

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 27<sup>TH</sup> DAY OF JUNE, 2018**

**BEFORE**

**THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR**

**ORDER ON I.A.No.2/2018 and I.A.No.3/2018**

**IN**

**W.P.No.26117/2018(S-RES)**

**BETWEEN:**

SRI SOMASHEKARA.A  
S/O CHIKKA ADIMURTHY  
AGED ABOUT 42 YEARS  
WORKING AS 5<sup>TH</sup> ADDL. CHIEF  
MATROPOLITAN MAGISTRATE  
BENGALURU-560 009 ...PETITIONER

(BY SHRI RAVIVARMA KUMAR, SENIOR ADVOCATE FOR  
SMT BELLE RAVIVARMA, ADVOCATE)

**AND:**

1. THE HIGH COURT OF KARNATAKA  
REPRESENTED BY ITS REGISTRAR GENERAL  
HIGH COURT BUILDING  
BENGALURU-560 001
2. THE STATE OF KARNATAKA  
REPRESENTED BY ITS CHIEF SECRETARY  
VIDHANA SOUDHA  
BENGALURU-560 001 ...RESPONDENTS

(BY SHRI B.J.ESWARAPPA, AGA FOR RESPONDENT No.2;  
SHRI S.S.NAGANAND, SENIOR ADVOCATE ON BEHALF OF  
SHRI S.SRIRANGA OF M/S JUST LAW, FOR RESPONDENT No.1)

I.A.No.2/2018 IS FILED UNDER RULE 18 OF THE WRIT PROCEEDINGS RULES, 1977 R/W ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO VACATE THE INTERIM ORDER DATED:21.06.2018 PASSED IN THIS WRIT PETITION.

I.A.No.3/2018 IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO STAY ALL FURTHER PROCEEDINGS PURSUANT TO NOTIFICATION DATED 13.4.2018 IN NO.GOB (1) 8/2018 (ANNEXURE-A) PENDING DISPOSAL OF THE ABOVE WRIT PETITION IN THE INTEREST OF JUSTICE AND EQUITY.

THESE I.As.No.2/2018 and 3/2018, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 26.6.2018, COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THIS COURT PRONOUNCED THE FOLLOWING:-

**ORDER ON I.A.No.2/2018 and I.A.No.3/2018**

1. This writ petition is filed by a judicial officer, presently working as V Additional Chief Metropolitan Magistrate at Bengaluru, with a prayer *inter alia* to strike down Clause (2) of the qualification prescribed for the post of District Judges in Column (4) of Sl.No.1 under Rule 4 of Karnataka Judicial Service(Recruitment) Rules, 2004 as void and unconstitutional.

2. This Court by an interim order dated 21.6.2018, has permitted the petitioner to appear for ensuing examination.

3. First respondent has filed I.A.No.2/2018 with a prayer to vacate interim order dated 21.6.2018.

4. Petitioner has filed I.A.No.3/2018 praying to stay all further proceedings pursuant to Notification dated 13.4.2018 in GOB(I) 8/2018 (Annexure-A).

5. Heard Shri Ravivarma Kumar, learned Senior Advocate for petitioner, Shri S.S.Naganand, learned Senior Advocate for respondent No.1 and Shri B.J.Eshwarappa, learned Additional Government Advocate for respondent No.2.

6. Briefly stated the facts of the case are, petitioner submitted a representation dated 19.4.2017 through proper channel to the Registrar General of this Court seeking permission to participate in the selection process of District Judges pursuant to notification dated GOB(I)24/2017 dated 13.4.2017, contending *inter alia* that the Hon'ble Supreme Court in the case of *Vijay Kumar Mishra and another Vs. High Court of Judicature at Patna*

*and others* reported in (2016) 9 SCC 313 has considered the aspect of eligibility of persons who are in judicial service to participate in the selection process of District Judges; and that, in terms of the said judgment, he is eligible to apply for the said post. His request for grant of permission was rejected on 28.4.2017.

7. By a notification No.GOB(1)8/2018 dated 13.4.2018, this Court called for online applications for recruitment of 30 posts of backlog vacancies of District Judges. Petitioner again submitted his representation dated 14.5.2018 through proper channel seeking permission to participate in the selection process. By a communication dated 21.5.2018, his request was rejected on the ground that his representation was submitted after expiry of last date fixed for submission of online applications. Feeling aggrieved, petitioner has filed this writ petition.

8. This Court, on 21.6.2018 has passed following interim order:

*"Learned Government Advocate to accept notice for respondent Nos.1 and 2.*

*Copy be served.*

*Since the contentions as urged by the learned Senior counsel for the petitioner would require detailed consideration and in that circumstance, keeping in view that the Hon'ble Supreme Court in W.P.No.396/2018 has made a provisional arrangement, there shall be a similar benefit to the petitioner herein.*

*Accordingly, the respondents shall permit the petitioner to appear for the ensuing examination pursuant to the application, which he has filed in response to the notification at Annexure-A, which shall however, remain subject to the result of this petition and the petitioner shall not claim equity in the event of failing in this petition."*

9. Shri S.S.Naganand, learned Senior Advocate, arguing in support of I.A.No.2/2018 to vacate interim order, urged following contentions:

- that the decision in the case of *Vijay Kumar Mishra(supra)* has been considered by the Hon'ble Supreme Court in a subsequent judgment in the case of *Dheeraj Mor Vs. Hon'ble High Court of Delhi* reported in (2018)4 SCC 619 and their Lordships have opined that as the subject matter involves interpretation of Article 233 of the Constitution of India, it should be placed before the Hon'ble the

Chief Justice of India for constituting an appropriate Bench;

- that the recruitment of District Judges is governed by the judgment of the Hon'ble Supreme Court in the case of *Malik Mazhar Sultan(3) and another Vs. Uttar Pradesh Public Service Commission and Others* reported in (2008) 17 SCC 703, wherein, schedule of dates has been fixed by the Hon'ble Supreme Court. In terms thereof, the last date for receipt of application is 30<sup>th</sup> April;
- that petitioner has submitted his representation seeking permission on 14.5.2018 after expiry of two weeks from the last date prescribed for submission of online applications;
- that benefit of parity claimed by the petitioner, on the ground that another judicial officer by name Shri Raju N. has been accorded permission, is misconceived inasmuch as, the said judicial officer has submitted his representation much prior to the last date prescribed for receipt of applications.

10. Amplifying above contentions, Shri Naganand submitted that since petitioner has submitted his representation long after expiry of the last date, he cannot be permitted to participate in the selection process. He further submitted that the schedule of dates have been fixed by the Hon'ble Supreme Court and therefore, cannot be altered. If petitioner is permitted to participate in the selection process, the same would result in discrimination as several other judicial officers have submitted similar representations seeking permission.

11. In reply, Shri Ravivarma Kumar, learned Senior Advocate submitted:

- that the law laid down by the Hon'ble Supreme Court in the case of *Vijay Kumar Mishra(supra)* holds the field, as reference to a larger Bench does not dilute the ratio of a judgment till the larger Bench decides the issue;

- that the Hon'ble Supreme Court in the case of *Asma Kouser Vs. High Court of Karnataka at Bengaluru in Writ Petition(s) (Civil) No(s).396/2018*, by its order dated 27.4.2018 has directed this Court to permit the petitioner therein to participate in selection process of the Karnataka Higher Judicial Services Examination, 2018;
- that this Court has permitted Shri Raju N., a similarly placed judicial officer to submit his application after expiry of last date;
- that this Court while granting interim order on 21.6.2018 has heard the learned Government Advocate and therefore, the interim order cannot be vacated.

12. Thus, in substance, Shri Ravivarma Kumar contended that in the facts of this case, no prejudice would be caused if the petitioner is also permitted to participate in the selection process.



13. Shri Ravivarma Kumar, in his usual fairness, also submitted that, though it has been recorded in the interim order dated 21.6.2018 that the petitioner has submitted his application, but, in fact, petitioner has sought permission to participate and is yet to submit his application.

14. I have given my careful consideration to the submissions of learned Senior Counsel on both sides and perused the material papers.

15. Incontrovertible facts of the case are, last date fixed for receipt of online applications is 30.4.2018. Petitioner has submitted his representation on 14.5.2018, two weeks after expiry of last date.

16. The appointment of District Judges is governed by the judgment of Hon'ble Supreme Court in the case of *Malik Mazhar Sultan(supra)*. The last date for receipt of application as per schedule of dates recorded therein is 30<sup>th</sup> April. The said date is inflexible unless permitted by

the Apex Court which is clear from paragraph No.17 of the said judgment which reads as follows:

*"17. The High Courts/State Governments/Union Territories shall be at liberty to apply to this Court for variation in the time schedule in case of any difficulty having regard to the peculiar geographical and climatic conditions in the State or other relevant considerations. However, till such time a different time schedule is permitted, the aforesaid time schedule shall be adhered to and appointments made accordingly."*

17. Thus, it is clear that the schedule of dates are sacrosanct and inflexible as they have been fixed by the Hon'ble Supreme Court. Unless any change in the schedule of dates is permitted by the Apex Court, the last date for submission of application shall remain 30<sup>th</sup> April. Admittedly, petitioner has submitted his representation on 14<sup>th</sup> May which is two weeks after expiry of last date prescribed for submission of online applications. Petitioner is a judicial officer. He has made a similar attempt to seek permission to participate in the selection process during 2017 by citing the judgment of the Apex Court in the case of *Vijay Kumar Mishra(supra)*.

18. Viewed from a different angle, if petitioner is permitted to participate in the selection process, the same will result in discrimination vis-à-vis, other judicial officers who have also submitted similar representations after expiry of last date and such other candidates who would complete seven years of practice and become qualified as on the date petitioner submitted his representation.

19. Shri Naganand is right in his submission that the case of *Sri Raju N.* stands on a different footing as he has submitted his representation seeking permission on 21.4.2018, much before the last date prescribed for receipt of applications.

20. In reply to Shri Ravivarma Kumar's argument that respondents were heard before granting the interim order, Shri Naganand submitted that High Court is represented by a separate panel of lawyers and none of them were heard before passing the interim order. Therefore, first respondent has filed I.A.No.2/2018 seeking dissolution of interim order.

21. So far as I.A.No.3/2018 for stay filed by the petitioner is concerned, it is relevant to note that the petitioner has made a similar prayer in the writ petition along with an alternative prayer to permit him to apply for the post of District Judge. This Court has granted the alternative prayer and permitted him to appear for the ensuing examination. Thus, the prayer to stay the notification has been impliedly rejected by this Court while passing the interim order on 21.6.2018. Therefore, the prayer in I.A.No.3/2018 does not merit any consideration.

22. In the light of above discussion, I am of the considered view that the petitioner cannot be permitted to participate in the selection process. Consequently, he shall not be eligible for the benefit of interim order. Hence, the following:

ORDER

- (i) I.A.No.2/2018 for vacation of interim order is allowed and the interim order dated 21.6.2018 is dissolved;

- (ii) I.A.No.3/2018 for stay is dismissed.
- (iii) No costs.

**Sd/-  
JUDGE**

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