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SATYA NARAIN SINGH ETC. ETC.

v.

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THE HIGH COURT OF JUDICATURE AT ALLAHABAD & ORS., ETC. ETC.

November 27, 1984

[O. CHINNAPPA REDDY, A.P. SEN AND E.S. VENKATARAMAIH, JJ.]

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Constitution of India - Article 233 Appointment of District Judges—Interpretation of - Persons already in service cannot be appointed District Judges by direct recruitment. Clause(2) of art.233 is applicable only to persons not already in the Service of the Union or of the State - Service here means judicial service - Requirement of seven years practice at bar necessary only in case of persons not already in service.

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In response to an adverti sment by the High Court of Allahabad, the petitioners, who were members of the Uttar Pradesh Judicial Service, applied to be appointed by direct recruitment to the Uttar Pradesh Higher Judicial Service. The petitioners claimed that they had acquired 7 years of practice at the bar even before their appointment to that Service. The High Court held that members of the Uttar Pradesh Judicial Service were not eligible to be appointed by direct recruitment to Uttar Pradesh Higher Judicial Service. Before this Court the petitioners submitted that a construction of Art. 233 of the Constitution which would render a member of the Subordinate Judicial Service ineligible for appointment to the Higher Judicial Service by direct recruitment because of the additional experience gained by him as a Judicial officer would be both unjust and paradoxical.

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Affirming the decision of the High Court and dismissing the petitions,

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HELD: Two points straightway project themselves when the two clauses of Art. 233 of the Constitution are read: The first clause deals with 'appointments of persons to be, and the posting and promotion of, district judges in any State' while the second clause is confined in its application to persons 'not already in the service of the Union or of the

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State'. 'Service of the Union or of the State' has been interpreted by this Court to mean judicial service. While the first clause makes consultation by the Governor of the State with the High Court necessary, the second clause requires that the High Court must recommend a person for appointment as a District Judge. It is only in respect of the persons covered by the second clause that there is a requirement that a person shall be eligible for appointment as District Judge if he has been an advocate or a pleader for not less than 7 years. In other words, in the case of candidates who are not members of a Judicial Service they must have been advocates or pleaders for not less than 7 years and they have to be recommended by the High Court before they may be appointed as District Judges, while in the case of candidates who are members of a Judicial Service the 7 years rule has no application but there has to be consultation with the High Court. A clear distinction is made between the two sources of recruitment and the dichotomy is maintained. The two streams are separate until they come together by appointment. [116 D-G]

Rameshwar Dayal v. *State of Punjab*, [1961] 2 SCR 874 and *Chander Mohan* v. *State of Uttar Pradesh*, [1967] 1 SCR 77, referred to.

ORIGINAL JURISDICTION : Writ Petition Nos. 16087 of 1984, 728 of 1981 and 15926 of 1984.

Under Article 32 of the Constitution of India.

L. N. Sinha, Mrs. Shyamla Pappu, Arvind Kumar, R.D. Upadhya and *C.K. Ratnaparkhi* for the Petitioner in W.P. Nos. 15926/84 & 16087/84.

K.K. Venugopal, Arvind Kumar and *Mrs. Laxmi Arvind* for the Petitioner in WP. No. 728 of 1981.

Gopal Subramaniam and *Mrs. Shobha Dikshit* for the Respondents.

The Judgment of the Court was delivered by

CHINNAPPA REDDY, J. The petitioners in the several writ petitions now before us as well as the appellants in Civil Appeal No. 548 of 1982 and the petitioners in Writ Petition Nos. 6346-

A 6351 of 1980 which we dismissed on 11th October, 1984 were members of the Uttar Pradesh Judicial Service in 1980 when all of them, in response to an advertisement by the High Court of Allahabad, applied to be appointed by direct recruitment to the Uttar Pradesh Higher Judicial Service. They claimed that each of B them had completed 7 years of practice at the bar even before their appointment to the Uttar Pradesh Judicial Service and were, therefore, eligible to be appointed by direct recruitment to the Higher Judicial Service. As there was a question about the eligibility of members of the Uttar Pradesh Judicial Service to appointment by direct recruitment to the Higher Judicial Service, some of C them filed writ petitions in the Allahabad High Court the said petitions were dismissed and it was held that members of the Uttar Pradesh Judicial Service were not eligible to be appointed by direct recruitment to the Uttar Pradesh Higher Judicial Service. Civil Appeal No. 548 of 1982 was filed in this Court after obtaining special leave under Art. 136 of the Constitution. By virtue of the inter- D im order passed by this Court, members of the Uttar Pradesh Judicial Service, who desired to appear at the examination and selection were allowed to so appear, but the result of the selection was made subject to the outcome of the civil appeal and the writ petitions in this Court. The civil appeal and some of the writ petitions were dismissed by us on October 11, 1984. The remaining writ petitions are now before us. Shri Lal Narain Sinha and Shri K.K. Venugopal, Learned Counsel who appeared for the petitioners, tried to persuade us to re-open the issue, which had been concluded by our decision on October 11, 1984. Having heard them, we are not satisfied that there is any reason for re-opening the issue. When F we dismissed the civil appeal and the writ petitions on the former occasion, we were content to merely affirm the judgment of the High Court of Allahabad without giving our own reasons. In view of the arguments advanced, we consider that it may be better for us to indicate briefly our reasons.

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The submission of Shri Lal Narain Sinha and Shri K.K. Venugopal was that there was no constitutional inhibition against members of any Subordinate Judicial Service seeking to be appointed as District Judges by direct recruitment provided they had completed 7 years' practice at the bar. The submission of the learned H counsel was that members of the Subordinate Judiciary, who had

put in 7 years' practice at the bar before joining the Subordinate Judicial Service and who had gained experience as Judicial Officers by joining the Subordinate Judicial Service ought to be considered better fitted for appointment as District Judges because of the additional experience gained by them rather than be penalised for that reason. The learned counsel submitted that a construction of Art. 233 of the Constitution which would render a member of the Subordinate Judicial Service ineligible for appointment to the Higher Judicial Service because of the additional gained by him as a Judicial Officer would be both unjust and paradoxical. It was also suggested that it would be extremely anomalous if a member of the Uttar Pradesh Judicial Service who, on the present construction of Art. 233 is ineligible for appointment as a District Judge by direct recruitment, is nevertheless eligible to be appointed as a judge of the High Court by reason of Art. 217(2) (aa.) On the other hand Sri Gopala Subramanium, learned counsel for the respondent urged that there was a clear demarcation in the Constitution betweeen two sources of recruitment namely : (1). those who were in the service of a State or Union and (2). those who were not in such service. He contended that the second clause of Art. 233 was attracted only to the second source and in respect of candidates from that source the further qualification of 7 years as an advocate or a pleader was made obligatory for eligibility. According to Mr. Gopala Subramanium, a plain reading of both the clauses of Art. 233 showed that while the second clause of Art. 233 was applicable only to those who were not already in service, the first clause was applicable to those who were already in service. He urged that any other construction would lead to anomalous and absurd consequences such as a junior member of the Subordinate Judicial Service taking a leap, as it were, over senior members of the Judicial Service with long records of meritorious service. Both sides relied upon the decisions of this Court in *Rameshwar Dayal* v. *State of Punjab*(1) and *Chander Mohan* v. *State of Uttar Pradesh*(2).

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(1) [1961] 2 S.C.R. 874.

(2) [1967[1 S.C.R. 77.

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A Article 233 is as follows:-

"233(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
B 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 as an advocate or a pleader
C and is recommended by the High Court for appointment."

Two point straightway project themselves when the two clauses of Art. 233 are read :

The first clause deals with 'appointments of persons to be, and
D the posting and promotion of, district judges in any State' while the second clause is confined in its application to persons 'not already in the service of the Union or of the State'. We may mention here that 'Service of the Union or of the State' has been interpreted by this Court to mean judicial service. Again while the first clause makes consultation by the Governor of the State
E with the High Court necessary, the second clause requires that the High Court must recommend a person for appointment as a District Judge. It is only in respect of the persons covered by the second clause that there is a requirement that a person shall be eligible for appointment as District Judge if he has been an advocate or a pleader for not less than 7 years. In other words,
F in the case of candidates who are not members of a Judicial Service they must have been advocates or pleaders for not less than 7 years and they have to be recommended by the High Court before they may be appointed as District Judges, while in the case of candidates who are members of a Judicial Service the 7 years rule has no
G application but there has to be consultation with High Court. A clear distinction is made between the two sources of recruitment and the dichotomy is maintained. The two streams are separate until they come together by appointment. Obviously the same slip cannot sail both the streams simultaneously. The dichotomy is clearly brought out by S.K. Das, J. in *Rameshwar Dayal* v.
H *State of Punjab* (supra) where he observes :

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> "...Article 233 is a self contained provision regarding the appointment of District Judges. As to a person who is already in the service of the Union or of the State, no special qualifications are laid down and under cl. (1) the Governor can appoint such a person as a district judge in consultation with the relevant High Court. As to a person not already in service, a qualification is laid down in cl. (2) and all that is required is that he should be an advocate or pleader of seven years' standing."

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Again dealing with the cases of Harbans Singh and Sawhney it was observed, "We consider that even if we proceed on the footing that both those persons were recruited from the Bar and their appointment has to be tested by the requirements of Clause(2), we must hold that they fulfilled those requirements". Clearly the Court was expressing the view that it was in the case of recruitment from the Bar, distinguished from Judicial Service that the requirements of Cl. (2) had to be fulfilled. We may also add here earlier the Court also expressed the view, "...we do not think that Cl. (2) of Art. 233 can be interpreted in the light of the Explanation added to Articles 124 and 217."

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In *Chandra Mohan* v. *State of Uttar Pradesh* (supra) Subba Rao, C.J. after referring to Articles 233, 234, 235, 236 and 237 stated,—

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> "The gist of the said provisions may be stated thus: 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. *There are two sources of recruitment, namely, (i) service of the Union or of the State* and *(ii) members of Bar*. The said judges from the first source are appointed in consultation with the High Court and those from the second source are appointed on the recommendation of the High Court. But in the case of appointments of persons to the judicial service other than as district judges, they will be made by the Governor of the State in accordance with rules framed by him in consultation with the High Court and the Public Service Commission. But the High Court has control over all the district courts and courts subordinate thereto, subject to certain prescribed limitations."

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A Subba Rao, CJ. then proceeded to consider whether the Government could appoint as district judges persons from services other than the judicial service. After pointing out that Art. 233(1) was a declaration of the general power of the Governor in the matter of appointment of district judges and he did not lay down the qualifications of the candidates to be appointed or denoted the sources B from which the recruitment had to be made, he proceded to state,

> "But the sources of recruitment are indicated in cl. (2) thereof. *Under cl. (2) af Art. 233 two sources are given namely, (i) persons in the service of the Union or of the State, and (ii) advocate or pleader.*"

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Posing the question whether the expression "the service of the Union or of the State" meant any service of the Union or of the State or whether it meant the judicial service of the Union or of the State, the learned Chief Justice emphatically held that the expression "the service" in Art. 233(2) could only mean the judi- D cial service. But he did not mean by the above statement that persons who are already in the service, on the recommendation by the High Court can be appointed as District Judges, *overlooking* the claims of all other Seniors in the Subordinate Judiciary Contrary to Art. 14 and Art. 16 of the Constitution.

E Thus we see that the two decisions do not support the contention advanced on behalf of the petitioners but, to the extent that they go, they certainly advance the case of the respondents. We therefore, see no reason to depart from the view already taken by us and we accordingly dismiss the writ petitions.

H.S.K. *Petitions dismissed.*