
(1998) 11 RAJ CK 0022
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3080 of 1994

Parmanand Sharma

APPELLANT

Vs

Bar Council of Rajasthan and Another

RESPONDENT

Date of Decision : 06-11-1998

Acts Referred:

Admission and Enrolment of Advocates on Roll of Bar Council of Rajasthan Rules — Rule 1
Advocates Act, 1961 — Section 24, 28(2)

Citation : AIR 1999 Raj 171 : (2000) 1 RLW 192

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

Bench : Single Bench

Advocate : S.L. Sharma, for the Appellant; A.K. Bhandari, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner is a law graduate from the University of Rajasthan. He had applied for being enrolled as an advocate on 18-7-1985 after depositing the required fee. At the time of his applying for being enrolled as an advocate he was working as In-charge, Legal Cell, General Manager, Telecommunication, District Jaipur (in short GMTD, Jaipur) and as alleged he was authorised on behalf of GMTD to appear in all subordinate Courts at Jaipur. The letters of authorisation are attached as Annexures 1,2 and 3. The petitioner submits that he had applied for being enrolled under proviso (1) of the condition No. 1 for enrolment as an advocate given in para 4 of the rules framed by the Bar Council of Rajasthan u/s 28 read with Section 24 of the Advocates Act. For the reason that the petitioner was actually working and giving appearance as Law Officer of the GMTD, Rajasthan and was going and presenting and pleading the cases of the employer at Jaipur, the Courts had been recognising him as a person authorising to act and plead on behalf of GMTD. It is submitted that any person if qualified is to be admitted as an advocate but if he is either in full or part-time service or employed or is engaged in any trade or business or profession is not entitled to be admitted as an advocate as per rules. However, there is a proviso to the rule

to the effect that any person who is Law Officer of the Central Government or State Government or Corporation or statutory body shall be entitled to be admitted as an advocate and such Law Officer meant a person who is so designated by the terms of his appointment.

2. The petitioner submits that a bare reading of the proviso which shall be reproduced hereinafter makes it clear that any person who is authorised by the employer by giving authority to him for appearing in the cases and if he possesses the law degree is entitled to be enrolled as an advocate. The request of the petitioner was declined by the Bar Council of Rajasthan on 15-2-1991 and the Enrolment Committee of the Bar Council of Rajasthan had given reasons to the effect that the petitioner was not designated as Law Officer. Copy of the order impugned is attached as Annexure-4. It is submitted that Sub-rule (10) of Rule 15 of the Central Civil Services (Conduct) Rules, 1964 does authorise the Central Government to give permission to any of its employee to get enrolled as an advocate subject to the condition that such employee shall not engage himself in legal profession either independently or otherwise so long as he continues in the service of the Central Government. It is submitted that the GMTD, Jaipur had given permission to the petitioner to get himself enrolled as an advocate from the Bar Council of Rajasthan as per the conditions as mentioned above. It is stated that the petitioner was a Central Government employee and was governed by the Central Services (Conduct) Rules, 1964 and, therefore, subject to the conditions mentioned in the rules, the petitioner was entitled to be enrolled as an advocate. Apart from above, it is the case of the petitioner that he is appearing in the Court for last so many years, more than a decade, in the cases of the department and for all practical purposes even though he is not specifically designated as Law Officer, but he is working as Law Officer and thus, on the facts mentioned above, the petitioner is praying that he be allowed to be enrolled as an advocate subject to all the conditions which are applicable under the rules.

3. The petition has been opposed by respondent No. 1 by filing written statement. It is stated that because of the reason that the petitioner is in full time of service or employment, he is not entitled to be admitted as an advocate.

4. The Bar Council of Rajasthan had framed rules u/s 28 (d) r/w Section 24 of the Advocates Act, 1961. It is provided under the rules that any person who is in full or part-time service or part time service or employment or is engaged in any trade, business or profession, shall not be admitted as an advocate. There are exceptions. The first exception is that of "Law Officer" and for a person who is an articulated clerk of an attorney and any person who is in part time service as a Professor, Lecturer or Teacher in Law provided his duties do not conflict with the professional work and is not inconsistent with the dignity of profession. There is also a provision under Clause (x) of Rule 1 that any class of persons as the Bar Council may from time to time exempt with the approval of the Bar Council of India.

5. Rule 10 of the Central Civil Services (Conduct) Rules provides that the

Government servant can be permitted to enrol himself as an advocate, who should not engage himself in the legal profession either independently or otherwise so for long as he continues in Government service.

6. The relevant Bar Council Rules are reproduced as under:

"1. A person who is otherwise qualified to be admitted as an advocate but is either in full or part-time service or employment or is engaged in any trade, business or profession shall not be admitted as an advocate :

Provided however that this rule shall not apply to: --

(i) Any person who is a Law officer of the Central Government or the Government of a State or any public Corporation or body constituted by a statute.

For the purpose of this clause a "Law Officer" shall mean a person who is so designated by the terms of his appointment and who by the said terms is required to act/or plead in courts on behalf of his employer.

(ii) Any person who is articled clerk of an Attorney.

(iii) Any person who is in part-time service as a Professor, Lecturer or Teacher in Law :

Provided that in the opinion of the State Bar Council the nature of the employment does not conflict with his professional work and is not inconsistent with the dignity of profession. This shall be subject to such directions, if any, as may be issued by the Bar Council of India from time to time."

7. Counsel for the petitioner also relies on a Full Bench decision in the case of M. Abdul Towheed Vs. The Patna High Court Bar Council, , Mukhtiar Singh Vs. State of Punjab and others, and Dr. Haniraj L. Chulani Vs. Bar Council of Maharashtra and Goa, .

8. In the Full Bench decision in M. Abdul Towheed Vs. The Patna High Court Bar Council, , the petitioner M. Abdul Towheed was working as a Lecturer in the Police Department in criminal law and later on he worked as Prosecuting Officer for about 8 years and conducted a large number of important criminal cases. At the relevant time, the petitioner was working as Superintendent of Police in the district when he had made an application for enrolment as an advocate of Patna High Court. The Full Bench of Patna High Court held that in the circumstances it must be held that at one time or the other he had always been in touch with law and its administration in one form or the other. A special case was made out for his exemption from the aforesaid rules and he could be exempted from the operation of those rules in regard to admission of advocates and a direction in that regard was given to the Bar Council.

9. In Mukhtiar Singh Vs. State of Punjab and others, it was held that even though the full time salaried employees are not allowed to be enrolled as an advocate but exception was made in regard to district attorneys for the reason

that they do not practice as an advocate even though the district attorney was not termed as Law Officer and the Division Bench of the High Court had held that a Law Officer means a person who is designated by the term of his employment and who by the said term is required to and/or plead in Court on behalf of his employer and, therefore, he was a Government Pleader within the meaning of Sub-section (7) of Section 2 of the CPC and Public Prosecutor within the meaning of Section 24 of the Code of Criminal Procedure.

10. Yet in another case in the case of All India Judges Association and others v. Union of India and others, Interlocutory Application Nos. 31 and 32 of 1993, Legal Assistant who wanted to be appointed to the post of Judicial Officer and had contended that he had been acting as a lawyer of his department and had the requisite experience and practice, the question which came up before the Hon"ble Supreme Court was whether he should be lawyer in the manner that he should regularly practice before a Court or Tribunal or appear for his client before the Court or the Tribunal. It was observed that it may be that in a given case he may do so only for his client, his employer. The Hon"ble Supreme Court had observed as under:--

"By reason of this provision, Assistant Public Prosecutors have been debarred from further competing in the election process which is at present in progress. There can be no doubt that an Assistant Public Prosecutor practices as a lawyer and is eligible for selection to the judicial service, provided he has not less than three years" practice as a lawyer. This position is, fairly, not disputed by learned counsel appearing for the State of Rajasthan. Accordingly, I.A. Nos. 31, 32 and the LA. in Writ Petition No. 320/93 are allowed and the applicants shall be permitted to complete the selection process."

11. In Dr. Haniraj L. Chulani Vs. Bar Council of Maharashtra and Goa, a case of medical practitioner who wanted to be enrolled as an advocate, the Hon"ble Supreme Court had held that conditions prescribing the salaried Government servants to enter into the profession is not ultra vires the Constitution. In the identical rules as in the Rajasthan Bar Council while dealing with the clause of granting exemption, any other persons or class of persons as the Bar Council may exempt, it was held that this exemption clause should have been based on the premise that an advocate must devote his full time and attention to the legal profession. It was observed that an advocate faces examination every day when they appear in the Courts. It is not as if that after Court hours the advocate has not to put hard work on his study table in his chamber with or without the presence of his clients who may be available for consultation. To put forward his best performance as an advocate he is required to give wholehearted and full time attention to his profession. Any flinching from such unstinted attention to his legal profession would certainly have an impact on his professional ability and expertise. It is for ensuring the full time attention of legal practitioners towards their profession and with a view to bringing out their best so that they can fulfil their role as an officer of the Court and can give their best in the administration

of justice.

12. In the present case the department of Telecommunication a Central Government department had recommended that the petitioner was dealing all types of legal cases in Consumer Redressal Forum, lower Courts, District Court and High Courts etc. since the year 1986. He is holding a degree of Law and is B.Com., LL.B. The General Manager, Telecommunication, District Jaipur had recommended to the effect that he had got full grip and command over his job and had been pleading independently in the Court of consumer forum relating to the department. He had also mentioned certain important cases conducted by the petitioner.

13. Will an officer who is not designated as Law Officer, but doing the duty of Law Officer in the department where he is appointed, or if the same very officer instead of being designated as Law Officer is designated as Legal Assistant, who is doing the same duties, make any difference, if he is not designated as Law Officer. It is not uncommon that in certain offices of the Government various qualified persons holding the degree of LL.B. are designated with different terms including the Law Officer. In the present case, the Head of the Department had definitely stated that the petitioner had been handling the exclusive legal work in the office as well in the various Courts concerning the cases of the department itself. The petitioner had been appearing in the trial courts, district courts and other forums and Tribunals wherever his presence is required and he has been dealing the cases of the department. Under Rule 10 also a Government servant can be admitted as an advocate if his duties so require. But, if such a Government servant is enrolled as an advocate while in service, he would and is bound to be called the advocate of the department and shall not and cannot appear on behalf of any other person. He cannot be engaged by any private party or even by any other department. He cannot charge any fee other than what he is already getting from his employer or whatever the employer fixes the emoluments attached to his post for such a person. He must be a graduate having law degree. He should invariably devote his time only to the legal problems of his department not only in the office, but also in the courts, forums and the Tribunals. If any such person handles the legal matters of giving his opinion in the department or dealing with the departmental cases of the officials or is looking towards the legal aspects of the cases being dealt with by him, but has no occasion to appear in the Courts, such an employee may not be admitted to the roll of advocates. The foremost duties of such person involving the grievances, the legal aspect, pleadings, advising and appearing in the Courts in regard to legal cases on behalf of or against his employer and if he is employed in any Government department, Central or State public undertaking or statutory Corporation, such a person may be admitted to be enrolled as an advocate with the limitations that he will be advocate for the department only so far as he is in service and shall not be engaged by any other person.

14. The above tests are fully applicable to the petitioner. The petitioner had been

doing the legal work of his department, had been appearing in different Courts for so many years, is law graduate, has been authorised by his General Manager to appear in the Courts and is doing all duties of an advocate on behalf of his department and even otherwise under Rule 10 of the Central Service Rules as discussed above. The petitioner fully qualifies to be enrolled as an advocate for the purpose of representing his department. The impugned order in such situation cannot be sustained in the eyes of law and is quashed with the direction to the Bar Council of Rajasthan to enroll the petitioner as an advocate.

15. However, it is made clear that the petitioner shall only appear on behalf of or against the department in which he is employed and shall not be engaged by any other person, shall not receive any fee for any other work except which is paid by his department for the service rendered by him in this regard and in case the petitioner at any time relinquishes the charge of the department in which he is presently working, he is duty-bound to inform the Bar Council of Rajasthan in this respect and the Bar Council shall review the decision in regard to the continuance of the enrolment in favour of the petitioner in such circumstances and situation as prevalent at the time.

16. The writ petition is allowed with the abovesaid observations. No order as to costs.