Before, R. N. Mittal, J.

MOHINDER MOHAN SINGH and others,—*Petitioners.*

versus

STATE OF PUNJAB and another,—*Respondents.*

Civil Writ Petition No. 146 *of* 1982.

February 11, 1982.

Constitution of India 1950—*Articles* 14 & 16—*Punjab Civil Service (Judicial Branch) Rules* 1951—*Part* A *Rules* 2 & 3 *and Part B Rule* 6—*Rules classifying candidates into Law graduates and Advocates for selection—Advocates further classified into two groups—Advocates having atleast four years practice at the Bar given benefit of relaxation of upper age limit—No such benefit to Advocates having less than* 4 *years practice—Minimum prescription of* 4 *years practice—Whether violative of Articles* 14 & 16 *of the Constitution—Such classification—Whether based on an intelligible differentia.*

Held, that one of the objects of the competitive examination is to test the practical ability of a candidate to decide the cases which are to be dealt with by a Subordinate Judge from day to day. An Advocate who has practised at the Bar for a number of years has got more practical knowledge and can prove to be a better Judge than a person who has not put in that much period at the Bar. The rule making authority in its wisdom prescribed four years of such experience in order to give him the benefit of higher age-limit. No fault can be found with this discretion of the authority under Articles 14 and 16 of the Constitution of India. Article 14 forbids class legislation but it does not forbid reasonable classification for the purposes of legislation. However, the classification must be founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that the differentia must have a rational relation to the object sought to be achieved by the law in question. The classification may be founded on different basis, that is, geographical or according to objects or occupations or the like. From a reading of the rules it cannot be said that the minimum period of four years' practice at the Bar prescribed for Advocates has no intelligible differentia and has no rational nexus with the object sought to be achieved. Therefore, the classification made by the rule making authority prescribing four years' minimum practice at the Bar to get the advantage of maximum age-limit of 37 years for an Advocate for recruitment to the Punjab Civil Service (Judicial Branch), Rules is not violative of Articles 14 and 16 of the Constitution of India. (Paras 5, 6 & 9).

Petition under Articles 226/227 *of the Constitution of India praying that this Hon'ble Court may be pleased to* :—

(i) *to issue a writ of mandamus directing the respondents to admit the petitioners to P.C.S. (Judicial) Examination,*

unhampered by the insistance of minimum four years practice at bar as mentioned in Annexure 'P'-1 and also in Rule 2(a) (i) in Part-A, of Punjab Civil Service (Judicial Br.) Rules, 1951, as his condition is unconstitutional and violative of Article 14 and 16 of the Constitution of India ;

(ii) *to issue a writ in the nature of certiorari for quashing the advertisement (Annexure P-1) ;*

(iii) *to stay the operation of impugned advertisement during the pendency of the present writ petition;*

(iv) *to grant any other relief as this Hon'ble Court may deem fit in the fact and circumstances of the present case and in the interest of justice and equity.*

M. M. Singh Bedi, Advocate, *for the petitioners.*

Amar Singh Sandhu, Additional A.G.

Kuldip Singh Bar-at-Law, *for the Respondents..*

JUDGMENT

Rajendra Nath Mittal, J.—

(1) Briefly, the case of the petitioners is that they are the practising Advocates at Chandigarh and are above 25 years and below 35 years of age. They have less than four years of practice at the Bar. An advertisement on behalf of the Punjab Public Service Commission, Patiala, hereinafter referred to as the Commission, appeared in the Tribune on 20th December, 1981, for recruitment to 35 posts in the Punjab Civil Service (Judicial Branch), wherein it was **inter alia** stated that it would hold an examination at Patiala sometime in June, 1982, for recruitment to the abovesaid number of posts in the Punjab Civil Service (Judicial Branch), only those candidates would be admitted to the examination who had obtained the degree of Bachelor of Law and were qualified to be enrolled as Advocates on the rolls of the Bar Council of Punjab and Haryana High Court; they should not be below 21 years and above 25 years of age on 11th February, 1982; the maximum age limit in the case of practising lawyers was 35 years, provided that they had completed four years' practice at the Bars and candidates

belonging to Punjab should apply not later than 11th February, 1982, to the District and Sessions Judges of their districts and candidates from the States other than Punjab should submit their rolls to the Commission through the District and Sessions Judge, Patiala, not later than the said date, that is, 11th February, 1982.

(2) It is further stated that according to the advertisement, the petitioners would have been eligible to appear in the examination if the minimum four years' practice at the Bar had not been prescribed. The relaxation of ten years, while determining the upper age limit, had been granted to give benefit to the practising lawyers as they have practical knowledge of law. The relaxation to this extent is a reasonable classification but not further insistence that the candidates should have practised for at least four years. There is also no provision in the Advocates Act, 1961, to make such a distinction amongst the Advocates. It is further pleaded that this classification is unreasonable, discriminatory and violative of Articles 14 and 16 of the Constitution of India.

(3) The only question that arises for determination is as to whether the rule prescribing four years minimum practice at the Bar to get the advantage of maximum age limit for an Advocate for recruitment to the P.C.S. (Judicial Branch) is *ultra vires* Articles 14 and 16 of the Constitution of India. In order to determine the question, it will be relevant to read rule 2 of Part A and rule 6 of Part B of the Rules framed in 1951 for the appointment of persons as subordinate Judges in the Punjab Civil Service (Judicial Branch) and regulating the recruitment and conditions of their service, under Article 234 of the Constitution of India, hereinafter referred to as the Rules. The relevant extracts from these rules are reproduced hereunder:—

"PART—A

2. No person, who is more than twenty-seven years, or of such age as may from time to time be fixed by the Government for entry into service, or is less than twenty-three years, on the date of appointment, shall be appointed as Subordinate Judge:

Provided that—

(a) the maximum age-limit—

(i) for an Advocate who has practised at the Bar for a minimum period of four years; or

(ii) * * *

shall be 37 years or such other age-limit as may, from time to time, be prescribed by the State Government in this behalf.

PART—B

6. For purposes of rules 2 and 3 of the Qualification Rules it should be noted as follows:—

(a) * * * *

(b) * * * *

(c) * * * *

(d) No roll of a candidate shall be submitted to the State Public Service Commission unless the age of the candidate is two years less than the age limits prescribed for appointment in rule (2) in Part A of these Rules on a date fixed by the Commission in its letter calling for rolls."

The minimum qualification for appointment as a Subordinate Judge has been prescribed in rule 3 of Part-A, and according to that rule, a candidate should have obtained the Degree of Bachelor of Laws at any of the Universities mentioned therein. Thus, from a reading of the relevant extracts from rules 2 and 3 of Part-A, it is evident that an Advocate who has practised at the Bar for a minimum period of four years can be appointed as a Subordinate Judge between 23 and 37 years' of age and in the case of a Law Graduate between the age of 23 and 27 years. However, the Government has been empowered to change the upper age-limit in the former case. Therefore, the rules have classified the candidates into two categories, firstly, Law Graduates and secondly, Advocates who have a minimum practice of four years. Rule 6 of Part-B, prescribes the age at which a candidate can submit his roll to the Public Service Commission for appearance in the competitive examination.

(4) The contention of the learned counsel for the petitioners is that the rule has classified the Advocates aged between 27 and 37 years into two groups, namely, those having four years' practice and those having less than four years' practice at the Bar. The former have been allowed to sit in the examination whereas the later have not been so allowed. According to him, the aforesaid classification is reasonable *inter alia* on the grounds that it is not founded on intelligible differentia and that it does not have a rational nexus to the object sought to be achieved by the open competitive examination. He also submits that no such classification has even been prescribed in the Advocates Act, 1961.

(5) I regret my inability to accept the contention. It is relevant to point out here that the counsel for the petitioners has not challenged the extension in age given to the Advocates upto the age of 37 years. What he challenges is that there should not have been further classification of the Advocate-candidates. One of the objects of the competitive examination is to test the practical ability of a candidate to decide the cases which are to be dealt with by a Subordinate Judge from day to day. It cannot be disputed that an Advocate who has practised at the Bar for a number of years has got more practical knowledge and can prove to be a better Judge than a person who has not put in that much period at the Bar. The rule making authority in its wisdom prescribed four years of such experience in order to give him the benefit of higher age-limit. No fault can be found with this discretion of the authority, under Articles 14 and 16 of the Constitution of India. It is well-settled that Article 14 forbids class legislation but it does not forbid reasonable classification for the purposes of legislation. However, the classification must be founded on intelligible differentia which distinguishes persons on things that are grouped together from others left out of the group and that the differentia must have a rational relation to the object sought to be achieved by the law in question. The classification may be founded on different basis, that is, geographical or according to objects or occupations or the like: (see *Budhan Choudhry* v. *The State of Bihar* (1). The above view was followed in *Ram Krishna Dalmia etc.* v.

(1) AIR 1955 S.C. 191.

Shri Justice S. R. Tendolkar etc. (2) wherein the following principles were laid down to be borne in mind by the Court which is called upon to adjudge the constitutionality of any particular law attacked as discriminatory or violative of the equal protection of the laws:—

"(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

(2) AIR 1958 S.C. 538.

Similar view was taken in *Harekchand Ratanchand Banthia and others* vs. *Union of India and others,* (3) on which the counsel for the petitioner placed reliance. It was observed by Ramaswami, J., speaking for the Court therein, that having ascertained the policy and object of the Act, the Court has to apply a dual test in examining its validity, firstly, whether the classification is rational and based upon an intelligible differentia which distinguishes a person or things that are grouped together from those that are left out of the group, and secondly, whether the basis of differentiation has any rational nexus or relation with its avowed policy and object.

(6) From a reading of the rules it cannot be said that the minimum period of four years' practice at the Bar prescribed for Advocates has no intelligible differentia and has no rational nexus with the object sought to be achieved. As already observed above, a person having some experience at the Bar can prove to be a better Judge than a person having lesser experience. In case some minimum period is prescribed by the rule making authority, that cannot be said to be violative of Articles 14 and 16 of the Constitution of India. In the case of appointment of District Judges, even the Constitution of India provides that an Advocate who has practised at the Bar for not less than seven years can be appointed as such. That further strengthens the argument as a person having more experience as an Advocate can be taken direct on the higher rungs in the judiciary. This question has also been answered by the highest Court of the land in *J. Panduranoarao etc.* vs. *The Andhra Pradesh Public Service Commission, Hyderabad and another,* (4). In that case also, the Supreme Court was dealing with the rules regarding recruitment to the judiciary. P. B. Gajendragadkar, J. as he then was, speaking for the Court, observed that the object of the rule was to recruit suitable and proper persons to the Judicial Service in the State of Andhra Pradesh with a view to secure fair and efficient administrtion of justice, and so there could be no doubt that it would be perfectly competent to the authority concerned to prescribe qualifications for eligibility for appointment to the said Service. The learned Judge further observed that knowledge of local laws as well as knowledge of the regional language and *adequate experience*

(3) A.I.R. 1970 S.C. 1453.
(4) A.I.R. 1963 S.C. 268.

at the Bar may be prescribel as qualifications which the applicants must satisfy before they apply for the post. (Emphasis supplied by underlining).

(7) It is evident from the above observations that their Lordships of the Supreme Court also laid emphasis on adequate experience at the Bar for recruitment to the Judicial Service.

(8) The learned counsel for the petitioner made a reference to section 16(1) of the Advocates Act where two classes of Advocates, namely, Senior Advocates, and other Advocates, have been prescribed. It is true that there are two classes of Advocates according to that Act but that does not support the argument of the learned counsel that no further classification can be made amongst the Advocates for recruitment to the Judicial Service on the basis of experience at the Bar.

(9) After taking into consideration all the above said facts and circumstances, I am of the opinion that the classification made by the rule making authority prescribing four years' minimum practice at the Bar to get the advantage of maximum age-limit of 37 years for an Advocate for recruitment to the Punjab Civil Service (Judicial Branch), is not violative of Articles 14 and 16 of the Constitution of India.

(10) For the aforesad reasons, I do not find any merit in the writ petition and dismiss the same with no orders as to costs.

H.S.B

Before; S. S. Sandhawalia, C.J. & G. C. Mital, J.

SAMPARAN KAUR & another, —**Petitioners.**

versus

SANT SINGH and another.—*Respondents.*

Civil Revision No. 280 *of* 1977.

February 19, 1982

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 2(a) & 13(a) (iii)—Demised premises integral part of a larger building—Particular portion in possession of tenants in good condition—Other parts of the building in a dilapidated condition—Such tenant—Whether can be evicted on the ground that building has become