

**REGISTRAR OF HIGH COURT OF
MADHYA PRADESH AND ANOTHER**

v.

B. A. NIGAM AND OTHERS

April 3, 1973

[D. G. PALEKAR AND A. ALAGIRISWAMI, JJ.]

Madhya Pradesh Civil Courts Act, 1958—Service Rules—Experience as Civil Judge, Class-I, necessary qualification for promotion to the post of Addl. District and Sessions Judge, and not the seniority.

The Respondent No. 1, who was a Civil Judge in former Madhya Bharat, was, on absorption into Madhya Pradesh Judicial Service, treated as Civil Judge, Class-II. The relevant Service Rules applicable to the Civil Judges recognised Civil Judges as only one Class but the M.P. Civil Courts Act, 1958, mentioned two classes of Civil Judges namely, Civil Judges Class I and Civil Judges Class II. From the time when the Madhya Pradesh Civil Courts Act, 1958 came into force it was always considered by the High Court that for promotion to the post of Addl. District and Sessions Judge, it was a necessary qualification that the Civil Judge must have some experience of working as Civil Judge, Class-I. Under the Act, the pecuniary jurisdiction of the Civil Judge, Class I was Rs. 10,000/- while that of Civil Judge Class II was Rs. 5,000/-. In May 1968, the High Court passed as Resolution laying down that the selection of a Civil Judge, Class-II, as a Civil Judge Class I shall be deemed as promotion and that being so, only the cases of Civil Judges, Class-I, shall be considered for promotion as Addl. District and Sessions Judges in order of their seniority. The respondent was not found fit for promotion to the post of Civil Judge, Class-I in the successive selections. He was finally found fit in 1968. In a writ petition before the M.P. High Court, the Respondent No. 1 contended that the date of the seniority should count from the date of appointment to the post of Civil Judge Class-II and not from the date of promotion to the post of Civil Judge, Class-I. He also contended that the High Court Resolution of May 3, 1968, was illegal as there was no provision in the Service Rules for classifying Civil Judges as Class I or Class II and the power to create various classes of services was vested in the Government, and not in the High Court. The M.P. High Court allowed the Writ Petition.

Allowing the State's appeal by certificate,

HELD : (1) On perusal of the High Court file regarding the selection of Class II Civil Judges as Class I Civil Judges, it is clear that the decisions were *bona fide* and on merits. The Respondent No. 1 had no claim to Class I post before 1968, when for the first time he was found fit. Once it is found that experience as Civil Judge Class I is a necessary qualification, the seniority in Class II service is of no consequence.

(2) While it is true that the Service Rules do not provide for any distinction within Civil Judges, the difference in the pecuniary jurisdiction cannot be ignored. The Resolution of the High Court of May 1968 should not be interpreted literally. The resolution does not create a new class of Civil Judges called Class I Civil Judges but merely lays down the qualification or standard of fitness for higher promotion. There is

(Alagiriswami, J.)

A no justification for re-opening cases closed for more than ten years at the instance of an officer whose record of service was not a shining one compared to those who were selected earlier. [880A, 881G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 624 of 1972.

B Appeal by certificate from the Judgment and order dated August 8, 1971 of the Madhya Pradesh High Court at Jabalpur in Misc. Petition No. 537 of 1969.

I. N. Shroff, for the Appellants.

C *M. N. Phadke, Anthoney G. Menezes, P. G. Bhartari, J. B. Dadachanji, O. C. Mathur & Ravinder Narain*, for respondent No. 1

The Judgment of the Court was delivered by

ALAGIRISWAMI, J.—In the Judicial Service of Madhya Pradesh there are three classes of officers, Civil Judges, Additional District and Sessions Judges and District Judges but under the Madhya Pradesh Civil Courts Act, 1958 there are four classes of Civil Courts, the Court of the District Judge, the Court of the Addl. District Judge, the Court of the Civil Judge (Class I) and the Court of the Civil Judge (Class II). The respondent No. 1, Shri B. A. Nigam, entered service as a Civil Judge on 20-10-1956 in Madhya Bharat. After Madhya Bharat became part of Madhya Pradesh he was absorbed as a Civil Judge and placed for purposes of seniority at No. 189. From the time when the Madhya Pradesh Civil Court Act, 1958 came into force some period of service of a Civil Judge during which he exercised powers of Civil Judge, Class I, however, small, was considered a necessary qualification for promotion to the post of Additional District and Sessions Judge. On or about May 3, 1968, by a resolution of the High Court it was laid down that selection of a Civil Judge, Class II, as a Civil Judge, Class I, shall be deemed as promotion and that being so, only the cases of Civil Judges, Class I, shall be considered for promotion as Additional District and Sessions Judges in order of their seniority. It must be made clear at the outset that according to the Service Rules there is only one class of Civil Judges and not two classes of Civil Judges (Class I) and Civil Judges (Class II). The fitness of the respondent (1) for promotion as Civil Judge, Class I, seems to have been considered on a number of occasions *i.e.* on May 3, 1966, August 12, 1966, April 17, 1967, November 6, 1967 and April 18, 1968 and on each of these occasions he was not found fit to exercise powers of a Civil Judge, Class I. Mr. I. N. Shroff appearing for the appellants has also shown us the file containing the proceedings of the Judges' meetings of the High Court of Madhya Pradesh on the various dates above referred to in which the names of various officers for being

posted as Class I Civil Judges have been considered. We have
 scrutinised them carefully and can see no reason to doubt the
bona fide nature of the decisions therein made. The High Court
 has also taken the view that though the junior members in the
 cadre of Civil Judges had often been allowed to exercise the
 powers of Civil Judge, Class I, without considering at that time
 the respondent's claim and then those junior members had been
 preferred for promotion on the ground that they had exercised
 such powers, and such preference was open to attack as being
 violative of the fundamental rights of the respondent, they could
 not assist him on that ground because even if his claims for exer-
 cising the powers of Civil Judge, Class I had been considered at
 the appropriate time, he would not have been found fit for the
 purpose for the reason earlier mentioned. While it is not im-
 possible that if the respondent's case had been compared with
 that of others before the 3rd May, 1966 he might have been
 found fit for being posted as a Civil Judge, Class I, it is very im-
 probable and we, therefore, agree with this conclusion of the High
 Court. Finally, on 30-11-1968 the respondent was found fit to
 be posted as a Civil Judge, Class I and he filed the petition, out
 of which this appeal arises, for consideration of his name for
 being promoted as an Additional District and Sessions Judge over
 the heads of all the people who had been earlier found to have
 better qualifications for being posted as Civil Judges, Class I in
 preference to him. That petition having been allowed by the
 High Court his appeal has been filed by certificate by the Registrar
 of the High Court of Madhya Pradesh and the State against the
 judgment of that High Court.

In addition to the point which we have earlier mentioned and
 agreed with the High Court, his only other contention was that
 in the list of Civil Judges he was senior to all of them and as there
 was no provision in the service rules for classifying Civil Judges
 as Class I or Class II and the power to create various classes of
 services was one which vested with the Government and not with
 the High Court therefore the resolution of the High Court of May
 3, 1968 cannot affect him adversely. The High Court took the
 view that as for some years past, a principle for selection had
 been introduced that before a Civil Judge was promoted to the
 post of an Additional District and Sessions Judge, it was essential
 that he should have exercised the powers of Civil Judge, Class I,
 for a period, however short and that principle had a rational rela-
 tion to the suitability of Civil Judges for promotion to posts of
 Additional District and Sessions Judges and the respondent No. I
 could not legitimately complain, as he did not have that qualifica-
 tion, and he could not be selected for promotion only on the basis
 of seniority. They also took the view that since the respondent
 No. I had not acquired the qualification required for promotion,

(Alagiriswami, J.)

- A his claim for such promotion should be regarded as having been considered and rejected by implication till November 30, 1968 when he was allowed to exercise the powers of Civil Judge, Class I. Having held rightly, according to us, that till November 30, 1968 the respondent No. I was not qualified to be considered for promotion as an Additional District and Sessions Judge, the High
- B Court curiously enough issued a writ of *mandamus* directing that the respondent's claim for promotion should be considered in relation to the claims of his juniors and if he was found fit he should be allowed the consequential benefits including fixing of seniority in the cadre of Additional District and Sessions Judges. In mentioning about the juniors of the respondent No. I the
- C learned Judges were referring to the original seniority in the cadre of Civil Judges.

- Once it is found that experience as Civil Judge, Class I, at least for a short period, is a necessary qualification for promotion as Additional District and Sessions Judge and that such a requirement has a rational relation to the question at issue, it would be
- D surprising to hold that a man, who again and again had been found unfit to be posted as Civil Judge, Class I, in comparison with others, who were his juniors in service, his claim for promotion as Additional District and Sessions Judge should be decided not on the basis of the date on which he was found fit to exercise the powers of Civil Judge, Class I, but on the basis of the date
- E of his entry into service. Out of the 41 people whom the respondent No. I had made respondents to his petition, 10 people were found fit in 1962 and one in 1963. Then we have 3 others whose claims were considered on 3-5-66 alongwith that of the respondent No. I and found superior to his. There are 8 others whose claims were compared to the respondent's on 12-8-66 and found to be superior to his. Seventeen others, whose claims were compared to the respondent's on 17-4-67 were found to be superior to the respondent's and two were found superior to the respondent on 7-11-67. It would, therefore, be most surprising that a man who in comparison to all these people was not found fit to be promoted as Civil Judge, Class I, should as soon as he was found fit on 30-11-68 go over the heads of all the other who were found
- G superior to him on a number of earlier occasions. While it is true that the Service Rules do not provide for Civil Judges being classed as Class I Civil Judges and Class II Civil Judges, we cannot ignore the fact that the jurisdiction of the Class II Civil Judges is only upto Rs. 5,000 and that of Class I Civil Judges upto Rs. 10,000. The resolution of the High Court of May 1963
- II should not be interpreted literally. If it is done in its proper background it would be appreciated that what was done was not to create a new class of Civil Judges called Class I Civil Judges but to have a list of persons who were qualified to be posted as

Class I Civil Judges and to provide that fitness for being posted as Class I Civil Judges and acting as such for some time should be considered as a qualification for promotion as Additional District and Sessions Judges. We have already pointed out that the High Court has rightly held that such a provision cannot be said to be irrelevant to the question of promotion from among the Civil Judges to Additional District and Sessions Judges. We are firmly of opinion that in the face of these circumstances to allow the respondent No. I to be considered for promotion as Additional District and Sessions Judge in preference to others who had been found better qualified to be posted as Civil Judges Class I much earlier merely on the basis of the date of his entry into service would be a mockery of all canons of fair play and justice. Indeed, we cannot help feeling that his being found fit for promotion to Class I Civil Judge on 30-11-68 seems to have been done more as a matter of grace and he should be more than happy to have got what he got. The fact that before 3-5-66 there might have been cases of Civil Judges being posted as Presiding Judges of Civil Courts Class I due to various exigencies of service cannot in any case affect the merits of this case. As we have already indicated, while it is not impossible it is improbable that compared to those people who had been posted as Class I Civil Judges before 3-5-66 the respondent No. I would have been found better qualified. At any rate we can see no justification for reopening cases that had been closed more than 10 years ago at the instance of an officer whose record of service to say the least, is not shining one. We see no merits in his claim. We, therefore, allow the appeal and set aside the judgment of the Madhya Pradesh High Court. There will, however, be no order as to costs.

S.B.W.

Appeal allowed.