(1999) 08 MP CK 0019

Madhya Pradesh High Court

Case No: Writ Petition No. 5766 of 1998

Rajneesh Kumar Jain		APPELLANT
	Vs	
State of M. P. and others		RESPONDENT

Date of Decision: Aug. 28, 1999

Acts Referred:

- Constitution of India, 1950 - Article 234, 309
- Industrial Disputes Act, 1947 - Section 7A(3)(aa)
- Madhya Pradesh Lower Judicial Services (Recruitment, Conditions of Service) Rules, 1994 - Rule 7

Citation: (2000) 1 MPJR 278 : (2000) 1 MPLJ 272

Hon'ble Judges: S.P. Khare, J; D.M. Dharmadhikari, J

Bench: Division Bench

Advocate: Rajneesh Jain, N. Nagrath, O.P. Mishra and R.K. Gupta, for the Appellant; Ravindra Shrivastava, Vivek Awasthy and S.K. Seth, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D.M. Dharmadhikari, J.

A common order is being passed in this petition and connected petitions i.e. W.P. No. 5770/98 (Abdul Jabbar Khan vs. State of M.P. and others) and W.P. No. 356/99 (Prakash Chandra Gupta vs. State of M.P. and others). W.P. No. 5824/98 (Smt. Kusum Saxena vs. State of M.P. and others was allowed by the Court to be withdrawn by order dated 27-1-1999 with liberty to the petitioner of that case to urge all grounds on her behalf in this petition.

All the petitioners in this batch of petitions are practising Advocates and have applied, pursuant to the advertisement issued by the Public Service Commission, for recruitment through Written test and interview for the post of Civil Judges in the

subordinate judiciary of the State of M.P. Admittedly, all the petitioners have crossed the minimum prescribed age limit of 35 years and are prima facie ineligible to apply for the post under the terms of the advertisement. By these petitions, they have challenged the validity of the conditions in the advertisement prescribing essential qualifications and the bar of age.

Recruitment to the Lower Judicial Service of the State which includes the post of Civil Judge (Junior Scale) is regulated by the M.P. Lower Judicial Services (Recruitment and Conditions of Service) Rules, 1994 (hereinafter referred to as "the Rules" for short). The above rules have been framed by the Governor in exercise of powers conferred by Article 234 read with proviso to Article 309 of the Constitution of India. Rule 7 contains the minimum prescribed conditions of eligibility for the recruitment to the post of Civil Judge. The relevant rule 7 which was amended by Notification dated 9th December, 1977, published in M.P. Gazette, Part 4(Ga) dated 19th December, 1997 now stands as under:--

"7. Eligibility.-- No person shall be eligible for appointment by direct recruitment to posts in category (i) of Rule 3(1) unless:--

(a) he is a citizen of India;

(b) he has attained the age of 25 years and not completed the age of 35 years on the first day of January of the next following year in which applications for appointment are invited.

Provided that the upper age limit shall be relaxable upto a maximum of five years if a candidate belongs to Scheduled Caste, Scheduled Tribe or Other Backward Class:

Provided further that the upper age limit of a candidate who is a Government servant (whether permanent or temporary) shall be relaxable upto 38 years:

(c) he possesses a degree in law of any recognised University;

(d) he has practised as an Advocate for not less than 3 years on the last date fixed for submission of application for appointment; and

(e) he has good character and is of sound health and free from any bodily defect which renders him unfit for such appointment."

The relevant conditions contained in the advertisement issued by the P.S.C. on 3-12-1998 inviting applications for the post of Civil Judge reads (rendered into English) as under:--

"IV. Details of the post..

(a) .....

(b) .....

(c) Essential qualifications (1) Bachelor degree of Law from a recognised university, and (2) practice as an Advocate for not less than three years on the last date fixed for submission of application for appointment.

(d) Age limit. Has attained the age of 25 years but not completed the age of 35 years on the first day of January of the next following year in which applications for appointment have been invited.

V. Relaxation in upper age limit. -- (1) Upper age limit shall be relaxable upto maximum of five years if the candidate belongs to Scheduled Caste, Scheduled Tribe or other backward classes.

(2) Upper age limit is upto 38 years for candidates who are government servants, permanent/temporary/workcharged/ or contingency paid as also employees in State Corporations/ Boards/Municipal Corporations/Municipalities and Autonomous Bodies. The same age relaxation will also available to employees working in various projects under the Project Executive Committees. Note:-- If any candidate is a member belonging to Scheduled Caste/Scheduled Tribe/Other Backward Class and also in government service, for such candidate maximum age limit is 40 years.

The above age relaxations would be granted only to such candidates who produce certificate for their entitlement."

Shri Rajneesh Jain as one of the petitioners, Shri Naman Nagrath counsel appearing with him and Shri O.P. Mishra, Advocate, addressed the Court on behalf of the petitioners. Shri Ravindra Shrivastava, and Shri S.K. Seth, Advocates appeared and addressed the Court for the High Court and Public Service Commission respectively. Counsel appearing for the State and for the Public Service Commission adopted the return filed and arguments advanced on behalf of the High Court.

We shall now take up for consideration in seriatim the challenges made by the learned counsel for the petitioners to the conditions of the advertisement. The first ground urged on behalf of the petitioner is that under the circular issued by the General Administration Department of the State dated 6th of July, 1998 (Annexure-A/2), for recruitment to government service the minimum prescribed age limit of 33 years has been increased for candidates from general category to 35 years, for reserve category to 40 years, and for women of general, reserved and specified categories such as divorcees, widows and deserted women, to 45, 50 and 55 years respectively. It is submitted that for recruitment to judicial services, no corresponding increase in the prescribed age limit from 35 to 38 years has been provided and the inaction in that respect is discriminatory.

The above contention has little merit. In the government services when the age of superannuation of government servants was fixed at 58 years, the age limit for recruitment was 33 years. It is after the 5th pay commission that the age of superannuation of government servants was increased to 60 years. The

Government thereafter thought it necessary to increase the age limit for entry into government service. It is in this background that the General Administration Department (G.A.D.) of the government issued circular dated 10th July, 1998 increasing the age limit for recruitment to government service from 33 to 35 years. This is clear from paragraph 2 of the G.A.D. Circular Annexure-A/2.

So far as the recruitment to judicial services of the State is concerned, on the directions of the Supreme Court in the All India Judges'' Association and Others Vs. Union of India and Others, , the age of superannuation of members of the judiciary was increased from 58 to 60 and correspondingly, thereafter, age limit of 35 was prescribed uniformly in the rules for recruitment to judicial service. The age of retirement of government servants after 5th Pay Commission has been increased from 58 to 60 years but there is no corresponding increase of the age of superannuation of judicial officers which continues to be 60 years as before. In these circumstances, there is absolutely no justification for increasing the age limit for entry to judicial service.

The challenge on the ground of discrimination has no merit. Recruitment to judicial services is not comparable to other services of the State because in the former the source of recruitment is from amongst the practising Advocates in the Bar or those advocates who subsequently joined other services. There is no other source of recruitment. The nature of duties and functions of a Judge are not comparable with the duties and functions of any other holder of a post or office in the services of the State other than judiciary.

The next ground urged is that there is no justification to discriminate candidates who are practising lawyers vis-a-vis candidates in the services of the State or State organisations for giving to the latter class age relaxation upto 38 years and deny such relaxation in age to the former class. It is argued that as compared to such candidates who are in service, the candidates who are active practitioners at the Bar are more suitable for recruitment to the services and such discriminatory treatment to members of the Bar is unconstitutional.

The above argument appears to be attractive, but keeping in view the object for which such relaxation is provided, it is also found to be unacceptable. It has not to be forgotten that the source of recruitment to judicial services is only from amongst law graduates. Majority of law graduates join the bar to practice law in the Courts. A small section of law graduates join different legal or administrative departments of the State and Government organisations. Such law graduates who are in service and have minimum prescribed three years experience at the Bar are also required to be given a chance of improving their career. There are candidates who had practised at the Bar for certain number of years and who voluntarily or due to compulsions of circumstances were required to join services. They also deserve to be given avenue of career in judiciary. Their chances cannot be blocked for entery into judicial services. Such in-service candidates who had been earlier practising law at the Bar

constitute a distinct class. A grant of different treatment to them by providing age relaxation has justification. Such candidates having spent initial period of their career at the bar and then in government services suffer from disadvantage as compared with those who are in active practice. As has been mentioned in the return of the High Court, "the class of government servant has traditionally been recognised as forming a distinct class in the matter of relaxation of upper age limit in recruitment to services. By virtue of services being rendered by them, subject to fulfilment of qualifications and other eligibility criteria. It has been a sound policy to provide them opportunity and encouragement to seek further and better employment if so desired to improve upon their career." The candidates belonging to this class of government servants are not comparable with candidates available in the Bar. Grant of age relaxation to the former class is based on a reasonable classification which has a reasonable nexus with object to make recruitment from all available sources. Such age relaxation cannot be extended to the members of the bar because that would mean increase of the prescribed age limit for members of the bar from 35 to 38 and thus fixing an age limit which would not give them a reasonably long tenure to seek promotion to the highest post of District Judge in the judicial career and would be a deterrent to the successful members of the Bar in competing for judicial service.

Age relaxation to in-service candidates is to be found in other statutory service recruitment rules of other departments of the State. A mention of it has been made in the return of the High Court. The departments mentioned are Forest Services, M.P. State (Gazetted) Services, P.W.D. (Non- Gazetted) Services, Irrigation, Engineering and Geological Service.

It has also been found that large number of law graduates are working in legal and administrative departments of the State such as in the staff of the High Court, on the ministerial post in Courts, Law Officers, Legal Aid Officers, Naib Tahsildars, Police Prosecutors, and various other categories of employees. It has been found necessary to give such in-service candidates with past practice and experience in law a chance of entry into judicial services. Entry of such candidates in the judiciary would pave way for utilisation of their legal and administrative experience in discharge of their judicial functions. If such candidates are found suitable to be provided with the career in judicial service, the grant of age relaxation to them is necessary because they have spent a considerable period of their life in serving in other departments and branches of government or government organisations.

In the above respect, it needs mention that the present statutory rules of recruitment under Articles 234 read with Proviso to Article 309 were framed on the directions of the Supreme Court in All India Judges Association case (supra) with a view to bring uniformity in recruitment to judicial service in the whole of India as a first step suggested towards "constitution of an All India Judicial Service". In implementing the directions and observations of the Supreme Court in the All India

Judges Association case, occasion to seek clarification arose in view of the provisions in Gujrat Judicial Service Recruitment Rules for recruitment of law graduates working in subordinate Courts and on the establishment of the High Court or in legal sections of different departments of the State. In the Gujrat Rules, for such staff members minimum prescribed 3 years practice at the Bar was not insisted upon. The validity of such rule came up for consideration on a clarification sought from the Supreme Court. The Supreme Court in upholding such rule of the Gujrat State providing avenue of recruitment to in- service candidates -- in different legal departments and legal sections of the State, approved the proposal for not insisting on practice at the Bar for such members of the staff. The relevant part of the observations in the order of the Supreme Court (a copy of which is filed with the return of the High Court as Annexure R-2/1) needs to be quoted in full to meet the challenge made to the rule of relaxation for candidates in government service as discriminatory:

"This Court while considering review petition No. 249 of 1992 in Writ Petition No. 1022 of 1989 along with certain other review petitions arising from the main judgment in the case of All India Judges'' Association Vs. Union of India and others, , laid down certain requirements -- one of which related to the qualification required to be prescribed and the procedure to be adopted for the recruitment of Judges at the grass-root level in all States vide Paragraph 20 of All India Judges'' Association and Others Vs. Union of India and Others, . This Court laid down that legal practice of three years would be one of the essential qualifications of recruitment to the judicial posts at the lowest rung in the judicial hierarchy. This direction related to the appointments to be made from the Bar. This direction is consistent with the observations of the Law Commission 77th Report found at paragraph 9.5 in Chapter 9. The relevant recommendation reads as under:

"We have considered the pros and cons and are of the opinion that the present system of insisting upon a number of years of practice at the Bar as mandatory for recruitment to the subordinate judicial service should continue. The minimum period of practice, in our opinion should be three years. Some exception regarding requirement of minimum practice may possibly have to be made in the case of law graduates employed in Courts."

Insofar as the recruitment rules are concerned, the relevant rule is rule 5 of the Gujrat Recruitment Service Rules, 1965. That rule provides the method of recruitment to class 2 of the Judicial branch. According to that rule, besides the members of the Bar, members of the staff of the High Court as well as Subordinate Courts, members of the Staff working as Assistant in the legal section of the Legal Department, Sachivalaya, members of the staff of Office of the Government Pleader, High Court and City Civil Court, Ahmedabad are eligible for appointment provided they have obtained the LL.B. (Special) Degree or are qualified for enrolment as an Advocate and have served for a period of not less than 5 years including not less

than 2 years after obtaining such Degree or qualifying for such enrolment and are certified to have sufficient knowledge of Gujrati and Hindi and are able to translate from Gujrati etc. Besides these requirements, those staff members are required to pass an examination called the Civil Judges (Junior Division) and Judicial Magistrates, First Class Recruitment Examination comprising two papers. Only those of the staff members who pass this rigorous test are eligible to be recruited to the lowest rung of the State Judiciary. The directions given by this Court in the judgment referred to hereinabove concerned the minimum practice requirement for entry into service from amongst the members of the Bar. The Court had not noticed the provision made by the High Court in regard to recruitment of staff members with sufficient experience. The experience of five years service is equated to the experience of three years at the bar. We are, therefore, of the opinion that in such cases the direction in regard to minimum three years practice at the Bar does not stricto sensu apply.

We, therefore, clarify this position and hold that the staff members who are eligible under Rule 5 and who comply with requirement of the Rule discussed above could be considered for appointment at the lowest rung in the subordinate judiciary. We would, however, also make it clear that any dilution of this Rule will render them ipso facto ineligible for appointment to the service of the lowest level of State judicial service."

The abovequoted observations of the Supreme Court fully justify preferential treatment to the candidates who are law graduates and are employed in the services of the State. So far as the M.P. Rules are concerned, even for in-service candidates the requirement of minimum 3 years'' practice at the Bar has not been dispensed with. Such candidates have to fulfil minimum prescribed three years practice at the Bar to compete with other practising lawyers in the written test and via-voce test. Some favourable treatment of age relaxation is given to them because after completing 3 years law practice they might have joined the services at their volition or due to compulsion. Their experience in service is, however, found to be worth giving some weightage for providing them avenue of recruitment to judicial service.

On the question of grant of relaxation to in-service candidates, the second limb of argument advanced on behalf of the petitioners has great force that such relaxation in age cannot be granted to work-charged, contingency paid or those employed in government corporations, Boards, Local Authorities and Autonomous Bodies. The relevant rule contained in Second Proviso to Clause (b) of Rule 7 has been quoted above. The rule permits relaxation of age upto 38 years to government servants of specified two categories only mentioned therein i.e. permanent or temporary. The rule does not contemplate or permit grant of age relaxation to government servants of any other category such as work-charged or contingency paid. The rule also does not permit age relaxation to employees of government corporations, Boards,

Municipal Corporations, Municipal Bodies and other autonomous Bodies. This part of the advertisement giving relaxation to all categories of employees could not be supported by the counsel on behalf of the High Court. At the Bar it was said that this was found to be a mistake and has been corrected in the recruitment advertisement issued for the future year. Learned counsel for the petitioner insisted that all such ineligible candidates who have applied on the basis of age relaxation should be eliminated from the process of selection and for this purpose this petition be treated as public interest litigation. We may observe that none of the petitions was filed as Public Interest Litigations and no foundation for treating them so has been laid in the petition. No directions pertaining to the candidates in general or public have been sought in the prayer clause of the petition. We, therefore, refrain from issuing any such directions in these petitions by treating them as petitions in public interest. We are not informed by the P.S.C. as to how many candidates, on the basis of age relaxation belonging to the ineligible category (i.e. those working in government corporations, Boards, local authorities and autonomous Bodies) have actually applied pursuant to the advertisement. The preliminary examination for the post under advertisement is already over and the written test has been held on 2nd of August, 1999. It would be a matter of guess as to how many candidates of the abovementioned ineligible category would get selected. It is for the P.S.C. to scrutinise the applications and at the final stage, if any candidates of such categories which are held to be ineligible, get selected their names be eliminated after due notice to them. Not much reasoning is required to hold the offending part of the advertisement as invalid in respect of grant of age relaxation to such categories of employees. They are neither permanent nor temporary servants in the government. No term/terms can be prescribed in the advertisement which are contrary to statutory rules. With these observations, but without issuing any specific direction, we uphold the second limb of contention advanced against grant of age relaxation to candidates not strictly in government employment as contained in para 5(2) of the advertisement.

The next ground urged on behalf of the candidates is that in accordance with the provisions of M.P. Civil Services (Special Provision for Appointment of Women) Rules, 1997, there should be 30% reservations for women candidates and relaxation in age upto 10 years in accordance with G.A.D. circular of the government dated 6/10th July, 1998. Under the abovementioned rules of the year 1997 framed by the Governor in exercise of powers conferred by the Proviso to Article 309 of the Constitution of India, for recruitment to public services and posts in connection with affairs of the State, 30% reservations shall be given to women candidates. In accordance with the circular issued as provided under the said rules, women candidates of general category would have age relaxation upto 45 years, those from reserved category upto 50 years, women candidates from general category who are divorcees, widows or deserted upto 50 years and those from abovementioned category of reserved classes upto 55 years.

In our opinion, the claim for reservation of posts for women and age relaxation on the basis of abovementioned Rules of 1997 is misconceived. Recruitment to judicial services cannot be regulated by rules made by the Governor alone under Proviso to Article 309 of the Constitution of India. The source of power to legislate and frame rules for recruitment to judicial service is to be found in Article 234 of the Constitution. Under Article 234 of the Constitution, the appointment to judicial service of the State for post other than that of District Judges shall be made by the Governor of the State in accordance with the rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State. The Rules of 1977 providing reservation of posts for women and age relaxation to them are not framed by the Governor in consultation with the High Court and P.S.C. The Rules of 1997 framed under Article 309 of the Constitution can have no application for recruitment to judicial services which are governed only by the specific Rules of 1994 framed for judicial services under Article 234 read with Proviso to Article 309 of the Constitution.

The other argument advanced on behalf of the women candidates in this regard is that there is no justification to discriminate between women seeking employment in other services of the government and the judicial services of the State. As has been observed in the All India Judges case by the Supreme Court, the judicial service is not ''service'' in the strict sense because the holder of judicial office is not servant of the State. His conditions of service and tenure are, therefore, distinguishable from holder of any other post in government service where there is relationship of master and servant. The source of recruitment for judicial service is limited to the law graduates either at the Bar or in any department of the government. Since the source of recruitment is limited, the availability of women candidates is also limited to such law graduates amongst women who are at the Bar or in services. In other departments of the State, there are posts and wings well suited for recruitment of women. Opportunity of employment to women who suffer from pecuniary and social disabilities such as the divorcees, deserted woman and widows may be provided in other departments but is not found suitable in judiciary. In the matter of reservation of seats for women and for grant of age relaxation to them differential treatment is justified from the nature of judicial service and the source of recruitment. The attack to the rule on the ground of discrimination under Articles 14 and 16, therefore, cannot be sustained. The decision of the Supreme Court in the case of J. Pandurangarao Vs. Andhra Pradesh Public Service Commission, on which reliance has been placed on behalf of the petitioners in support of the above argument is distinguishable. In that case, for recruitment to the post of District Munsiff discrimination in the rules was found in prescribing the qualification of practice as an Advocate only in the High Court of Andhra Pradesh. The Supreme Court held that the Advocates to other High Courts cannot be discriminated for recruitment to judicial service of Andhra Pradesh. Such is not the case here. On the

question of reservation of seats and age relaxation for women for recruitment to judicial services, we do not propose to express any final opinion although on the circumstances brought on record, at present, we find no ground to issue any such direction for reservation of seats and age relaxation to women candidates as is prayed in one of the petitions filed on behalf of a woman candidate who has crossed the prescribed age limit.

In the course of hearing the learned counsel appearing for the High Court placed before us a copy of the formal decision taken and conveyed by the High Court on the subject to the Government, whereby the High Court has refused to accept the proposal of the government to introduce provision of reservation of seats and age relaxation for women in recruitment to judicial services at par with provisions made for women for recruitment to posts in services in other departments of the State stating that there are enough number of women injudicial services.

As we have held above the source of recruitment to judicial services is limited to law graduates with three years practice at the Bar. We have presently found no ground to discriminate between them on the ground of sex alone. We, however, foresee a situation where women judicial officers might be required to be appointed to Courts specially constituted for dealing with laws concerning women, children and families.

The grant of reservation of seats and reservation to women candidates for recruitment to judicial services is essentially a policy matter to be decided by the appointing Authority depending upon various relevant factors such as the nature and source of recruitment, availability of suitable number of posts, the need for representation of a special class and the requirements of the service.

We, therefore, do not rule-out a valid policy of reservation in future in favour of women for recruitment to judicial services. The reasonability and constitutionality of the same would then be a question for decision if brought to the Court by any of the parties.

The last argument that, needs consideration and some observations, although not advanced by the learned counsel appearing as individual grievances of the petitioners, is on the condition with regard to minimum prescribed period of practice at the Bar. On behalf of the petitioners it is emphasised that the condition in the advertisement and the relevant rule prescribes three year''s minimum practice as an Advocate on the last date of submitting the application under the advertisement. It is contended that the condition requires that the candidate should be in ''continuous practice'' on the date of submission of the application and such candidates who had practised in the past for three years but not continuously before the last date of the application are not eligible. Very strong reliance has been placed on the Single Bench decision of Bombay High Court in Sudhakar Govindrao Deshpande vs. State of Maharashtra. 1986 Lab IC 710. In the Bombay case (supra), by dissenting from, the view of the Allahabad High Court in the case of Chandra

Mohan Vs. State of U.P. and Others, , and construing the provisions of Article 233(2) of the Constitution laying down the qualifications for members of the bar for appointment as District Judges, it was held that the Article refers to "members of the bar" who have been of seven years'' standing and not to persons who have ceased to be members of the bar and are employed elsewhere at the time of their application for appointment as District Judges. The learned Single Judge of the Bombay High Court noted the fact that the phrase "has been" is capable of two interpretations, namely, (i) has been sometime in the past or (ii) has been in the immediate past denoting a continuous state from the past. It observed thus:

"Looking to the history of the provisions contained in Article 233(2) and the context, the correct interpretation of Article 232(2) is that it refers to persons who have been advocates or pleaders and who continue to be so at the time of their appointment."

The learned Single Judge of the Allahabad High Court in the case of Chandra Mohan (supra) while construing the provisions of section 233(2) of the Constitution relied on a decision of the Supreme Court in the case of State of Assam Vs. Horizon Union and Another, and held that the words "has been"in the phrase, when not followed by a participle is the present perfect tense of "to be" and accordingly the language indicates that the state of being has existed and may be (but not necessarily is) continuing. It was, therefore, held by the Allahabad High Court that Article 233(2) of the Constitution does not disqualify a candidate who had practised for seven years at the bar in the past and may not be in the bar on the date of his consideration for appointment as District Judge.

From the aforesaid decisions of Bombay and Allahabad High Courts and the decisions of the Supreme Court which we shall hereafter discuss, the relevant recruitment rule providing minimum prescribed period of practice at the bar needs construction. The rule uses the expression "he has practised as an advocate for not less than 3 years on the last date fixed for submission of application for appointment". The expression "has practised as advocate" is susceptible of two interpretations conveying (i) the candidate who has been in continuous practice for not less than 3 years on the date fixed for submission of application, and (ii) the candidate who had practised in the past for 3 years at the Bar. In interpreting the above rule, the object with which the above rule and the legal history for introducing such a rule cannot be overlooked. The Law Commission in its 77th Report recommended that there should be insistence upon the number of years of practice at the bar as a mandatory requirement for recruitment to subordinate judiciary service. The part of that report has already been quoted above as part of the order passed by the Supreme Court clarifying the observations and directions in the All India Judges Association case. In the All India Judges Association''s case, the following observations were made for providing in the recruitment rules minimum three year''s period of practice as a necessary eligibility condition:--

"The qualifications prescribed and the procedure adopted for recruitment of the Judges at the lowest rung are not uniform in all the States. In view of the uniformity in hierarchy and designations as well as the service conditions, it is necessary that all the States should prescribe uniform qualifications and adopt uniform procedure in recruiting the judicial officers at the lowest rung in the hierarchy. In most of the States, the minimum qualifications for being eligible to the post of the Civil Judge-cum-Magistrate First Class/Magistrate First Class/Munsiff Magistrate is minimum three year''s practice as a lawyer in addition to the degree in law. In some States, however, the requirement of practice is altogether dispensed with and Judicial Officers are recruited with only a degree in law to their credit. The recruitment of law graduates as judicial officers without any training or background of lawyering has not proved to be a successful experiment. Considering the fact that from the first day of his assuming office, the judge has to decide, among others, questions of life, liberty, property and reputation of the litigants, to induct law graduates fresh from the Universities to occupy seats of such vital powers is neither prudent nor desirable. Neither knowledge derived from books nor pre-service training can be an adequate substitute for the first hand experience of the working of the Court system and the administration of justice begotten through legal practice. The practice involves much more than mere advocacy. A lawyer has to interact with several components of the administration of justice. Unless the judicial officer is familiar with the working of the said components, his education and equipment as a Judge is likely to remain complete. The experience as a lawyer is, therefore, essential to enable the judge to discharge his duties and functions efficiently and with confidence and circumspection. Many States have hence prescribed a minimum of three year''s practice as a lawyer as an essential qualification for appointment as a judicial officer at the lowest rung. It is hence necessary that all the States prescribe the said minimum practice as a lawyer as a necessary qualification for recruitment to the lowest rung in the judiciary. 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 person to the posts of the Judge of the High Court and the Judge of the Supreme Court, respectively. Therefore, the Supreme Court directed that all States shall take immediate steps to prescribe three year''s practice as a lawyer as one of the essential qualifications for recruitment as the judicial officer at the lowest rung. The direction is calculated to ensure recruitment of competent, independent and honest judicial officers and thus to strengthen the administration of justice and the confidence of public in it. The States should, therefore, take immediate steps to comply with the said direction by amending the relevant Rules."

We have already quoted above along with the observations of the Supreme Court the clarification to the said observations made while considering the Gujrat Judicial

Service Recruitment Rules which provided avenue of recruitment to members of the staff working in the Courts and legal department of the State. The Supreme Court in the directions and orders issued in the matter of clarification, upheld the Gujrat Recruitment Rule dispensing with 3 years'' practice at the bar and instead requiring only minimum 5 years service in the concerned legal department for in-service law graduates.

In interpreting, therefore, the rule in the M.P. Recruitment Rules, the above-quoted observations in the All India Judges case as initially made by the Supreme Court and subsequently clarified will have to be given due weightage and effect. Under the Recruitment Rules, the avenue of recruitment is provided both to the lawyers practising at the bar for three years and those who have practised for the minimum required period but on the date of making the application are employed in the government service. If the interpretation sought to be placed on the rule by the petitioners is accepted, then all those government servants who are law graduates but are not actually in practice on the date of making application by them would be debarred from applying for the post. It is well settled that an interpretation whereby part of the rule is rendered ineffective or otiose should be avoided and the interpretation which would make all parts of the rule workable should instead be preferred. We have shown from the extracts of the judgment of the Supreme Court in the All India Judges case (supra) which was subsequently clarified by it (supra), that in-service candidates who had practised for minimum three years at bar have to be considered for appointment being from one of the suitable sources for recruitment to judicial services. In the background of the directions of the Supreme Court and in the context in which the rule was introduced, it has to be held that the expression "has practised" would mean all candidates who might have practised for minimum period in the past and also those who are in continuous actual practice till the last date fixed for making the application. The decisions cited at the bar are distinguishable on the language of the particular rule in those cases. In the case of Thote Bhaskara Rao Vs. A.P. Public Service Commission and Others, the language of the relevant rule was that in case of candidate who is already in government service he must have actually practised for a period of more than 3 years immediately prior to the date of his entering the Government service. The rule under consideration before us i.e. Rule 7(d) does not have similar language. In the case of Thote Bhaskar Rao (supra), the question that arose was whether the service in Hindustan Shipyard which is a Government company would be deemed to be government service for the purpose of the rule and the answer of the Supreme Court was in the negative. The decision of the learned Single Judge of Bombay High Court was on interpretation of Article 233 which provides experience at the bar for seven years as a qualification for appointment to District Judge and the language of that Article was interpreted. The Bombay view dissents from the earlier view of the Allahabad High Court in which it has been held that candidates who have practised for seven years in the past but may not be in actual practice on the date of making the application, are

eligible to apply for the post of District Judge. The decision of the Allahabad High Court is based on the decision of the Supreme Court in State of Assam Vs. Horizon Union and Another, . For the reasons we have already mentioned above, particularly in view of the interpretation of the rule laying down prescribed past experience at the bar as has been clarified by the Supreme Court in All India Judges Association case, we are of the view that the decisions of Bombay and Allahabad High Courts concerning interpretation of Article 233(2) are not helpful in construing the rule framed for recruitment to the lower judicial service of the State under Article 234 of the Constitution. In the decision of the Supreme Court in State of Assam vs. Horizon Union (supra), u/s 7A(3)(aa) of the Industrial Disputes Act, a candidate who has for a period of not less than three years been a District Judge was held qualified for appointment as Presiding Officer of the Industrial Tribunal. Shri B.G. Datta who was appointed as Presiding Officer of the Industrial Tribunal had held the office of the Additional District Judge for the requisite period of three years in the past but on the date he was appointed to the Tribunal he was holding the office of the Registrar of the High Court of Assam. His appointment as Presiding Officer of the Industrial Court was challenged on the ground that the requirement of the section is that a candidate who was continuing as the District Judge or Additional District Judge alone was qualified for the appointment. In interpreting the provision contained in section 7A(3)(aa), the Supreme Court held that the High Court was in error in thinking that in order to satisfy the conditions of section 7A(3)(aa), Shri Datta should have actually worked as District Judge/Additional District Judge for a period not less than three years. For over three years, Shri Datta held the post of Additional District Judge. Consequently, during this period he had been an Additional District Judge as required by section 7A(3)(aa) and to satisfy the requirement of section 7A(3)(aa) of the Industrial Disputes Act it was not necessary that he must have actually worked as Additional District Judge for this period.

Taking some support from the above decision of the Supreme Court and relying on the observations of the Supreme Court in All India Judges Association case with the clarification issued by it subsequently in the matter of in-service law graduates, we are of the opinion that the rule harmoniously construed along with other rules makes it clear that law graduates in service who had practised for minimum 3 years at the Bar are qualified to apply for the post.

Having thus answered all the contentions advanced on behalf of the petitioners, we find no ground to grant any relief to any of the petitioners in this batch of petitions. There is also no justification to issue any direction or writ in these batch of petitions treating them as Public Interest Litigation.

Consequently, the petitions are dismissed, but in the circumstances, without any order as to costs.