

THE STATE OF MAHARASHTRA AND ORS.

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v.

PRATAPSINGH DAYAL SINGH RAJPUT

JANUARY 13, 1998

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[S. SAGHIR AHMAD AND D.P. WADHWA, JJ.]

*Service Law :*

*Judicial Officer—Promotion—State of Maharashtra—Civil Judge, Senior Division-cum-Chief Judicial Magistrate—Consideration for promotion as Additional District Judge—Judgment Scrutiny Committee categorising the officer as Grade 'A'—Confidential record good—No adverse remarks ever conveyed to him—Performance at interview good—Name included in select list for promotion as Additional District Judge—However, name of officer excluded by full court from the final list sent to Government for appointment—Writ petition filed by the Officer allowed by Division Bench of the High Court, holding that in the absence of any material Placed before it, decision of High Court in excluding the name of the officer suffers form lack of consideration or application of mind to relevant criteria for promotion and the decision was clearly violative for Articles 14 and 16 of the Constitution of India—Appeal—Meanwhile officer superannuated—Held Division Bench was right in recording the findings—Appeal dismissed so that the officer may be promoted notionally to the post of Additional District Judge and may get pensionary benefits on that basis—The question whether it was not necessary either to record any reason in the Minutes of the Full Court meeting or to disclose those reasons to the Court on the judicial side, left open to be decided in appropriate case—Constitution of India—Articles 14 and 16.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6224 of 1990.

From the Judgment and Order dated 20/24.4.90 of the Bombay High Court in W.P. No. 2464 of 1987.

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D. M.Nargolkar for the Appellants.

Uday Umesh Lalit, Makarand D.Adkar, S.D.Singh and Sudhanshu Atreya, for the Respondent.

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A The following Order of the Court was delivered :

The Respondent No.1 was appointed as a Civil Judge, Junior Division on 16.3.1972. He was promoted as Civil Judge, Senior Division-cum-Chief Judicial Magistrate on 7.9.1983.

B In 1986 process for making selection for purposes of promotion to the post of Additional District Judge was initiated by the High Court. On. 20.10.1986, respondent No. 1 was called for interview. From the facts found by the High Court it appears that the Judgment Scrutiny Committee categorised respondent No. 1 as Grade 'A'. His confidential record was good and no adverse remarks were ever communicated to him. His performance at the interview was also good and his name was included in the select list for promotion to the post of Additional District Judge.

C The select list prepared by the Interview Committee was considered by the Full Court of the Bombay High Court in its meeting on 2nd and 3rd May, 1987. The name of the respondent No.1 was, however excluded from the list finally prepared by the Full Court for being forwarded to the State Govt. for appointment on the post of Additional District Judge.

D The exclusion was challenged by the petitioner in a writ petition filed before the Bombay the Bombay High Court which by the impugned judgment E found that the petitioner's name was included in the select list prepared by the Interview Committee but was excluded by the Full Court of the Bombay High Court for reasons which are not disclosed to the Court. The High Court ultimately by the impugned judgment allowed the writ petition and directed that the name of the petitioner be reconsidered for promotion to the post of Additional District Judge. It is against this judgment that the State of F Maharashtra, the High Court of Judicature at Bombay as also the Chief Justice have appealed to this Court. During the pendency of the appeal in this Court, respondent No. 1 retired on attaining the age of superannuation on 2nd of May, 1990.

G The Bombay High Court in its judgment has recorded the findings as under:-

H "In appreciating the contention raised on behalf of the petitioner, it has to be held that the specific averments made by the petitioner in his petition that he had been given 'A' to his judgments by the judgments Scrutiny Committee, that his confidential record was good,

that no adverse remarks were communicated to him that his performance in the interview was good, and that his name was included in the select list prepared by the Interview Committee stand proved as they are not denied or contradicted by the respondents 1 and 2 although time was taken and was granted by us after the hearing commenced to enable them to file an additional affidavit on behalf of the respondents 1 and 2. In fact it is categorically stated before us that the respondents 1 and 2 do not want to file any additional documents in the instant case. It is also not shown to us by producing necessary material from the records that the above averments of the petitioner are incorrect.

At any rate, it is clear that the provisional select list prepared by the Interview Committee circulated for consideration in the Chamber Meeting, which is brought to our notice did include the name of the petitioner, which was higher up in the said list on the basis of the inter se seniority of the judicial officers selected by the Interview Committee. If the name of the petitioner is included in the select list prepared by the Interview Committee it would also substantiate the above specific averments made by him in his petition particularly when they are not denied and are not shown to be wrong by bringing to our notice any material in that regard, such as his confidential records showing any adverse entry being communicated to him, grade granted this judgments by the judgments Scrutiny Committee, evaluation of his performance at the interview, the reports of District Judge, if any against him, which reflects the material necessary to satisfy the requirement of the criteria laid down for promotion to the posts of the Additional District Judges.

It is pertinent to see in this regard that after passing through all the rigorous stages of the process of selection discussed above as per the guidelines laid down by the High Court, the name of the petitioner has found place in the select list prepared for consideration in the meeting of the Hon'ble Judges of the High Court. It is clear from the process of selection that the confidential record of the petitioner, the reports of the District Judges about him and the remarks, if any, about him by the Honourable Judges of the High Court who have heard appeals from their decisions have been examined twice, first by the Judgments Scrutiny Committee before he is selected for Scrutiny of his judgments and thereafter by the Interview Committee, which

A takes into consideration all the above factors beside the rating, to his judgments and his performance at the Interview. Unless otherwise shown it has to be presumed that there is nothing against him in his confidential reports the report of the District Judges and/or the remarks, if any, of Honourable Judges of this Court who have heard appeals against this decision but on the contrary as demonstrated by the process of selection then show his suitability and qualify him for selection para 44A). As regards the rating given to his judgment apart from the fact that the respondent 1 and 2 have not denied his averments, that he has received grade 'A' to his judgments, the very fact that the Judgments Scrutiny Committee has [included his name in the list of candidates to be called for interview shows that his judgments are of such quality and standard, which qualify him for being called for interview. Similarly the fact that the Interview Committee has included his name in its select list shows that his performance at the interview was good apart from the fact that as already pointed out, since the Interview Committee applies all the criteria, referred to above, he also D satisfied by inclusion of his name in its select list, all the criteria adopted for promotion to the post of Additional District Judge under the guidelines of the High Court.

E It is in the context of the above facts and circumstances that we fail to see as to on what basis or material which has to be within the four corners of the criteria for promotion laid down by the High Court in its guidelines the name of the petitioner who is senior in the inter se seniority of the judicial officer selected by the Interview Committee is excluded by the High Court in the final select list prepared by it in its Chamber Meeting, particularly when there is unfortunately no material in the return filed by the respondents 1 and 2 and when no material is even otherwise brought to out notice during the hearing of this petition, which has prompted the High Court in its Chamber meeting to exclude the name of the petitioner. In fact, it is expected that when the High Court in its meeting has to consider, particularly G independently as urged on its behalf, the question of promotion to the post of the Additional District Judge, atleast a synopsis of the relevant material considered by its Committees in terms of criteria for selection laid down in its guidelines such as the grades given to the judgments of the candidates by the Judgments Scrutiny Committee assessment of their work and conduct as per their confidential reports and in particular if there are adverse entries communicated to them the remarks H

if any about them in the report of the District Judge, their performance at the interview held by the Interview Committee and other relevant material, if any not considered by the Interview Committee or which has escaped its attention in the light of the above criteria, which any of the Honourable Judge want to be taken into consideration in the Chamber Meeting should be circulated to the Honourable Judge before the meeting so that it can be inferred from the same that in its meeting the High Court has applied its mind to the relevant material in the light of the relevant criteria adopted in its guidelines.

It is only the resolution of the Chamber meeting which is placed before us. The said resolution is too general and merely state vaguely that there was full and frank discussion in the meeting upon the list prepared by the Interview Committee but does not refer to any material on which it is based. The said resolution itself is thus of no assistance to the respondents 1 and 2 to show that the said decision is based upon relevant data and the relevant criteria.

*To conclude, in the absence of any material being placed before us, we have no other alternative but to hold after taking into consideration the above facts and circumstances that the decision of the High Court to exclude from the final list the name of the petitioner which was included in the select list of the Interview Committee is not within the four corners of the relevant [A criteria discussed above. At any rate from the above facts and circumstances there is no doubt in our minds that the decision of the High Court in excluding the name of the petitioner from the select list for promotion to the post of the Additional District Judge suffers from lack of consideration or application of mind to the aforesaid relevant criteria for promotion to the post of the Additional District Judge and the relevant data relative thereto if not from extraneous consideration. The said decision is, therefore, clearly violative of Articles 14 and 16 of the Constitution of India."*

(Emphasis supplied)

From the above it will be seen that the reasons for excluding the name of the petitioner from the select list by the Full Court of the Bombay High Court were not disclosed to the Division Bench at the time of the hearing of the writ petition nor was any relevant material placed before the Division Bench on the basis of which it could come to the conclusion as to why the

A petitioner who had been selected at the earlier stages was excluded from being included in the final list prepared by the High Court for being forwarded to the State Govt. for making promotion to the post of Additional District Judge.

B It is contended by the learned counsel for the appellants that it was not necessary either to record any reason in the Minutes of the Full Court meeting or to disclose those reasons to the court on the judicial side. This is in our opinion, preposterous as the argument that it is not obligatory for the High Court to disclose reason why an officer was not proposed to be promoted when he had already been selected, runs counter to the spirit of Article 14 and 16 of the Constitution. At least this argument was not expected from a high judicial body like the Bombay High Court which is before us today as a litigant. The Division Bench was, in our opinion, right in recording the findings extracted above and we see no reason to differ.

C But this is today only of academic interest as respondent No.1 retired from service more than seven years ago. Leaving the question open to be decided in some other case, we dismiss the appeal so that the respondent may be promoted notionally to the post of Additional District Judge and may get atleast pensionary benefits on that basis. The application for intervention is rejected. No costs.

D R.P.

Appeal dismissed.