
(2015) 07 RAJ CK 0143
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7795 of 2015

Atma Ram Meghwal	Vs	APPELLANT
Rajasthan High Court		RESPONDENT

Date of Decision : 24-07-2015

Acts Referred:

Constitution of India, 1950 — Article 233(2)

Citation : (2015) 07 RAJ CK 0143

Hon'ble Judges : Gopal Krishan Vyas, J;Vijay Bishnoi, J

Bench : Division Bench

Advocate : M.A. Siddiqui, for the Appellant

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J—The instant writ petition has been filed by the petitioner to quash the order dated 8th July, 2015 whereby the candidature of the petitioner was rejected to appear in the examination of District Judge Cadre in pursuance of advertisement dated 26.4.2015 and prayed that the respondents may kindly be directed to treat the petitioner eligible for appearing in the examination, which is going to be conducted by the respondents on 25.7.2015.

2. As per facts of the case, an advertisement was issued by the Rajasthan High Court on 26.4.2015 whereby online applications were inviting from eligible candidates for recruitment on 44 posts in the District Judge Cadre in accordance with the Rajasthan Judicial Service Rules, 2010 (hereinafter referred to as the Rules of 2010).

3. The contention of the petitioner is that he being eligible applied for the post and submitted the required documents alongwith the application form. It is pleaded in the writ petition that the District Judge, Churu issued character, experience and fitness certificate in favour of petitioner on 18.5.2015 and certified that petitioner is having experience of practice from 1999 to 15th Nov., 2014. The said certificate was annexed by him with the online application form.

4. As per facts before issuance of advertisement dated 26.4.2015 the petitioner joined on the post of Chief Law Assistant on 18.11.2014 in the Western Railway and railway authorities issued no objection certificate in favour of the petitioner to appear in the aforesaid examination.

5. The learned counsel for the petitioner submits that petitioner was waiting for admission card to appear in the examination but vide office notice dated 8.7.2015 the respondent rejected the application form of the petitioner on the ground that he is in service other than prosecution service.

6. The learned counsel for the petitioner vehemently argued that the ground of rejection is totally unfounded because in Rule 33 of the Rules of 2010 there is no provision to treat petitioner ineligible or to treat only those candidates eligible who were in service of prosecution for appearing in the examination of District Judge Cadre for appearing in the examination of District Judge cadre, therefore, the rejection of the petitioner's candidature is totally unconstitutional. It is also argued that in the rules it is nowhere provided that a candidate in-service other than prosecution service is not entitled to appear in the said examination, therefore, on this ground the rejection of the petitioner's candidature is contrary to law. Counsel for the petitioner submits that in the year 2011 the petitioner appeared in the District Judge Cadre examination but now his application has been rejected on the ground that he is in-service other than prosecution, therefore, the reasons for not treating the petitioner eligible for the post of District Judge is against the principles of natural justice, therefore, the notice of rejection may kindly be quashed and respondent may kindly be directed to allow the petitioner to appear in the said examination.

7. After hearing the learned counsel for the petitioner it emerges from the facts that petitioner is substantively working as Chief Law Assistant in Western Railway and he joined the said services on 18.11.2014 after selection. Meaning thereby, on the date of issuance of advertisement itself the petitioner was not practicing lawyer. We have perused the rule 33 of the Rules of 2010 in which eligibility of candidate is provided, which reads as under:-

"33. Eligibility for direct recruitment. - For the purpose of direct recruitment under sub-rule (3) of Rule 31, applications shall be invited by the Court from those Advocates, who fulfill the following conditions of eligibility:-

(i) must have attained the age of 35 years and must not have attained the age of 45 years on the first day of January following the last date fixed for receipt of the applications:

Provided that

(a) the upper age limit mentioned above shall be relaxed by 5 years in case of candidates belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women Candidates.

(b) If a candidate would have been entitled in respect of his/her age to appear at

the examination in any year in which no such examination was held, he/she shall be deemed to be entitled in respect of his/her age to appear at the next following examination.

(c) If for any reason, the written examination/interview is cancelled in any particular year, it shall be open to the High Court to grant age relaxation to the candidate to appear in the next examination.

(ii) must hold a degree of Bachelor of Laws (Professional) of any University established by Law in India and recognised as such under the Advocates Act, 1961.

(iii) must have been an Advocate for a period of not less than seven years on the last date fixed for receipt of applications.

(iv) must possess a thorough knowledge of Hindi Written in Devnagri script and Rajasthani dialects and social customs of Rajasthan.

(v) the character of a candidate must be such as to render him suitable in the opinion of the Court in all respects for appointment to the service. He must produce a certificate of good character from the District Judge of the District in which he has been practising as a lawyer and two such certificates, written not more than six months prior to the date of submission of the application to the Court, from two responsible persons not related to him.

(vi) a person dismissed by the Central Government or by a State Government or convicted of an offence involving moral turpitude or any such offence, which in the opinion of the Recruiting Authority renders him unsuitable for appointment in Judicial Service shall not be eligible for appointment.

(vii) no person shall be appointed as a member of the service unless he is in good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of his duties as a member of the service. Before a candidate is finally approved for appointment by direct recruitment, he shall be required to appear before a medical board which will examine him and certify if he is fit for appointment to the service."

8. In rule 33(iii) it is categorically provided that candidate must have been an advocate for a period of no less than 7 years on the date fixed for receipt of the applications. Admittedly, on the last date fixed for receipt of application, the petitioner was not lawyer. More so, he was working on the post of Chief Law Assistant in the Western Railway.

9. We have considered the arguments of the learned counsel for the petitioner that only condition in the rules is that candidate must have experience of 7 years as an advocate, therefore, petitioner is eligible but in our opinion if this proposition is accepted then not only the petitioner but all other in-service candidates who practiced for more than 7 years prior to their recruitment will claim eligibility for the post of District Judge cadre, in our view, it is not the

intention of the rules to provide eligibility to all the candidates who acquired 7 years experience of practice irrespective of the fact that they are not lawyer at present or not performing any duties as prosecutor. In view of above there is complete fallacy in the argument of the learned counsel for the petitioner that even though he has joined the services in Railway, he is eligible for appearing in the competitive examination.

10. The Hon"ble Supreme Court in the case of Sushma Suri Vs. Govt. of National Capital Territory of Delhi and Another, (1998) 7 JT 121 : (1998) 5 SCALE 490 : (1999) 1 SCC 330 : (1999) SCC(L&S) 208 : (1998) 2 SCR 187 Supp : (1999) 1 UJ 60 has held as under:

"If a person on being enrolled as an advocate ceases to practice law and takes up an employment, such a person can by no stretch of imagination be termed as an advocate. However, if a person who is on the rolls of any Bar Council is engaged either by employment or otherwise of the Union or the State or any Corporate body or person practices before Court as an advocate for and on behalf of such Government, Corporation or authority or person, the question is whether such a person also answers the description of an advocate under the Act. That is the precise question arising for our consideration in this case.

This Court in I.A. No. 32 of 1995 in Review Petition No. 248 of 1994 in Writ Petition (Civil) No. 1022 of 1989 All India Judges Association Vs. Union of India decided on 10.5.1985 held that:-

"There is no doubt in our minds that what was intended by the provision was that a candidate for appointment to judicial office should be a person who had three years experience of practice as an advocate. He must be a lawyer in the sense that he regularly practices before a Court or tribunal, who appears for his clients before the Court or Tribunal. It may be that in a given case he may do so only for a client who is his employer."

For purposes of Advocates Act and the Rules framed thereunder the Law Officer (Public Prosecutor or Government Counsel) will continue to be an advocate. The intention of the relevant Rules is that a candidate eligible for appointment to Higher Judicial Service should be a person who regularly practices before the Court or Tribunal appearing for a client.

In Oma Shanker Sharma's case, the Delhi High Court approached the matter in too pedantic a manner losing sight of the object of recruitment under Article 233(2) of the Constitution. Whenever any recruitment is conducted to fill up any post, the area of recruitment must be as broad based as Rules permit. To restrict it to advocates who are not engaged in the manner stated by us earlier in this order is too narrow a view, for, the object of recruitment is to get persons of necessary qualification, experience and knowledge of life. A Government Advocate or a Government Pleader. He too gets experience in handling various types of cases apart from dealing with the officers of the Government. Experience gained by such persons who fall in this description, cannot be stated

to be irrelevant nor detrimental to selection to the posts of Higher Judicial Service. The expression "members of the Bar" in the relevant rule would only mean that a particular class of persons who are actually practising in courts of law as pleaders or advocates. In a very general sense an advocate is a person who acts or pleads for another in a court and if a public prosecutor or a Government counsel is on the rolls of the Bar Council and is entitled to practice under the Act, he answers the description of an advocate, any post, the area Under Rule 49 of the Bar Council of India Rules an advocate shall not be a full time employee of any person, Government, Firm. Corporation or concern and on taking up such employment shall intimate such fact to the concerned Bar Council and shall cease to practise as long as he is in such employment. However, an exception is made in such cases to Law Officer is required to act or plead in Court on behalf of others. It is only to those who fall into other categories of employment that the bar under rule 49 would apply. An advocate employed by the Government or a Body Corporate as its Law Officer even on terms of payment of salary would not cease to be an advocate in terms of Rule 49 if the condition is that such advocate is required to act or plead in Courts on behalf of the employer. The test, therefore, is not whether such person is engaged on terms of salary or by payment of remuneration, but whether he is engaged to act or plead on its behalf in a Court of law as an advocate. In that event the terms of engagement will not matter at all. What is of essence is as to what such Law Officer engaged by the Government does - whether he acts or pleads in Court on behalf of his employer or otherwise. If he is not acting or pleading on behalf of his employer, then he ceases to be an advocate. If the terms of engagement are such that he does not have to act or plead, but does other kinds of work, then he becomes a mere employee of the Government or the Body Corporate. Therefore, Bar Council of India has understood the expression "advocate" as one who is actually practising before courts which expression would include even those who are law officers appointed as such by the Government or body corporate."

11. The aforesaid judgment delivered in the case of Sushma Suri (supra) has been followed by the Hon'ble Supreme Court in Deepak Aggarwal Vs. Keshav Kaushik and Others, (2013) 2 AD 177 : (2013) 2 JT 139 : (2013) LabIC 1449 : (2013) 1 LLN 273 : (2013) 1 SCALE 564 : (2013) 5 SCC 277 : (2013) 2 SCC(L&S) 88 : (2013) 1 SCT 752 : (2013) 1 SLJ 435 : (2013) AIRSCW 1190 : (2013) 1 Supreme 355 , wherein the Hon'ble Supreme Court observed as under:

"87. The Division Bench has in respect of all the five private appellants Assistant District Attorney, Public Prosecutor and Deputy Advocate General recorded undisputed factual position that they were appearing on behalf of their respective States primarily in criminal/civil cases and their appointments were basically under the C.P.C. or Cr.P.C. That means their job has been to conduct cases on behalf of the State Government/C.B.I. in courts. Each one of them continued to be enrolled with the respective State Bar Council. In view of this factual position and the legal position that we have discussed above, can it be said that these appellants were ineligible for appointment to the office of Additional District and

Sessions Judge? Our answer is in the negative. The Division Bench committed two fundamental errors, first, the Division Bench erred in holding that since these appellants were in full-time employment of the State Government/Central Government, they ceased to be advocate under the 1961 Act and the BCI Rules, and second, that being a member of service, the first essential requirement under Article 233(2) of the Constitution that such person should not be in any service under the Union or the State was attracted. In our view, none of the five private appellants, on their appointment as Assistant District Attorney/Public Prosecutor/Deputy Advocate General, ceased to be advocate and since each one of them continued to be advocate, they cannot be considered to be in the service of the Union or the State within the meaning of Article 233(2). The view of the Division Bench is clearly erroneous and cannot be sustained.

88. 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 some time 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.

89. Rule 11 of the HSJS Rules provides for qualifications for direct recruits in Haryana Superior Judicial Service. Clause (b) of this rule provides that the applicant must have been duly enrolled as an advocate and has practised for a period not less than seven years. Since we have already held that these five private appellants did not cease to be advocate while working as Assistant District Attorney/Public Prosecutor/Deputy Advocate General, the period during which they have been working as such has to be considered as the period practising law. Seen thus, all of them have been advocates for not less than seven years and were enrolled as advocates and were continuing as advocates on the date of the application."

12. In view of the fact that petitioner was appointed on the post of Chief Law Assistant in the Western Railway on 18.11.2014, it cannot be said that petitioner is eligible in view of the above adjudication made by the Hon"ble Supreme Court.

13. Therefore, no case is made out, hence, this writ petition is hereby dismissed.