

## BALASAHEB VISHNU CHAVAN

v.

## STATE OF MAHARASHTRA &amp; ORS.

B

*February 22, 1984*

[O. CHINNAPPA REDDY, E.S. VENKATARAMIAH AND R.B. MISRA, JJ.]

C

*Bombay Judicial Service Recruitment Rules, 1956—Rule 5(2)—Interpretation of.*

D

Rule 5(2) of the Bombay Judicial Service Recruitment Rules, 1956 provided for two methods of appointment to the posts of District Judges (i) by promotion of members of the Junior Branch who had served as Assistant Judges and (ii) by direct recruitment from members of the Bar. The proviso to Rule 5(2) (i) (b) provided that when a member of the Bar was recruited as a District Judge, and he was less than the age prescribed, he should first be appointed to work as Assistant Judge for such period as might be decided by the Government before he was appointed as a District Judge.

E

The appellants who were members of the Junior Branch of the Judicial Service of the State of Maharashtra were appointed as Assistant Judges in 1971. In 1974 respondents Nos. 2 to 5, who were members of the Bar, were appointed as Assistant Judges and their names were shown below the appellants in the existing list of Assistant Judges. In February 1977 respondents Nos. 2 to 5 were appointed to officiate as District Judges. The appellants filed petitions before the High Court claiming that they should be treated as having been promoted as District Judges along with respondents Nos. 2 to 5. The High Court dismissed the petitions. Hence these appeals.

F

Dismissing the appeals,

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HELD : Under rule 5 (2)(i)(b) of the Bombay Judicial Service Recruitment Rules, 1956 even though a member of the Bar is recruited as a District Judge he may be asked to serve as an Assistant Judge for a specified period. When he so func-

H

- A** tions he cannot be called as a member of the cadre of Assistant Judges subject to the rule of seniority applicable to the regular members of that cadre who were appointed by promotion from the Junior Branch. He would only be a person who is recruited as a District judge but posted as an Assistant Judge to gain the requisite Judicial experience of that post before being entrusted with the duties of a District Judge. Inclusion of the name of such a person in the list of Assistant Judges does not confer any right on such regular Assistant Judges appointed by promotion from the Junior Branch who are placed above him in the list to claim seniority over him.
- B** [723 G-H, 724 A-B]

- C** In the instant case since as between the appellants on the one hand and respondents Nos. 2 to 5 on the other there being no comparison, it cannot be said that there is any violation of Article 14 or Article 16 of the Constitution. It appears that all this confusion has arisen on account of the practice of including the names of the direct recruits from the Bar to the cadre of District Judges while they are serving as Assistant Judges under the proviso to Rule 5(2)(i)(b) of the Rules in the same list along with Assistant Judges promoted from the Junior Branch. If a separate list of such persons was there, there would not have been any room for such confusion.
- D** [724 E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5999 & 6000 of 1983

- E** Appeals by Special leave from the Judgment and Order dated the 25th June, 1978 of the Maharashtra High Court in Misc. Appln. No. 763 of 1981 with Special Civil Application No. 1323 of 1978.

*U. R. Lalit, V. N. Ganpule and Mrs. V. D. Khanna* for the Appellants.

- F** *A.V. Sawant, M.N. Shroff, S.M. Shah, P. Sankara Narayana* for the Respondents.

*S.B. Bhasme, Gopal, B. Sathe* for Respondent No. 5.

- G** *V.B. Saharya and R.N. Poddar* for Respondent (U.O.I.).

The Judgment of the Court was delivered by

- H** VENKATARAMIAH, J. The appellant in Civil Appeal No. 5999 of 1983 is Shri B.V. Chavan and the appellant in Civil Appeal No.

6000 of 1983 is Shri A.A. Halbe. The appellants in these two appeals are members of the Judicial Service of the State of Maharashtra. They were originally appointed as Civil Judges (Junior Division) and Judicial Magistrates First Class in the Junior Branch of the Maharashtra State Judicial Service. Both of them in course of time were promoted in the year 1971 as Assistant Judges in the Senior Branch of the Maharashtra State Judicial Service. When they were both working as Assistant Judges, applications were invited from members of the Bar for filling in five posts of officiating Assistant Judges in the Judicial Service of the State of Maharashtra although the applications could be invited for the purpose of recruitment to the cadre of District Judges. Respondents Nos. 2 to 5 Shri I.G. Shah, Shri B.S. Bhirud, Shri H.H. Kantharia and Shri A.D. Mane along with many others applied for the same. Ultimately respondents Nos. 2 to 5 were selected by the High Court and on the recommendation of the High Court, the Governor appointed them as Assistant Judges as per Government notification dated December 27, 1974, the material part of which read thus:

“Sachivalaya, Bombay—400032, 27th December, 1974. No. DAJ 1071/687-H-I. The following persons are appointed as Assistant Judges on an officiating basis initially till they are appointed as District Judges, with effect from the dates on which they assume charge of their appointments:

1. Shri Ishwarchand Gulabchand Shah
2. Shri Bhaskar Dattatraya Bhirud
3. Shri Hajivandh Hiralal Kantharia
4. Shri Anant Dhyanu Mane

By order and in the name of the Governor of Maharashtra.

Sd/-M.B. Deshmukh  
Deputy Secretary to Government”.

Respondents Nos. 2 to 5 accordingly were posted as Assistant Judges in January, 1975. In the list of Assistant Judges which was in force then the appellants were shown at serial Nos. 5 and 6 and respondents Nos. 2 to 5 were shown at serial Nos. 25 to 28. Later on by a notification dated February 1, 1977, respondents Nos. 2 to 5 were promoted to officiate as District Judges along with one

**A** Shri M.M. Sonak but by a notification dated February 5, 1977 which was issued as a corrigendum to the notification, dated February 1, 1977, respondents No. 2 to 5 were shown as having been appointed to officiate as District Judges. The appellants who were working as Assistant Judges from 1971 were not promoted alongwith respondents Nos. 2 to 5. The appellants who felt aggrieved by the appointment of respondents Nos. 2 to 5 filed a petition before the High Court of Bombay claiming that they should be treated as having been promoted as District Judges on the same date on which respondent No. 2 was appointed and placed above respondents Nos. 2 to 5 in the seniority list on the ground that they were senior to respondents Nos. 2 to 5 in the cadre of Assistant Judges. The petitions were dismissed by the High Court by a common judgment. The appellants have filed these appeals by special leave against the judgment of the High Court.

**D** The solution to the problem before us depends upon the true meaning of the relevant provision of the Bombay Judicial Service Recruitment Rules, 1956 (hereinafter referred to as 'the Rules') which govern the recruitment to the different cadres in the Judicial Service of the State of Maharashtra.

**E** Rule 3 of the Rules provides that the Judicial Service in Maharashtra shall consist of two Branches-(a) the Junior Branch, and (b) the Senior Branch. The Junior Branch consists of the following class I Officers namely (1) Judges of the small Causes Courts at places other than Bombay; (2) Civil Judges (Senior Division); (3) Judges of the small Causes Courts at Bombay and Metropolitan Magistrates; and (4) Civil Judges (Junior Division) and Judicial Magistrates of the First Class (5) Metropolitan Magistrates, Juvenile Court, Bombay. The Senior Branch of the Judicial Service consists of District Judges, the Principal Judge and the Judges of the Bombay City Civil Court, the Chief Judge and the Additional Chief Judge of the Small Causes Court, Bombay, the Chief Presidency Magistrate, Bombay and the Assistant Judges. Rule 4 of the Rules deals with the method of recruitment to the Junior Branch with which we are not concerned. Rule 5 deals with the method of recruitment to the Senior Branch. Sub-rule (4) of Rule 5 of the Rules provides that appointments to the posts of Assistant Judges shall be made by the Governor in consultation with the High Court by promotion from the Civil Judges (Junior Division) or Civil Judges (Senior Division), of not less than seven years standing. The appellants were promoted and appointed as Assistant Judges under this sub-rule. Sub-rule

(2) of Rule 5 which provides for the appointment of District Judges reads thus:

“5. (2) District Judges and Judges of the Bombay City Civil Court—

(i) District Judges.—Appointments to the posts of District Judges shall be made by the Governor—

(a) in consultation with the High Court by promotion from the members of the Junior Branch who have ordinarily served as Assistant Judges, and

(b) on the recommendation of the High Court from members of the Bar who have practised as advocates or pleaders for not less than seven years in the High Court, or courts subordinate thereto:

Provided that a person recruited at the age of not more than forty-five years, fifty years in the case of a person belonging to a community recognised as backward by Government for the purposes of recruitment, shall first be appointed to work as Assistant Judge for such period as may be decided by Government on the merits of his case on the recommendations of the High Court before he is appointed as a District Judge:

Provided further that ordinarily the proportion of post filled in by promotion, under clause (a) and those by appointment from members of the Bar under clause (b) shall be 50 : 50.”

Rule 5(2) of the Rules provides for two methods of appointment to the posts of District Judges (i) by promotion of members of the Junior Branch who have served as Assistant Judges and (ii) by direct recruitment from members of the Bar. When an Assistant Judge is promoted as a District Judge, he becomes entitled to function as a District Judge from the date of such promotion. But the proviso to Rule 5 (2) (i) (b) provides that when a member of the Bar is recruited as a *District Judge* and he is less than forty-five years of age on the date of such recruitment (he is less than fifty years in the case of a person belonging to a backward community) he shall first be appointed to work as Assistant Judge for such period as may be decided by the Government on the merits of his case on the recommendation of the High Court before he is appointed as a District Judge. That means that even though a member of the Bar is recruited as a District Judge, he may be asked to

**A** serve as an Assistant Judge for a specified period if he is below the prescribed age as stated above. When he so functions as the Assistant Judge he would not be strictly in law a person appointed as an Assistant Judge for there is no provision for direct recruitment to the cadre of Assistant Judges. He would only be a person who is recruited as a District Judge but posted as an Assistant Judge to gain the requisite judicial experience in that post before being entrusted with the duties of a District Judge. He cannot, therefore, be called as a member of the cadre of Assistant Judge subject to the rule of seniority applicable to the regular members of that cadre who are appointed by promotion from the Junior Branch. Inclusion of the name of such a person in the list of Assistant Judges does not confer any right on such regular Assistant Judges appointed by promotion from the Junior Branch who are placed above him in the said list to claim seniority over him. He has to be posted as District Judge on the expiry of the period during which he has to work as an Assistant Judge under the proviso to Rule 5 (2) (i) (b) of the Rules. The other Assistant Judges promoted from the Junior Branch in the list can become District Judges only when they are appointed in their turn under Rule 5 (2) (i) (a). In the instant case, respondents Nos. 2 to 5 were appointed as District Judges after their prescribed stint in the cadre of Assistant Judges was over in 1977 but the appellants could be promoted under Rule 5 (2) (i) (a) only subsequently. In the circumstances since as between the appellants on the one hand and respondents No. 2 to 5 on the other there being no comparison, it cannot be said that there is any violation of Article 14 or Article 16 of the Constitution. It appears that all this confusion starting with the issue of the notification inviting applications for purposes of recruitment under Rules 5 (2) (i) (b) of the Rules has arisen on account of the practice of including the names of the direct recruits from the Bar to the cadre of District Judges while they are serving as Assistant Judges under the proviso to Rule 5 (2) (i) (b) of the Rules in the same list alongwith Assistant Judges promoted from the Junior Branch. If a separate list of such persons was there, there would not have been any room for such confusion.

**G** The High Court was right in negating the claim of the appellants in the circumstances of the case.

No other ground is urged.

In the result these appeals fail and they are dismissed but without any order as to costs.

**H** H.S.K.

*Appeals dismissed.*