three grounds; First, that the Committee had no power at all to prescribe the minimum standard or the minimum marks to be secured by a candidate in the viva vice examination; second, that the Committee ought to have divided the interview marks equally at least on 3 heads provided under Rule 7 and awarded separate marks on each head instead of awarding block or lump sum marks, and third, that the Rule is invalid inasmuch as it conferred power on the Judges of the High Court to select Munsiffs which is not a part of their judicial function as it affected the separation of powers and independence of the judiciary provided by the scheme of the Constitution.

7. The first contention should not detain us longer. The decision of this Court in *K. N. Chandrasekhara v. State of Mysore*, (1962) 40 Mys. L.J. 87 : A.I.R. 1963 Mys. 292 no doubt supported that proposition. Somnath Iyer, J., speaking for the Bench observed that the prescription of a minimum standard in the competitive examination was an essential part of the legislation and not a matter of mere detail to be entrusted to selecting authority. He also said that under Art. 234 of the Constitution, it would be a special duty and responsibility of the Governor alone to make a rule prescribing a minimum for viva vice examination and in the absence of such a rule, the Committee constituted for selection cannot prescribe any such minimum standard. But having regard to the decisions of the Supreme Court in *Gwalior Rayon Mills Mfg. (Wvg.) Co. Ltd. v. Assistant Commr. of Sales Tax*, : [1974]94ITR204(SC) and *N. K. Papaiah & Sons, v. Excise Commr.*, : [1975]3SCR607 , we thought that the said decision of the Court required

reconsideration. So on 22nd February, 1979, we made an order referring the following question for opinion of a Full Bench under S. 7 of the High Court Act :

'Whether the second respondent Selection Committee was competent to prescribe cutting score of 40 per cent. marks in the viva voce examination in the absence of prescription to that effect under the Karnataka Munsiffs (Special Recruitment) Rule, 1978 ?'

8. A Full Bench of this Court by order dated 12th April, 1979 has answered the above question in the affirmative holding that the Committee would be competent to prescribe the minimum marks to be secured by candidate in the viva voce examination under the Rules in question. The Full bench has thus dissented from the view taken in K. N. Chandrashekhara's case.

9. We must, therefore, now proceed on the premises that the Committee was well within its powers to prescribe the cutting score for candidates to become eligible for appointment. Even according to us, the argument to the contrary would not be sound. If no such minimum standard is prescribed and if there are only as many candidates as there are vacancies, the Committee would be under an obligation to select all such candidates. The viva voce or interview would then be a farce or an empty formality. In our opinion, the process of selection of suitable candidates to any responsible posts should by itself involve a minimum standard to be crossed by candidates and that shall be subjectively determined by the Selection Committee itself. This requirement is all the more important in recruitment to subordinate judiciary. The image of the Court in the ultimate analysis depends primarily upon the way in which the judicial officers function. Their integrated or total personality is the greatest guarantee for the independence of the judiciary. They must have character, courage, honesty, wisdom and learning. Their official conduct and also personal behaviour should be free from impropriety and the appearance of impropriety. They are as vital as the independence that is accorded to the judiciary under the Constitution.

10. Mr. Arthur T. Vanderbilt, the Chief Justice of the Supreme Court of New Jersey in his Bacon Lectures for 1954-55, said : By Vanderbilt : Judges and Jurors. Their functions, qualifications and Selection, P. 30.

'Wisdom, that deepening of the intellect which is more than mere intelligence, including comprehension of the effect of their decisions, is fundamental if a Judge is to be able to resolve all the ramifications of the various kinds of litigation coming before him. Knowledge in the fullest sense of learning and education legal and general and professional experience, are the hand-maidens of such wisdom. Social relations embrace personal conduct, the maturity which comes with experience of people, the ability to get along with other men, to understand their actions and to decide in accordance with such understanding, and to evoke the respect of other men by attitudes of courtesy and co-operation. A judge does not function in the isolation of any ivory tower; he must deal with the disputes of actual people and he must know and understand them. The trial Judge is in some ways a solitary figure, but in his relations with litigants, witnesses, lawyers, the Court staffs, and the public he must reveal a knowledge of human nature or he will not be able to fulfil his tasks.'

In our opinion, there cannot be a proper selection of presiding officers with these qualities of head and heart without the prescription of a minimum standard either in the written or viva voce examinations.

11. Learned Chief Justice of the Supreme Court in the recent reference on the Special Courts Bill, : [1979]2SCR476 , observed :

'The administration of justice has a special dimension and the society at large has a stake in impartial and even-handed justice.'

There are many litigants in this country who cannot afford to appeal to superior courts. The Munsiff in most of his decisions is the Court of last resort. This is particularly true in the local Courts of criminal jurisdiction. It is from these presiding officers, a more just justice is required. Their selection, therefore, cannot afford to be casual or at the cost of much needed efficiency in the administration of justice.

12. This takes us to the second question as to whether it was obligatory for the Committee toward separate marks for each of the qualities required to be judged in a candidate at the viva voce. It may be recalled that the Committee has not awarded separate marks for the different qualities mentioned under Rule 7. It has

awarded block marks on a consideration of all the qualities possessed by a candidate. The decisions on this question turns on the application of the principles stated by at least two decisions of the Supreme Court. Before referring to those decisions, we may first analyse R. 7 of the Rules. It provides that the viva voce examination shall be to test the candidate's general knowledge, grasp of the principles of law and suitability in all respects for appointment as Munsiff and the Committee may obtain confidential reports about the conduct, character, integrity, temperament, behaviour and such other matters as it considers relevant in respect of all candidates and take them into consideration while awarding marks. At least three qualities of a candidate prominently stand out for scrutiny in the viva voce examination. They are : (1) The candidate's general knowledge; (2) grasp of the principles of law; and (3) suitability in all other respects for appointment as Munsiff. The rule also requires to consider the confidential reports of the candidates about the conduct, character, etc., and such other relevant matters which the Committee has called for. In the instant case, in addition to the confidential reports of the candidates, the Committee has called for the certificates on the academic qualifications of the candidates. These may pertain to the 'suitability' under the third head.

13. Mr. Parthasarathy urged that the above heads are of equal importance and so the maximum marks prescribed for the viva voce should be equally divided into three heads and separately allotted to the candidates.

14. We may agree with the learned counsel for the petitioners that there are at least three distinct qualities of a candidate to be tested by the Committee in the viva voce. But, it is difficult to agree with the other part of his submission that the marks should be divided equally and allotted separately on those three qualities. There are no doubt two decision, one of this Court and another of the Supreme Court supporting the contention urged for the petitioners. In *D. G. Viswanath v. Govt. of Mysore*, A.I.R. 1964 Mys. 132 at p. 141, a rule authorising the selection to the professional colleges came up for consideration. That rule authorised the Selection Committee therein to award certain marks in the interview having regard to the following factors :

- (1) General knowledge.
- (2) Aptitude and personality.
- (3) Previous Academic career including special distinction, etc.
- (4) N.C.C., A.C.C., etc.
- (5) Extra curricular activities including sports, social service, debating, dramatics, etc.

It was urged in that case that rule should be struck down on the ground that it conferred unguided and uncontrolled powers on the Selection Committee to allot marks without any guidance as the Committee could plump those marks on any candidate of their choice, whether they had the qualification mentioned or not. Dealing with that contention, Hegde, J. as he then was, speaking for the Bench of this Court observed at page 144 :

'It is true that Annexure IV does not specifically mention the marks allotted for each head. But from the circumstance it cannot be held that the Government had conferred an unguided power on the Committees. In the absence of specific allocation of marks for each head it must be presumed that the Government considered that each of the heads mentioned in Annexure IV as being equal in importance to any other. In other words, we have to infer that the intention of Government was that each one of those heads should carry 1/5th of the reject the 'Interview' marks. In that view, we reject the contention that unguided power was conferred on the selection committee.' Two of the petitioners who were not satisfied with the relief granted by this Court appealed to the Supreme Court in *R. Chitralkh v. State of Mysore*, : [1964]6SCR368 . There a larger question relating to the selection by interview was raised. It was urged that a selection by interview is inherently repugnant to the doctrine of equality enshrined in Art. 14 of the Constitution. It was also urged that for whatever may be objective of the interview if the awarding of marks is left to the subjective satisfaction of the Selection Committee. It gives ample room for discrimination and manipulation. That contention was repelled by the Supreme Court by observing 'that a scheme of

selection however perfect it may be on paper, may be abused in practice and that it is capable of abuse is not a ground for quashing it so long as the rule lays down the relevant objective criteria and entrust the business of selection to qualified persons. If in any particular case the Selection Committee abuses its power in violation of Art. 14 of the Constitution that may be a case for setting aside the result of a particular interview, as the High Court did in that case'. The Supreme Court accordingly approved the view taken by this Court in Viswanath's case, A.I.R. 1964 Mys. 132.

15. A similar question came up before the Supreme Court in *A. Periakaruppan v. State of Tamil Nadu*, : [1971]2SCR430 . The case involved the selection of candidates to medical colleges by interview and the Selection Committees were asked to interview the candidates on the basis of certain criteria prescribed like (1) Sports of National Cadet Corps activities, (2) Extra Curricular special services, (3) General physical condition and endurance, (4) General ability and (5) Aptitude. The Selection Committees were authorised to give maximum of 75 marks at the interview. The Selection Committee did not award separate marks on the different criteria. Challenging that selection, it was urged before the Supreme Court that the selection made by awarding consolidated marks was arbitrary. Hegde, J., speaking for the Bench of the Supreme Court after referring to the principles stated in Viswanath's case held that it was obligatory for the Selection Committees to award separate marks on each head to be tested at the interview.

16. If these two decisions are applicable to the facts of the present case, there is no doubt that the selection of the respondents was illegal. But, we cannot proceed on that premises without referring to a later decision of the Supreme Court in *State of Karnataka v. M. Farida*, : [1977]1SCR323 . That was an appeal against the decision of this Court in which the selection of Gazetted Probationers (Class I and II Posts) made by the Public Service Commission came to be challenged. The selection was made under the Karnataka Recruitment of Gazetted Probationers (Class I and Class II Posts Appointment by Competitive Examinations) Rules, 1966. The commission held a written examination as required under the rules followed by the personality test as provided by Rule 19 of those Rules whereunder a maximum of 200 marks was prescribed for personality test. In the personality

test, the qualities to be judged were as follows : The mental alertness, critical powers of assimilation clear and logical exposition; balance of judgment, variety and depth of interest, ability for social cohesion, leadership and intellectual depth of the candidates. Farida though interviewed by the Public Service Commission was not selected. The public Service Commission did not allot separate marks for each of those specified qualities, but awarded block marks to each candidate in assessing his personality with reference to those qualities. This Court following the decisions in Viswanath's A.I.R. 1964 Mys. 132 at p. 141 and Periakaruppan's : [1971]2SCR430 cases held that that selection was illegal inasmuch as the Public Service Commission did not award separate marks on each individual qualities at the viva voce. In the appeal before the Supreme Court the Additional Solicitor General who argued for the appellant sought to justify the allotment of block marks by the Public Service Commission by distinguishing the decision in Periakaruppan's case. He urged that Periakaruppan's case involved an objective test whereas in Farida's case, : [1977]1SCR323 , it had to be subjective because the qualities specified under the rules of that recruitment were intangible qualities. The Supreme Court however, did not appreciate that distinction, Gupta, J., speaking for the Constitution Bench observed *ibid* Page 2484, para 4.

'We do not think it is possible to distinguish Periakaruppan's case on this ground. For, as pointed out in the judgment under appeal, some of the qualities for test in Viswanath's case (A.I.R. 1964 Mys. 132) which Periakaruppan approved, were also intangible, like aptitude and personality. Further, even where the qualities to be tested are intangible qualities, if the relevant rule required that separate marks should be allotted for each, interviewers have to follow the rule and do the best under the circumstances.'

The learned Judge continued *ibid* page 2482, para 5 :

'Where a block mark should be given after the interview on a consideration of the qualities evinced by a candidate. Or marks are to be allotted separately under each head depends, in our opinion, upon the rule regulating the examination. In Periakaruppan's case : [1971]2SCR430 it was held that the intention of the Government was that each of the specified qualities should carry equal marks. In

these appeals we have not been called upon to decide whether the rule concerned in Periakaruppan's case was correctly interpreted. We do not, however, think that it would be correct to assume that as a general proposition that in every case where the interviewing body is asked to take into consideration several specified qualities, they must be of equal value and separate marks should be allotted under each head, on the contrary, in our opinion, where the rules do not contain a clear direction, it would be reasonable in such cases to suppose that the intention is that there should be a block assessment on an integrated test.'

On the question whether the award of block marks in the viva voce would lead to arbitrariness the learned Judge said *ibid* page 2485, para 5 :

'..... We do not think that the total arrived at by adding up the separate marks awarded for the different qualities is always a true measure of a candidate's suitability. An illustration from Periakaruppan's case would serve to clarify the point. Of the five qualities mentioned above, suppose a candidate secures full 15 marks for extra-curricular activities but fails to get any credit under any of the other four heads, and another candidate gets a few marks under each head aggregating, say, 14 marks, one mark less than the total marks secured by the first candidate. Which of the two should be considered more qualified for admission to medical profession It would take great courage, we think, to hold that the candidate who secured 15 marks was more suitable ?'

Again at para 6 of the judgment, the learned Judge examined the scope of the rule relating to the viva voce and concluded *ibid* page 2486 para 6 :

'It seems to us in the context that the qualities are mentioned only as guide, as indicating the attributes to be kept in view, in assessing the personality of the candidates. It seems hardly possible in the test contemplated to allocate separate marks for each of the various qualities specified, because most of them overlap one another and are so intermixed that they cannot be separated.'

17. The learned counsel for the petitioners urged that the rule considered in Farida's case (*supra*) is quite distinguishable from the one concerned in this case and, therefore, we should follow only the decision in Periakaruppan's case, :

[1971]2SCR430 . The Rule in the present case is no doubt slightly different. The three qualities to be tested are independent qualities of a candidate and they do not overlap with each other as found in Farida's case. But, we do not think that we would follow the decision in Periakaruppan's case overlooking the Farida's case since the principles laid down in Periakaruppan's case have been given a go-by in Farida's case.

Upon the rule laid down by the Supreme Court in *Matulal v. Radhelal*, : [1975]1SCR127 and *Union of India v. K. S. Subramanian*, : (1977)ILLJ5SC , amid the diversity of decisions, the proper course for this Court is to follow only the views expressed by a larger Bench of the Supreme Court in preference to those expressed by a smaller Bench. We must, therefore, follow the decision in Farida's case and reject the second contention urged for the petitioner.

18. The third and the last contention urged for the petitioners relates to the validity of the Rule so far as it confers power on the Judges of this Court to select the Munsiffs. It was urged that the power to select Munsiffs being not in the nature of judicial power, cannot be entrusted to the Judges, of the High Court since the Constitution does not specifically provide for it and the Judge should not be asked by the Governor to perform non-judicial function even by the Rules prescribed under Art. 234 of the Constitution. This submission was elaborated by stating that the list of the selected candidates prepared by the Judges would not be binding on the Government and the Government could reject the entire list. To have such control by the executive over the functioning of the highest judiciary in the State would expose the Judges to public comment and belittle their importance and independence.

19. We do not think that there is any substance in this contention. Judges are always entrusted with administrative duties which are proper concomitant of the judicial functions. Article 229 of the Constitution vests in the Chief Justice of the High Court the power to appoint officers and servants of the High Court. Article 233 confers powers on the High Court to select District Judges, and upon that selection the appointment shall be made by the Governor. Article 234 provides for recruitment of persons other than District Judges. It shall be made by the

Governor in accordance with the Rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court. The control over the District Courts and Courts subordinate thereto including the posting, promotion and other incidental matters is vested in the High Court under Art. 235. Having regard to these provisions, we fail to see why the Judges of the High Court should be kept away from the selection of Munsiffs. On the contrary, in our opinion, the High Court selecting Munsiffs would ensure independence of the judiciary and make the control over the subordinate judiciary more effective and meaningful. Without meaning any disrespect, we may say that the Public Service Commission is not a specialised agency nor better placed to select the Munsiffs. If the District Judges could be selected by the High Court and the High Court only, it is fallacious to state that the Munsiffs should not be selected by the High Court.

20. It must be remembered that the High Court has responsibility for the management of the subordinate judiciary and for the most efficient conduct of its business. A system of Courts in a large statewide organisation has many of the problems inherent in the direction and management in a large business enterprises. Like a business it cannot function without proper selection of men and proper control over them. To make the judicial system more effective and make the control more meaningful, it would be, therefore, proper that the entire selection to the subordinate judiciary is centralised and lodged in the High Court and not with any other agency. The High Court is both logically and legally better placed in this matter.

21. Reference at this stage may be made to two decisions relied on by the learned counsel for the petitioners. The first one is of the Privy Council in *Attorney-General of the Commonwealth of Australia v. Reginam*, [1957] 2 All. E.R. 45. The validity of the Commonwealth Conciliation and Arbitration Act, 1904-1952 conferring judicial power on the Court of Conciliation and Arbitration came up for consideration. Viscount Simon after considering the scope of the Constitution of the Commonwealth of Australia and the provisions of the said Act, held that that Act was invalid as being ultra vires of the Constitution. We do not think that that decision has got any bearing on the case before us. The second is *Hayburn's case* [1780- 1800] 1 L.Ed. 346, in which an Act to provide for the settlement of the claims

of widows and orphans was considered by the Circuit Court, Pennsylvania in the United States. That Act conferred power on the executive to sit as a Court of errors on the judicial opinions of the Court. The Judges of the Circuit Court in Pennsylvania on that ground refused to make a decision. That, in our opinion, is also correct. The executive cannot be made to sit in appeal over the judicial decisions of Courts. That would be a negation of the independence of the judiciary. But that is not the principle involved in our case. Assuming that the Governor has power to accept or reject the list prepared by the Committee of Judges, that itself is no ground to hold that the judiciary has been made subservient to the executive. Nor can we accept the contention that it would denigrate the Judges or would derogate from their proper performance of judicial function. The Governor has no power to tinker with the list.

22. It is a trite law that the judges should not participate in the action of the executive or legislative departments of the Government. They should not accept off-court assignment which has got the effect of diluting the judicial service. But there is nothing wrong if Judges are taken off the Court for the work concomitant to their judicial function. We, therefore, reject the third contention also.

23. In the result, these petitions fail and are dismissed without an order as to costs.