

(2021) 10 TEL CK 0058
In the Telangana High Court
Case No : Writ Petition No. 28260 Of 2019

Mohammed Ajaz Ali Khan

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 29-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Telangana Advocates' Welfare Fund Act, 1987 — Section 2, 2(f), 2(h), 2(m), 3, 3(2)
(h), 4, 15, 15(1), 15(a)
Andhra Pradesh Reorganization Act, 2014 — Section 101
Advocates Welfare Fund Act, 2001 — Section 28

Citation : (2021) 10 TEL CK 0058

Hon'ble Judges : Satish Chandra Sharma, CJ;Ujjal Bhuyan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This Writ Petition has been filed by a practicing advocate of this Court- Mohammed Ajaz Ali Khan under Article 226 of the Constitution of India for a declaration that sub-section (1) of Section 15 of the Telangana Advocates' Welfare Fund Act, 1987 is ultra vires and unconstitutional. Further prayer made is for a direction to the respondents, more particularly, respondent No.2 to admit the petitioner as a member of Telangana Advocates' Welfare Fund.

2. It is stated that petitioner was enrolled as an advocate on 7.7.1992. As his practice was not good and as he got an opportunity to go abroad, petitioner went to Riyadh in Saudi Arabia. In this connection, on 08.11.1994 he voluntarily suspended his practice where after Bar Council gave him permission to go abroad.

3. On 30.11.1999, petitioner resumed his legal practice. But after a short while, on 15.4.2000 he again suspended his practice and went to Riyadh in Saudi Arabia as his employer called him again.

4. However, in the year 2007, petitioner permanently came back to India. He applied for and was granted permission by the Bar Council on 30.4.2007 to

resume his legal practice.

5. According to the petitioner, the then Government of Andhra Pradesh had imposed restriction on the advocates who had not paid the welfare fund at the age of 35 years. Petitioner being above 35 years of age was not allowed to become a member of the Welfare Fund. On the one hand petitioner has to contribute to the Welfare Fund but on the other hand he is denied the benefit of welfare fund being above 35 years of age.

6. Petitioner approached the Chairman of the Bar Council of the State of Telangana by submitting appeal on 22.8.2019 to permit him to pay the welfare amount of Rs.30,000.00 as by then he was 64 years of age, his date of birth being 19.12.1954. Secretary of the Telangana Bar Council informed the petitioner, vide letter dated 15.11.2019, that petitioner had suspended his practice as on the date of amendment which restricted his admission to the Welfare Fund. Therefore, petitioner is not entitled for admission as a member of Telangana Advocates' Welfare Fund.

7. Petitioner has contended that depriving him from the benefit of the Welfare Fund, but at the same time compelling him to contribute to the Welfare Fund is arbitrary, unreasonable and unconstitutional. The amendment is contrary to the very object of the principal Act. Such restriction is discriminatory as it debars advocates who have crossed the age of 35 years from the benefit of the Welfare Fund. Petitioner has also contended that he does not come within the prohibition of Section 15 (a) of the Telangana Advocates' Welfare Fund Act, 1987 (briefly, 'the Act' hereinafter) as he is not a retired Government servant or one who has retired from private service in India on attaining the age of superannuation or on voluntary retirement.

8. In the above backdrop, petitioner has preferred the present Writ Petition seeking the reliefs as indicated above.

9. Respondent No.2 i.e. Bar Council of Telangana has filed counter affidavit through Smt. N. Renuka, its Secretary. She has stated that petitioner got enrolled as an advocate on 07.7.1992, but suspended his practice from 08.11.1994 and had gone to work in Saudi Arabia. He resumed practice on 30.11.1999 after returning to India. He again got his practice suspended on 15.4.2000 and went to work in Saudi Arabia. Finally he returned to India and resumed practice on 30.4.2007.

10. Deponent has referred to Section 15 (1) of the Act which provides that every advocate practicing in any court in the State and being a member of a Bar Association recognized by the Bar Council, may apply to the committee for admission as a member of the Fund, in such form as prescribed. It is stated that Section 15 (1) of the Act was amended in the year 1998. Post amendment the said provision provided that every advocate below the age of 65 years practicing in any court in the State and being a member of a Bar Association recognized by the Bar Council could apply to the committee for admission as a member of the

Fund in such form as prescribed. Section 15 (1) of the Act was further amended in the year 2006. As per the subsequent amendment of 2006, every advocate below the age of 35 years practicing in any Court in the State and being a member of a Bar Association recognized by the Bar Council may apply to the committee for admission as a member of the Fund in such form as may be prescribed.

11. After referring to the provision of Section 15 (1) of the Act, as it stands now post amendment, it is stated that petitioner got enrolled as an advocate under the Bar Council on 07.7.1992. He did not apply for admission as a member of the Welfare Fund until 08.11.1994 when he suspended his practice for the first time. Petitioner also did not choose to apply for admission as a member of the Fund upon resumption of his practice on 30.12.1999. Petitioner made representation dated 22.8.2019 requesting that the benefit of one time opportunity given to advocates who were less than 65 years of age as on the date of last amendment to Section 15 (1) of the Act i.e. 15.01.2006 be extended to him. The said representation was placed before the Welfare Fund Committee in its meeting held on 01.11.2019. Welfare Fund Committee, upon considering the relevant material, found that the petitioner was not entitled to admission as a member of the Welfare Fund inasmuch as petitioner did not possess the qualification of being an advocate of less than 65 years of age as on 15.01.2006 (being the date of amendment to Section 15 (1) of the Act) inasmuch as petitioner had suspended his practice for the third time from 15.4.2000 till 30.4.2007.

12. Respondent No.2 has refuted the contentions of the petitioner that the restrictions imposed by Section 15 (1) of the Act, as amended, is discriminatory and unreasonable, as misconceived and untenable.

13. It is contended that classification amongst advocates i.e. on the one hand advocates who have devoted full time to the profession from the beginning and on the other hand advocates who had undertaken employment and entered profession belatedly after being in employment for a considerable length of time is a reasonable classification and has nexus with the object sought to be achieved by the Act. In the case of the petitioner, he had resumed practice at the age of 53 years after being in employment abroad for more than 12 years. Therefore, his prayer for inclusion into the Fund was rightly rejected. It is contended that advocates who enter into profession immediately after studies and devoting their entire life to the profession constitute a different class from advocates who suspend their practice shortly after enrollment and take up employment elsewhere but return to resume legal practice at an advanced age. In this connection reliance has been placed on a Division Bench judgment of the Madras High Court in Chairman, Bar Council of Tamil Nadu V. S.Seshachalam 2009 (4) CTC 513. It is further stated that the Special Leave Petition filed against the aforesaid judgment was dismissed by the Supreme Court.

14. In the circumstances respondent No.2 seeks dismissal of the Writ Petition.

15. Submissions made by learned counsel appearing for the parties are on pleaded lines. Therefore, a detailed reference to the same is considered not necessary.

16. At the outset, we may advert to the provisions of the Telangana Advocates' Welfare Fund Act, 1987 (already referred to as 'the Act' herein before). As per the statement of objects and reasons, the Bar Council of the State of Andhra Pradesh had represented firstly in 1975 and thereafter in 1985 for formulation of some welfare schemes for the advocates of the State of Andhra Pradesh. Previously it was proposed to enact a legislation for the purpose of constituting a welfare fund for the promotion of welfare of the advocates in the State. But the same was deferred. In the meanwhile, the State of Kerala had already enacted the Kerala Advocates' Welfare Fund Act, 1980. It was noted that advocates of the State had been continuously demanding for the constitution of a welfare fund for their benefit. It was therefore proposed to constitute a welfare fund for payment of retirement benefits to the advocates of the State. As per the preamble, it is an Act to provide for constitution of a welfare fund for the benefit of advocates in the State of Andhra Pradesh and for matters connected therewith or incidental thereto. Be it stated that the same had received the assent of the President on 23.7.1987. The Act which was in force in the combined State has been adapted to the State of Telangana under Section 101 of the Andhra Pradesh Reorganization Act, 2014, vide the Telangana Adaptation of Laws Order, 2016.

17. Section 2 of the Act provides for the definition of various words and expressions used in the statute. Section 2(f) defines the word 'Fund' to mean the Telangana Advocates' Welfare Fund constituted under Section 3. As per Section 2(h), the expression 'Member of the Fund' has been defined to mean an advocate admitted to the benefit of the fund continuing to be a member thereof under the provisions of the Act. As per Section 2(m), 'Suspension of Practice' means voluntary suspension of practice as an advocate or suspension by the Bar Council for misconduct.

18. Section 3 deals with Advocates' Welfare Fund. As per sub-section (1), with effect on and from the commencement of the Act the Government shall, by notification constitute a fund to be called the Telangana Advocates' Welfare Fund (briefly, 'the Fund' hereinafter). The amounts mentioned in the various clauses of sub-section (2) shall be credited to the Fund. As per Section 3 (2) (h), all sums specified in sub-section (2) shall be paid to or collected by, such agencies, at such intervals and in such manner, and the accounts of the Fund shall be maintained in such manner, as may be prescribed.

19. Establishment of Welfare Fund Committee is prescribed in Section 4. As per sub-section (1), the Government may, by notification establish a committee to be called the Telangana Advocates' Welfare Fund Committee (briefly, 'the Committee' hereinafter). As per sub-section (2), the committee shall be a body corporate and shall by the same name sue and be sued. Sub-section (3) says that the Chairman of the Bar Council shall be the Chairman of the Committee in

ex-officio capacity. The Committee shall also include amongst others Advocate General of Telangana, Secretary to the Government (Law and Legislative Affairs), Registrar, High Court of Telangana etc., Secretary of the Bar Council shall be the ex-officio secretary of the Committee, of course, without voting rights.

20. Section 15 deals with membership of the Fund. Sub-section (1) of Section 15 as it stands now post amendment in 1998 and 2006 reads as follows:

15. Membership of the fund:-

(1) Every advocate below the age of thirty five years practicing in any court in the State and being a member of a Bar Association recognized by the Bar Council may apply to the committee for admission as a member of the Fund, in such form as may be prescribed.

21. Section 15 (1) says that every advocate below the age of 35 years practicing in any court in the State and being a member of a Bar Association recognized by the Bar Council may apply to the committee for admission as a member of the Fund in such form as may be prescribed.

22. We have already noticed the two amendments of 1998 and 2006 from the counter affidavit of respondent No.2.

23. According to the petitioner he had filed application on 22.8.2019 before the Chairman of the Bar Council for being made a member of the Fund. The same was rejected on 15.11.2019. In the rejection letter it was mentioned that when the 1998 amendment was in force which provided that every advocate below the age of 65 years could apply to the Committee for admission as a member of the Fund, the petitioner did not apply. Petitioner applied when the 2006 amendment had come into force which restricted the age of advocate to below 35 years for being eligible to apply for membership of the Fund. Therefore, when the petitioner had applied on 22.8.2019, the law was very clear. It prescribed that to be eligible for membership of the Fund, an advocate has to be below the age of 35 years, which the petitioner was not. Accordingly the application of the petitioner was rejected as being not entitled for admission into the Fund.

24. We find no error or infirmity in the decision taken by the Committee.

25. In so far constitutionality of sub-section (1) of Section 15 is concerned, we may mention that Section 28 of the Advocates Welfare Fund Act, 2001 which is a central legislation, provides that no senior advocate or a person in receipt of pension from the Central Government or the State Government shall be entitled to ex gratia grant under the said Act. This distinction amongst advocates on the premise that a group of advocates receive certain financial assistance from the State Government or the Central Government or some other employer in the form of terminal benefits and pension etc., was gone into by the Madras High Court which concluded that such classification is a reasonable classification between advocates setting up practice after demitting their office from various

organizations including Central Government and State Government and advocates who set up practice straight away from law college. This aspect also got the attention of the Supreme Court in *S.Seshachalam V. Chairman, Bar Council of Tamil Nadu* AIR 2015 SC 816 wherein the Supreme Court held as follows:

26. The profession of law is a noble calling. The legal fraternity toils day and night to be successful in the profession. Although it is true that slowly working one's way up is the norm in any profession, including law, but initially young advocates have to remain in the queue for a prolonged period of time and struggle through greater hardships. Despite being extremely talented, a number of young lawyers hardly get proper opportunity or exposure in their profession. New entrants to the profession in the initial stages of the profession suffer with the meagre stipend which young lawyers may receive during their initial years, coupled with the absence of a legislation concerning this, they struggle to manage their food, lodging, transportation and other needs. Despite their valiant efforts, they are unable to march ahead in their profession. It is only after years of hard work and slogging that some of the fortunate lawyers are able to make a name for themselves and achieve success in the profession. For the majority of the legal fraternity, everyday is a challenge. Despite the difficult times, the lawyer who sets up practice straight after enrolment, struggles to settle down himself in the profession. Some of the lawyers remain struggling throughout their lives yet choose to remain in the profession. It is something like "riding a bicycle uphill with the wind against one".

27. Contrariwise, the retired employees like the appellants who are law graduates did not withstand the difficult times in the profession. They opted for some other lucrative job during their prime time of their life and lived a secured life. Others found some job and positioned themselves in a comfortable place of employment, chose to join evening college or attended part time classes and obtained law degree and having retired with comfortable retiral benefits, further securing their future, they enrol themselves as an advocate to practice. The retired employees have the substantial retiral benefits, gratuity apart from receiving pension. The availability of lump sum retiral benefits with pension makes a retired employee better placed than their counter part lawyers who struggle through difficult times.

28. The various welfare fund schemes are in actuality intended for the benefit of those who are in the greatest need of them. The lawyers, straight after their enrolment, who join the legal profession with high hopes and expectations and dedicate their whole lives to the professions are the real deservers. Lawyers who enroll themselves after their retirement from government services and continue to receive pension and other terminal benefits, who basically join this field in search of greener pastures in the evening of their lives cannot and should not be equated with those who have devoted their whole lives to the profession. For these retired persons, some amount of financial stability is ensured in view of the

pension and terminal benefits and making them eligible for lump sum welfare fund under the Act would actually amount to double benefits. Therefore, in our considered view, the classification of lawyers into these two categories is a reasonable classification having a nexus with the object of the Act.

26. Though the above analysis by the Supreme Court was on a somewhat different context i.e. classification of advocates into those who join the profession after superannuating from service and those who join the profession straight away from the law schools, nonetheless, the fact remains that the legislature has consciously provided a cut off age limit of 35 years for being eligible to be a member of the Fund. Section 15 (1) of the Act as it originally stood, did not prescribe any age bar. However, in 1998, it was amended to restrict advocates below the age of 65 years as being eligible to be a member of the Fund. As we have already noticed above, when this amended provision was in force from 1998 to 2006, petitioner did not apply for membership of the Fund. In 2006 Section 15 (1) was further amended prescribing eligibility limit of below 35 years. The legislative intent of prescribing age limit of below 35 years to be eligible for membership of the Fund is clearly deducible from the classification noted above. It is expected that when an advocate below the age of 35 years applies for membership of the Fund, it would mean that he is an advocate who has joined the profession from the law school without any employment with terminal benefits in the interregnum.

27. That being the position, we are of the considered opinion that Section 15 (1) of the Act cannot be construed to be ultra vires and unconstitutional.

28. For the aforesaid reasons, the Writ Petition fails and is accordingly dismissed. However, there shall be no order as to costs.

29. Miscellaneous petitions, if any pending in this Writ Petition, shall also stand dismissed.