

Bombay High Court

Vinayak Kisan Jadhao And Ors. vs District And Sessions Judge And ... on 27 August, 2004

Equivalent citations: 2005 (2) BomCR 893

Author: S D.D.

Bench: S D.D., D B.P.

JUDGMENT Sinha D.D., J.

1. Heard Mr. Subodh Dharmadhikari, learned Counsel for the petitioners and Mr. Deopoojary, learned Asstt, Govt. Pleader for respondent Nos. 1 and 2 in Writ Petition Nos. 1771 of 1993 and 2171 of 1993. Since the cause of action/issue involved in both the above writ petitions is common, they are heard together and disposed of by this common judgment.

2. Learned Counsel for the petitioners states that the petitioner in Writ Petition No. 2171 of 1993 was appointed on 20th December, 1982 to the post of peon in the Subordinate Judiciary. Similarly, the petitioner Nos. 1, 2 and 3 in Writ Petition No. 1771 of 1993 were appointed on 1st July, 1982 as a Chowkidar, 2nd July, 1984 and 16th December, 1982 as Peons respectively. It is submitted that Class-III and Class-IV posts in various Subordinate Courts are governed by the Recruitment Rules for recruitment to Class-III and Class-IV services in Subordinate Judiciary. In terms of the said Rules, the Appointing Authority for the Class III and Class-IV employees belonging to Subordinate Judicial Service is the District Judge of the concerned District.

3. Mr. Dharmadhikari, learned Counsel, states that the said Recruitment Rules apply to the posts of (i) Stenographers, (ii) Clerks, (iii) English Section Writer, (iv) Regional Language Section writers, (v) Bailiffs, (vi) Peons, (vii) Watchmen, (viii) Gardeners, and (ix) Sweepers in Civil and Criminal Courts in the District.

4. Mr. Dharmadhikari, learned Counsel for the petitioners, states that as per the above referred Recruitment Rules, there are two channels by which recruitment to subordinate judicial service is required to be made. The first channel pertains to the direct recruitment from open market which the District Judge has to make strictly in order of seniority from the list of candidates to be prepared in consultation with the Advisory Committee provided for this purpose under the Rules. The second channel in by way of promotion from amongst the existing employees as provided for is Rule 3 of the Rules. Under Rule 3, the District Judge is empowered to appoint and/or promote the existing employee to a superior post if he is qualified and fit for such an appointment. The petitioners being qualified to be promoted to the posts of Bailiffs, they applied to the District Judge, Buldana, for consideration of their claims for the posts. The petitioner in Writ Petition. No. 2171 of 1993 had applied on 18th April, 1989, 7th August, 1990 and 14th June, 1993 to the respondent No. 1 to be considered for promotional post of Bailiff. Similarly, the petitioner Nos. 1, 2 and 3 in Writ Petition No. 1771 of 1993 applied on 7th April, 1991, 26th November, 1991 and 18th March, 1992 to respondent No. 1 to be considered for promotional posts of Bailiffs. It is submitted that all the petitioners are qualified for the posts of Bailiffs under the Recruitment Rules, since their service records are satisfactory. None of the petitioners was issued any Show-cause-Notice and/or Memo, nor any adverse remarks have been communicated to them and, therefore, they are eligible and fit for promotion to the posts of Bailiffs. However, their claims to the promotional posts of Bailiffs,

without any justification, have been ignored by the respondent No. 1 and, therefore, appropriate direction be given to respondent No. 1 to consider the claims of the petitioners for promotional posts of Bailiffs and respondents No. 1 may also be directed to grant deemed dates of promotions, since the petitioners are eligible to be promoted to the posts of Bailiffs since long.

5. Mr. Deopoojary, learned Asstt. Govt. Pleader, does not dispute the fact that the Recruitment Rules for recruitment to Class-III and Class-IV services in Subordinate Judiciary are applicable for effecting promotion to the post of Bailiff from the category of Peons, Watchmen, Gardeners, Sweepers to be made by the District Judge. It is submitted that the District Judge, Buldana, had prepared the panel for appointment to the posts of Bailiffs after following the procedure applicable in this regard. The select list prepared by the Advisory Committee is not yet exhausted. However, so far as the petitioners are concerned, the respondent No. 1 will consider the fitness of the petitioners for promotional post of Bailiff by calling their confidential service records, and if necessary, will also interview them by following proper procedure laid down under Rule 3 of the Recruitment Rules. The Asstt. Govt. Pleader states that the Recruitment Rules referred to herein above are part and parcel of Appendix 'A' Paragraph 577(iii) of the Civil Manual and are applicable in the present case in respect of promotion to the post of Bailiff from the category of Peons, Watchmen, Gardeners, Sweepers. It is submitted that the District Judge, as per Sub-rule (2) of Rule 3, can promote persons holding the posts of Watchman, Gardener, Sweeper to the posts of Bailiffs, provided such persons are properly qualified and are, in the opinion of the District Judge, fit for promotion to the higher posts of Bailiffs. It is submitted that in the instant case, the claims of the petitioners are neither refused, nor disallowed by the District Judge for the promotional posts of Bailiffs and the respondent No. 1 is ready and willing to consider the claims of the petitioners for promotional posts of Bailiffs if they are qualified and fit for promotion. However, it is submitted that though the petitioners have applied to the respondent No. 1 way back in the years 1989, 1990 and 1992, however, their claims to the promotional post were not considered because of the pendency of the present petition, though their applications/representations were prior to the filing of the writ petitions. Learned Asstt. Govt. Pleader makes a categorical statement that the claims of the petitioners for promotional posts of Bailiffs, according to the above referred Rule, would be considered, as early as possible, on the basis of the above referred facts.

6. We have given our anxious thought to the above referred contentions canvassed by the respective Counsel.

7. In the instant case, it is not in dispute that the procedure mentioned in Rule 3 is applicable for effecting promotion to the post of Bailiff from the category of Peon, Watchman, Gardener, Sweeper. It is also not in dispute that under Sub-rule (2) of Rule 3 of the Recruitment Rules, District Judge is entitled/empowered to promote any Peon, Watchman, Gardener, Sweeper to the post of Bailiff, provided such person is qualified and, in the opinion of the District Judge, is fit for promotion to the higher post of Bailiff. In the instant case, it appears that though the petitioners have applied for promotion to the respondent No. 1 in the years 1989, 1991 and 1992, their claims to the promotional posts of Bailiffs were not considered by respondent No. 1 due to pendency of the petition, though in absence of any interim order, the respondent No. 1 was entitled to consider their claims for promotional posts of Bailiffs.

8. Be that as it may, since a positive statement is made by learned Asstt. Govt. Pleader that the claims of the petitioners for promotional posts of Bailiffs would be considered in view of Rule 3, in our view, the grievance of the petitioners is redressed and, therefore, we pass the following order :-

The respondent No. 1 is directed to consider the claims of petitioners for promotional posts of Bailiffs as per Sub-rule (2) of Rule 3 of the Recruitment Rules. As early as possible, in any case, not beyond the period of three months from the date of receipt of this judgment and issue appropriate orders of promotions if the petitioners are qualified and fit for the same, and grant them deemed dates of promotion accordingly if they deserve. Rule is made absolute in above terms. No order as to costs.