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H.C. PUTTASWAMY AND ORS.

v.

HON'BLE CHIEF JUSTICE OF KARNATAKA HIGH COURT, BANGALORE AND ORS.

NOVEMBER 5, 1990

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[K. JAGANNATHA SHETTY AND S.C. AGRAWAL, JJ.]

Karnataka Civil Services (General Recruitment) Rules 1977—Rule 6(3)(b)—Second Division Clerks in subordinate courts—Benefit of age relaxation—Grant of—Humanitarian approach—Necessity for.

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Article 229 of the Constitution—Appointment of court staff—Chief Justice/Administrative Judge—Not an absolute ruler—To operate in a clean world and remain committed to the constitutional ethos and traditions of his calling.

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Appointments to the posts of Second Division Clerks in all the State Departments of the Karnataka Govt. are governed by the Karnataka Civil Services (Ministerial Posts) Recruitment Rules, 1966 and the power to make selection vests in the State Public Service Commission. Each Department notifies the number of required posts to the Public Service Commission and the Commission after following the

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prescribed procedure selects persons. The said Rules are made applicable to the judicial department also by statutory Rules called the Karnataka Subordinate Courts (Ministerial and other posts) Recruitment Rules, 1977. Contrary to the said statutory Rules by Notification dated 29.5.1978, the High Court of Karnataka invited applications for the posts of 40 Second Division Clerks and 25 posts of Typists and

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Typists-copyists in the establishment of the High Court. The notification stated that the selection would be to fill up the then existing posts and for preparing a waiting list. Large number of candidates including the appellants submitted their applications. The then Chief Justice of the High Court appointed as many as 398 candidates as against 40 posts advertised; he retained 56 on the establishment of the High Court and

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the rest were transferred to the subordinate courts. These appointments were made during the years 1980 to September 1982.

In 1983 seven persons who had applied for the posts in response to the advertisement dated 29.5.1978, moved the High Court by means of writ petitions challenging the validity of all the aforesaid appointments.

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They urged that they had better merit than the appointees and the

appointments made by the Chief Justice from time to time without considering their case was arbitrary and in derogation of the rules of recruitment. The High Court by its order date 21.1.1988 allowed the writ petitions and quashed the appointments. The affected persons filed a petition before this Court against the order of the High Court which was dismissed by this court with certain directions so that the petitioners could, as far as possible be absorbed.

The Petitioners however being dissatisfied, filed the instant review petitions on the plea that the directions issued by this Court are not likely to enure to the benefit of a large number of petitioners, as majority of them had already crossed the age of 40 years and thus would not be able to avail of the benefit of age relaxation under Rule 6(3)(b) of the Karnataka Civil Services (General Recruitment) Rules 1977, that they had put in more than 10 years of service and that it would cause them irreparable injury if they are thrown out of employment at that stage of their life, as they are not likely to come anywhere near the zone of selection in the event of fresh selection.

This Court admitted the review petition after notice to the Respondents, granted special leave to appeal after recalling its earlier order dated 30.4.1990; and allowing the resultant appeals,

HELD: The judiciary is the custodian of constitutional principles which are essential to the maintenance of the rule of law. It is the vehicle for the protection of a set of values which are an integral part of our social and political philosophy. Judges are the most visible actors in the administration of justice. Their case decisions are the most publicly visible outcome. But the administration of justice is just not deciding disputed cases. It involves great deal more than that. Any realistic analysis of the administration of justice in the Courts must also take account of the totality of the Judges behaviour and their administrative roles. They may appear to be only minor aspects of the administration of justice, but collectively they are not trivial. They constitute a substantial part of the mosaic which represents the ordinary man's perception of what the courts are and how the judges go about their work.

The Chief Justice or any other Administrative Judge is not an absolute ruler. Nor he is a free-wheeler. He must operate in the clean world of law, not in the neighbourhood of sordid atmosphere. He has a duty to ensure that in carrying out the administrative functions, he is actuated by same principles and values as those of the Court he is

serving. He cannot depart from and indeed must remain committed to the constitutional ethos and traditions of his calling. Those who are expected to oversee the conduct of others, must necessarily maintain a higher standard of ethical and intellectual rectitude. The public expectations do not seem to be less exacting.

The circumstances of the instant case, however, justify a humanitarian approach and indeed, the appellants seem to deserve justice ruled by mercy.

Lila Dhar **v.** *State of Rajasthan*, **[1981] 1 SCR 320 at 326;** *A.K. Yadav* **v.** *State of Haryana and Ors.*, **[1985] 4 SCC 417;** *State of U.P.* **v.** *Refiquddin and Ors.*, **[1988] 1 SCR 794;** *Miss Shainda Hasan* **v.** *State of U.P. and Ors.*, **[1990] 2 All India Services Law Journal 93;** *Channabasaviah* **v.** *State of Mysore and Ors.*, **[1965] 1 SCR 360; referred to.**

CIVIL APPELLATE JURISDICTION: Review Petition Nos. 378-84 of 1990.

IN

Special Leave Petitions Nos. 3131-37 of 1988.

From the Judgment and Order dated 21.1.1988 of the Karnataka High Court in W.P. Nos. 386, 387, 4695 to 4699 of 1984.

Gopal Subramaniam and P. Mahale for the Petitioners.

Advocate General of Karnataka and P.R. Ramashesh for the Respondents.

The Judgment of the Court was delivered by

K. JAGANNATHA SHETTY, J. The review petitions are against the order dated 30 April 1990, dismissing Special Leave Petition Nos. 3131-37/88 and other connected petition. The Special Leave Petitions are directed against the decision of the Karnataka High Court dated 21 January 1988 by which the petitioners were unseated by quashing their appointments. The Court while dismissing the Special Leave Petitions, however, issued certain directions as under:

"The SLPs are rejected but with the following directions:

The High Court shall intimate the State Public

Service Commission the total vacancies in the cadre of Second Division Clerks on the establishment of Subordinate Courts and the Public Service Commission shall then immediately take up the process of selection of candidates for appointment to such vacancies. To avoid delay the Public Service Commission may take up this process exclusively for filling-up the vacancies in the establishment of the subordinate judiciary. All these procedures shall be completed with allotment of candidates to respective districts within eight months from today.

2. The candidates whose appointments have been set aside by the High Court are entitled to relaxation of age as provided under Rule 6(3)(b) of the General Recruitment Rules and they shall not be disturbed till they are selected or displaced by the new recruits.

3. So far as appointment against vacancies in the High Court is concerned it is left to the Chief Justice to take immediate action."

The instant review petitions have been presented with the plea that the directions issued by this Court though merciful are not likely to enure to the benefit of a large number of petitioners. It is said that a majority of the petitioners have already crossed the age of 40 years, and they will not get the benefit of age relaxation even if it is allowed up to 10 years under Rule 6(3)(b) of the Karnataka Civil Services (General Recruitment) Rules, 1977. It is also stated that all the petitioners have put in more than 10 years of service. They have over the years acquired considerable experience in office administration and it would cause them irreparable injury if they are thrown out of employment. It is further stated that the majority of the petitioners may not come any where near the zone of selection in the event of a fresh selection in spite of their high qualifications and long experience, since there would be lakhs of candidates for fresh recruitment. With these and other grounds, the petitioners seek a review of the entire matter.

On 17 July 1990 notice was issued on the review petitions and upon service they were admitted with the following observations:

"The review petitions are admitted. The orders of this Court and the High Court are kept in abeyance. Counsel

A for the High Court to state whether the present petitioners could be appointed in suitable posts and whether the affected employees both in the High Court and also in the Subordinate Courts could be allowed to continue in service purely on compassionate and humanitarian consideration, since uprooting them at this stage will bring them untold B miseries and to their families. Most of these persons are over aged and they are not liable to get exemption under Rule 6(3)(b). Some of them have already been promoted. Some have acquired high qualifications. All of them have gained experience for more than 10 years. These facts were not brought to our attention when we disposed of the special leave petitions. This is a human problem and it requires a C very very sympathetic consideration. Counsel for the High Court will assist this Court how best to tackle this problem."

In response to these observations, Mr. Achar, learned Advocate-General of the State has appeared for the Chief Justice of D Karnataka High Court who is the main respondent in this case. He submitted that since the persons who have filed the writ petitions have complained that they have been unreasonably discriminated and found to have been denied the posts in the High Court, the Chief Justice is now willing to appoint them in the High Court, if necessary by creating additional posts. This is indeed a good gesture.

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We therefore, recall our order rejecting the special leave petitions, and grant leave and proceed to dispose of the appeals.

The facts giving rise to the appeals, as found by the High Court, may be summarised as follows: By Notification dated 29th May, 1978, F the High Court of Karnataka invited applications for the posts of 40 Second Division Clerks and 25 posts of Typists and Typists-Copyists in the establishment of the High Court. The notification provided that the selection would be to fill up those existing vacancies and for preparing a waiting list. The qualifications prescribed for the posts of Second Division Clerks was a pass in S.S.L.C. or any equivalent G examination; for Typists-Copyists a pass in S.S.L.C. and Senior Typewriting in English. A large number of candidates including the appellants submitted applications. The then Chief Justice of the High Court who was the competent authority in the matter has appointed as many as 398 candidates as against the 40 posts advertised. Of them, he retained 56 on the establishment of the High Court and the rest were H transferred to the subordinate Courts. The appointments and transfers

were made by instalments during the years 1980, 1981 and 1982 and the last of the appointments was in September, 1982. A

In 1983, seven persons who were also the applicants in response to the advertisement dated 29 May, 1978 moved the High Court by means of Writ Petitions under Article 226 of the Constitution challenging the validity of all the aforesaid appointments. They claimed that B they had better merit determined on the basis of marks in the qualifying examination prescribed for recruitment to the cadre of Second Division Clerks than those who were appointed. The appointments made by the Chief Justice from time to time without considering their case was impugned as arbitrary and in derogation of the rules of recruitment.

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It is not disputed that the selection and appointment to the cadre of Second Division Clerks in all the departments of the State Government are regulated by Rules called the Karnataka Civil Services (Ministerial Posts) Recruitment Rules, 1966. The power to make selection under the Rules is vested in the State Public Service Commis- D sion. The selection is required to be made by written test followed by interview. On the basis of the merit determined by the written and interview tests, the Public Service Commission shall prepare a list of selected candidates. Before the commencement of the process of selection, the Heads of Departments are required to intimate the Public Service Commission the number of vacancies that are available E for recruitment in their respective departments. The Public Service Commission would allot the corresponding number of selected candidates to each of the departments. The allotment is generally made with due regard to the option indicated by the candidates in their applications and also on the basis of their rankings in the select list. The said Rules are made applicable to the judicial department also by the F statutory rules called the Karnataka Subordinate Courts (Ministerial and other Posts) Recruitment Rules, 1977. It provides that ninety per cent of the posts of Second Division Clerks on the establishment of the subordinate courts should be filled up by direct recruitment in accordance with the Karnataka State Civil Services (Recruitment to Ministerial Posts) Rules, 1966. According to the provisions of the G Karnataka Civil Services (Classification, Control and Appeal) Rules, every District Judge is the appointing authority and consequently every District constitutes a recruitment unit. The District Judge being the Unit head, like the head of any other department must send a requisition to the Public Service Commission intimating the number of vacancies available in his establishment for appointment. The Public H

A Service Commission shall send a list of selected candidates to the District Judge as per his requisition. It is only after the Public Service Commmission forwards the list of selected candidates the District Judge could make appointments of persons out of that list. No other person could be appointed in the clerical cadre of the subordinate courts except perhaps by promotion.

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This is the undisputed procedure for recruitment prescribed by the Rules. The then Chief Justice, however, disregarded the authority of the Public Service Commission to make selection and bye-passed the power of the District Judge to make appointment. He took upon himself the power of both the authorities of making selection as well as appointment in the establishments of the Subordinate Courts. Out of a C large number of candidates who have applied in response to the notification dated 29 May, 1978 he called some candidates for interview at frequent intervals and appointed them in the High Court. At the beginning except on one or two occasions the number of candidates called for interview seem to be more than the candidates selected, but D later on, only a few candidates were called for interview and they were all appointed on the same day. Most of them were immediately transferred to subordinate courts. In some cases, it is said that in the forenoon the candidates were appointed and taken on duty in the High Court; in the afternoon they were transferred and placed at the disposal of a District Judge for taking them on duty. In most of the cases E the candidates seem to have reported before the concerned District Judge on the very next day. This cycle of appointment and transfer went on during the years 1980 to 1982 as against the advertisement of the year 1978. The total number of persons thus appointed came to ten times the number of posts advertised. They could not be retained in the High Court since the High Court apparently did not have so many F vacancies. Their appointment in substance and effect was intended for the subordinate courts and accordingly most of them were transferred to subordinate courts circumventing the statutory provisions for such recruitment.

While the administration of the Courts has perhaps, never been G without its critics, the method of recruitment followed by the Chief Justice appears to be without parallel. The learned Judges of the High Court have in a considered judgment allowed the writ petitions and quashed all those appointments. They have expressed the view that the appointments made by the Chief Justice were very serious violation of statutory law and constitutional protection of equality of opportunity H guaranteed to the candidates under Article 14 and 16(1). From the

foregoing narration of events and by the rules of recruitment, it seems to us that there cannot be two opinions on the conclusion reached by learned Judges. The methodology adopted by the Chief Justice was manifestly wrong and it was doubtless deviation from the course of law which the High Court has to protect and preserve.

The Judiciary is the custodian of constitutional principles which are essential to the maintenance of rule of law. It is the vehicle for the protection of a set of values which are integral part of our social and political philosophy. Judges are the most visible actors in the administration of justice. Their case decisions are the most publicly visible outcome. But the administration of justice is just not deciding disputed cases. It involves great deal more than that. Any realistic analysis of the administration of justice in the Courts must also take account of the totality of the Judges behaviour and their administrative roles. They may appear to be only minor aspects of the administration of justice, but collectively they are not trivial. They constitute in our opinion, a substantial part of the mosaic which represents the ordinary man's perception of what the Courts are and how the judges go about their work. The Chief Justice is the *prime force* in the High Court. Article 229 of the Constitution provides that appointment of officers and servants of the High Court shall be made by the Chief Justice or such other Judge or officer of the Court as may be directed by the Chief Justice. The object of this Article was to secure the independence of the High Court which cannot be regarded as fully secured unless the authority to appoint supporting staff with complete control over them is vested in the Chief Justice. There can be no disagreement on this matter. There is imperative need for total and absolute administrative independence of the High Court. But the Chief Justice or any other Administrative Judge is not an absolute ruler. Nor he is a free wheeler. He must operate in the clean world of law, not in the neighbourhood of sordid atmosphere. He has a duty to ensure that in carrying out the administrative functions, he is actuated by same principles and values as those of the Court he is serving. He cannot depart from and indeed must remain committed to the constitutional ethoes and traditions of his calling. We need hardly say that those who are expected to oversee the conduct of others, must necessarily maintain a higher standards of ethical and intellectual rectitude. The public expectations do not seem to be less exacting.

Having reached the conclusion about the invalidity of the impugned appointments made by the Chief Justice, we cannot, however, refuse to recognise the consequence that involves on uprooting

A the appellants. Mr. Gopala Subramanayam, counsel for the appellants while highlighting the human problems involved in the case pleaded for sympathetic approach and made an impassioned appeal for allowing the appellants to continue in their respective posts. He has also referred to us several decisions of this Court where equitable directions were issued in the interests of justice even though the selection B and appointments of candidates were held to be illegal and unsupportable.

There is good sense in the plea put forward for the appellants. The human problem stands at the outset in these cases and it is that problem that motivated us in allowing the review petitions. It may be C recalled that the appellants are in service for the past 10 years. They are either graduates or double graduates or post graduates as against the minimum qualification of S.S.L.C. required for Second Division Clerks in which cadre they were originally recruited. Some of them seem to have earned higher qualification by hard work during their service. Some of them in the normal course have been promoted to D higher cadre. They are now overaged for entry into any other service. It seems that most of them cannot get the benefit of age relaxation under Rule 6 of the Karnataka Civil Services (General Recruitment) Rules, 1977. One could only imagine their untold miseries and of their family if they are left at the midstream. Indeed, it would be an act of cruelty at this stage to ask them to appear for written test and *viva voce* E to be conducted by the Public Service Commission for fresh selection (See: *Lila Dhar* v. *State of Rajasthan,)* [1981] 1 SCR 320 at 326.

We may briefly touch some of the decisions referred to us by counsel for the appellants. *A.K. Yadav* v. *State of Haryana and Ors.,* [1985] 4 SCC 417 was concerned with the selection made by the F Haryana Public Service Commission for appointment to the cadre of the Haryana Civil Service by allocating 33.3 per cent for *viva voce*. The selection was challenged before this Court on the ground that the marks awarded for the interview was high as it would open door for arbitrariness. This Court upheld that contention and held that the marks for *viva voce* test should not exceed 12.2. per cent. However, G the Court did not set aside the appointments, instead, directed the Public Service Commission to give one more opportunity to the aggrieved candidates to appear at the competitive examinations. In *State of U.P.* v. *Refiquddin & Ors.,* [1988] 1 SCR 794 the validity of selection made by the Public Service Commission of Uttar Pradesh to the cadre of Munsifs came for consideration. Here again the Court H refused to quash the appointment even though the selection was found

to be contrary to the Rules of recruitment. In *Miss Shainda Hasan* v. *State of U.P. & Ors.*, [1990] 2 All India Services Law Journal 93 the legality of appointment of a Principal of a minority college was in question. The Principal was overaged for appointment, but she was given age relaxation which was held to be arbitrary. Yet the Court has declined to strike down her appointment. On the contrary, the Chancellor was directed to grant the necessary approval for her appointment with effect from the date she was holding the post of the Principal. Her continuous working as Principal in the College seems to be the only consideration that weighed with this Court for giving that relief.

The learned Advocate General however, relied upon the decision in *Channabasavaiah* v. *State of Mysore & Ors.*, [1965] 1 SCR 360 which has also been relief upon by the High Court to deny relief to the affected persons. There the Karnataka Public Service Commission made selection for appointment to services in Class I and II posts in the State Administrative Services. The Public Service Commission published a list of 98 persons who were said to be the selected candidates. After the announcement of the said list, the State Government sent a list of additional twenty-four candidates to the Public Service Commission for consideration. The Commission approved those candidates and also included their names in the select list. Consequently, all of them were appointed by the Government. Sixteen candidates who were not selected by the Public Service Commission moved the High Court with a writ petition under Article 226 of the Constitution challenging the selection made by the Public Service Commission. That writ petition was disposed of by a compromise between the Government and petitioners. The Government agreed to appoint those petitioners also. Of those 16 persons, three had not even been called for interview by the Public Service Commission since they were not qualified for interview. But upon appeal, this Court quashed the appointment of twenty-four persons selected by the Government and also the appointment of sixteen persons who had filed the writ petition before the High Court and who were appointed on the terms of the compromise. The facts of the case are not comparable with the present. Considerations that weighed with this Court also appear to be quite different.

The precedents apart, the circumstances of this Case justify an humanitarian approach and indeed, the appellants seem to deserve justice ruled by mercy. We take note of the fact that the writ petitioners also would be appointed in the High Court as stated by

A learned Adocate General of the State.

In the result, we allow these appeals and direct that these appellants should be treated to be regularly appointed with all the benefits of the past service. The judgment of the High Court is accordingly modified. This order would govern all those whose appointments have been quashed by the High Court.

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In the facts and circumstances of the case, however, we make no order as to costs.

Y. Lal Appeals allowed.