
(2014) 11 BOM CK 0129
In the Bombay High Court
Case No : Writ Petition No. 10690 of 2014

Monica

APPELLANT

Vs

The Hon"ble High Court of Mumbai

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 233(2)

Citation : (2015) 2 ALLMR 310 : (2015) 2 MhLj 761

Hon'ble Judges : N.M. Jamdar, J;Anoop V. Mohta, J

Bench : Division Bench

Advocate : Tejesh Dande, Advocate i/by Tejesh Dande and Associates,
Advocates for the Appellant; M.S. Karnik, Advocates for the Respondent

Judgement

Anoop V. Mohta, J.—Rule, made returnable forthwith. Heard finally by the consent of parties. The Petitioner prays by invoking Article 226 of Constitution of India that she should be declared as qualified for appearing for the Examination for the Post of District Judge advertised by Press Advertisement No. A. 5504/2014 dated 30 June 2014; and the qualification so declared be revoked and cancelled; and a liberty be granted to allow to appear and participate in the Examination process.

2. There is no dispute with regard to the duration of practice and the stages in which Petitioner practiced as an Advocate those are as under:

"1. 17-09-2001:-Enrolled as Advocate on the roll of the Bar Council of Maharashtra & Goa.

2. 18th September 2001 to November 2004:- Started practicing before Hon"ble High Court of Judicature of Bombay Bench at Aurangabad and Hon"ble High Court of Andhra Pradesh at Hyderabad.

3. 26-12-2004 to 01-09-2006:- Worked as Judicial Magistrate First Class & CJJD at Nanded.

4. 02-09-2006 to 08-06-2008:- Worked as Judge Co-operative Court Nanded.
5. 09-06-2008 to 26-05-2009:- Worked as Judicial Magistrate First Class & CJJD at Hinganghat Dist. Wardha.
6. 26-05-2009:- Relieved from the post of Judicial Magistrate First Class & CJJD at Hinganghat Dist. Wardha vide order No. CJM1509/750/(100)-3 dated 19-05-2009 in view of resignation dated 08-04-2009.
7. After relieving Till 31-09-2009:-Worked as Human Resource manager at Opulentus Overseas a small consultancy.
8. 05-10-2009 to 31-01-2012:- Worked as Legal Associate at Quislex Legal Services Pvt. Ltd. At Hyderabad.
9. From 1-02-2012 till date:- Practicing before Hon"ble High Court of Judicature of Bombay Bench at Aurangabad and Hon"ble High Court of Andhra Pradesh at Hyderabad also rendering professional assistance to lawyers in different cities into briefing and drafting. Submitted by:-"

3. The eligibility criteria for the post in question is as under:

"Applications in the prescribed form are invited online from eligible candidates for 17 vacancies for the posts of District Judge, in the Judicial Service of the State of Maharashtra in the pay scale of Rs. 51550-1230-58930-1380-63070 + dearness allowance and other allowances as admissible under the Rules.

Eligibility criteria

1) A candidate must be a citizen of India

2) A candidate must be-

(a) a holder of Degree in Law

(b) practising as an Advocate in the High Court or Courts subordinate thereto for not less than seven years on the date of publication of Advertisement and in computing the period during which a candidate has been an Advocate there shall be included any period during which he has held the post of a Public Prosecutor or Government Advocate or Judicial Officer.

OR

Must be working or must have worked as Public Prosecutor or Government Advocate for not less than 7 years in the post or posts on the date of publication of advertisement. In computing the period of 7 years, the period during which the candidate has worked as an Advocate shall also be included.

(c) Age:- Must have attained the age of thirty-five years and must not have attained the age of forty-eight years in the case of candidates belonging to communities recognized as backward by the Government for the purpose of recruitment and forty-five years in the case of others, as on the date of

publication of Advertisement."

4. In view of above admitted position, it is clear that the Petitioner was not practicing as an Advocate "for not less than 7 years on the date of publication of advertisement". The plain reading of this clause is, rightly contended by the learned counsel appearing for the Respondent in support of the action of disqualification, so taken by the Respondent. It is further submitted that no case to interfere in the decision so taken.

5. The reference is made also to a Supreme Court decision in the case of Deepak Aggarwal Vs. Keshav Kaushik and Others, , referring Article 233(2) of the Constitution of India, which is the basic foundation for such judicial service "post/appointment". Paragraph No. 88 clinches the issue in favour of Respondent and against the Petitioner which is as under:

"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."

6. The Petitioner was not continuously in practice as an Advocate, preceding 7 years, on the date of advertisement in question. The action of disqualification is well within the frame of law and the record. Therefore, in view of above there is no case made out to interfere with the decision so taken. Petition is dismissed. No costs.