

ITEM NO.21

COURT NO.3

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s). 189/2017

SUKHDA PRITAM AND ANR.

Petitioner(s)

VERSUS

HON'BLE HIGH COURT OF RAJASTHAN AND ANR

Respondent(s)

(with office report)

Date : 03/04/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J. CHELAMESWAR
HON'BLE MR. JUSTICE S. ABDUL NAZEER

For Petitioner(s) Mr. Ajit Kumar Sinha, sr. Adv.
 Mr. P.P. Nayak, Adv.
 Mr. Ajay Pal, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

This writ petition is filed with the prayer as follows:

"(a) Issue writ of mandamus and/or any other appropriate writ/order and/or direction thereby holding the impugned Rule 31(3) and 33(iii) of the Rajasthan Judicial Service Rules, 2010 as ultra vires the Constitution of India.

(b) Direct the Respondents to amend Rule 31(3) and 33(iii) of the Rajasthan Judicial Service Rules, 2010 to the extent of inconsistency to Article 233 (2) and fundamental rights enshrined in the Constitution of India.

(c) Direct the Respondent No.1 to accept petitioners candidatures for forthcoming Rajasthan Judicial Service Direct Recruitment Examination 2015; and

(d) Pass such other or further orders which this Hon'ble Court deems just and proper in the interest of justice and in the circumstances of this case."

The matter pertains to the selection process for the appointment of District Judges in the State of Rajasthan. The impugned Rule inter alia stipulates that a candidate for the selection "must have been an Advocate for a period of not less than seven years on the last date fixed for receipt of application." This rule, in our opinion, is strictly inconsonance with the requirement of Article 233 of the Constitution of India. The said Article reads as follows:

"233. Appointment of district judges - (1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment."

Mr. Ajit Kumar Sinha, learned senior counsel appearing for the petitioners argued that rules framed by certain States in the past in exercise of their power under Article 309 of the Constitution of

India provided that "in computing the period of seven years "there shall be included a period during which he (a candidate) has held judicial office". One such rule framed by the State of Gujarat is placed before us (a copy of the Gazette of the State of Gujarat dated 9.5.2005).

It appears that two writ petitions (W.P. (C)No. 130/2016 and W.P.(C)No.398/2014) under Article 32 of the Constitution are filed before this Court by certain petitioners claiming that in the matter of appointment to the Delhi Higher Judicial Service, a benefit similar to the one extended by the State of Gujarat must also be given to the candidates seeking to participate in the selection process of Delhi. We are informed that the writ petitions are pending and certain interim orders came to be passed by this Court, in fact, two such orders are placed before us (viz. Order dated 7.5.2014 in W.P.(C)No.398/2014 and order dated 10.3.2016 in W.P.(C)No.130/2016).

Mr. Ajit Kumar Sinha, learned senior counsel appearing for the petitioners submits that in view of the above interim orders, the present writ petition is required to be examined and similar interim order is required to be passed in this matter.

We find it extremely difficult to accept the submission though we are not very sure as to what exactly the prayer was in the above mentioned two writ petitions. We do not doubt the correctness of the statement made by learned senior counsel at the Bar, assuming the facts to be so, we are of the opinion that such a prayer in the above mentioned writ petitions would be plainly inconsistent with the context of Article 233 of the Constitution. No doubt the State

of Gujarat seems to have framed such rule. The validity of the said rule has not been tested so far.

In the circumstances, we deem it appropriate to direct the Registry to place this matter before Hon'ble the Chief Justice of India for appropriate further orders as in our opinion, if the issue is not settled at an early date, it would only result in proliferation of number of litigation, more particularly, in the context of the Higher Judicial Service in the various States in this Country.

Registry is therefore directed to place the matter before the Hon'ble the Chief Justice of India today itself.

[O.P. SHARMA]
AR-CUM-PS

[RAJINDER KAUR]
COURT MASTER