SUPREME COURT OF INDIA

G.B. Pattanaik, S.N. Phukan & S.N. Variava, JJ.

S. Renuka v. State of A.P.

Writ Petition (C) No.409 of 2000

21.03.2002

Service Matter

A.P. High Judicial Service (Special) Rules Rule 2 – A.P. State and Subordinate Service Rules, Rule 22 – Constitution of India Articles 14, 16, 309 – Appointment – Mahila and family court – 100% reservation – Court rejected the plea of the recommended candidates to be appointed as Family Court Judges against the advertisement they had applied for wherein on account of shortage of lady District Judges, it had been decided to recruit women candidates by way of direct recruitment – On a reference being made by the State after the selection process had been completed and the names had been sent to the State Government for appointment, the High Court came to the conclusion that earmarking the posts only to the women candidates would amount to cent-percent reservation which was not constitutionally permissible – Resultantly, it was held that by reserving the 10 posts for women, the High Court had inadvertently created a 100% reservation for women and therefore, did not recommended in favour of appointing any person from the panel prepared – The writ petition thus came to be filed by the 9 women lawyers whose names were forwarded to the State Government and directions were sought for appointing them – In the meantime, an advertisement also was issued reserving only 1 post for a woman and calling for fresh applications which was also challenged – Court held that there could not be 100% reservation for women and dismissed the writ petitions.

Held,

The appointments were to be not to any ex-cadre posts but to posts in the cadre of district and sessions judge, grade II. The rules prescribed that in the cadre of district and sessions judges, there had to be reservations for scheduled tribes, scheduled caste, backward classes (groups A, B, C, or D) and women. The rules did not allow 100% reservation for women. By reserving all the 10 posts for women, the High Court had inadvertently created 100% reservation for women. Further, the posts advertised were 5 open competition, 2 scheduled caste, 1 scheduled tribe, 1 backward class group A and 1 backward class group B. Yet the panel sent to the government consisted of 7 open competition candidates, 1 scheduled caste candidate and 1 backward class group D candidate. Such a selection was entirely against the rules and against the reservation policy. The rules also required that if no SC or ST candidate was available then the vacancy had to be carried forward. Similarly, the vacancy of backward class group A, B, C and/or D could not be converted into other category. Because of these difficul-ties the persons empanelled could not be appointed in

the cadre of district & sessions judge grade II. [Para 6]

Cases Referred:

1 Munna Roy v. Union of India (JT 2000 (9) SC 168) (Para 10)
2. R.S. Mittal v. Union of India (JT 1995 (3) SC 417) (Para 10)

Mr. L.N. Rao, Mr. P.N. Mishra, Senior Advocates, Mr. Santhana Krishnan, Ms. Manita Verma and Mr. Sunil Kumar, Advocates with them for the Petitioners. Ms. K. Amareswari, Mr. P.P. Rao, Senior Advocates, Mr. K. Subba Rao, Mr. Prem Malhotra, Mrs. R. Madhavi Latha, Mr. T.V. Ratnam.

JUDGEMENT:

S.N. VARIAVA, J.
1. The facts relevant for the purposes of this writ petition are as follows:
The State of Andhra Pradesh established family courts and mahila courts. The High Court of Andhra Pradesh desired that these courts be manned by women. However, in the cadre of district and sessions judges, grade II there were not enough women judges who could be posted in these courts. Therefore, the High Court re-quested the state to create additional posts. On 3rd September, 1996 the state government issued office memorandum no. 172 sanc-tioning 10 additional posts of district and sessions judges, grade II. The relevant portion of the said memorandum reads as follows:
“The registrar, High Court of Andhra Pradesh, Hyderabad, has informed in his letter 6th, read above that six family courts in the cadre of district and sessions judge were sanctioned at Visakhapatnam, Hyderabad, Vijayawada, Kurnool, Tirupathi and Warangal in the G.O. 3rd, read above and another family court at Secunderabad was sanctioned in the G.O. 5th, read above. The registrar, High Court of Andhra Pradesh has further stated that the High Court considers it necessary to post lady district judges to preside over the family courts in the state with a view to protect and preserve that institution of marriage and to promote the welfare of the children as stipulated in rule 4 (4) (a) and (b) of the Family Court Act, 1984, but due to non-availability of women judicial officers in the cadre of district judges, the High Court is unable to post lady district judges to the family courts. The registrar has also stated that mahila courts with lady presiding officers at Hyderabad, Vijayawada and Visakhapatnam were sanctioned exclusively to deal with offences against women, in the G.Os first and fourth read above. The registrar, High Court of Andhra Pradesh has finally requested that 10 posts of district and sessions judge, grade-II, be sanctioned in addition to the existing cadre strength, exclusively to recruit the women candidates by direct recruitment, for being posted to the family courts and mahila courts in the state.
2. Government after careful consideration of the matter hereby sanction in relaxation of rule 2 of the special rules for the A.P. State Higher Judicial Service, 10 posts of district and sessions judges, grade-II, in addition to the existing cadre strength exclusively for women candidates to be recruited by direct recruitment”.
2. Pursuant to this memorandum, the High Court issued an advertisement inviting applications from women candidates for appointment to the post of district and sessions judge, grade-II. The advertisement specified that five posts would be available for open

competition, two posts for the scheduled castes, one post for the scheduled tribe, one post for backward class, group A and one post for backward class group B.
3. Pursuant to this advertisement, 261 candidates applied for the posts. The High Court called 210 candidates for a written exami-nation. 180 candidates participated in the written examination. The High Court then called 35 candidates for oral interviews. The oral interviews were conducted on 20th and 21st of March, 1997. A panel of 10 candidates was prepared. The 10 candidates were asked to furnish further information in relation to their legal practice. After receipt of the information, the High Court re-jected one name. A panel of nine candidates was then approved at full court meetings held on 17th September, 1997 and again on 17th October, 1997. This panel consisted of seven candidates from the open category, one from scheduled caste and one from backward class group D. The High Court then sent the names of the nine candidates to the state government for appointment.
4. The state government brought to the notice of the High Court certain aspects and requested the High Court to consider the same and express its views. The aspects brought to the notice of the High Court were as follows:
"1. As rule 22 of the A.P. State and Subordinate Service Rules, old or new prescribes a specific procedure either for filling of S.C. and S.T. vacancies with OBC candidates or for de-reserving such vacancies, it is for the consideration whether the 7th and 8th vacancies in the recruitment reserved for SCs and STs respective-ly can straightaway be de-reserved which is not in consonance with the said rule 22.
1. As the notification inviting the applications for the post in question was issued much later to 18-3-1996, the principles of carry forward of vacancies in respect of BCs also applies to the recruitment. The recommendation of the High Court at roster points 4th and 10th reserve for BC.A and BC.B groups respective-ly, required consideration in the light of rules issued in G.O.Ms.No. 65, general administration (Ser. D) dept., dated: 15-2-1997.
2. The High Court informed that the appointments of the nine provisionally selected candidates shall be provisional as family court judges under the Family Courts Act to man family courts and mahila courts only. As the proposal for sanction and notification are for the posts of district and sessions judges grade II, it is for consideration whether the candidates provisionally appointed in such recruitment can now be provisionally appointed designating them as family courts judges.
3. The High Court has stated that the nine recommended candidates to be provisionally appointed as family court judges would be recruited into higher judicial service as district judges grade II as and when vacancies in the cadre to the extent of reservation for women become available in order of their merit, subject to the rule of reservation, it has to be considered in view of rule 2 of the special rules and whether they can be so adjusted as suggested in view of rule 6 of the special rules.
4. Whether the provisionally selected candidates recruited as district judges in the Andhra Pradesh State Higher Judicial Service can be kept out of the service by provisional appointment to some other post and recruiting them into the posts of district judges on the availability of vacancies reserved for women.
5. The appointments to the posts of district judges shall be made by the governor of the state, whereas under the Family Courts Act, 1984, the state government appoints persons to be judges of the family courts. Hence, the appropriate procedure to be adopted for making the suggested appointments may also be considered".
5. The High Court considered the aspects brought to its notice in a meeting of the full court

held on 21st November, 2000. The High Court then replied to the state government as follows:

"For query no.1:

As per the rules in force, the vacancies relating to SC and ST candidates cannot be straightaway de-reserved. If there are no qualified candidates of SC and ST available, the said vacancies have to be carried forward for limited recruitment. Therefore, the High Court is of the view that the vacancies reserved for SC and ST candidates cannot be de-reserved.

For query no.2:

As per the rules in force, the vacancies relating to each cate-gory of candidates belonging to backward class, group A, B, C and D cannot be converted into other categories and they have to be carried forward for limited recruitment, if the candidates be-longing to each sub-group are not available. Therefore, the High Court is of the view that the vacancies reserved for each sub-group cannot be filled up with the candidates of other sub-groups.

For query no.3:

The advertisement for the recruitment of women candidates was made inviting applications for the posts of district and sessions judges, grade II. The government accorded sanction of 10 addi-tional posts in G.O. Ms.No.172, law (LA&J SCF) department, dated: 3.9.1996. There is no provision in the special rules for A.P. State Higher Judicial Service for eventual absorption of the candidates appointed as family court judges into the cadre of district judges, grade II against the future vacancies falling with the direct recruitment quota. In this regard, two aspects viz., (1) Suitability test from the point of view of merit of the candidates and (2) Legality of recruitment by inviting applica-tions exclusively from women candidates only, have been consid-ered by the High Court.

Regarding the suitability, it is noticed by the High Court that the candidates who were provisionally selected have got less marks even if 40% is taken as minimum marks for OCs and 30% for SCs and STs for the purpose of selection as district judges grade II. The recommendation through the letter 4th cited was for appointment of the women candidates as family court judges and not as district and sessions judges, grade II. The High Court, therefore, is of the view that it is not conducive to the efficiency in service and the image of judiciary if the candi-dates who have got such low marks are inducted into higher judicial service.

Regarding the legality of recruitment, the High Court is of the view that there are formidable legal impediments in the way of recommending the candidates for appointment as district and sessions judges, grade II. The High Court is of the further view that the special rules for A.P. State Higher Judicial Service issued in exercise of powers conferred under Article 233 and the proviso to Article 309 of the Constitution of India and those rules enjoin that 33.1/3% of the total number of permanent posts shall be filled or reserved to be filled by direct recruitment. The government accorded sanction of 10 posts of district and sessions judges, grade II in addition to the existing cadre strength exclusively for women candidates to be recruited by direct re-cruitment. This was purportedly done by relaxation of rule 2 of the special rules for A.P. State Higher Judicial Service. Rule 2 provides for method of appointment and the proportion between the recruits by transfer (promotees) and direct recruits from the bar. By resorting to relaxation of the said rule, it is not legally permissible to earmark 10 sanctioned posts exclusively for direct recruitment of women candidates since there is no rule in the A.P. State Higher Judicial Service giving the power to relax any of the rules. The power to relax the rules would only be under the A.P. State and

Subordinate Service Rules. Even if there is such power, it is doubtful whether the basic rules of recruitment can be relaxed in view of the rulings of the Supreme Court in Keshav Chandra Joshi v. Union of India (AIR 1991 SC 284) and in J&K Public Service Commission v. Narinder Mohan (JT 1993 (6) SC 593). The High Court is of the further view that earmarking 10 additional posts sanctioned only to the women candi-dates amount to cent per cent reservation in favour of women which is not legally/constitutionally permissible. Even if the reservation provided under rule 22-A of the A.P. State and Subor-dinate Higher Judicial Service Rules is made applicable to A.P. State Higher Judicial Service, the reservation could be to the extent of 1/3rd only.

For query no.4:

Since there is no rule under the special rules for A.P. State Higher Judicial Service to absorb the family courts judges into the higher judicial service as district & sessions judges, grade II as and when vacancies in the cadre to the extent of reservation for women become available, the High Court is of the view that they cannot be absorbed in view of rule 2 read with rule 6 of the special rules for A.P. State Higher Judicial Service.

For query no.5:

According to rule 6 of the special rules for A.P. State Higher Judicial Service, seniority of a person appointed to the category of district and sessions judges, shall be determined with refer-ence to the date from which he was continuously on duty in the category. The special rules do not provide to keep provisionally selected district judges out of service as family court and mahila court judges and recruiting them into the posts of dis-trict judges as and when vacancies for women for direct recruit-ment become available in order to their merit and subject to the rule of reservation. Therefore, the High Court is of the view that the provisionally selected candidates as district judges cannot be kept out of that service by provisional appointment to some other post and recruiting them into the posts of district judges on the availability of vacancies reserved for women.

For query no.6:

In view of the above views expressed by
the High Court, this query needs no clarification.

In the light of the above views for the queries raised by the govern-ment, the High Court of Andhra Pradesh is not in favour of recommending any women candi-dates on provisional selection for appointment as district and sessions judges, grade II under the A.P. State Higher Judicial Service in pursuance of the notification issued on the basis of the High Court's letter no. 4610/96-B.Spl. dated:7.10.1996″.

Thus the full court, in its meeting held on 21st November, 2000 was not in favour of appointing any person from the panel pre-pared earlier.

6. It must be noted that the vacancies were for judges of family courts and mahila courts. These courts could be manned by district and sessions judges, grade II. The state government had thus created 10 posts of district and session judge, grade II. The advertisement was also for appointment to the posts of district and sessions judge, grade II. The appointments were to be not to any ex-cadre posts but to posts in the cadre of district and sessions judge, grade II. The rules prescribed that in the cadre of district and sessions judges, there had to be reservations for scheduled tribes, scheduled caste, backward classes (groups A, B, C, or D) and women. The rules did not allow 100% reservation for women. By reserving all the 10 posts for women, the High Court had inadvertently created 100% reservation for women. Further, the posts advertised were 5 open competition, 2

scheduled caste, 1 scheduled tribe, 1 backward class group A and 1 backward class group B. Yet the panel sent to the government consisted of 7 open competition candidates, 1 scheduled caste candidate and 1 backward class group D candidate. Such a selec-tion was entirely against the rules and against the reservation policy. The rules also required that if no SC or ST candidate was available then the vacancy had to be carried forward. Simi-larly, the vacancy of backward class group A, B, C and/or D could not be converted into other category. Because of these difficul-ties the persons empanelled could not be appointed in the cadre of district & sessions judge grade II. The High Court initially considered that the petitioners could be appointed in ex-cadre posts as family court and/or mahila court judges and then absorb them in the cadre of district and sessions judge, grade II as and when vacancy for women arose. The High Court correctly realised that this could not be done. It was also noticed that the candi-dates provisionally selected i.e. the petitioners had got less marks than those normally prescribed for such selection.

7. It must be mentioned that in the meantime the petitioners had made representations both to the chief justice as well as to the chief minister. They received no reply. This writ petition was thus filed by the nine women lawyers who were selected and whose names were forwarded to the state government for appointment. The petitioners sought directions to appoint them in the cadre of district and sessions judges, grade II. Thereafter, on 20th July, 2000 another advertisement was issued calling for applications for appointment to six posts of district judges. In this advertisement only one post was reserved for women. The petition was thus amended and a further direction to quash the decision of the full court not to appoint as per the selection earlier made and to quash the subsequent advertisement have been sought.

8. It is settled law that no right accrues to a person merely because a person is selected and his or her name is put on a panel. The petitioners have no right to claim an appointment. Even otherwise, the selection was contrary to the rules in force at that time. There could not be 100% reservation for women. Also the reservation policy had not been adhered to. The posts which are created are posts of district and sessions judges, grade II. There is no separate posts for judges of family courts and mahila courts. Thus, the petitioners could not be appointed as judges of family courts and mahila courts in ex-cadre posts even provisionally. This would amount to creation of ex-cadre posts not sanctioned by the government. No fault can be found with the High Court being in favour of not appointing the petitioners.

9. The unfortunate part is that even though family court and mahila courts have been established, no appointments have been made. Thus, till date the family courts and mahila courts are not being manned.

10. Mr. Nageshwar Rao has relied upon the case of *R.S. Mittal v. Union of India*1 reported in (1995 Supp. (2) SCC 230). In this case, even though the Court was of the opinion that the selection was not proper, it refused to interfere. Mr. Nageshwar Rao also relied on the case of *Munna Roy v. Union of Indi*a2 reported in ((2000) 9 SCC 283). In this case, the Court directed appointment of the selected candidate in spite of the fact that she had no right to the appointment. Both these cases are based on the peculiar facts of those cases.

11. As the posts were lying vacant for such a long period of time initially it was suggested that if the petitioners filed an undertaking before this Court, that they are willing to be ap-pointed in ex-cadre posts of judges of the family court and/or mahila court and that they will not claim any right to be subsequently absorbed in the cadre of district and sessions

judges grade II then the Court could consider directing the state government to appoint these nine petitioners. Eight of these petitioners have filed undertakings before this Court. However, on a proper consideration of the matter, we are of the view that this Court cannot direct the state government to appoint these petitioners. If such a direction were to be given, this Court would be creating ex-cadre posts and making appointments contrary to rules. Thus, it is not possible for this Court to accede to the request of Mr. Nageshwar Rao to appoint petitioners, on the ex-cadre posts, as judges of family courts and mahila courts. 12. Writ petition is thus dismissed. There will be no order as to costs.

Equivalent: (2002)5 SCC 195