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(1991) 12 KL CK 0019

High Court Of Kerala

Case No: W.A. No. 1363/91

P.R. Gopalakrishnan	APPELLANT
Vs	
High Court of Kerala and Another	RESPONDENT

Date of Decision: Dec. 20, 1991

Acts Referred:

- Constitution of India, 1950 - Article 233(1), 233(2)
- Kerala Higher Judicial Service Rules, 1961 - Rule 2
- Kerala State and Subordinate Services Rules, 1958 - Rule 14, 15, 16, 17

Hon'ble Judges: Shamsuddin, J; K.T. Thomas, J

Bench: Division Bench

Advocate: Party in Person, for the Appellant; A.M. Poulose, Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

Thomas, J.
Appellant is an Advocate practicing at Thiruvananthapuram. He was one of the applicants for the post of District Judge (by direct recruitment from Bar) for which three vacancies have been notified. He participated in the interview conducted by the High Court in the months of August and September, 1991. (Five Judges of this High Court as decided by all the Judges in a "Full Court meeting" interviewed the candidates). Petitioner came to know that his name has not been included in a list of three names prepared by the High Court and forwarded to the Government. He says that he was interviewed in the year 1988 also for the post of District Judge, and then also he was not included in the selected list. From some newspaper reports he understood that the High Court, while preparing the list, has not complied with the principle of reservation for Scheduled Castes/Scheduled Tribes and Other Backward Classes. Hence he filed the Original Petition for a direction to the Government not to make any appointment to the post of District Judge from the list sent by the High Court. Certain other ancillary reliefs were also prayed for by him.

2. Learned Single Judge dismissed the Original Petition without going into the merits as the selection made by the High Court is yet to be finalised. Learned Single Judge refrained from making "any comment on the language used and the nature of the allegations made by the Petitioner".

3. In the Original Petition, he made some scathing allegations against Judges of this High Court and particularly against one sitting Judge by name. It speaks against the Petitioner as he used his Original Petition to make wanton and irresponsible allegations against sitting Judges of the High Court, when he is sure that the Judges concerned are not in a position even to refute the allegations. (Those against whom he made those allegations were not parties in the Original Petition).

4. In this appeal, Appellant''s main grievance is regarding sending a panel of only three names without including names of "at least 3 or 4 times the number of notified vacancies". According to the Petitioner, dismissal of his Original Petition by the Single Judge "may also have the vices under the "Doctrine of bias" since the impugned actions had been from the part of five senior-most Judges of the High Court". Even the restraint adopted by the learned Single Judge was, unfortunately, made a ground of adverse comment in the appeal petition.

5. We deprecate the tendency of any candidate who aspires for the post of District Judge making wild and reckless allegations against sitting Judges of the High Court. Such allegations cannot advance his cause, knowing as he does that it is the High Court which he approached to establish his claim for appointment to the post of highest dignity and responsibility in the Higher Judiciary of the State. His disappointment in not being selected both in 1988 and in 1991 is no justification for spewing vitriolic contents against personages entrusted with the task of selection making.

6. As the Petitioner pressed for a decision, regarding his contention that it is illegal to send a list without including names of at least 3 or 4 times the number of notified vacancies to enable Government to comply with the principle of reservation, we would examine the legal position.

7. Article 233(1) of the Constitution mandates that appointments of persons as District Judges shall be made by the Governor of the State in consultation with the High Court concerned. Article 233(2) provides that a person who is not already in the service shall be eligible to be appointed as District Judge (if he has the required qualification) only if he is recommended by the High Court for such appointment. The effect of those Articles has been considered by the Supreme Court on several occasions. It is well settled that selection of candidates for the post of District Judge is to be made by the High Court. This position is not disputed by the Petitioner either Supreme Court has often reminded that Governor can appoint a person to the post of District Judge only on the recommendations made by the High Court. (Vide Chandramohanan v. State of U.P. AIR 1966. S.C. 1987, A. Panduranga Rao Vs. State of Andhra Pradesh and Others, , Mani Subrat Jain and Others

Vs. State of Haryana and Others, , M.M. Gupta and Others Vs. State of Jammu and Kashmir and Others, and State of Kerala Vs. Smt. A. Lakshmikutty and others, , Subba Rao, C. J. has observed in Chandramohanan''s case AIR 1966. S.C.1987 that the High Court is expected to know better than the Governor in regard to the suitability or otherwise of a person belonging either to the judicial service or to the Bar to be appointed as a District Judge. After discussing the case law, the Supreme Court reiterated the position in State of Kerala Vs. Smt. A. Lakshmikutty and others, (cited supra) that "we make it clear that the choice of candidate lies entirely on the High Court". Supreme Court further pointed out that "normally as a matter of rule, the recommendations of the High Court for appointment of a District Judge should be accepted by the State Government. The Governor should act on the same. If in any particular case the State Government for good and weighty reasons finds it difficult to accept the recommendations of the High Court, the State Government should communicate its views to the High Court and the State Government must have complete and effective consultation with the High Court in the matter. It must, therefore, follow that before rejecting the panel forwarded by the High Court, the State Government should have conveyed its views to the High Court to elicit its opinion".

8. Kerala Higher Judicial Service Rules contain the provision that "the rules relating to reservation in appointments shall apply to appointments by direct recruitment to the category of District and Sessions Judge" (Vide the Note given under Rule 2). Rules 14 to 17 of Part II of the Kerala State and Subordinate Service Rules, 1958 (for short "K.S.S.R.") contain the rules regarding reservation in appointments. Rule 14 states that appointments by direct recruitment shall be made on the basis of the principles prescribed there under. It is provided therein that the unit of appointment under the rule shall be 20, of which two shall be reserved for SC/ST and 8 shall be reserved for Other Backward Classes (Castes) and the remaining 10 shall be filled on the basis of merit. Appointment under this rule shall be made in the order of rotation formulated in Clause (c) of Rule 14. As per the order of rotation, first is the turn for open competition and next is the turn reserved for OBC, and every alternate turn is earmarked for open competition while the other turn is for OBCs, or for SC/ST as indicated therein. The integrated cycle combining the rotation in the aforesaid clause is specified in the Annexure given to Part II of K.S.S.R. Rule 15 of Part II says that if a suitable Candidate is not available for selection from any particular community, the said community shall be passed over and the post shall be filled up by a suitable candidate from the community immediately next to the passed over community in the Annexure in accordance with the order of rotation. The same rule further provides that "if no suitable candidate is available for selection in any of the above communities or group of communities, selection shall be made from open competition candidates". It is thus clear that, if no suitable candidate from the communities concerned is available, the vacancy is not intended to remain unfilled. It can certainly be filled up by suitable candidates selected through open competition. Suitability of the candidate is to be tested and decided by the body vested with the power of selection.

9. From the foregoing discussion the legal position can be summed up like this: Suitability of a candidate for appointment as District Judge is to be determined by the High Court, but Government can have good and weighty reasons for declining to accept such recommendation after making effective consultation with the High Court for which, Government shall communicate its opinion to the High Court. If suitable candidates are not found out from SC/ST or OBC .in a particular selection, the High Court is not under an obligation to send a list including names of persons from those communities as well. Further, there is neither any rule nor any reason that the list should contain more names than the number of vacancies to be filled up.

There is no merit in the contentions advanced by the petitioner even apart from the fact that this is a premature launching. Writ Appeal is accordingly dismissed.