
(2001) 04 RAJ CK 0046

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4508 of 1999

Manoj Kumar Soni and Others

APPELLANT

Vs

Rajasthan Public Service Commission and Others

RESPONDENT

Date of Decision : 19-04-2001

Acts Referred:

Bar Council of India Rules, 1975 — Rule 49

Citation : (2002) 1 RLW 377 : (2001) 4 WLC 675 : (2001) 3 WLN 693

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : Ajay Rastogi, for the Appellant; S.N. Kumawat and P.L. Mathur, for the Respondent

Final Decision : Dismissed

Judgement

Verma, J.—The petitioner was an applicant in response to advertisement issued on 19.12.98 by Rajasthan Public Service Commission (herein after to be called as "RPSC") for the direct recruitment in Rajasthan Judicial Services i.e. on the post of Munsif & Judicial Magistrate under Rajasthan Judicial Services Rules, 1955. The qualification required for the eligible candidate to appear in RJS examination was to be Law Graduate from any recognised University with the minimum three years experience as a lawyer. The petitioner applied for the same. He was issued admission card with Roll No. 100276 to appear in the RJS examination, 1998. He was asked to file an affidavit to the effect that he had three years experience in the capacity of Legal Assistant by appearing in Courts or Judicial Tribunals upto the date of receipt of form i.e. 9.4.1999. It was stated in annexure-3, that he would only be entitled to appear in the examination if he files such an affidavit. In response to annexure-3, the petitioner is said to have filed the affidavit to the effect that he had actual experience of an Advocate for two years and ten days i.e. from 22.11.95 to 31.12.97 and that from 2.1.98 he has been working as Legal Assistant in the office of Director, Medical & Health department. He mentioned in the affidavit that in the capacity of Legal Assistant he had been

appearing and prosecuting the cases in the court of District and Sessions Judge, Churu upto 31.12.97 and from 2.1.98 he had been prosecution the cases as Legal Assistant on behalf of the department, as such he had got the experience of more than three years upto 9.4.99.

2. Apart from above and as a proof of the fact that he had been appearing in the cases on behalf of the department, he had also filed the letter dated 15.7.98 (ann. 6) issued by Dy. Legal Remumberance, Medical Department, Jaipur. He had also produced certain order sheets of the Tribunal where his presence was marked. The candidature of the petitioner was rejected vide order dated 3.8.99 (ann. 9) by RPSC on the ground that from the affidavit filed by petitioner, it was not clear whether he had been prosecuting the cases before the Tribunal or not. Against the cancellation of candidature of the petitioner, the petitioner has filed the present writ petition.

3. In reply filed by respondents, the claim of the petitioner is denied on the ground that from affidavit filed by the petitioner, it was not clear whether the petitioner was appearing as lawyer before the Tribunal or not. The respondent asserts that the Legal Assistant cannot be equated with that of Advocate and they cannot project themselves for legal appearance and as such the petitioner had no experience as Advocate for three years, therefore, his candidature was rightly rejected.

4. In rejoinder, the case of the petitioner is that he had been appearing before the Service Appellate Tribunal on behalf of the department and also arguing the matter. As a proof, he has attached many judgments of the Tribunal, even though they related to subsequent dates.

5. It is admitted fact that the petitioner has the experience as an Advocate of 2 years and 10 days only, as has been stated in para No. 1 of the affidavit filed by petitioner. In para No.2 It has been stated that since 2.1.98 the petitioner was Legal Assistant in Medical & Health department. In para No. 3, the petitioner has stated as under:-

^^3- eSa l"kiFk lp c;ku djrk gwa fd eSaus fof/k lgk;d ds in ij jgrs gq, le;≤ ij fof/k vuqHkkx izHkkjh] funs"kky; fpfdRIk ,oa LokLFk; lsok;sa] jkt- t;iqj ds vkns"k@ funsZ"kkuqlkj fofHkUu U;k;ky;ksa @ vf/kdj.kksa esa fopkjk/khu izdj.kksa esa foHkkxh; vf/koDrk ls vf/kd fu;kesa o mi fu;eksa rFkk uohure U;kf;d n`"Vkarksa ds lkFk fopkj foe"kZ dj iSjoh lqfuf"pr djokbZ gSA rFkk orZeku esa U;k;ky; flfoy lsok vihy vf/kdj.k ds le{k izfrnu mifLFkr gksdj jkT; i{k dh iSjoh lqfuf"pr djok jgk gwaA

6. Meaning thereby, the petitioner had prosecuting the cases by assisting the Advocate of the department in regard to departmental rules, bye laws and latest authorities and discussing the matter with such Advocate. He had also attended the appellate Tribunal to ensure the legal proceedings. It is no where mentioned in the affidavit that the petitioner had argued any matter or had been arguing the matters of the department. Even though, the copies of the order sheets/

judgments of Tribunal have been produced, but his presence has been marked as appearing along with the Advocate of department. In no case the petitioner had argued on behalf of the department.

7. In *All India Judges' Association and Ors. v. Union of India and Ors.* (1), it was held that Legal Assistants cannot be treated to be having experience "at the Bar" because they do not get experience and exposure which is important for the purpose of manning judicial posts; it is the actual intimate knowledge and association with the judicial system which is important rather than appearance before court. It is not possible to lay down any guideline on the basis of few appearances.

8. The Hon"ble Apex Court in an interlocutory application No. 31 & 32/95 in writ petition No. 1022/89 has observed as under:-

"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."

9. The Hon"ble Supreme Court had directed that the legal Assistants, who were applicant, to file affidavit before the Commission stating as to what precisely their work as Legal Assistants involved. It was only if that work involved regularly appearing before the courts or tribunal that they would fall within the requirements of the provision aforementioned.

10. In *Madan Singh v. Rajasthan High Court and Ors.* (2), the Division Bench of this Court had held that Legal Assistant working in Govt. Advocate's office who appear before Judicial Officers of High Court for submitting pleadings and removing defects, does not come within the provisions of Advocates Act and is eligible to be considered for RHJS Examination.

11. In *Susham Suri Etc. Etc. v. Govt. of National Capital, Territory of Delhi and Anr. Etc. Etc.* (3), the Hon"ble Apex Court while interpreting the Rule 5 of Delhi Higher Judicial Service Rules, 1970 and Rule 49 of Bar Council India Rules and interpreting the meaning of the word "Advocate" or "Pleader" it was held that the Law Officer (Public Prosecution or Government Counsel) will continue to be an Advocate. What is of essence as to what such law officer engaged by the Government does whether he acts or pleads in the court on behalf of his employer or otherwise. Whether such person is engaged on terms of salary or remuneration but whether he is engaged to act or plead in the court of law as an Advocate.

12. However, each case is to be decided on its own fact. In the affidavit filed by the petitioner, it has not been stated by him that he himself was arguing the cases before the Tribunal, nor he has mentioned his duties as Legal Assistant

except that he had assisted the departmental Advocate and, as such, in my opinion it cannot be said that the rejection/cancellation of candidature of the petitioner for not completing the experience of three years as Advocate is illegal or unjustified.

13. For the reasons and discussions mentioned above, I do not find any merit in the writ petition and the same is dismissed. No order as to costs.