

Madras High Court
Madras High Court
N.Rajachandrasekaran vs The Secretary To Government on 12 June, 2009
DATE : 12.06.2009

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA

AND

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

W.P. NO. 3102 OF 2005

W.P. NO.7588 OF 2006

AND

W.P. NO.1285 OF 2009

W.P. No.3102 of 2005

N.Rajachandrasekaran .. Petitioner

- Vs -

1. The Secretary to Government

Public (Special A) Department

State of Tamil Nadu

Fort St. George

Chennai 600 009.

2. Registrar General

High Court

Chennai 600 104.

3. Velu

4. Ramamoorthy

5. Jayachandran

6. T.Ka.Ram

7. Sathish

8. Seshaya

9. Karthikeyan

10.Saravanan

11.Kumaraguru .. Respondents

W.P. No.7588 of 2006

D.Parisuthanathan .. Petitioner

- Vs -

1. The Secretary to Government

Public (Special A) Department

State of Tamil Nadu

Fort St. George

Chennai 600 009.

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3. N.Velu

4. V.Ramamoorthy

5. V.Jayachandran

6. T.Ka.Ram

7. N.Sathish Kumar

8. N.Seshayee

9. C.V.Karthikeyan

10.G.Saravanan

11.S.Kumaragurubaran

12.P.Velmurugan .. Respondents

W.P. No.1285 of 2009

D.Parisuthanathan .. Petitioner

- Vs -

1. The Public Information Officer/Registrar General High Court, Madras

Chennai 600 104.

2. The Deputy Registrar (RTI Act)

High Court Madras

Chennai 600 104.

3. The Chief Information Commissioner

State Information Commission

Teynampet, Chennai 600 018.

4. The Registrar General

High Court

Madras. .. Respondents

W.P. No.3102 of 2005 filed for the issuance of a writ of declaration declaring the selection of the respondents 3 to 11 as District Judges by direct recruitment in the Tamil Nadu State Judicial Service as illegal and ultra vires and in contravention of Articles 223 and 233 of the Constitution of India. W.P. No.7588 of 2006 filed for the issuance of a writ of certiorarified mandamus calling for the records relating to G.O. (2D) No.81 Home (Court III) Department dated 17th March, 2005 on the file of the 1st respondent herein and to quash the same insofar as respondents 3 to 12 are concerned and direct the respondent to fill up the vacancies to the posts of District Judges in order of merit in the list furnished by the 2nd respondent. W.P. No.1285 of 2009 filed for the issuance of a writ of certiorarified mandamus to call for the records pertaining to the letter of the 2nd respondent in ROC No.575/2007 RTI dated 23rd June, 2008 and quash the same and direct the 3rd respondent to initiate an inquiry under section 18 (2) and (3) of the Right to Information Act, 2005 and thereby direct the 1st respondent to furnish all the information sought for by the petitioner in his application dated 2nd Feb., 2007. For Petitioners : Mr. S.Subbiah

For Respondents : Mr. A.Edwin Prabhakar, GA, for RR-1 & 2 For Respondents Mr.V.Anantharaj for R-3

in WP 3102/05 & Mr. V.Raghavachari for R-8 & R-11 7588/06 Mr. Senthilkumar for R-9

Mr. Silambanan for R-4

M/s.Norton & Grant for R-5

M/s.G.M.Mani Associates for R-6

Mr. J.Thilagaraj for R-10

Mr. S.Periasamy for R-7

Mr. C.V.Shyamsundar for R-12

For Respondents : Mr. A.Edwin Prabhakar, GA, for RR-1 to 4 in WP 1285/09

COMMON ORDER

S.J.MUKHOPADHAYA, J.

As all the writ petitions relate to selection and appointment to the post of District Judge by direct recruitment and common order of selection and appointment of contesting respondents 3 to 11 are under challenge, they were heard together and disposed of by this common judgment.

2. The petitioner, N.Rajachandrasekaran of W.P. No.3102/05 has sought for declaration that selection of respondents 3 to 11 as District Judges by direct recruitment in the Tamil Nadu State Judicial Service as illegal and ultra vires Articles 223 and 233 of the Constitution of India. Petitioner, D.Parisuthanathan of W.P. No.7588/06 has challenged the appointment of the aforesaid respondents. The same very petitioner, D.Parisuthanathan has preferred the other writ petition, W.P. No.1285/09 against the order contained in letter R.O.C. No.575/2007 RTI dated 23rd June, 2008, whereby the 2nd respondent, Deputy Registrar Right to Information, has shown inability to provide information with regard to appointment of District Judges and informed the petitioner that the Government is the appointing authority, therefore, related particulars and other information can be obtained from the State Government.

2. It appears that a notice dated 10th Aug., 2003, was published in the newspaper, the respondent-State invited application for appointment to the post of District Judge by direct recruitment from amongst members of the Bar having more than 7 years of practice as an Advocate. The petitioner and the contesting respondents and others applied. A written test was conducted on 6th Sept., 2003. The candidates were called for interview held in April, 2004. The intimation relating to selection was forwarded on 3rd Dec., 2004, pursuant to which orders of appointment were issued vide G.O. Ms. No.1786 Public (Special - A) Department dated 24th Dec., 2004. The persons, who were appointed were sent for training, commenced on 6th June, 2005. After more than a year or two, the writ petitions were preferred by petitioners challenging the appointment of the respondents 3 to 11. The main plea taken by the petitioner is that, though they obtained higher marks in the written test as well as interview, but they have not been appointed and persons having lower marks, having lower position in the merit list have been appointed.

3. The petitioner, N.Rajachandrasekaran of W.P. No.3102/05 has stated that out of 75 marks in the written test, he has secured 60 marks and out of 25 marks in the viva-voce, he has obtained 15 marks and, thereby, he has secured 75 marks out of 100, which is the highest among all the candidates. The next highest mark, as he could come to know is 54 marks or below, obtained by others. Almost similar plea has been taken by the petitioner, D.Parisuthanathan of W.P. No.7588/06, who claims to have obtained about 60 to 75 marks.

4. The contesting respondents have denied the averments and stated that the claim made by the petitioners was not based on evidence and the marks they claim is based on surmises and conjectures. The 2nd respondent, Deputy Registrar RTI, has taken plea that he is ready to produce the records before the Court and, in fact, produced the original proceeding relating to selection and appointment.

5. We have heard the learned counsel for the parties and perused the original record.

6. In the case of Hari Datt Vs State of H.P. (AIR 1980 SC 1426), while the question of appointment of District Judges fell for consideration, the Supreme Court observed that where the Government acts on the recommendation of the High court and the action of the Government is challenged by way of writ petition, in order to facilitate proposition of issues raised, administrative side of the High Court, if joined as a party, must appear and place before the Court the entire records for a fair and judicious adjudication of the issues on the

judicial side of the High Court. That was a case in which the appellants in their writ petition requested the High Court to produce the proceeding, which culminated in the recommendation of the High Court to the Government for appointment of contesting respondents as District Judges. No action was taken on the request because no such record appears to have been produced before the High Court. In such background, the Supreme Court observed that Such silence militates against fair adjudication of issues. Just and fair adjudication must not only inform the administrative side of the High Court, but in order to put its record beyond the slightest pale of controversy it must avoid any secrecy in this behalf consistent with public interests.

7. In the present case, the High Court had the relevant documents relating to selection, but from the impugned letter dated 23rd Feb., 2008, it appears that the 2nd respondent, Deputy Registrar RTI did not choose to give information under the Right to Information Act on the ground that the State Government is the appointing authority, who may furnish the details.

8. We may notice that The Right to Information Act, 2005 was promulgated on 15th Feb., 2005 and published in the Gazette on 21st June, 2005 for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto. As democracy requires an informed citizenary and transparency of information, which are vital to its functioning and also to contain corruption to hold the Governments and their instrumentalities accountable to the governed; and revelation of information in actual practice is likely to conflict with other public interests, including efficient operations of the Governments, with a view to harmonise these conflicting interests, while preserving the paramountcy of the democratic ideal, the Parliament thought it expedient to provide for furnishing certain information to citizens, who desires to have it.

9. While request for obtaining information and disposal of request has been mentioned u/s 6 and 7 of the Right to Information Act, 2005, exemption from disclosure of information is prescribed u/s 8, which reads as follows :- 8. Exemption from disclosure of information.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, - (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence; (b) information which has been expressly forbidden to be published by any Court of law or tribunal or the disclosure of which may constitute contempt of Court; (c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature; (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information; (e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information; (f) information received in confidence from foreign Government; (g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes; (h) information which would impede the process of investigation or apprehension or prosecution of offenders; (i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers; Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over; Provided further that those matters which come under the exemptions specified in this section shall not be disclosed; (j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer of the State Public Information Officer of the appellate authority, as the case may be, is satisfied that the larger public interest justified the disclosure of such information: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person. (2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923)

nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweigh the harm to the protected interests. (3) Subject to the provisions of clauses (a),) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section: Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act. Admittedly, the present case in hand do not fall within the purview of any of the exemption clause from disclosure of information.

10. The matter relates to appointment in the State Judicial Service made by the State Government on the recommendation of the High Court. Apart from the fact that the State Government is a public authority, administrative side of the High Court having recommended the name, is also required to promote transparency and accountability. Therefore, the 2nd respondent, instead of asking the petitioner to move the State Government for information, should have supplied the information to the petitioner as brought to the notice of the Court.

11. So far as the present case is concerned, Mr.Parisuthanathan, petitioner of W.P. No.1285/09 has asked for details of those who appeared in the written test, including their names, address, roll numbers, etc. For appointment in the services of the State, in the written test, thousands and thousands of candidates appear. Only those meritorious and successful are appointed in the service of the State authorities. It is not clear as to why the petitioner Mr.Parisuthanathan, has sought for the address, roll numbers, etc., of all the thousands and thousands of candidates. In absence of any explanation as to why he sought for the details of all the candidates, who appeared in the examination, including those who have failed or not competed, we are of the view that it was not necessary to supply all such information to Mr.Parisuthanathan. To the extent information is required, i.e., the names, roll numbers and address of the successful candidates, the petitioner already has knowledge of their names and address and they have been impleaded as party respondents to the case. Therefore, only information with regard to the marks obtained by the petitioner and other successful candidates could have been called for, which we have noticed and discussed hereinafter. Therefore, no separate information required to be given to the petitioner, Mr.Parisuthanathan.

12. It appears that written test was held for ten posts of District Judge on 6th Sept., 2009. Answer books were evaluated by six Hon'ble Judges of this Court. Marks awarded by four Hon'ble Judges were found to be within the permissible limits of variation whereas marks awarded by one of the Hon'ble Judge was on the low side and marks awarded by the other Hon'ble Judge was on the higher side. The variation being far and wide, as it was decided to call for oral interview in the ratio of 1:3, the administrative committee of the High Court met on 10th Feb., 2004 and 13th Feb., 2004 and took a decision that scaling of marks should be made by applying the legal principles enunciated by Supreme Court in U.P. Public Service Commission Vs Subhash Chandra Dixit & Ors. (2003 (8) Supreme 375) as the solution for maintaining equality confirming to Article 14 of the Constitution in general and Article 16 of the Constitution in particular. Accordingly, the Director, Anna Institute of Management and the Director General of Training, Chennai, were called for by the administrative committee on 16th Feb., 2004 and after discussing the matter the above officers had been entrusted with the task of making the exercise applying the scaling system. Accordingly, the Mr.S.Gopalakrishnan, I.A.S., Director, Anna Institute of Management submitted his report in D.O. Lr. No.D/AIM/DGT/4/2004 dated 17th Feb., 2004. Thereafter, the administrative committee met on 17th Feb., 2004 and considered the matter and took a decision that a second opinion may also be obtained. Accordingly, one Dr.H.K.Lakshmana Rao, Managing Consultant and Faculty, BITS Pilani, IGNOU-/AIMA, who was the expert in the field was entrusted with the matter, who, after examining the mode of scaling down by Mr.S.Gopalakrishnan, I.A.S., concurred by his report dated 8th April, 2004. The administrative committee, on 8th April, 2004, accepted his opinion and, consequently, agreed to the marks, which were arranged by Mr.S.Gopalakrishnan, I.A.S. after scaling down.

13. In its meeting dated 27th April, 2004, the committee met after the conclusion of oral interview. Marks awarded to the candidates were shown thereunder as follows :- S. No.

Name of the Candidate

Community

Examination Marks

Viva-Voce Marks

Total

Thiru./Tmt.

1

N.Velu

MBC

67.097

14

81.097

2

C.V.Karthikeyan

GT

64.9

1.1663

78.066

3

G.Saravanan

BC

64.35

11

75.350

4

V.Ramamurthy

DNC

61.399

10.333

71.732

5

P.Velmurugan

SC

57.208

12.75

69.958

6

G.Jayachandran

BC

57.559

12.333

69.892

7

N.Rajachandrasekaran

BC

62.518

7.166

69.684

8

J.Narayanaswamy

MBC

61.663

8

69.663

9

N.Seshasayee

GT

55.439

14.166

69.605

10

N.Sathish Kumar

BC

56.32

12.5

68.820

11

M.Lakshminarasimhan

GT

58.307

9

67.307

12

S.Mahesh Babu

BC

60.039

7.166

67.205

13

RMT.Teeka Raman

MBC

54.392

12.666

67.058

14

S.Maheswaran

BC

59.397

6.166

65.563

15

H.Mohamed Rafi

BC

57.895

7.666

65.561

16

R.Vivekanandan

GT

55.893

9.166

65.059

17

A.K.Baskarapandiyan

DNC

60.504

4.166

64.670

18

S.Kumaraguru

SC

56.134

8.333

64.467

19

A.D.Jagadish Chandra

MBC

55.08

8.333

63.413

20

C.Meenakshi Rama Prabhu

MBC

57.559

5.5

63.059

21

D.Parisuthanathan

GT

57.208

5

62.208

22

T.Saikrishnan

GT

55.439

6.5

61.939

23

S.A.Mohamed Mubarak

BC

55.08

6.833

61.913

24

T.K.Balasubramanian

BC

57.559

4.333

61.892

25

M.Chokkalingam

BC

55.08

6

61.080

26

S.Sounthar

GT

55.013

5.833

60.846

27

K.Punithan

DNC

57.302

3

60.302

28

N.Sampath

MBC

54.392

5.5

59.892

29

M.Dhanalakshmi

MBC

54.392

5

59.392

14. The committee had already fixed the minimum qualifying marks in the viva-voce test for selection of the candidates and observed and recommended the names, as quoted hereunder :- Before embarking upon the

holding of oral interview, the Committee had fixed a minimum of '10' marks in the oral interview for selection in the case of candidates other than Scheduled Castes and a minimum of '8' marks in the case of candidates belonging to Scheduled Caste Community. Adding the marks secured in the written examination with the marks secured in the oral interview, keeping in view the minimum marks in the oral interview mentioned above, having regard to the fact that Thiru P.Saravanan, who was called for interview, is not qualified to hold the post as District Judge as he is already serving as Civil Judge (Jr. Division)/J.M.F.C., having regard to the further fact that only one woman candidate, viz., Tmt. M.Dhanalakshmi, was qualified for oral interview in the ratio of 1:3 and she also not having secured the minimum of 10 marks as she belonged to MBC (she secured only 5 marks in the oral interview) and as no qualified third BC candidate is available and next turn being General Turn candidate, the Committee resolves to select the following ten candidates for appointment to the post of District Judges. Thiru.

1.N.Velu

2.C.V.Karthikeyan

3.G.Saravanan

4.V.Ramamurthy

5.P.Velmurugan

6.G.Jayachandran

7.N.Seshasayee

8.N.Sathish Kumar

9.RMT.Teeka Raman

10.S.Kumaraguru

The Registrar General, High Court, Madras, is directed to request the Government to verify the antecedents of the above candidates at the earliest and then issue appointment orders as per the roster in Schedule III of Tamil Nadu State and Subordinate Service Rules.

15. The scaling of marks as forwarded by the Director, Anna Institute of Management and Director General of Training, vide letter dated 17th Feb., 2004; the note to the Hon'ble The Chief Justice dated 19th April, 2004 and the proceeding of the administrative committee dated 27th April, 2004, are on record from which we have extracted the marks.

16. From the aforesaid marks it will be evident that all the respondents have got higher marks than the petitioner, D.Parisuthanathan. The other petitioner, N.Rajachandrasekaran having failed to obtain minimum qualifying marks in the interview was not selected, though he obtained total 69.684 marks. Thus, we find no ground made out by any of the writ petitioners to interfere with the selection and appointment of the contesting respondents 3 to 11. There being no merit, all the writ petitions are dismissed. But there shall be no order as to costs.

GLN

To

1. The Secretary to Government

Public (Special A) Department

State of Tamil Nadu

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3. The Public Information Officer/Registrar General High Court, Madras

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