
(2000) 08 RAJ CK 0068
In the Rajasthan High Court
Case No : Civil Spl. Appeal No. 720 of 2000

Madan Singh

APPELLANT

Vs

The Rajasthan High Court and Others

RESPONDENT

Date of Decision : 18-08-2000

Acts Referred:

Constitution of India, 1950 — Article 232

Citation : (2000) 3 RLW 1721 : (2000) 3 WLC 752 : (2001) 1 WLN 630

Hon'ble Judges : A.R. Lakshmanan, C.J.;Rajesh Balia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

AR. Lakshmanan, C.J.—Heard Mr. P.S. Bhati, learned Counsel for the appellant.

2. This appeal is directed against the order passed by Hon. Palshikar, J. dated 4th August, 2000 in SBCW Pet. No. 2661/2000 rejecting the contentions raised on behalf of the appellant that he is entitled to contest, as the Head Legal Assistant working in the Government Advocate Office, is a Law Officer.

3. The appellant, at present is working in the Government Advocate's Office at Rajasthan High Court, Jodhpur. He is also working as a part-time Lecturer in the Academic Sessions 1999-2000 at the Law Faculty of Jai Narain Vyas University, Jodhpur. It is also his case that he regularly made appearance before the Dy. Registrar of this Court and other Tribunals. He submitted his application form for direct recruitment to the Rajasthan Higher Judicial Service (RHJS) and the same was rejected on the ground that he was not enrolled as an advocate in the Bar Council vide letter dated 18.7.2000. According to the learned Counsel for the appellant, the appellant was eligible to plead as a lawyer and that however, his claim was not considered by the respondents and the appellant's claim for appearing in the examination was also rejected. Being aggrieved with the rejection of application form for appearing in the RHJS Examination, the appellant preferred the above writ petition in this Court.

4. The learned Single Judge, dismissed the writ petition on the ground that the appellant was not enrolled as an advocate and his appearance before the Judicial Officers of the High Court, and pleading on behalf of the State of Rajasthan and on behalf of the Government Advocate, cannot be construed as appearance as an advocate in Court. The learned Counsel for the appellant reiterated the submission made before the learned Single Judge, before us also.

5. We are of the view that the appellant, by any stretch of imagination, cannot be treated as an advocate. It is argued on behalf of the appellant that the appellant has practised before the Tribunal and, therefore, his application should be accepted.

6. It is not in dispute that the appellant has not practised before the Tribunal as an advocate. He was not enrolled as an advocate and he is also not a member of the Bar Council. Therefore, in our opinion, the appellant does not come within the provisions of the Advocates Act and, therefore, ineligible to apply for the RHJS Examination as an advocate. The appellant's case is that he is regularly appearing before the Judicial Officers of the High Court and, therefore, his appearance on behalf of the State of Rajasthan and on behalf of the Government Advocate's Office should be taken into account. However, it is not in dispute that the Legal Assistant in the Office of the Government Advocate do not appear for the State of Rajasthan to represent the Government Advocate's Office in the matter of submitting the pleading and removing the defects and defaults etc. Therefore, they cannot be, in the circumstances, termed as Law Officers entitled to be considered for Rajasthan Higher Judicial Service. Mere act of submitting the pleading and removing the defects, is only an acting on behalf of the Government Advocate and not pleading on their behalf. The learned Counsel for the appellant placed reliance on a judgment reported in 1991(1) SCC 330.

7. In our opinion, the said judgment is contrary to this submission. In the said case the appellant before the Supreme Court was working as an Additional Government Advocate in Government of India and she was also an Advocate on Record of the Supreme Court. She remained on the rolls of the Bar Council as an Advocate by virtue of exception to Rule 49 of the Bar Council of India Rules. In response to an advertisement issued by the Delhi High Court she applied for appointment to Delhi Higher Judicial Service but she was not called for interview on the ground that she was not eligible. The Delhi High Court dismissed her writ petition relying on its earlier judgment in Oma Shanker Sharma's case which inter alia laid down that a Law Officer of Government though entitled to be enrolled as an advocate for the purpose of the Advocate Act, 1961, yet is not a member of the Bar for the purpose of Rule 7 of the Delhi Higher Judicial Service Rules, 1970. The precise question before the Supreme Court was whether the appellant was an "advocate" for the purpose of Article 232(2) of the Constitution and was "from the Bar" for the purpose of Rule 7 of the Delhi Higher Judicial Services Rules, 1970. The Supreme Court held that 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 of the Bar Council of India Rules, if 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 behalf of his employer, in a court of law as an advocate.

8. In the instant case, the appellant was not employed as an Advocate by the Government Advocate's Office. Secondly he was not required to act or plead in court on behalf of the Government. He was not engaged to act or plead on behalf of the Government in a court of law as an advocate. Under such circumstances, we are of the opinion that the appellant is not eligible to appear for the examination or is not eligible for consideration for RHJS Examination.

9. The writ appeal fails and is dismissed.