

ALL INDIA JUDGES' ASSOCIATION AND ORS.

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v.

UNION OF INDIA AND ORS.

AUGUST 12, 1994

[M.N. VENKATACHALIAH, C.J. AND S. MOHAN, J.]

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Constitution of India, 1950—Articles 32 and 312-Kerala Judicial Service Rules, 1991—Rule 5(3) and 10(1)-Kerala Criminal Judicial Service Rules, 1973.

The Supreme Court's directive that all the States prescribe minimum practice as a lawyer as a necessary qualification for recruitment to the lowest rung in the judiciary is mandatory and three years' legal practice is pre-requisition for recruitment. If the rules prescribe for a longer standing at the Bar, that does not run counter to the directive. Hence the requirement of five years standing prescribed by Rule 10(1) read with rule 5(3) of Kerala Service Rules, 1991 is perfectly valid.

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In *All India Judges Association v. Union of India & Ors.*, [1992] 1 SCC 119 and [1992] SCC 119; [1992] SCC (L&S) : (1992) 19 ATC 42, a number of directions were issued by this Court for setting up All India Judicial Service and bringing about unanimous condition of service and practice for members of subordinate judiciary throughout the country. Review Petitions were filed and after reviewing the judgment it was held in *All India Judges Association and Anr. v. Union of India & Ors.*, [1993] SCC 288 in paragraph 20 as under :

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"It is hence, necessary that all the States prescribe the said minimum practice as a lawyer as a necessary qualification for recruitment to the lowest rung in the Judiciary"

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The State of Kerala filed IA 14 of 1994. In the above- mentioned Review Petition and sought the following 3 clarifications :

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i. Whether Rule 5 (3) of the Kerala Judicial Service Rules, 1991 can be retained as it is?

ii. Whether the directions contained in paras 20, 24 and 52(a) of the judgment will apply retrospectively to the service candidates who are

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A already working as judicial officers?

iii. Whether five years legal practice prescribed as minimum qualification for appointment to the lowest category of judicial service namely the Munsiff Magistrates requires to be amended since Rule 10(1) prescribes five years standing for the Advocates, as three years practice, as per the directive issued by the Supreme Court?

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IA 15 was filed by the Kerala High Court Staff Association and Ors. and it was submitted that the requirement of legal practice for a minimum period of 3 years applies only in the case of direct recruitment from the Bar and not for appointment by transfer from service personnel as provided under the Kerala Civil and Criminal Judicial Service Rules. Under Rule 10(1) of said rules a minimum 5 years standing at the Bar has been prescribed. It was strongly pleaded that the rule for appointment by transfer may be retained.

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Dismissing partially the IAs, this Court

HELD : 1.1. Minimum Practice of 3 years, is highly essential to be recruited to a judicial office. Daily Practice in the courts strengthens and develops not only the innate qualities of intellect and character but also those of patience, temper and resilience which are so important in the practice of the law. A period of training prior to ascending the Bench will help to repair some of the gaps which may have been created by the demands of life at the Bar. [619-E; 618-G]

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1.2. It is no wonder that lawyers through the ages in all countries have enjoyed esteem and respect as pillars of justice, as preserver of the weak and poor against oppressors and tyrants, as upholders of the freedom and liberty; of human beings, as a sword for the guilty and a shield for the innocent. Therefore, legal practice for a minimum three years is a must for recruitment in the lowest rung of judicial office. [619-D-E]

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1.3. The principle of minimum practice of three years is already laid down by this court. If the Rules prescribe for a longer standing in the Bar that does not in any way, run counter to the said principle. It is open to the State of Kerala to prescribe a higher qualification as five years standing at the Bar. [622-A]

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1.4. It is hereby clarified the requirement of three years minimum

practice must be held to have come into force from 24.08.93. [622-C]

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All India Judges' Assn. V. Union of India, [1992] 1 SCC 119; [1992] SCC L & S 9; (1992) 19 ATC 42 and *All India Judges' Assn. v. Union of India*, [1993] 4 SCC 288; [1994] SCC (L&S) 148; (1993) 25 ATC 818, referred to and relied on.

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CIVIL ORIGINAL JURISDICTION : I.A. Nos. 14-16 of 1994.

IN

Review Petition No. 249 of 1992.

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IN

Writ Petition No. 1022 of 1989.

(Under Article 32 of the Constitution of India.)

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Aruneshwar Gupta, M.K.D. Namboodry, M. Veerappa, T.V.S.N. Chari, B.B. Singh, Ms. A. Subhashini, Anip Sachthey, S.K. Agnihotri, S.R. Setia, E.C. Agrawala, A.T.M. Sampath, B. Parthasarathy, A.K. Panda, D.N. Mukherjee, Gopal Singh, Krishnamurthy Swami, Ms. H. Wahi, A.S. Bhasme, Pravir Choudhary, V. Krishnamurthy, Ms. Bina Gupta, P.K. Manohar, S.K. Mehta, M.T. George, J.D. Jain, A. Sharan, S.K. Nandy, R. Mohan, Sanjay Parikh, Ms. Sheela Goyal, M.M. Kashyap, I. Makwana, M.A. Krishnamurthy, D.K. Sinha, T.C. Sharma, E.M.S. Anam and Ms. Malini Poduval for the appearing parties.

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The following Order of the Court was delivered :

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All these I. As. can be dealt with under a common order.

In *All India Judges Association v. Union of India & others*, [1992] 1 SCC 119, when directions were sought from this Court for setting up an All India Judicial Service and for bringing about uniform conditions of service and perks for members of subordinate judiciary throughout the country, the following directions amongst other as mentioned in paragraph 63 of the said judgment were issued :

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(i) An all India Judicial Service should be set up and the Union of India should take appropriate steps in this regard.

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A (ii) Steps should be taken to bring about uniformity in designation of officers both in civil and the criminal side by March 31, 1992.

B (iii) Retirement age of judicial officers be raised to 60 years and appropriate steps are to be taken by December 31, 1992.

(iv) As and when the Pay Commission/Committees are set up in the States and Union Territories, the question of appropriate pay scales of judicial officers be specifically referred and considered.

C (v) A working library at the residence of every judicial officer has to be provided by June 30, 1992. Provision for sumptuary allowance as stated has to be made.

D (vi) Residential accommodation to every judicial officer has to be provided and until State accommodation is available, Government should provide requisitioned accommodation for them in the manner indicated by December 31, 1992. In providing residential accommodation, availability of an office room should be kept in view.

E (vii) Every District Judge and Chief Judicial Magistrate should have a State Vehicle, Judicial Officers in sets of five should have a pool vehicle and others would be entitled to suitable loans to acquire two wheeler automobiles within different time limits as specified.

F (viii) In-service Institute should be set up within one Year at the Central and State or union Territory level."

G Review Petition were filed seeking review of the judgment. With regard to the qualification for recruitment to judicial posts in the lower rung, it was held in *All India Judge's Association and others v. Union of India and others*, [1993] 4 SCC 288 in paragraph 20 as under :

"It is hence, necessary that all the States prescribe the said minimum practice as a lawyer as a necessary qualification for recruitment to the lowest rung in the judiciary."

H This review was done on 24.8.1993.

In I.A. 14 of 1994, the State of Kerala is the petitioner. It seeks three clarifications : A

(i) whether Rule 5(3) of the Kerala Judicial Service Rules, 1991 can be retained as it is;

(ii) Whether the directions contained in paras 20, 24 and 52(a) of the judgment will apply retrospectively to the service candidates who are already working as judicial officers; B

(iii) Five years legal practice prescribed as minimum qualification for appointment to the lowest category of judicial service namely; Munsiff Magistrates requires to be amended since Rule 10(1) prescribes five year standing for the advocates as three years practice. C

I.A. No. 15 has been filed by the Kerala High Court Staff Association and others again seeking clarifications that under Kerala Subordinate Magisterial Service Rules, 1962, appointment to the cadre of Subordinate Magistrate, the lowest rung in judicial hierarchy, was by transfer from among prescribed categories. These rules along with Kerala Civil Judicial Service Rules, 1973 and Kerala Criminal Judicial Service Rules, 1973 came into force with effect from 18.9.1973. Both these rules provided for appointment of service personnel to the lowest rung in each service from out of category of persons having experience in law through courts without actually having practice at the Bar. On and from 1.1.1992, the Kerala Judicial Service Rules integrated both the service i.e. Kerala Civil Judicial Services and Kerala Criminal Judicial Services provided for direct recruitment by transfer from among the categories like Assistant Public Prosecutor Grade I, Grade II, Assistant Registrars, Private Secretary to the Chief Justice and other officers of the High Court. D E F

This method of appointment was not brought to the knowledge of old this Court when this court was dealing with the fixation of qualification of appointment. Thus, it is submitted that the requirement of legal practice for a minimum three years applies only in the case of direct recruitment plan the Bar and not for appointment by transfer from service personnel as provided under the Rules made in exercise of the power under Article 234 of the Constitution. G

I.A. No. 16. of 1994 is an application for intervention by the High. H

- A Court of Kerala, represented by the Registrar, High Court of Kerala.

Mr. Altaf Ahmad, learned counsel appearing for the State of Kerala in I.A. No. 14 would urge that the prayers in the I.As. are highly necessary so that the position of the service candidates may be settled. The officers enumerated under Rule 5(3) of Kerala Judicial Service Rules have knowledge and are acquainted with substantive and procedural laws. They require to be treated on par with Advocates having experience in the Bar.

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- C Then again, under Rule 10(1) of said Rules, a minimum five years' standing in the Bar has been prescribed. Whether they could be retained, is a matter which requires clarification.

- D Mr. P.S. Poti, senior learned counsel appearing for the applicant in I.A. No. 16 of 1994 would strongly plead that having regard to the Rules which contemplate the rule by transfer which is one of the sources of appointment, that rule may be retained because experience has shown that these various categories of persons have not been found wanting either in integrity or capacity to do judicial work. In their cases, the requirement of three years minimum practice at Bar should not be insisted upon.

- E We have given our careful consideration to the facts of the instant case. This Court in All India Judges case (supra) (review) held in paragraph 20 as under :

"It is, hence, necessary that all the States prescribe the said minimum practice as a lawyer as a necessary qualification for recruitment to the lowest rung in the judiciary."

- F The above extract underscores the necessity of legal practice. In our considered view, such a practice is highly essential to be recruited to a judicial office. Daily practice in the courts strengthens and develops not only the innate qualities of intellect and character but also those of patience, temper and resilience which are so important in the practice of the law. A period of training prior to ascending the Bench will help to repair some of the gaps which may have been created by the demands of life at the Bar.
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It is stated in Samuel Warren's Law Studies at page 112 as under :

- H "Bar affords scope for the highest moral and intellectual ener-

gies, while exposing littleness and meanness to contempt inevitable and unutterable. It has special temptations, and exquisite trails; but also resplendent rewards for the great and truehearted, who, resisting those temptations, and enduring those trails, turning to neither the right hand nor the left, nor poorly fainting by the way hold on to the end."

As an advocate, a person has to present and expound law, as such he fulfils an important social need, namely, the upholding and preserving of society against onslaughts of selfish tyrants, be they individuals, communities or the State. Blackstone in his introduction to commentaries, has spoken of law as "a science which distinguishes the criterion of right and wrong, which teaches to establish the one and prevent, punish or redress the other; which employs in its theory the noblest faculties of the soul, and exerts in its practice the cardinal virtues of the heart, a science which is universal in its use and extent, accommodated to each individual, yet comprehending the whole community." It is no wonder, then, that lawyers through the ages in all countries have enjoyed esteem and respect as pillars of justice, as preserver of the weak poor against oppressors and tyrants, as upholders of the freedom and liberty of human beings, as a sword for the guilty a shield for the innocent.

Therefore, we have no doubt in our mind that this qualification of legal practice for a minimum three years is a must for recruitment in the lowest rung of judicial office.

The Kerala Judicial Service Rule 1991 came into force from 1.1.1992. Rule 5 of the said Rules is as under :

"Appointment: -(1) Appointment to a category specified in column (1) below shall be made by the method of appointment specified against that category in column (2):

	Category (1)	Method of appointment (2)
1.	Subordinate Judges/Chief Judicial Magistrates.	Promotion from category 2.
2.	Munsiff-Magistrates	Direct recruitment and transfer in the manner provided in sub rule (3) of this Rule.

A (2) Promotion to category 1 Shall be made from a select list prepared by the High Court from among the eligible officers on the basis of merit and ability. Merit and ability shall be assessed with reference to the entries in the personal files relating to the officers, penalties, if any, imposed on them, their performance as
 B Judicial Officers and other relevant considerations. Seniority shall be the criterion only if merit and ability are found to be approximately equal. Officers superseded shall be informed of their supersession with reasons therefor. They shall be considered for promotion against after the expiry of six months.

C (3) Out of every four vacancies arising in category 2, the first, second and the third shall be filled or reserved to be filled by direct recruitment and the fourth by recruitment by transfer from among the following categories.

D (i) Assistant Public Prosecutors Grade I :
 Assistant Public Prosecutors Grade II :

(ii) Assistant Registrars,

E Private Secretary to the Chief Justice and other officers of the High Court in the same scale of pay of Assistant Registrars, personal Assistant to the Chief Justice, Additional personal Assistant to the Chief Justice Additional Personal Assistant to the Chief Justice,

F Section officers,
 Librarian,
 Reference Librarian,
 Court Officers
 Court Fee Examiners,
 Accountant,
 Head Translator and

G Selection Grade Shorthand Writers in the High Court of Kerala.

(iii) Under Secretaries,
 Section Officers and
 Librarian in the Advocate General's Office.

H (iv) Section officers and Librarian in the Law Department,

Government Secretariat.

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(v) Sheristadars of District Courts, Additional District Courts, Special Courts, the office of the Motor Accidents claims Tribunals, the officer of the State Transport Appellate Tribunal and sub Courts. Head Clerks of the District Courts and Additional District Courts and Selection Grade Confidential Assistants in the Subordinate Civil Courts.

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(vi) Sheristadars of Chief Judicial Magistrate's Courts and Selection Grade Confidential Assistants in the Subordinate Criminal Courts.

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(vii) Full time lecturers of Government Law Colleges.

(viii) Law Graduates working in the High Court, Subordinate Courts, Advocate General's Office and Law Department in the Government Secretariat, not covered by categories (i) to (vii) not less than ten years of total service in any one of the three offices or in the three offices taken together, of which not less than two years of service shall be after the acquisition of the law qualification.

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Explanation: A person who is otherwise qualified for appointment but is not holding any of the posts enumerated in items (ii) to (viii) of this sub rule at the time of his application, shall be eligible for appointment, if he has held any one or more of such posts at any time for the prescribed number of years and is holding a post in a higher scale of pay in any of the offices from which appointment is to be made"

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Sub-Rule (3) of Rule 5 recruitment by transfer is contemplated bearing the first category of officers namely Assistant Public Prosecutor Grade-I and Assistant Public Prosecutor Grade II. Those officers belonging to categories II-VIII do not have minimum practice of there years at the Bar. Where Assistant Public Prosecutor Grades I & II falling under category I are eligible for recruitment to the lower rung in judicial service, in that, they have three years practice at Bar, need to be decided in this Review Petition. That question is left over.

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In All India Judges' Association & Ors. (supra) [review] this Court

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A has clearly laid down the principle of minimum practice of three years. If the Rules prescribe for a longer standing in the Bar that does not, in any way, run counter to our judgment. It is open to the State of Kerala to prescribe a higher qualification as five years standing at the Bar. In the instant case, the Rule prescribing five years standing reads as follows :

B "10(1) : No Advocate shall be eligible for appointment to category 2 unless he is having practice at the Bar for a period of not less than five years and has not completed 35 years of age on the first day of January of the year in which applications for appointment are invited."

C (Rest omitted as unnecessary)

It is hereby clarified this requirement of three years minimum practice must be held to have come into force 24.8.1993.

D Subject to the above observations, I.A. Nos. 14-16 of 1994 are dismissed.

A.G.

I. As partially dismissed.