

PETITIONER:
SANJAY DHAR

Vs.

RESPONDENT:
J&K PUBLIC SERVICE COMMN. & ANR.

DATE OF JUDGMENT: 10/10/2000

BENCH:
R.C.Lahoti, K.G.Balakrishnan

JUDGMENT:

R.C. Lahoti, J.
L.....I.....T.....T.....T.....T.....T.....T...J

Leave granted. The appellant, having passed LL.B. (3 years degree course) from Kashmir University, was enrolled as an advocate by the High Court of Jammu & Kashmir with effect from 29.1.1990. In October 1990, the appellant shifted his place of practice to Delhi and started practicing exclusively in the High Court of Delhi. In December 1992, applications were invited by J&K Public Service Commission for selection and appointment to the post of Munsif. One of the eligibility conditions, as laid down by Rule 9 of J&K Civil Service (Judicial) Recruitment Rules, 1967 was that a candidate for recruitment to the service must have put in at least two years practice at Bar by the date on which he submits his application for such recruitment and must produce a certificate to this effect from the District Judge within the local limits of whose jurisdiction he practices at the Bar. As the appellant was practicing in the High Court of Delhi, he made an application to the Registrar which according to him was the best authority suited to issue the certificate and the Registrar of the High Court of Delhi issued a certificate dated 22nd December, 1992 which recited — On the basis of material/document made available to this court it is certified that Shri Sanjay Dhar, Advocate . who was enrolled as an Advocate with Bar Council of Jammu & Kashmir in January, 1990 is practicing as Advocate in Delhi since October, 1990. The certificate was submitted by the appellant alongwith his application to the Public Service Commission. On 12.3.1993, the J&K PSC informed the appellant that his application was deficient as actual practice certificate from District & Sessions Judge based on his personal knowledge or official records of courts giving relevant dates of actual practice was not produced. The appellant placed the certificate issued by the Registrar, High Court of Delhi before the District & Sessions Judge, Delhi, who on 17.3.1993 counter-signed the certificate under his hand and seal. The same was submitted to the PSC. However, the PSC did not feel satisfied with the certificate and in July, 1993 the appellant was informed that his application was rejected for non-production of a valid actual practice certificate as required by Rule 9 above-said.

On 19.7.1993, the appellant filed a civil writ petition before the High Court of J&K laying challenge to the communication of the PSC and the action of the PSC excluding the appellant from participating in the process of selection. On 21.7.1993, the High Court passed an interim order directing the PSC to permit the appellant to appear in the examination on the basis of certificate of practice filed by the appellant at his risk and responsibility. The result of the appellant was directed not to be declared except under the orders of the court. The appellant participated in the examination conducted by the PSC under the interim orders of the court. On 21.9.1994, on a prayer made by the appellant, the High Court passed yet another interim order in continuation of the earlier order dated 21.7.1993 directing the result of written examination taken by the appellant to be declared. On 28.9.1994, the result was declared. The appellant had qualified at the written examination entitling him for participation in the interview. The appellant apprehended that the PSC may deny the appellant an opportunity of participating in the interview and hence he once again knocked the doors of the High Court and the High Court made an interim direction, in continuance of the earlier ones, allowing him participation in the interview as also declaration of the result of selection. It was further directed that if the appellants name found place in the select list of candidates and if he fell within the zone of consideration for appointment, the High Court should carry the recommendation of J&K PSC to its logical conclusion by issuing appropriate orders; the appellant if appointed as Munsif, the appointment should remain subject to ultimate outcome of the petition.

The above-said interim order dated 21.9.1994 made by the learned Single Judge was put in issue by J&K PSC by filing a Letters Patent Appeal. As the main ground of challenge raised by J&K PSC was that the appellant did not satisfy the test of actual practice, the appellant, while offering opposition to the LPA filed by J&K PSC, also submitted a list of a few cases in which he had appeared in the High Court of Delhi, duly certified by the Superintendent of Delhi High Court.

It appears that in between the select list had been finalised by the PSC and forwarded to the High Court. As the appellant was not sure of his position in the select list he filed another writ petition in the High Court, registered as CWP No.596/94, seeking a direction to the J&K PSC and the State of J&K to make available a certified copy of the list of selected candidates forwarded by the J&K PSC to the Law Department of the State. The LPA and the writ petition filed by the appellant were both taken up for analogous hearing. On 9.2.1995, the Court passed an interim order staying the operation of the order dated 21.9.1994 passed by the Single Judge but at the same time directing that one vacancy in the open merit category shall be kept reserved till the disposal of the appeal so as to accommodate the appellant in the event of his success.

In between, a few candidates (other than the appellant) had laid a challenge to the process of selection of Munsifs in the State of Jammu & Kashmir, as undertaken by the J&K PSC, by filing a writ petition before the Supreme Court. The writ petition was disposed of by a judgment dated 6.2.1995. [See: Madanlal & Ors. Vs. State of Jammu

& Kashmir AIR 1995 SC 1088]. Having decided the several questions of controversy raised before this court, it was directed that 11 persons shall be appointed out of select list of 20 consistently with the posts advertised and vacancies available out of which 11 posts, 2 shall be reserved for schedule caste and schedule tribe candidates and the remaining 9 shall be available to the general category candidates as stated in the order of merit in the list (Annexure-C) filed before the Supreme Court. The same list as was filed before the Supreme Court as Annexure-C, has been filed by the appellant before us as Annexure- 15 with the SLP. Therein the names of successful candidates in the order of merit, after adding the marks obtained in viva voce test with the marks obtained in written examination, have been stated. But the list does not mention the name and particulars of the candidate who figured in the order of merit at serial No.3. According to appellant, he is the candidate who had secured the 3rd rank and was placed at serial No.3 in the order of merit but his name was not communicated by the J&K PSC to the Law Department in view of the controversy under litigation. This fact verified on the oath of the appellant in the SLP has not been controverted by the respondents and we have, therefore, no reason to disbelieve the statement so made. In fact the learned Advocate General appearing for the respondents has also not disputed the correctness of this factual averment at the time of hearing.

While the issue raised in the two writ petitions filed by the appellant was sub-judice before the High Court, the J&K PSC once again advertised fresh vacancies inviting applications for selection and appointment to the post of Munsif by holding a competitive examination in 1996. As the LPA pending before the High Court was not taken up for hearing in spite of various prayers made for early hearing, the appellant again applied for participating in the 1996 selection. To satisfy the requirement of Rule 9, the appellant approached the Registrar of High Court of Delhi for issuance of certificate of practice. The certificate now issued was also in the terms same as the earlier one. This certificate issued by the Registrar was produced by the appellant before the District & Sessions Judge, Delhi, who issued a certificate to the appellant to the following effect:-

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OFFICE OF THE DISTRICT & SESSIONS JUDGE DELHI

Certified that Shri Sanjay Dhar son of Shri P.N. Dhar resident of Flat L, Sagar Apartments, 6, Tilak Marg, New Delhi who was enrolled as an advocate on January, 1990 (with Bar Council of J&K) has been found to be possessing the experience of actual practice at the bar for the last more than 3 years at Delhi. years on the basis of the record and the information furnished (vide letter No.9993/Genl/DHC dated 25.5.96 of Shri Ramesh Sharma, Registrar (Vig.), High Court of Delhi, at New Delhi.

Sd/ K.P. Verma District & Sessions Judge Delhi (with rubber stamp) DATE : 28.6.96

This certificate was accepted as valid by J&K PSC. The appellant participated in the written test and the viva voce test. He qualified at the both and pursuant to recommendation made by J&K PSC, he was appointed a Munsif vide posting order dated 5.12.1997 issued by High Court of Jammu & Kashmir. This subsequent event was brought to the notice of the High Court in the pending LPA making a prayer to suitably modify the relief so that in the event of the appellant being successful, he can be given the benefit of notional seniority with a right to be considered for next promotion in view of the primary relief of appointment having been rendered infructuous in view of the subsequent events. The application was allowed by the High Court and the subsequent events with the supporting documents were taken on record. On 15.4.1999, a Division Bench of the High Court allowed the LPA filed by J&K PSC and set aside the order of the learned Single Judge dated 21.9.1994. On the view of the law taken by the Division Bench, CWP 675/93 and CWP 415/95 filed by the appellant were directed to be dismissed by a common judgment. The aggrieved appellant has filed this appeal by special leave.

Ms. Indira Jaising, the learned senior counsel for the appellant, submitted that the appellant having been appointed a Munsif in the judicial service of J & K, the principal grievance of the appellant stands redeemed; still the issue raised by him survives for adjudication as the appellant has been wrongfully denied appointment in the year 1995 pursuant to the 1992-1993 selections and if in spite of his having been selected, the appointment was wrongfully withheld then the relief sought for by him ought not to be denied to him and if the appellant be found entitled to appointment in the year 1995 then his seniority in the cadre of Munsif should be calculated from the date with which other incumbents figuring in the select list, in which the appellant also figured, were appointed. We find merit in this submission.

The main question arising for decision is: whether the certificate of practice furnished by the appellant satisfied the requirement of Rule 9 and, if so, whether the appellant was wrongfully denied the appointment in 1992-93 selections?

Rule 9 came up for the consideration of this Court in the case of Madanlal & Ors. (supra). Vide para 19, this Court has held that a member of the Bar can be said to be in actual practice for two years and more if he is enrolled as an advocate by the concerned Bar Council since two years and more and has attended law courts during that period. The words actual practice as employed in Rule 9 indicate that the concerned advocate must be whole-time available as a professional attached to the concerned Court and must not be pursuing any other full time avocation. The appellant during the period 1990 to 1993 claims to have practised exclusively in the High Court of Delhi. Obviously the best person to verify the period of actual practice would be the Registrar of the High Court and not the District Judge as nothing would have been available in the records within the command of the District Judge to verify the factum of actual practice as the appellant was not practising in the District Courts. The object of Rule 9 is to secure recruitment of practising advocates in the judicial service. It does not matter whether they were practising in the High Court or in

the District Courts. A Registrar of the High Court is a responsible officer who is basically a judicial officer of the rank of District Judge or Addl. District Judge sent on deputation to serve as a Registrar. The certificate issued by him was counter-signed by the District Judge and this was enough to satisfy the requirement of Rule 9. The District Judge would not have counter-signed the certificate issued by the Registrar unless the District Judge was satisfied of the correctness of the verification as to period of practice made by the Registrar. It is pertinent to note that in the latter recruitment the certificate issued by the District Judge and accepted by the J & K PSC as satisfying the requirement of Rule 9 was also based on the record of and the information furnished by the Registrar of the High Court of Delhi. The certificate was not issued on the knowledge of or material available in the records of District Judge, Delhi. On the facts and in the circumstances of the case, in our opinion, there is in substance no difference between the certificate of the year 1993 and the later certificate dated 28.6.1996. The J & K PSC was not justified in rejecting the certificate dated 22.12.1992/17.3.1993 issued by the Registrar and counter-signed by the District & Sessions Judge, Delhi treating it as not satisfying the requirement of Rule 9. We have already stated that it is beyond the pale of any controversy that the appellant was selected and in the select list prepared by the J & K PSC in the year 1993, the name of the appellant figured at serial no.3.

Vide order dated 28.4.2000 we had directed the learned Advocate General appearing for the respondents to disclose on affidavit the information as to what happened to the vacancy which the High Court had directed to be kept reserved subject to the result of the petition filed by the appellant. The requisite information has been made available in the affidavit dated 1.7.2000 filed by the Assistant Legal Remembrancer of the State of J & K. From the documents enclosed therewith we find that on 14.3.1995 the Government of Jammu & Kashmir (Law Department) appointed only 10 candidates out of the select list of Munsifs. On 15.3.1995 the Registrar, High Court of J & K wrote a letter to the Law Department stating that a mistake had crept in in forwarding the list of candidates who were required to be appointed on officiating basis as Munsifs; that the name of one candidate figuring at serial no.9 in the select list was omitted from the earlier letter and therefore a modified order of appointment in respect of 11 candidates including the one pointed out in the letter be issued forthwith. Thereafter, a fresh appointment order was issued on 22.3.1995 modifying the earlier order of appointment and thereby making 11 appointments.

On 25.8.2000 we directed the learned counsel for the respondents to file an affidavit whether while making appointments, pursuant to the selection list of the year 1992-93, the interim order of stay granted by the Division Bench of the High Court was taken note of. An affidavit dated 7.9.2000 sworn in by Shri G.Q. Wani, Registrar Vigilance and Incharge Registrar General of Jammu & Kashmir High Court has been filed which too does not clarify how compliance with the order dated 9.2.95 of the Division Bench was ensured while making appointments from the select list. However, at one place it is stated in the affidavit that over and above the appointments made there were still 3 vacancies available as on the date of the order passed by

the Division Bench and therefore it was considered unnecessary to keep 1 vacancy unfilled out of the 11 sought to be filled up by making appointments. In either case there is no hurdle in the way of the appellant being allowed relief sought for by him on account of the 11 appointments having been made by the State Government pursuant to the letter of the High Court. Either there were 3 vacancies available or if it was not so then the appointments have been made in defiance of the interim order of stay of the Division Bench which cannot be recognised to defeat any rightful claim of the appellant.

Rule 9 of the J&K Civil Service (Judicial) Recruitment Rules, 1967 must receive a purposive interpretation. Purposive interpretation enables ascertaining the purpose of enactment, the object sought to be achieved and the mischief sought to be taken care of or prevented. The object of the rule is to exclude lawyers not in actual practice, and hence inexperienced, from entering judicial service. At the same time the rule cannot be so construed as to create an anomalous situation by asking District Judge to certify period of practice of a lawyer practising in High Court and not in District Courts, based on his personal knowledge or official records of District Courts- as J & K PSC wanted appellate to do. A literal compliance, if insisted on, may defeat the object sought to be achieved by the rule itself. If an advocate is practicing exclusively in the High Court, the District Judge would not have any material available in his records to verify the factum and period of actual practice of any applicant. The Registrar of the High Court would be the best suited person to issue a certificate in that regard and since the rule contemplates the requisite certificate being issued by the District Judge, the underlying object sought to be achieved by the rule would be fulfilled if the certificate issued by the Registrar is counter-signed by the District Judge or the District Judge issues a certificate of his own based on the certificate issued by the Registrar. In this view of the matter the certificate dated 12.12.1992/17.3.1993 filed by the appellant before the J&K PSC satisfied the requirement of Rule 9 above-said and the J&K PSC was not justified in rejecting the application of the appellant holding him to be ineligible. As the appellant participated in the process of selection protected by the interim orders of the High Court and was also successful having secured third position in the select list, he could not have been denied appointment. The appellant is, therefore, fully entitled to the relief of his appointment being calculated w.e.f. the same date with which the candidates finding their place in the order of appointments issued pursuant to the select list prepared by the J&K PSC for 1992-93 were appointed and deserves to be assigned notionally a place in seniority consistently with the order of merit assigned by the J&K PSC.

We have already noticed the learned Single Judge having directed the appellant to be appointed on the post of Munsif in the event of his name finding place in the select list subject to the outcome of the writ petition which order was modified by the Division Bench in LPA staying the order of the learned Single but at the same time directing one vacancy to be kept reserved. The High Court and the Government of J & k (Law Department) were not justified in by- passing the judicial order of the High Court and making appointments exhausting all available vacancies. The right of the appellant, if otherwise sustainable, cannot be

allowed to be lost merely because of an appointment having been made wittingly or unwittingly in defiance of the judicial order of the High Court.

For the foregoing reasons the appeal is allowed. The judgment under appeal is set aside. It is directed that the appellant shall be deemed to have been appointed along with other appointees under the appointment order dated 6.3.1995 and assigned a place of seniority consistently with his placement in the order of merit in the select list prepared by J&K PSC and later forwarded to the Law Department. During the course of hearing the learned senior counsel for the appellant made a statement at the Bar that the appellant was interested only in having his seniority reckoned notionally in terms of this order and was not claiming any monetary benefit by way of emoluments for the period for which he would have served in case he would have been appointed by order dated 6.3.1995. We record that statement and direct that the appellant shall be entitled only to the benefit of notional seniority (and not monetary benefits) being given to him by implementing this order. The appeal is disposed of accordingly. The contesting respondents shall pay the appellant costs quantified at Rs.5,000/-.