

The Registrar of High Court of Madhya Pradesh and Another

Vs

Shri B. A. Nigam and Others

Civil Appeal No. 624 of 1972

(D.G. Palekar, A. Alagiriswami JJ)

03.04.1973

JUDGMENT

ALAGIRISWAMI, J. -

1. 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 Additional District Judge, the court of the Civil Judge (Class I) and the Court of Civil Judge (Class II). The respondent No. 1, Shri B. A. Nigam, entered service as a Civil Judge on October 20, 1956, in Madhya Bharat. After Madhya Bharat became part of Madhya Pradesh he was observed as a Civil Judge and placed for purposes of seniority at No. 189. From the time when the Madhya Pradesh Civil Courts Act, 1958 came into force some period of service of a Civil Judge during which he exercised powers of Civil Judge, Class 1, 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 consideration 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 reference was open to attack as being violative of the fundamental rights of the respondents, they could not assist him on that ground because even if his claims for exercising 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 impossible that if the respondents case had been compared with that of others before May 3, 1966, he might have been found fit for being posted as a Civil Judge, Class I, it is very improbable and we, therefore, agree with this conclusion of the High Court. Finally, on November 30, 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 this appeal has been filed by certificate by the Registrar of High Court of Madhya Pradesh and the State against the Judgment of that High Court.

2. 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 relation to the suitability of Civil Judges for promotion to posts of Additional District and Sessions Judges and the respondent No. 1 could not legitimately complain, as he did not have that qualification, and he could not be selected for promotion only on the basis of seniority. They also took the view that since the respondent No. 1 had not acquired the qualification required for promotion, 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. 1 was not qualified to be considered for promotion as an Additional District and Sessions Judge, the High Court curiously enough issued a writ of mandamus directing that 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. 1 the learned Judges were referring to the original seniority in the cadre of Civil Judges.

3. 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 Session Judge and that such a requirement has a rational relation to the question at issue, it would be 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 Session 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 of his entry into service. Out of the 41 people whom the respondent No. 1 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 May 3, 1966 alongwith that of the respondent No. 1 and found superior to his. There are 8 others whose claims were compared to the respondent's on August 12, 1966, and found to be superior to his. Seventeen others, whose claims were compared to the respondent's on April 17, 1967 were found to be superior to the respondents and two were found superior to the respondent on November 7, 1967. 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 November 30, 1968, go over the heads of all the others who were found 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 up to Rs. 5,000 and that of Class I Civil Judges up to Rs. 10,000. The resolution of the High Court of

May, 1968 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.

4. 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. 1 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 November 30, 1968 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 May 3, 1966, 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 May 3, 1966, the respondent No. 1 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 a 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.

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