

(2000) 09 DEL CK 0017

In the Delhi High Court

Case No : CW. 5601 of 2000 and CM. 8632 of 2000

Sanjiv Gupta

APPELLANT

Vs

High Court of Delhi

RESPONDENT

Date of Decision : 26-09-2000

Acts Referred:

Citation : (2000) 57 DRJ 13

Hon'ble Judges : Madan B. Lokur, J

Bench : Single Bench

Advocate : Mr. Valmiki Mehta, for the Appellant; Mr. S.K. Kaul and Ms. Nandini Ramchandran, for the Respondent

Judgement

CW 5601/2000 & CM. 8632/2000

1. Rule.

2. The petitioner was provisionally enrolled as a "Trainee Advocate" pursuant to the Bar Council of India Training Rules, 1995 (hereinafter called the Training Rules).

3. In V. Sudeer Vs. Bar Council of India and Another, the Supreme Court framed one of several questions for its consideration as follows:

"Whether the impugned rules are ultra virus the rule making power of the Bar Council of India as available to it under the provisions of the Act."

4. In paragraph 29 of the Report, it was held as follows:

"The inevitable result is that the impugned rules fail and must be held to be still born being beyond the rule making power of the Bar Council of India. Point No. 1, Therefore, has to be answered in affirmative in favor of the writ petitioners and the appellant in appeal arising out of SLP (C) No. 13755 of 1996 and against the respondent Bar Council of India in the writ petitions and which is also the appellant in appeal arising out of SLP (C) No. 12989 of 1998."

5. In view of the decision of the Supreme Court, the petitioner was enrolled by the Bar Council of Delhi with retrospective effect from 19th May, 1997 that is the date of his provisional enrolment.

6. The Petitioner is desirous of taking the examination for recruitment to the Delhi Judicial Services. This examination is likely to be held in the next couple of days. When the petitioner applied for permission to sit in the examination, his application was rejected in view of Rule 14 of the Delhi Judicial Service Rules, 1970. This Rule reads as follows:

"A candidate shall be eligible to appear at the examination if he is;

(a) a citizen of India;

(b) a person who has practiced as an Advocate for not less than 3 years on the last date of prescribed for the submission of application; and

(c) not more than 32 years of age on the 1st day of January following the date of commencement of the examination."

7. What is material for the decision of this case is the meaning of Rule 14(b) which requires that "a person who has practices as an Advocate for not less than three years" is entitled to sit for the examination.

8. The view of the Respondent High Court is that the period spent by the Petitioner as a Trainee Advocate cannot be described as period during which he "practiced as an Advocate".

9. There is no doubt that no empirical standard is available for evaluating "practice as an Advocate". A person may be in practice as an advocate for one day in a year or he may be practice for almost every other day of the year. Both can be said to have" practiced as an advocate."

10. So far as the word "Advocate" is concerned, it has been defined in the Advocates Act, 1961 u/s 2(a) which reads as follows:

11. As mentioned, the Petitioner has been enrolled, as an advocate under the provisions of the Advocates Act with effect from 19th May, 1997. Therefore, he can be said to be an advocate since 19th May, 1997.

12. Learned counsel for the Respondent relies upon V. Sudeer (Supra) particularly paragraphs 37 and 40 of the Report, to contend that the setting aside of the Training Rules as being ultra virus the rule making power of the Bar Council of India has prospective effect. This is so.

13. However, in paragraph 40 of the Report, the Supreme Court has concluded that a Trainee Advocate who has not completed his training, is nevertheless entitled to be enrolled as an advocate. In other words, a Trainee Advocate is entitled to be enrolled as an advocate from the date of his provisional registration. This is what the Bar Council has rightly done in the present case.

14. Consequently, it has to be held that the Petitioner is an advocate enrolled by the Bar Council of Delhi with effect from 19th May, 1997.

15. Does this mean that the Petitioner has "practiced as an advocate" during the period that he was a Trainee Advocate? This is the nub of the problem before me.

16. One has to see the nature of training that a Trainee Advocate is required to undergo. Rule 8 of the Training Rules reads as follows:

"During the period of training the candidate shall regularly attend the chamber or office of the guide, study case papers, correspondence, study pleadings, attend courts and in particular study cases with a view to get acquainted with the practice in courts and minimum attendance for 225 days in all in courts and chambers in a years shall be a condition precedent for the successful completion of training."

17. A Trainee Advocate has, Therefore, not only to regularly attend the chamber or office of his guide, but he has also to stud case papers, correspondence, draft pleadings and attend Court. So far as attending courts is concerned, Rule 15 B of the Training Rules restricts his appearance to seeking adjournments and mentioning matters on the instructions of his guide.

18. However, what is important is that Rule 15-B also provides that a Trainee Advocate "shall be under disciplinary control of the State Bar Council and the Bar Council of India under Advocates Act, 1961 and Rules made there under "

19. Therefore, a Trainee Advocate is virtually required to function as an advocate for all intends and purposes. He has to draft pleadings, study case papers etc. He is made liable to disciplinary action by his Bar Council and by the Bar Council of India. This being the position, "I find it difficult to accept the view that even though a Trainee Advocate is made subject to certain restrictions yet he is not entitled to take advantage of provisions which may ensure to his benefit.

20. My attention has been drawn to passage in All India Judges" Association Vs. Union of India, (IA. 32/1995 in RP 248/1994 in WP (C) No. 1022/1989), decided on 10th May, 1995. This passage is extracted in paragraph 7 of the decision in the case of Sushma Suri Vs. Govt. of NCT, Delhi (1999) 1 SCC 331. In this passage, it has been stated that a person who has three year"s experience of practice as an advocate 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."

21. It is true that a Trainee Advocate was not entitled to appear for any client before a Court or a Tribunal; but as a Trainee Advocate, he practiced in a Court although the practice was limited to his appearing for an adjournment or mentioning a matter. To my mind, neither the quality nor the quantity of cases can be used to determine whether a person has practiced as an advocate.

22. In view of this, I am of opinion that a Trainee Advocate can be said to have

"practices" in a Court during the period of his training. The expression "practised as an advocate" cannot be given a restrictive meaning as is sought to be done by the Respondents.

23. In the peculiar facts of the case and in view of the fact that the expression "practised as an advocate" cannot be clearly defined, the Petitioner should be given the benefit of doubt and be allowed to participate in the examination to be held for recruitment to the Delhi Judicial Services. It is ordered accordingly.

24. The writ petition is, accordingly, allowed.

25. Since the examination is scheduled for 29th September, 2000, the Registry of the High Court should entertain applications of prospective applicants provided such applications are received before 5 PM on 27th September, 2000. If an applicant does not collect his admission ticket thereafter, then it is his misfortune.