
(2008) 02 MP CK 0048
In the Madhya Pradesh High Court

Mohd. Riyaz and Another

APPELLANT

Vs

State of Bar Council and Others

RESPONDENT

Date of Decision : 19-02-2008

Acts Referred:

Advocates Act, 1961 — Section 10, 11, 12, 15, 17

Citation : (2008) ILR (MP) 503 : (2008) 2 JLJ 129 : (2008) 2 MPHT 143

Hon'ble Judges : A.K. Patnaik, C.J.;Prakash Shrivastava, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Patnaik, C.J.—The petitioner No. 1 is a practicing lawyer and is registered as an Advocate in the rolls of the State Bar Council of Madhya Pradesh (for short "the State Bar Council"). He has filed this writ petition as a Public Interest Litigation contending inter alia that the respondent No. 7, who is working as Secretary of the State Bar Council has already attained the age of superannuation but is still being continued by the State Bar Council and that he is being paid salary much in excess of what is permitted under the rules. The petitioner has therefore prayed that this Court should issue a writ/direction to the State Bar Council to remove the respondent No. 7 from the post of Secretary of the State Bar Council forthwith and for a further writ/direction to the State Bar Council and its Chairman to recover all payments towards salary made to the respondent No. 7 in excess of what is permitted under the rules and all payments of salary made to respondent No. 7 after the age of his superannuation.

2. Mr. K.K. Trivedi, Learned Counsel for the petitioner submitted that the State Bar Council in exercise of its powers u/s 15 and Ors. relevant provisions of the Advocate Act, 1961 (for short "the Act") has made rules with the approval of the Bar Council of India in the year 1963 (hereinafter called "the Rules of 1963"). He submitted that Chapter II of the Rules of 1963 provides for appointment of a Secretary, Accountant, Clerks and Peons by the State Bar Council as well as the qualifications and conditions of service of the stipendiary Secretary and other

members of the staff. He submitted that in Rule 2 of Chapter II of the Rules of 1963 it is provided that the Secretary shall be a full time employee of the Bar Council and shall draw salary in the scale of Rs.300 -25 -800/-and benefits of provident fund and leave salary at such rates as are admissible under the rules. He submitted that the Rule 2 of the 1963 Rules further provides that the Secretary shall retire on attaining the age of 55 years provided the Bar Council may in case of the Secretary otherwise physically fit extend his tenure for a period of three years. He submitted that Sub-section (3) of Section 15 of the Act provides that the no rules made u/s 15 of the State Bar Council shall have effect unless they have been approved by the Bar Council of India. He submitted that the Rules of 1963 have been approved by the Bar Council of India, and cannot be altered without the approval of the Bar Council. He vehemently submitted that notwithstanding the aforesaid provisions in the Rules of 1963 that the Secretary of the Bar Council will draw salary in the scale of Rs.300-25800 and that he will retire at the age of 55 years, the State Bar Council has fixed the basic pay of the respondent No. 7 at Rs.34,750/-and reduced the same to Rs.27,400/-subsequently and has continued the service of the respondent No. 7 beyond 57 years. The respondent No. 4 adopted the aforesaid submissions made by Mr. Trivedi.

3. Mr. Rajendra Tiwari, learned Senior Counsel, appearing for the respondents No. 1 and 2, on the other hand, submitted relying on the return filed by respondents No. 1 and 2 that the State Bar Council has made Service Rules in the year 1975 (hereinafter called " the Service Rules of 1975") which were approved by the Bar Council of India in its Resolution No. 86/1975 dated 31.5.1975 and Rule 5 of the Service Rules of 1975 provides that the age of retirement of the members of the staff shall be 58 years. He submitted that the Service Rules of 1975 do not make any provision regarding pay -scales of the members of the staff but Rule 31 of the Service Rules of 1975 provides that wherever Service Rules of 1975 are silent in any matter, the rules in that regard applicable to the employees of the High Court Madhya Pradesh in the same cadre shall be applicable to the employees of the State Bar Council. He submitted that in accordance with Rule 31 of the Service Rules of 1975, the staff of all the grades of State Bar Council are being paid the salary as applicable to the staff of the High Court of Madhya Pradesh. He further submitted that by resolution dated 13.11.1978 the State Bar Council has resolved that the pay -scale of the Secretary will be at par with the Additional District Judge and the pay -scales of the remaining employees of the Bar Council shall be equivalent to the pay-scales of the corresponding grade of the employees of the High Court. He further submitted that this resolution has come into force from 1.1.1979 and in accordance with the resolution, the respondent No. 7 is being paid the pay-scale of an Additional District Judge as recommended by the Shetty Commission. Mr. Tiwari argued that the Service Rules of 1975 will prevail over Chapter II of the Rules of 1963 containing the conditions of service of the Secretary of the Bar Council and other members of the staff of the Bar Council.

4. Mr. K.K. Trivedi, Learned Counsel for the petitioner and the respondent No. 4 in their rejoinder contended that the Rules of 1963 are still in force and are applicable. Mr. Trivedi in particular submitted that Service Rules of 1975 are applicable to the staff of the State Bar Council but do not apply to the Secretary of the State Bar Council. He submitted that assuming that some provisions of the Service Rules of 1975 are applicable to the Secretary of the State Bar Council, Rule 5 which provides that the age of retirement of the members of the staff shall be 58 years is applicable to only the staff and not to the Secretary of the State Bar Council. Mr. Trivedi further submitted that Rule 31 of the Service Rules of 1975 is not applicable to the Secretary of the Bar Council inasmuch as Rule 2 of the Rules of 1963 specifically provides for salary of the Secretary and it stipulates that the Secretary shall draw salary in the scale of Rs.300 -25 -800 and therefore Rule 31 of the Service Rules of 1975 has no application.

5. We are unable to accept the aforesaid submissions of Mr. Trivedi and the respondent No. 4. A settled principle of interpretation of statute is that a prior general law stands repealed by a subsequent particular law. In "Principles of Statutory Interpretation 11 th Edition 2008 by Justice G.P. Singh, this principle of statutory interpretation has been explained at page 648 thus:

A prior general Act may be affected by a subsequent particular or special Act, if the subject -matter of the particular Act prior to its enforcement was being governed by the general provisions of the earlier Act. In such a case the operation of the particular Act may have the effect of partially repealing the general Act, or curtailing its operation, or adding conditions to its operation for the particular cases.

6. The Rules of 1963 have been made under Sections 15(1) & (2) and 28(1) & (2) read with Sections 9, 10, 11, 12, 17, 21, 25 and 26 of the Advocates Act, 1961. Chapter I of 1963 Rules provides for different Committees namely the Executive Committee, the Enrolment Committee, the Disciplinary Committees, the Finance Committee, the Examination Committee, the Rules Committee, the Legislation or Reforms Committee and the Privileges Committee and is relatable to Section 9 of the Act. Chapter II of the Rules of 1963 provides for staff of the Bar Council and the qualifications and conditions of service of the Secretary, Accountant and other members of the staff of the State Bar Council and is relatable to Section 11 of the Act. Chapter III is titled Accounts & Audits and is relatable to Section 12 of the Act. Chapter V is titled Rules for meetings of the Bar Council, Chapter VI is titled Rules common to all committees, Chapter VII is titled the Executive Committee, Chapter VIII is titled the Enrolment Committee, Chapter IX is titled the Disciplinary Committee, Chapter XII is titled Rules Committee, Chapter XIII is titled Legislation & Law Reforms Committee, Chapter XIV is titled the Privileges Committee, Chapter XV is titled Miscellaneous, Chapter XVII provides for powers and duties of the Chairman and Vice Chairman of the State Bar Council, Chapter XVIII provides for election of Chairman and Vice-Chairman, Chapter XIX is titled Management & Investment of the Funds of the

Council, Chapter XX relates to enrolments of the advocates, Chapter XXI is titled conditions of enrolment, Chapter XXII deals with rights and authorities of the members of the Bar Council. The Rules of 1963 are therefore general rules made by the State Bar Council under Sub-section (2) of Section 15 of the Act which confers powers on the State Bar Council to make rules on various matters enumerated therein.

7. A reading of the Service Rules of 1975 would show that the Service Rules of 1975 provide for different service conditions of the staff of the Bar Council of India. It provides for the duties hours, the age of retirement, the powers of the Chairman in disciplinary matters, the administrative control of the Secretary over the members of the staff, the administrative control over the Secretary of the Executive President and the acts and omissions on the part of the employees which would amount to misconduct, the punishment for minor and major misconduct, the manner in which proceedings for misconduct will be initiated and concluded, different types of leave available to the Secretary and staff of the Bar Council, the traveling allowance and daily allowance to be paid on tour to the different members of the staff, festival advances to be paid to the permanent employees of the Bar Council, advance for purchase for bicycle to the members of the staff, advance to be paid against provident fund, house rent allowance, medical allowance etc. Rule 31 of the Service Rules of 1975 provides that where Service Rules of 1975 are silent in any manner, the rules applicable to the employees of High Court of Madhya Pradesh in the same cadre shall be applicable to the employees of the State Bar Council.

8. It is thus clear that the Service rules of 1975 are particular rules made under clause R of Sub-section 2 of Section 15 of the Act prescribing the service conditions of the employees of the State Bar Council. These particular rules having been made later than the general rules of 1963 will have the effect of repealing Chapter II of the Rules of 1963 which earlier provided for conditions of service of the staff of the State Bar Council. Therefore, we do not accept the submission of Mr. Trivedi and the respondent No. 4 that the provisions of the 1963 Rules do not stand repealed by the Service Rules of 1975. In our considered opinion, the provisions of Chapter II of the Rules of 1963 stand repealed in so far they are inconsistent with the provisions of the Service Rules of 1975.

9. We now come to the submission of Mr. Trivedi that Rule 5 relating to age of retirement and Rule 31 relating to matters in which the Service Rules of 1975 are silent are not applicable to the Secretary of the Bar Council. Rules 5 of the Service Rules of 1975 is quoted herein below:

5. The age of retirement of the members of the staff shall be 58 years, provided that the Council may extend the age of retirement, if it thinks fit, for a total period of two years in the particular case.

It is clear from Rule 5 of the Service Rules of 1975 quoted above that it provides

that "the age of retirement of the members of the staff shall be 58 years". The Service Rules of 1975 do not define the expression "Staff ". In absence of any such express definition of "Staff" in Service Rules of 1975, the word "Staff" will have the same meaning as it has in the Act. Section 11 of the Act which is titled "Staff of the Bar Council " reads thus:

11. Staff of Bar Council.

(1) Every Bar Council shall appoint a secretary and may appoint an accountant and such number of other persons on its staff as it may deem necessary.

(2) The secretary and the accountant, if any, shall possess such qualifications as may be prescribed.

Since Section 11 of the Act makes it clear that the staff of Bar Council will include the Secretary of the State Bar Council, the word "Staff " in Rule 5 will include the Secretary of the Bar Council and therefore Rule 5 of the Service Rules of 1975 will be equally applicable to the Secretary of the State Bar Council and as provided in Rule 5 of the Service Rules of 1975, the retirement age of Secretary of the Bar Council is also 58 years. Respondent No. 7 is yet to be 58 years and accordingly no direction or writ can be issued to respondent No. 1 and 2 to remove the respondent No. 7.

10. Rule 31 of the Service Rules of 1975 is quoted herein below:

Wherever these Service Rules are silent in any matter, the rules in that regard applicable to the employees of the High Court of Madhya Pradesh in the same cadre shall be applicable to the employees of the Bar Council of Madhya Pradesh.

Rule 31 of the Service Rules of 1975 thus states that wherever the Service Rules of 1975 are silent on any matter, Rules in that regard applicable to the employees of the High Court of Madhya Pradesh in the same cadre shall be applicable to the employees of the State Bar Council. The question is whether the Secretary of the Bar Council is an employee of the State Bar Council. The expression "employee " has not been defined in the Service Rules of 1975. It has also not been defined in Section 2 of the Act. Sub-section 2(k) of Section 15 of the Act however states that a Bar Council may without prejudice to the generality of its powers under subsection (1) in particular make rules providing for the qualifications and conditions of service of a Secretary, Accountant and other employees of the Bar Council. Hence the Secretary of the Bar Council has been equated with the other employees of the Bar Council by Section 15(2)(k) of the Act. That apart, from the provisions of Section 11 of the Act as well as the Service Rules of 1975 it is very clear that the Secretary of the Bar Council draws his salary from the State Bar Council and is under the control of the State Bar Council as if he was an employee of the Bar Council of Madhya Pradesh. The Secretary of the Bar Council of Madhya Pradesh is thus an employee of the Bar Council to whom the provisions of Rule 31 of the Service Rules of 1975 are applicable.

11. It is for the State Bar Council of Madhya Pradesh as the employer to decide what would be the equivalent cadre for the Secretary of the Bar Council. A resolution has been adopted by the State Bar Council on 31.11.1978 as under:

Resolution No. 253/78/EC dt. 13/11/78 dt. 13/11/78. It was resolved that pay scale of the Secretary will be at par with the Additional District Judge and the pay scales of the remaining employees of the Bar Council shall be equivalent to the pay scales of the corresponding grade of employees of the High Court. The Resolution shall come into force from 1.1.1979.

Thus as per the resolution of the State Bar Council, the Secretary has been treated at par with an Additional District Judge (equivalent to Additional Registrar of the High Court) and has been paid pay -scales accordingly. It is not the case of the petitioner No. 1 that the respondent No. 7 is drawing any pay higher than the pay-scale of the Additional District Judge. Hence, no writ or direction can be issued to the respondents No. 1 and 2 to recover any amount paid to the respondent No. 7.

12. In the result, we do not find any merit in this writ petition and we accordingly dismiss the same. No costs.