

(2008) 08 CAL CK 0042
In the Calcutta High Court
Case No : Writ Petition No. 7991 (W) of 2008

Subhasish Muhuri

APPELLANT

Vs

Public Service Commission and Others

RESPONDENT

Date of Decision : 07-08-2008

Acts Referred:

Advocates Act, 1961 — Section 35(3)
Bar Council of India Rules, 1975 — Rule 49, 49
Constitution of India, 1950 — Article 217(2), 226, 233(2)

Citation : (2008) 4 CALLT 5

Hon'ble Judges : Sailendra Prasad Talukdar, J

Bench : Single Bench

Advocate : Aloke Kumar Ghosh, Amalenda Mitra, Gopal Basu and A. Jana, Arunava Ghosh, Soumya Majumdar and Anirban Pramanick, for the Appellant; Sandip Srimani and Amitava Chaudhuri, for the Respondent

Judgement

Sailendra Prasad Talukdar, J.—The backdrop of the present case is as follows:

The writ petitioner submitted his application in prescribed manner in response to the advertisement No. 4/2007 dated 17th February, 2007 issued by the respondent No. 1 i.e. Public Service Commission, West Bengal. This was in connection with recruitment in West Bengal Judicial Service.

2. He duly appeared in the earlier examination for selection in the said service. He was successful in the written examination and appeared in the personality test but unfortunately, could not make it.

3. In his second attempt, he passed the preliminary test, appeared in the written examination and was called for personality test. At the time of his interview, which was held on 23rd November, 2007, he was given an impression that he was possibly not eligible to appear in such examination as he was in full time employment. Subsequently when the select list of candidates was published, he did not find his name therein.

4. The petitioner is a citizen of India. He is a law graduate. He got enrolled as an Advocate in the Bar Council. He has ability to read, write and speak in Bengali. He was thus qualified to appear in the said examination since he satisfied all the eligibility criteria.

5. He was quite confident that he would make it this time. He was shocked to find that his name was not in the select list. He submitted an application dated 25th March, 2008 under Right to Information Act to the respondent No. 1 seeking certain particulars like marks obtained by him, lowest marks of the selected candidate in the general category and the ground of his disqualification, if any.

6. By Memo No. 946/P.S.C. dated 9th April, 2008, respondent No. 1 informed the petitioner that he had secured 627 1/2 marks in the examination whereas the lowest ranked general category candidate had secured 540 marks in aggregate. He was further informed that since he was in full time employment on the date of the advertisement in respect of the examination, he was not lawfully entitled to practice and thus became ineligible in terms of Clause-III of "qualification" required for appearing in the West Bengal Judicial Service Examination.

7. Being seriously aggrieved by such decision of the respondent authority, the petitioner submitted a representation in the form of demand justice on 16th April, 2008. The petitioner did not receive any reply thereto. Thus, being left with no option, he approached this Court with such application under Article 226 of the Constitution seeking redress.

8. It seems to be the stand of the respondent authorities that the writ petitioner does not pass the test of scrutiny and is not eligible to appear in such examination.

9. Proper appreciation of the controversy raised in the present application demands consideration of the "qualification" as advertised. The same is:

Qualification : (i) A citizen of India or such a person of other nationality as declared eligible by Government of India; (ii) A degree in Law from any University or Institution affiliated to a University recognized by the State Government or the Central Government; (iii) Enrolment as an advocate in the roll of Bar Council of any State or Union Territory in India on the date of advertisement for the examination; (iv) Ability to read, write and speak in Bengali (not required for recruitment in the case of Nepali speaking candidates from hill areas of the district of Darjeeling).

10. Mr. Arunava Ghosh, appearing as learned Counsel for the writ petitioner, first invited attention of the Court to the fact that there is specific mention of candidates in employment and how they are required to apply.

11. The relevant portion may be reproduced as follows:

Candidates in service of Government, a Local or Statutory Body must submit

their applications in prescribed form with the requisite documents direct to the Commission's office within the closing date.

Candidates in service of Government, a Local or Statutory Body are required to submit an undertaking (as in the declaration printed in the Application Form) to the effect that they have informed, in writing, their Head Office/Department as to their applying for the examination.

12. The petitioner is employed as a Stamp Reporter, High Court, Original Side, Calcutta. It appears that he was given permission by the Registrar (vide order dated 19.2.2007) to appear in such examination. The petitioner as against column No. 12 of the application form wrote "yes" in response to the query whether he was enrolled as an Advocate. The petitioner gave details of his employment as against column No. 16 of such application form. Inviting attention of the Court to all such facts and circumstances, learned Counsel Mr. Ghosh expressed wonder and submitted as to how could the authorities be justified in making the writ petitioner "ineligible" for appearing in West Bengal Judicial Service Examination.

13. Mr. Aloke Kr. Ghosh, appearing as learned Counsel for the respondent/High Court Authority, invited attention of the Court to the observations made by the Apex Court in All India Judges' case 1993 (4) SCC 288. Mr. Ghosh contended that keeping such directions of the Apex Court in mind, the respondent authorities held that the moment an enrolled advocate takes up a full time job, he loses his right to practice and his enrolment remains suspended. Consequently, he cannot be said to be still enrolled as an advocate in the roll on the date of advertisement for the examination as he has either returned his enrolment certificate or has become liable for penal action for not returning the same. It was submitted that the authority concerned took the view that unless the candidate is lawfully entitled to practice on the date of advertisement for the examination, he will not be eligible to sit for the examination.

14. In this context, Mr. Ghosh referred to Rule 49 of the Advocates Act, 1961. The same is:

49. An advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practice, and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears and shall thereupon cease to practice as an advocate so long as he continues in such employment.

15. This, of course, intensified the wonder in the mind of Mr. Arunava Ghosh, who submitted that in that event, there could be no answer as to why specific reference has been made in the application form regarding those who are in service and as to how they are required to submit their application.

16. Mr. Mitra, as learned Counsel for the respondent/Public Service Commission, virtually adopted the argument advanced by Mr. Aloke Ghosh on behalf of the

respondent No. 3. At the time of hearing, Mr. Aloke Ghosh produced a copy of the minutes of the Selection Committee Meeting held on 24th December, 2007 in connection with the West Bengal Judicial Service Examination, 2007. It appears from the said document that a question arose before the Selection Committee as to whether a candidate, who on the date of advertisement in full time service under any employer, is eligible to sit for the examination. The Committee decided to answer the question in negative.

17. In this context, reference was made to the decision of the Apex Court in the case of All India Judges' Association AIR 1993 SC 2493. The relevant observation is:

The recruitment of law graduates as judicial officers without any training or background of lawyering has not proved to be a successful experiment. Considering the fact that from the first day of his assuming office, the judge has to decide, among others, questions of life, liberty, property and reputation of the litigants, to induct graduates fresh from the Universities to occupy seats of such vital powers is neither prudent nor desirable. Neither knowledge derived from books nor pre-service training can be an adequate substitute for the firsthand experience of the working of the court-system and the administration of justice begotten through legal practice. The practice involves much more than mere advocacy. A lawyer has to interact with several components of the administration of justice. Unless the judicial officer is familiar with the working of the said components, his education and equipment as a Judge is likely to remain incomplete. The experience as a lawyer is, therefore, essential to enable the judge to discharge his duties and functions efficiently and with confidence and circumspection. Many States have hence prescribed a minimum of three years' practice as a lawyer as an essential qualification for appointment as a judicial officer at the lowest rung. It is, hence, necessary that all the States prescribe the said minimum practice as lawyer as a necessary qualification for recruitment to the lowest rung in the judiciary. In this connection, it may be pointed out that under Article 233(2) of the Constitution, no person is eligible to be appointed a District Judge unless he has been an advocate or a pleader for not less than seven years while Articles 217(2)(b) and 124(3)(b) require at least ten years practice as an advocate of a High Court for the appointment of a person to the posts of the judge of the High Court and the Judge of the Supreme Court respectively. We, therefore, direct that all States shall take immediate steps to prescribe three years' practice as a lawyer as one of the essential qualifications for recruitment as the judicial officer at the lowest rung.

18. Subsequently, the concerned Recruitment Rules were amended and the following clause was substituted:

A candidate shall not be eligible to appear all the examination unless he has put in at least three years' practice as a lawyer at the time of his application for appearing at the examination.

19. Thereafter, the Apex Court reviewed its earlier decision and held that three years' minimum experience as a lawyer would not be necessary as after three years' practice, the brilliant law graduates were not attracted by conditions of the Judicial Service.

20. It is significant to mention that the Apex Court observed in the All India Judges' Association and Others Vs. Union of India and Others, that "we accept this recommendation of the Shetty Commission and the argument of the learned Amicus Curiae that it should be no longer mandatory for an applicant desirous of entering the Judicial Service to be an Advocate of at least three years' standing." Thus, doors were opened to "a fresh law graduate who may not even have put in even three years of practice, to be eligible to compete and enter the Judicial Service." This led to further amendment of the Rules and the following sentence was incorporated:

Every candidate must be enrolled as an advocate in the roll of Bar Council of any State or Union Territories in India on or before the 1st January of the year in which the examination is held.

21. Mr. Arunava Ghosh, as learned Counsel for the writ petitioner, submitted that when the Apex Court thought it fit to open the gate for the fresh law graduates, how could there be any justification for insisting on "enrolment" as a Lawyer. Though there is force in the submission made by Mr. Ghosh in this regard, this Court does not think it necessary to proceed with a detailed analysis of the said aspect. The fact remains that the authority concerned in the advertisement published clearly mentioned that the candidate is required to be enrolled as an Advocate in the roll of the Bar Council of any State or Union Territory of India on the date of advertisement for the examination.

22. It is not denied that the present writ petitioner was, thus, enrolled with the Bar Council. It is not in dispute that he was employed as Stamp Reporter in the High Court at Calcutta. The relevant advertisement very well mentions about candidates in service of Government, a Local or Statutory Body and that they are required to submit their applications in prescribed form with the requisite documents direct to the Commission's office. For candidates in service of Government, a Local or Statutory Body, there was a direction for submitting an undertaking to the effect that they have informed in writing their head office/department as to their applying for the examination. Thus, it cannot be said that the doors were closed to the candidates in some sort of employment - permanent or otherwise.

23. Then, the question naturally arises as to why should the petitioner be left out and how does the authority consider him "ineligible".

24. Mr. Alope Ghosh on behalf of the High Court Administration submitted that the moment an enrolled advocate takes up an employment, it is for him to intimate the Bar Council and with such intimation, his enrolment remains suspended. It is not for this Court to enquire as to whether the enrolment of the

writ petitioner had been suspended or not. The authority concerned also never sought a clarification as to whether the writ petitioner intimated the Bar Council about his taking up the job or whether he approached the Bar Council for keeping his enrolment suspended. It is also not for this Court within the scope and ambit of the present application to find out as to whether any proceeding has been initiated by the Bar Council against the writ petitioner on the assumed ground that he did not send any intimation to the Bar Council. All these aspects do not seem to be relevant for adjudication of the controversy raised in the present application.

25. The advertisement published under reference being annexure-"P-3" at page 29 is required to be read in its usual simple manner. It is meant for the young law graduates, who aspire to be Judicial Officers. There should be no justification for attempting to read something more than what meets the eyes. Borrowing from Lord Denning (Ref: The Discipline of Law"), it can be said that words are the vehicle of thought. Obscurity in thought inexorably leads to obscurity in language. Language in an advertisement is required to be simple and direct and it should communicate effectively without leaving any scope for confusion or controversy. The effect of taking up a job subsequent to enrolment does not find any reference in the advertisement. A candidate is required to be enrolled and the writ petitioner satisfies that criteria. There are references to candidates in service of Government, a Local or Statutory Body and the writ petitioner is an employee of the High Court.

26. Thus, this Court finds it extremely difficult, if not impossible, to brush aside the submission made by learned Counsel Mr. Arunava Ghosh.

27. Mr. Arunava Ghosh submitted that "advocate" means an advocate entered in any roll under the provisions of the Advocates Act, 1961. There are advocates practicing and there may be others who are not. He elaborated this aspect by mentioning that in order to practice, enrolment with the Bar Council is essentially required. But even after enrolment with the Bar Council, an advocate may very well take up a job in the corporate sector or otherwise. In that event, there are specific provisions in the relevant Act indicating how the situation is required to be dealt with. If a person after enrolment as an advocate with the Bar Council chooses to take up a job, he is certainly expected to intimate accordingly. It may be that his enrolment would be kept under suspension. It is relevant to mention that the writ petitioner appeared in West Bengal Civil Service (Judicial) Examination, 2003 in similar circumstances and under self-same eligibility criteria. True, he could not make it to the final merit list, but he was never declared ineligible by the P.S.C. (W.B.). He mentioned it while filling up the application form in connection with the West Bengal Judicial Service Examination, 2007. Mr. Ghosh contended that if he could know that his employment would stand in the way of his qualifying for the said examination, he could have resigned.

28. Referring to the Black's Law Dictionary, it was submitted that enrolment

means "to register", "to record", "to enter on the roll of a Court" etc. In Stout's Judicial Dictionary, it means "admit or enroll". Reference was made to Rule 49 of the Bar Council of India Rules (Part-VI, Chapter-II, Sec-VII), which provides for cessation of practice only on taking up full time employment. Mr. Ghosh submitted that it does not provide for suspension and/or cessation of enrolment in any manner whatsoever.

29. On behalf of the writ petitioner, it was further contended that the Bar Council had no occasion to proceed against the writ petitioner u/s 35(3)(c)(d) of the Advocates Act, 1961. According to him, enrolment does not necessarily mean only practicing advocate. Inviting attention of the Court to the fact that consideration has been made in the application form itself for full time Government servants and since there are instances where such Government servants had been allowed to appear for the examination and were declared selected, there could be no reason for such discrimination. It was further contended that the advertisement under reference expressly provides for two years age relaxation for the Government employees with at least two years service. This attracts the principle of "estoppel by encouragement and acquiescence".

30. On behalf of the writ petitioner, Mr. Ghosh categorically submitted that the confusing eligibility criteria cannot be permitted to take away the right of the writ petitioner and the intention put-forth by the Public Service Commission cannot be accepted as it is hit by the principle of "disproportionate counter mischief".

31. On the other hand, Mr. Alope Ghosh on behalf of the respondent No. 3 submitted that the writ petitioner, being admittedly a full time salaried employee of the High Court, was required to intimate the fact to the Bar Council on whose roll his name appears and thereupon cease to practice as an advocate so long as he continues in such employment. It is not for this Court to consider as to whether the writ petitioner intimated the Bar Council. This Court also has no concern whether Bar Council has acted on such intimation, if any, or not. It is not in dispute that the writ petitioner got himself enrolled with the Bar Council. He also clearly satisfied the other eligibility criteria. It is worth mentioning that the Apex Court in the said judgment observed that the Hon"ble Court may be approached for clarification. This naturally applies to the implementing authorities and not to the candidates.

32. In such circumstances, the letter dated 9th April, 2008 issued by the Deputy Secretary & State Public Information Officer, Public Service Commission, West Bengal, thereby declaring the writ petitioner ineligible for appearing in the West Bengal Judicial Service Examination does not seem to have any rational basis.

33. It was emphatically submitted that when the Apex Court felt it necessary to open the door even to fresh law graduates with the idea to attract better candidates, there could be very little justification for insisting upon the candidates getting themselves enrolled as advocates. On behalf of the petitioner,

Mr. Ghosh submitted that things appear to have been unnecessarily and unreasonably complicated, thereby giving rise to unpleasant and unfortunate controversies. There is nothing before this Court to suggest that the respondent authorities in this case, which are required to implement the directions, approached the Apex Court for any clarification. That could perhaps make it clear whether there is any need for "enrolment" at all since anxiety is to attract fresh graduates.

34. After due consideration of entire facts and circumstances, this Court finds it very difficult to brush aside the grievances ventilated on behalf of the writ petitioner. Mere fact that the writ petitioner after enrolment as an advocate took up a full time employment cannot by itself be a ground for disqualifying him. The impugned communication being Memo No. 946/P.S.C. dated 9th April, 2008, thus, seems to have no rational basis. In such circumstances, the present writ application being W.P. No. 7991(W) of 2008 is disposed of with the following directions:

35. The said communication being Memo No. 946/P.S.C. dated 9th April, 2008 stands cancelled. The respondent No. 1 is hereby directed to consider the petitioner in order of merit in the select list of candidates and recommend the same to the respondent Nos. 2 and 3 for necessary follow up action. If the petitioner is so selected on merit, the respondent authorities must also take appropriate action in order to ensure that his seniority as per the merit list is not disturbed.

36. The aforesaid direction must be complied with within a period of two months from the date of communication of this order.

37. There is no order as to costs.

38. Urgent xerox certified copy of the judgment be supplied to the parties, if applied for, as expeditiously as possible.