PETITIONER:
A. PANDURANGA RAO

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH & ORS.

DATE OF JUDGMENT02/09/1975

BENCH:
UNTWALIA, N.L.
BENCH:
UNTWALIA, N.L.
ALAGIRISWAMI, A.
GOSWAMI, P.K.

CITATION:
1975 AIR 1922 1976 SCR (1) 620
1975 SCC (4) 709
CITATOR INFO :
RF 1977 SC 276 (11,15)
R 1980 SC1426 (13)
R 1987 SC 331 (19,24,25)

ACT:
Constitution of India-Art. 233(2)-Scope of.

HEADNOTE:
Under Article 233(2) of the Constitution a person not already in 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 7 years an advocate or pleader and is recommended by the High Court for appointment.

After interviewing a large number of candidates to fill six posts of District Judges the High Court recommended six persons as the most suitable candidates from among the applicants. The appellant was one of' them. This recommendation having leaked out, the Government requested the High Court to send a list of persons whom the High Court considered to have reasonable claims to the appointment. 'The High Court sent the entire list of the candidates interviewed by it with the marks obtained by them, but without offering any remarks. Treating the entire list of candidates sent by the High Court as candidates recommended by it in the order of merit, respondents 3 to 6 were selected, in addition to two candidates earlier recommended by the High Court. The appellant's name did not find place in the final list. He, therefore moved the High Court contending that respondents 3 to 6 were appointed in violation of the provisions contained in Art. 233. The High Court dismissed the petition holding that the entire list of the candidates should be taken as recommended by the High Court.

Allowing the appeal to this Court,
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HELD :In the case of appointment of District Judges from the Bar it is not open to the Government to choose a candidate for appointment unless and until this name is recommended by the High Court. The word 'recommend' means "suggest as rut for employment."

(2) 'The Government was not bound to accept all the

recommendations made by the High Court but could tell the High Court its reasons for not accepting its recommendations in regard to certain persons. If the High Court agreed with the reasons in case of a particular person the recommendation in his case stood withdrawn and there was no question of appointing him. But it was certainly wrong and incompetent for the Government to write to the High Court and ask it to send the list of persons whom it considered to have reasonable claim to the appointment. It was very much wrong on the part of the High Court to forward the entire list of the candidates interviewed with the marks obtained by them and adding at the same time that the High Court had no further remarks to offer.. 'The reply sent by the High Court was by no means a recommendation of the High Court of all the candidates interviewed that all of them had reasonable claims or in other words were fit to be appointed as District Judges. [623 H; 624 B, D-E]

Chandra Mohan v. State of Uttar Pradesh & Ors. [1967] 1 S.C.R. 77, referred to

(3) Respondents 3 to 6 were not eligible to be appointed as District Judges as their names had never been recommended by the High Court. [625-A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2059 of 1974.

Appeal by special leave from the Judgment and order dated the 10th June, 1974 of the Andhra Pradesh High Court in Writ Petition No. 895 Of 1974

621

P.A. Chowdhary and K. Rajendra Chaudhury, for the appellant.

P. Ram Reddy and P. P. Rao, for respondent No. 1.

A. V. Rangam and A. Subhashini, for respondent No. 2.

G. Narasimhulu, for respondents Nos. 3, 5 and 6.

G. N. Rao, for respondent No. 4.

A. V. K. Rao, the intervener, appeared in person.

The Judgment of the Court was delivered by

UNTWALIA, J.-In this appeal by special leave we are once again called upon to lay down the meaning and scope of Article 233 of the Constitution of India relating to the appointment of District Judges. This Article alongwith other Articles in Chapter VI of Part VI of the Constitution came up for consideration and was interpreted by this Court on several occasions in the past, yet, a Bench of the High Court of Andhra Pradesh in its judgment under appeal felt persuaded to take a wholly erroneous view as to the meaning of the Article and committed a serious error in the application of the principles of law settled by this Court to the facts of the instant case.

We shall state the facts in a narrow compass shorn of unnecessary details. On 3-1-1972 the Government of Andhra Pradesh, respondent No. 1 was requested by the High Court, respondent No. 2, to take necessary steps "for filling up six vacancies by notifying six posts of District and Sessions Judges, Grade II for direct recruitment." By a D.O. letter dated 14-9-1972 the first respondent informed the second respondent that the six vacancies were being notified for direct recruitment. They were actually notified in the Gazette of that date. With the approval of the High Court, an advertisement was published on 1-8-1972 in the Deccan Chronicle. The total number of applications received in response to the advertisement was 381. Twenty six

applications were found to be not in order and rejected. The remaining 355 candidates were called by the High Court for interview. 92 did not turn up and the remaining 263 were interviewed by the Selection Committee of the High Court on various dates. Shri A. Panduranga Rao, the sole appellant in this appeal was one of the candidates interviewed on 14-6-1973.

The High Court eventually made its recommendations in its D.O. letter dated 13-7-1973 recommending in order of merit six persons "as most suitable candidates from among the applicants, for being appointed as District and Sessions Judges, Grade II." This letter was written by the Registrar of the High Court as directed "by the Hon'ble the Chief Justice, and the Hon'ble Judges of the Andhra Pradesh High Court." The appellant's name was the fifth amongst the six names recommended.

Although it is not very relevant to say so, just to complete the link in the chain of relevant events, it may be stated here that the recommendations made by the High Court seems to have leaked out. Whoever might have been responsible for this leakage it was all the same a very unfortunate thing. This led the Bar Association City Civil Court, Hyderabad and the High Court Bar Association to pass certain
622
resolutions and to send certain memoranda to the Government even to the extent of making some adverse comments against some of the persons recommended by the High Court for appointment. On receipt of the same, Government wrote a D.O. letter to the High Court on 24-7-1973 expressing surprise at the leakage of secret information but at the same time inviting the High Court to send its comments. The High Court sent a detailed reply and comments in its D.o. letter dated 26-7-1973 pointing out that the leakage of the secret information could not be possible at the High Court end. It is not necessary for us to advert to the comments or resolutions of the Bar Associations or the views of the High, Court expressed in its letter dated 26-7-1974.

We now come to the relevant letters in question. A D.o. letter dated 26-7-1973 was written by the Government to the High Court with reference to the latter's letter of recommendation dated 13-7-1973. We may point out here that this letter dated 26-7-1973 was written by the Government without any reference to, and in all probability, before the receipt of the High Court's letter dated 26-7-1973 in reply to the Government's of 24-7-1973. In the Government's letter dated 26-7-1973 attention of the High Court was invited to Instruction 12(5) of the Secretariat instructions and a request was made "to send the list of persons whom the High Court considered to have reasonable claims to the appointment or suitable therefore the posts of District and Sessions Judges, Grade II alongwith remarks regarding the qualifications and claims of the several persons in the list." It may be stated here that as usual the correspondence was going on between the Chief Secretary on behalf of the Government and the Registrar on behalf of the High Court. The latter in reply to the former's letter dated 26-7-1973 sent the following reply on 1-8-1973:

> "Your letter reached me on 28-7-1973. With reference to your above letter dated 26-7-1973, I have been directed to forward the entire list of the candidates interviewed by the High Court, with the marks obtained by them. the High Court has no further remarks to offer. All the applications of the candidates sent by you are returned separately."

Thereupon the Government wrote D.o. letter dated 30-11-1973 to the Chief Justice of the High Court intimating that Government had decided to select the six candidates mentioned in that letter for filling up the six vacancies. Out of the persons so selected two were those who had been recommended by the High Court alongwith four others in its letter dated 13-7-1973. They were serials 1 and 4. Four out of the six were not appointed and in their place, as it appears, treating the entire list of 263 as a list recommended by the High Court in order of merit persons at serials 9, 12, 13 and 16 were selected by the Government for appointment. And finally orders appointing the six persons so selected were issued on 7-12-1973. Several writ applications were filed in the High Court to challenge the appointments made by the Government. We are in this appeal concerned with the judgment of the High Court dismissing the Writ Petition No. 895/1974 filed by the appellant to challenge the appointment of only four viz.,, respondents 3 to 6 and the non-appointment of the appellant. His case was that respondents 3 to
623
6 were appointed in violation of the constitutional provision contained in Article 233 and that he was not appointed on grounds which are unsustainable in law. The High Court has taken the view that the appointments have been made by the Government consistent with the requirement of Article 233(2) out of the entire list of 263 recommended by the High Court. The appellant's claim on merits for appointment to the post has not found favour with the High Court. In the view which we take as to the violation of Article 233 in this case, we would not like, nor is it necessary to do so, to examine the claim of the appellant for appointment in one of the six vacancies.

It would be convenient to read once again Article 233 of the Constitution. "

> (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 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 an advocate or a pleader and is recommended by the High Court for appointment."

As pointed out at page 89 by this Court in Chandra Mohan v. State of Uttar Pradesh & Ors (1)

> "There are two sources of recruitment, namely, (1) service of the Union or of the State, and (ii) members of the 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."

A candidate for direct recruitment from the Bar does not become eligible for appointment without the recommendation of the High Court. He becomes eligible only on such recommendation under clause (2) of Art. 233. The High Court in the judgment under appeal felt some difficulty in appreciating the meaning of the word "recommend". But the literal meaning given in the Concise oxford Dictionary is quite simple and apposite. It means "suggest as fit for employment." In case of appointment from the Bar it is not open to the Government to choose a candidate for appointment until and unless his name is recommended by the High Court.

The recommendation of the High Court for filling up the

six vacancies was contained in its letter dated 13-7-1973. Government was not bound to accept all the recommendations but could tell the High Court its reasons for not accepting the High Court's recommendations in regard to certain persons. If the High Court agreed with the reasons in case of a particular person the recommendation in his case stood with drawn and there was no question of appointing him. Even if the High

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

624

Court did not agree the final authority was the Government in the matter of appointment and for good reasons it could reject the High Court's recommendations. In either event it could ask the High Court to make more recommendations in place of those who have been rejected. But surely it was wrong and incompetent for the Government to write a letter like the one dated 26-7-1973 inviting the High Court's attention to Instruction 12(5) of the Secretariat instructions and on the basis of that to ask it to send the list of persons whom the High Court considered to have reasonable claims to the appointment. On the basis of the furore created by two Bar Associations of Hyderabad and the High Court's letter dated 26-7-1973 written in reply to the Government's letter dated 24-7-1973 no person's candidature recommended by the High Court had been rejected when the letter dated 26-7-1973 was written by the Government. Even after rejection the Government could not ask the High Court to send the list of all persons whom the High Court considered to have reasonable claim to the appointment We feel distressed to find that instead of pointing out the correct position of law to the Government and itself acting according to it, a letter hike the one dated 1-8-1973 was sent by the High Court in reply to the Government's letter dated 26-7-1973. It is not clear from this letter whether it was written under the direction of the Chief Justice alone or under the directions of Chief Justice and the other Judges of the High Court as in the case of the letter dated 13-7-1973. But surely it was very much wrong on the part of the High Court to forward the entire list of the candidates interviewed with the marks obtained by them and adding at the same time that the High Court had no further remarks to offer. We could not understand the reason for writing such a letter by the High Court. But if we may hazard a surmise it seems to have been written in utter disgust at the Government's unreasonable attitude displayed in its letter dated 26-7-1973. By no means could it be, nor was it, a recommendation by the High Court of all there 263 candidates interviewed, that all of them had a reasonable claim, or in other words, were fit to be appointed District Judges. We must express our displeasure at and disapproval of all that happened between the Government and the High Court in the former writing the letter dated 26-7-1973 and the letter sending the reply dated 1-8-1973.

Then comes the letter dated 30-11-1973. After tracing the history of the recommendation made by the High Court in its letter dated l 3-7-1973 and "in the light of the further information about these candidates as required from High Court", Government decided to select the six candidates mentioned therein including respondents 3 to 6 as if they were from "the list recommended by the High Court . It was further stated in this letter "Reasons for not selecting candidates placed by the High Court higher than those now selected are given in the annexure enclosed to this D.o. letter." The High Court, to be more accurate, the Chief Justice to whom the letter dated 30-11-1973 was addressed

seems to have not resented or protested against the selection so made by the Government in clear violation of Article 233 of the Constitution. We find it intriguing that the letter written by the Registrar of the High Court on 1-8-1973 was treated as a recommendation of all the 263 candidates as having been found fit for appointment as District Judges. By no means could it be so. It was not so. And yet the High Court or the
625
Chief Justice did not object to the appointment of respondents 3 to 6 as District Judges. They were not eligible to be so appointed as their names had never been recommended.

In the result we allow this appeal and set aside the judgment of the High Court. The writ application filed by the appellant succeeds only to this extent that the appointments of respondents 3 to 6 are quashed. The four posts manned by them are declared vacant. There will be no order as to costs.

P.B.R. Appeal allowed.
626