

PETITIONER:
MANI SUBRAT JAIN ETC.

Vs.

RESPONDENT:
STATE OF HARYANA AND ORS.

DATE OF JUDGMENT 09/12/1976

BENCH:
RAY, A.N. (CJ)
BENCH:
RAY, A.N. (CJ)
BEG, M. HAMEEDULLAH
SINGH, JASWANT

CITATION:
1977 AIR 276 1976 SCR (2) 361
1977 SCC (1) 486
CITATOR INFO :
E&R 1978 SC 327 (11)
E&R 1987 SC 331 (19,28,33)
RF 1989 SC 49 (19)

ACT:

Constitution of India--Writ of mandamus, when can be asked for Article 233, scope of--Direct recruitment of District Judges--Whether Governor bound to accept, recommendation of High Court.

HEADNOTE:

The Haryana High Court invited applications and interviewed candidates for filling up vacancies in the quota of direct recruits from the bar, in the Haryana Superior Judicial Service. The names of the appellants were recommended to the State Government who rejected them and asked the High Court to invite application again. Accepting the position, the High Court issued the advertisements. The appellants filed petitions against the order rejecting their names and asked for mandamus for appointment. The same were dismissed by the High Court on the ground that the appellants had no locus standi.

Dismissing the appeals, the Court,

HELD: (1) There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when he is denied a legal right by some one who has legal duty to do something or to abstain from doing something. [362G-H, 363A-B]

State of Haryana v. Subash Chander Marwaha & Ors. [1974] 1 S.C.R. 165; Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed & Ors. [1976] 3 S.C.R. 58; Halsbury's Laws of England 4th Ed. Vol. I, paragraph 122 and Ferris Extra-ordinary Legal Remedies, paragraph 198, applied.

(2) The initial appointment of District Judges under Article 233 is within the exclusive jurisdiction of the Government after consultation with the High Court though the consultation does not mean that the Governor must accept whatever advice or recommendation is given by the High Court. Article 233 only requires that the Governor should obtain from the High Court its views on the merits and demerits of per-

sons, selected for promotion and direct recruitment.[363A-B. F-G]

Chandra Mohan v. State of Uttar Pradesh & Ors. [1967] 1 S.C.R. 77; Chandramouleshwar Prasad v. Patna High Court & Ors. [1970] 2 S.C.R. 666 and A. Panduranga Rao v. State of Andhra Pradesh & Ors. [1976] 1 S.C.R. 620. referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1987.-1988 of 1976.

(Appeals by Special Leave from the Judgment and Order dated the 25-3-1975 of the Punjab and Haryana High Court in Civil Writ Petn. Nos. 1228 & 1229 of 1975).

G.L. Singh, in CA 1988/76 with Hardev Singh, B. Datta and N.S. Sodhi, for the appellants.

Niren De, Attorney General with Devan Chetan Das, Adv. General, Prem Malhotra and R.N. Sachthey, for respondents Nos. 1 & 2.

Anand Swarup, and Mrs. S. Bhandare, for respondent No. 3.

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The Judgment of the Court was delivered by

RAY, C.J. These appeals are by special leave against the judgment dated 25 March, 1975 of the Punjab and Haryana High Court dismissing the writ petitions.

The appellants in the writ petitions asked for a mandamus directing Respondents No. 1 and 2 to appoint the appellants to the posts of Additional District and Sessions Judge. The appellants also asked for a mandamus or an appropriate writ quashing the orders of Respondents No. 1 and 2 whereby the High Court was informed that the Government was not prepared to appoint the appellants to the post of Additional District and Sessions Judge.

Respondent No. 1 is the State of Haryana. Respondent No. 2 is the Chief Minister of Haryana. Respondent No. 3 is the High Court of Punjab and Haryana.

The High Court dismissed the petitions on the ground that the appellants had no locus standi to file the petitions. The reason given by the High Court is that the appellants were not appointed and they had no right to be appointed. They had also no right to know why they were not appointed.

The High Court by letter dated 19 February, 1972 invited applications from eligible members of the Bar to fill up two vacancies in the quota of direct recruits from the Bar in the Haryana Superior Judicial Service. The High Court called for interview 9 candidates on 18 October, 1972.

The High Court thereafter recommended to the Haryana Government the names of the appellants for appointment as District/Additional District & Sessions Judges.

After 27 months the Government reacted the recommendation of the High Court. Thereupon the appellants filed writ petitions challenging the order of rejection and asked for mandamus for appointment.

There is a letter dated 8 September, 1972 from the Chief Secretary to the Government of Haryana to the Registrar of the High Court. In that letter the Government took exception to the inviting of applications from members of the Bar without the High Court having first obtained the approval of the Government for that purpose. The letter also stated that in the past two occasions the High Court obtained the approval of the State Government before inviting application.

The High Court rightly dismissed the petitions. It is

elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty

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to do something or to abstain from doing something (See Halsbury's Laws of England 4th Ed. Vol. I, paragraph 122; State of Haryana v. Subash Chander Marwaha & Ors.(1) Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed & Ors. (2) and Ferris Extraordinary Legal Remedies paragraph 198.

The initial appointment of District Judges under Article 233 is within the exclusive jurisdiction of the Government after consultation with the High Court. The Governor is not bound to act on the advice of the High Court. The High Court recommends the names of persons for appointment. If the names are recommended by the High Court it is not obligatory on the Governor to accept the recommendation.

Counsel for the appellants relied on the decisions of this Court in Chandra Mohan v. State of Uttar Pradesh & Ors.(3); Chandramouleshwar Prasad v. Patna High Court & Ors(4) and A. Panduranga Rao v. State of Andhra Pradesh & ORS.(5) in support of two contentions. First, the Governor should accept the recommendations made by the High Court. Second, if the Governor will not accept the recommendations he should give reasons for not accepting the recommendations. None of the decisions supports the contentions.

In these three cases the scope and content of Article 233 was examined. This Court has held that the Constitution contemplates consultation of the Governor with the High Court inasmuch as the High Court is in a position to express views on the judicial work of persons who are recommended for appointment to the posts of District Judges. The High Court knows the merits and demerits of persons who will be promoted from the service to the post. The High Court interviews persons who will be appointed by direct recruitment. The High Court in those circumstances will select candidates for promotion and direct recruitment and send their names to the Government.

This Court has also held that the consultation of the Governor with the High Court does not mean that the Governor must accept whatever advice or recommendation is given by the High Court. Article 233 requires that the Governor should obtain from the High Court its views on the merits and demerits of persons, selected for promotion and direct recruitment.

In regard to persons who are appointed by promotion or direct recruitment this Court has held that it is not open to the Government to choose a candidate for appointment by direct recruitment or by promotion unless and until his name is recommended by the High Court.

In Panduranga Rao's case (supra) there is an observation that the Government could tell the High Court its reasons for not accepting

(1) [1974] 1 S.C.R. 165.

(2) [1976] 3 S.C.R. 58.

(3) [1967] 1 S.C.R. 77.

(4) [1970] 2 S.C.R. 666.

(5) [1976] 1 S.C.R. 620.

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the recommendations of the High Court in regard to certain persons. The observation in Panduranga Rao's case (supra) was made in the facts and circumstances of that case and in particular the controversial correspondence.

In the present case the Government pointed out that the

High Court had not written to the Government about the proposed appointments before issuing advertisements therefor. In any event, after the Government communicated to the High Court that the recommendations were not accepted a new situation developed. The Government asked the High Court to issue advertisements and to invite applications for appointment to the posts. The High Court accepted that position and acted upon it. The High Court issued the advertisements.

The attitude of the High Court has been peculiar. When the High Court decided to ask for fresh applications the High Court accepted the position that the original recommendations which had been made by the High Court were not accepted by the State Government and yet the High Court supported before this Court the appellant's case by pleading for the "candidature" of the appellants. The High Court should not take a partisan view by supporting the candidature of any person. We were a little surprised that the High Court supported the appellants. This is not proper particularly when the High Court dismissed the writ petitions of the appellants.

For the foregoing reasons the appeals are dismissed. There will be no order as to costs.

M.R.
missed.
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Appeals dis-