

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.35020 of 2023

Trupti Mayee Patra

Petitioner

Mr. S.Das,
Advocate

-versus-

Registrar, Examination, Orissa

Opposite Party

Mr.S.N.Das, ASC

CORAM:

MR. JUSTICE D.DASH

MR. JUSTICE G.SATAPATHY

ORDER

03.11.2023

Order No.

02.

1. This matter is taken up through hybrid arrangement (virtual/physical) mode.

2. This writ petition at the instance of the Petitioner invokes the extraordinary jurisdiction of this Court under Articles-226 and 227 of the Constitution of India seeking a direction to Opposite Party to include the Petitioner in the list of eligible candidate for appearing in the recruitment examination to the post in the cadre of Distinct Judge from the Bar, 2023 by issuing a fresh list.

3. The case of the Petitioner is that she being enrolled an advocate with Orissa State Bar Council, Cuttack having Enrollment No.O-1659/2004 practiced as an advocate from 2004 to 2014, but being selected as a Junior Clerk in the office of District & Sessions Judge, Malkangiri, she surrendered her license on 04.05.2016 and thereafter, in the year 2018, she got selected and appointed as Assistant Public Prosecutor with effect from 13.03.2018. However, she applied for and allowed to sit in the recruitment examination to the post in the cadre of District Judge from the Bar in the year 2020, 2021 and 2022, but remained unsuccessful. Further, on 29.08.2023, the High Court of Orissa issued an Advertisement No.05 of 2023

inviting applications for eligible candidates for direct recruitment to the post in the cadre of District Judge from the Bar, 2023 and accordingly, the Petitioner applied for the post by enclosing necessary documents, but she was found not eligible and accordingly, her name was found missing in the list of eligible candidates issued by Opposite Party. Hence, this writ.

4. Mr. S.N. Das, learned ASC by producing the instruction received from the Opposite Party informs the Court that the Petitioner is not eligible for the direct recruitment to the post in the cadre of District Judge for want of seven years continuous Bar practice. The written instruction along with experience certificate and copy of notification of appointment of the Petitioner as Assistant Public Prosecutor Group-B as produced by the learned ASC is kept on record.

5. Mr. Subhasis Das, learned counsel for the Petitioner submits that the Petitioner having allowed to appear and sit in the exam for the direct recruitment to the post in the cadre of District Judge from the Bar in the year 2020, 2021 and 2022 cannot be deprived of her candidature to the recruitment examination and the authority having allowed her to appear in the examination in previous years are estopped to reject candidature of the Petitioner this time by considering her not eligible. Mr. Das further submits that on the principle of acquiescence, the authority in the circumstance cannot reject the candidature of the Petitioner for want of eligibility. On the aforesaid submission, Mr. Das prays to allow the writ petition and direct Opposite Party to issue a fresh list of eligible candidate including the name of the Petitioner. In support of his contention principle of estoppels and acquiescence, Mr. Das relies upon the decision of this Court in *Basanta Kumar Mohanty v. Utkal University and others; 1988 SCC Online Orissa 39* and the

decision of the Apex Court in *Union of India and others v. N, Murugesan etc.*; (2022) 2 SCC 25.

6. On the other hand, Mr. S.N. Das, learned ASC by relying upon the decision in *Deepak Aggarwal v. Keshav Kaushik and others*; (2013) 5 SCC 277 submits that since the Petitioner was not having seven years continuous practice as on the cutoff date, she was rightly found not eligible to appear in the exam and thereby, the present writ merits no consideration.

7. After having considered the rival submissions upon perusal of record, there appears no dispute that the Petitioner was having active practice as an advocate from 23.04.2004 to 16.11.2014 as per the experience certificate furnished by her. Besides, the Petitioner has herself averred in the writ petition that she was having practiced as an advocate from 2004 to 2014 and she surrendered her license on 04.05.2016 and thereafter, she joined as Assistant Public Prosecutor on 13.03.2018. It is, therefore, very clear that the Petitioner was not having seven years continuous practice just preceding the date of her application. The appointment of District Judges is governed by Article-233 of Chapter-VI (sub-ordinate Courts) of the Constitution of India, wherein the eligibility criteria has been provided in Clause-2 of Article-233 in the following words:

“A person not already in the service of Union or the State shall only be eligible to be appointed a District Judge if he has been for not less than seven years as advocate or a pleader and is recommended by the High Court for appointment”.

When the seven years practice has to be reckoned has been answered by a three Judge Bench of the Apex Court in *Deepak Aggarwal (supra)* wherein it has been held as follows:

“102. As regards construction of the expression, “if he has been for not less than seven years an advocate” in

*Article 233(2) of the Constitution, we think Mr. Prashant Bhushan was right in his submission that this expression means seven years as an advocate immediately **preceding the application and not seven years any time in the past**. This is clear by use of “has been”. The present perfect continuous tense is used for a position which began at sometime in the past and is still continuing. Therefore, one of the essential requirements articulated by the above expression in Article 233(2) is that such person must with requisite period be **continuing as an advocate on the date of application**”.*

8. Moreover, in *Dheeraj Mor v. High Court of Delhi; (2020) 7 SCC 401*, a constitutional Bench of five judges of Apex Court while answering reference has been pleased to held as under:

*“14. Article 233(2) provides that if an advocate or a pleader has to be appointed, he must have completed 7 years of practice. It is coupled with the condition in the opening part that the person should not be in service of the Union or State, which is the judicial service of the State. The person in judicial service is not eligible for being appointed as against the quota reserved for advocates. Once he has joined the stream of service, he ceases to be an advocate. The requirement of 7 years of minimum experience has to be considered as the practising advocate as on the cutoff date, the phrase used is a continuous state of affair from the past. The context ‘has been in practice’ in which it has been used, it is apparent that the provisions refer to a person who has been an advocate or pleader **not only on the cutoff date but continues to be so at the time of appointment**”.*

9. Learned counsel for the Petitioner has of course pressed the principle of estoppel to contend that the Opposite Party cannot reject the candidature of the Petitioner, but merely because a person was inadvertently allowed earlier to appear in the examination, who was not eligible, confers no right on him or her to appear in the exam by contending *inter alia* that the authorities have allowed him/her to appear in the exam earlier, especially when he/she does

not possess the requisite eligibility. In this regard, the decision relied on by the Petitioner in *Basanta Kumar Mohanty (supra)* having been rendered in different context is not applicable to this case. Similarly, the decision relied on by the Petitioner in *N. Murugesan (supra)* also found distinguishable from the facts of the present case since a defence of latches can only be allowed when there is no statutory bar, but in this case, the advertisement issued by the High Court of Orissa clearly spell out one of the eligibility criterias for the candidature as “be having at least seven years practice as an advocate as on 1st April, 2023”. Adhering to the aforesaid eligibility condition, when the case of the Petitioner is considered, she is found not eligible for want of seven years continuous practice as an advocate as on 1st April, 2023.

10. In view of the discussion made hereinabove and applying the law laid down by the Apex Court *Deepak Aggarwal and Dheeraj Mor (supra)* to the case at hand and the Petitioner having not found experience of continuous practice as an advocate for seven years, it can safely be said that the Petitioner is not eligible to appear in the examination. Hence, the decision of the OP in not considering the petitioner to be eligible to the post in the cadre of District Judge is perfectly right and does not need any interference by this Court.

11. In the result, the writ petition being devoid of merit, stands dismissed, but no order as to costs.

(D. Dash)
Judge

(G. Satapathy)
Judge