
Before Jawahar Lal Gupta & Ashutosh Mohunta, JJ

JANAK RAJ—*Petitioner*

versus

BAR COUNCIL OF PUNJAB & HARYANA & ANOTHER—
Respondents

C.W.P. No. 12894 of 2000

3rd August, 2001

Constitution of India, 1950—Art. 226—Advocates Act, 1961—S. 24—Bar Council of India Rules, 1975—Rls. 1(1) (b&C) and 3—Govt. employees while in service passing Three Years' LL.B. Professional Course as regular students—1975 Rules require a minimum attendance of 66% lectures in each of the subjects as also at tutorials, moot Courts & practical training Course—Petitioners failing to show that they had actually & physically attended the required percentage of lectures & were actually on leave during the relevant period—Petitioners did not fulfil the conditions prescribed under the Act & the Rules—Not eligible for enrolment as Advocates—Action of the Bar Council in rejecting the claim of the petitioners legal.

Held, that Rule 3 requires that the students shall be required to put in a minimum attendance of 66% of the lectures in each of the subjects as also at tutorials, moot Courts and practical training course. The petitioners were employed in the office of the Deputy Commissioner, Ferozepur when they had joined the course. They have not been able to show as to how many lectures had been delivered and that they had actually attended the requisite percentage thereof. In this situation, it is apparent that the petitioners did not fulfil the conditions prescribed under the Act the Rules.

(Paras 13 & 14)

Further held, that a degree of law can help a person to get different kinds of jobs. The Bar Council does not wish to adversely affect the interests of the petitioners in so far as their chances of getting some employment etc. may be concerned. It was only concerned with their eligibility for enrolment as Advocates. For this limited purpose, it has examined the relevant material after asking the

petitioners to furnish the requisite information and come to a finding that they do not fulfil the prescribed conditions. Thus, their request has been rejected. There is no infirmity in the action.

(Para 19)

A.K. Chopra, Advocate for the Petitioners

P.S. Hundal, Advocate for respondent No. 1

S.S. Rathore, Advocate for respondent No. 2.

JUDGMENT

Jawahar Lal Gupta, J

(1) Is the action of the Bar Council in refusing to enrol the petitioners in these two cases as Advocates on the ground that they have not "obtained a Degree in law after undergoing a Three Year Course of study..." arbitrary and illegal? This is the short question that arises for consideration. Learned counsel for the petitioners has referred to the facts in CWP No. 12894 of 2000. These may be briefly noticed.

(2) The petitioners had joined service in the office of the Deputy Commissioner, Ferozepur in the year 1962. He had finally retired on attaining the age of superannuation on 31st October, 1997. In the year 1971, while the petitioner was still in service, he had passed the B.A. examination. In the year 1995, he joined the Three Years' LL.B. (Professional) course "as a regular student in (the) Faculty of law, Shia Degree College, Lucknow". This college is affiliated to the University of Lucknow. The petitioner alleges that in August 1996, he was granted permission "for taking LL.B. examination....subject to the condition that no leave for preparation of exam will be granted.....so that the office work may not suffer". A copy of this letter has been produced as Annexure P. 1 with the writ petition. On retirement, the petitioner was given a certificate that his work and conduct were satisfactory. He completed the course in the year 1998. A provisional certificate dated 29th November, 1999 certifying that the petitioner had passed the examination for the Degree of Bachelor of Law and was placed in the second division, was issued by the University. A copy of this certificate has been produced as Annexure P. 3.

The College Principal has also certified that the petitioner had passed the examination "as a regular student from this institution in IInd division. His attendance was as per norms prescribed by the Lucknow University". A copy of this certificate has been produced as Annexure P. 4 with the writ petition. Thereafter, the petitioner had submitted the forms alongwith the requisite fee for enrolment as a trainee on 5th February, 1999. Two diaries bearing No. 4094 were issued. The training Rules having been struck down by the Supreme Court in the case of *V. Sudeer etc. vs. Bar Council of India and another* (1), the petitioner approached the Bar Council for enrolment as an Advocate. He submitted his application. *Vide* letter dated 21st may, 1999, a copy of which has been produced as Annexure P. 6 with the writ petition, the petitioner was asked for the following information alongwith the supporting documents :—

- (i) "Place of posting during law course - 1995-1998.
- (ii) Distance (one side) from place of posting to place of law College.
- (iii) Proof of leave or study leave from your Department duly obtained for the purpose of attending the regular classes from the date of admission till the date of retirement. The details should be yearwise and monthwise.
- (iv) Copy of permission order to join LL.B. classes at Lucknow".

(3) The petitioner submitted the reply on 14th July, 1999. A copy is at Annexure P. 2. The petitioner stated that he was working as a Reader in the court of Sub-Divisional Magistrate, Zira in District Ferozepur from 1995 to 1996. He was transferred to the office of the Deputy Commissioner, Ferozepur in February 1996 and had remained there till his retirement on 31st October, 1997. The distance from his place of posting to Lucknow was 720 kms. He had obtained 143 days' earned leave during the period from 15th May, 1995 to 21st July, 1997. He had also affixed/suffixed 24 days' leave. Besides this, he also claimed to have availed of casual leave. As for the proof of leave having been obtained "for the purpose of attending the regular classes" and copy of the order granting permission to join LL.B. classes at Lucknow, the petitioner stated that he "had already submitted the same in...office". While the Bar Council of Punjab was considering

(1) AIR 1999 SC 1167

the matter, the petitioner represented to the Bar Council of India. He stated that his application had been pending with the Bar Council of Punjab. A number of persons "who did law during their service period had been enrolled as Advocates". Thus, the Bar Council of Punjab and Haryana should be directed enrol him as an Advocate.

(4) The matter was considered by the Bar Council. *Vide* letter dated 1st August, 2001, it conveyed the grounds on which the petitioner's application for enrolment had been rejected. A copy of the order has been produced as Annexure P. 13 with the writ petition. Aggrieved by this order, the petitioner has approached this Court through the present writ petition. He alleges that the certificate granted by the College and the University clearly show that he had passed the Three years' LL.B. Professional course as a regular student. He had been enrolled as a trainee. Thus, he was eligible to be enrolled as an Advocate. The action of the respondents in rejecting his claim is arbitrary and discriminatory. Thus, he prays that the grounds on which his claim for enrolment has been rejected be quashed and that the first respondent be directed to enrol him as an Advocate.

(5) A written statement has been filed on behalf of the State Bar Council. It has been inter alia averred that the disputed questions of fact are involved. These cannot be decided in a writ petition. On merits, it has been pointed out that the petitioner was working in the office of the Deputy Commissioner, Ferozepur when he joined the law College at Lucknow. Under the rules, he was required to show that he "had actually and physically attended the required percentage of lectures at the Law College, Lucknow". On his own showing, he had been granted permission to take examination. He was required to attend 66% of the lectures in each of the subjects as also tutorials and moot' courts. The fact that the petitioner had been issued the diaries for training did not mean that he was eligible to be enrolled. The matter regarding eligibility for enrolment was taken up by the Bar Council after the receipt of his application. In pursuance to the scrutiny of the application by the Enrolment Committee, the petitioner was asked to furnish the requisite information. The matter was considered. The petitioner was found ineligible. Thus, his claim was rejected.

(6) The petitioner has filed a replication reiterating the claim as made in the petition.

(7) The factual position in CWP No. 11269 of 2000 is not materially different. It may be noticed that the petitioner had joined service in the office of the Deputy Commissioner, Ferozepur on 20th August, 1964. He had earned certain promotions and had retired on 28th February, 1999. During his tenure of service, the petitioner had qualified the B.A. examination in June 1972. He had taken admission in the LL.B. course at the Seth G.L. Bihani S.D.P.G. College, Sri Ganganagar (Rajasthan). This College is affiliated to the Maharishi Dyananad Saraswati University, Ajmer. The petitioner had completed the course of study in the year 1998. On 26th October, 1998, he was granted a provisional certificate for having passed the LL.B. Professional examination. On 19th September, 1998, the Teacher Incharge certified that the petitioner had "remained as regular studentduring the session 95-96, 96-97, 97-98 of Law classes I, II and III. During this session, his attendance is more than 75%". By another certificate dated 18th September, 1998, the Principal had certified that the petitioner "has been a regular student of this College during the session 1997-98 in the class LL.B. IIIrd year. He passed in the M.D.S. University, Ajmer examination held in 1997-98". An undated certificate regarding attendance of moot courts was also issued. A copy has been produced as Annexure P.5.

(8) The petitioner had applied for enrolment as an advocate on 28th April, 1999. *Vide* letter dated 3rd June, 1999, the petitioner was asked to furnish certain information including proof regarding grant of leave for study from July 1995 to August 1998 "for the purpose of attending the regular classes" duly verified by the Department. The petitioner did not reply for some time. He was given a reminder *vide* letter dated 19th July, 1999. The petitioner submitted his reply on 10th September, 1999. He stated that permission had been granted by the employer. The distance between his place of posting and the college was about 145 kms. He was entitled to different kinds of leave. He had availed 20 casual leaves. There were gazetted holidays. He also claimed to have taken earned leave of 89 days during the three years. He was unable to find the record relating to casual/restricted/compensatory leaves. It might have been destroyed. The record regarding earned leave was maintained in the office. At the time of retirement, he was posted at Moga. Therefore, it was not possible to verify the leave from the office record.

(9) The matter was considered by the first respondent. It was found that the petitioner had not been "granted any leave for study". Thus, he could not have attended classes at Sri Ganganagar. Resultantly, for the reasons stated by the Enrolment Committee, the petitioner's request for enrolment was rejected.

(10) Mr. A.K. Chopra, learned counsel for the petitioners in these cases contended that the action of the respondents was vitiated as the certificate given by the college regarding attendance had not been considered. No enquiry had been made from the college. No action for the cancellation of the degrees awarded by the respective Universities had been taken by the respondents despite the decision dated 9th February, 1988. The petitioners had been enrolled as trainees. Various other persons who had obtained degrees in a similar manner had been enrolled. In the case of Mr. Hari Kishan - the petitioner in CWP No. 11269 of 2000, permission had actually been granted by the employer to join classes. He had even attended moot courts. Thus, the action of the respondents in rejecting the petitioner's enrolment was discriminatory and illegal. The claim made on behalf of the petitioners was controverted by the counsel for the respondents.

(11) The Advocates Act, 1961 embodies the law relating to the legal practitioners. Section 24 of the Act lays down the conditions which a person has to fulfil before he can be considered as "qualified to be admitted as an Advocate on a State roll". One of these conditions is that he should have "obtained a degree in law after undergoing a three years' course of study in law from any university in Indian which is recognised for the purpose of this Act the Bar Council of India". It has been further provided that he should fulfil "such other conditions as may be specified in the rules made by the State Bar Council under this chapter".

(12) In exercise of the powers under the Act, Rules have been framed by the Bar Council of India. These lay down the standards of legal education as required under the Act. In Section 'B' which is applicable in the case of persons obtaining a degree of law on the completion of three years of study, Rule 1(1) (b & c) provide that a degree in law shall not be recognised for the purposes of Section 24(1) (c) (iii) unless the following conditions are fulfilled :—

- (b) that the law degree has been obtained after undergoing course of study in law for a minimum period of three years as provided in these rules.

(c) that the course of study in law has been by regular attendance at the requisite number of lectures, tutorials or moot courts in a college recognised by a University.

(13) Rule 3 requires that the students shall be required to put in a minimum attendance of 66% of the lectures in each of the subjects as also at tutorials, moot courts and practical training course.

(14) What is the position in the present cases? The petitioners were admittedly employed in the office of the Deputy Commissioner, Ferozepur when they had joined the course. They have not been able to show as to how many lectures had been delivered and that they had actually attended the requisite percentage thereof. In this situation, it is apparent that the petitioners did not fulfil the conditions prescribed under the Act and the Rules.

(15) Mr. Chopra contended that the respective colleges had issued certificates that the petitioners had passed the LL.B. examination as regular student. The counsel referred to the certificate at Annexure P. 4 with CWP No. 12894 of 2000. We have perused this certificate. It bears no date. It does not disclose as to how many lectures were delivered. It is silent about the number of lectures attended by the petitioner. It only states that the "attendance was as per norms prescribed by the Lucknow University". What were the norms? It is again silent.

(16) An attendance certificate dated 19th September, 1998 has been produced by the petitioner in the second case. A copy is at Annexure P. 3 with the writ petition. It has not been issued by the College Principal but the Teacher Incharge. It does not disclose the number of lectures which were actually delivered. The period during which these lectures were delivered is also not borne out from the certificate.

(17) Besides the above, there is nothing on record to show that the petitioners were actually on leave during the relevant period and that they had travelled long distances (725 kms. and 150 kms. one way - respectively) so as to be able to attend their classes. There is not even a suggestion in the petitions that the petitioners had actually attended classes at Lucknow and Ajmer respectively on even a day. Despite being asked, learned counsel was not able to refer to anything

on the record to show as to where were the petitioners staying and when they had attended classes. The deliberate silence on the crucial matter lends support to the finding by the respondents that the petitioners had not studied as regular students at the respective Universities.

(18) Mr. Chopra contended that the respondents should have made an enquiry from the college. They should have taken action for the cancellation of the degrees. Nothing of the sort having been done, the impugned orders are vitiated.

(19) We are unable to accept this contention. It is the admitted position that a degree of law can help a person to get different kinds of jobs. The respondent-Bar Council does not wish to adversely affect the interests of the petitioners in so far as their chances of getting some employment etc. may be concerned. It was only concerned with their eligibility for enrolment as Advocates. For this limited purpose, it has examined the relevant material after asking the petitioners to furnish the requisite information and come to a finding that they do not fulfil the prescribed conditions. Thus, their request has been rejected. There is no infirmity in the action.

(20) Mr. Chopra contended that the petitioners were allowed to be enrolled as trainees. Thus, they were eligible to be enrolled as Advocates also.

(21) The contention cannot be accepted. A trainee cannot practice as an Advocate. The enrolment as such was of no consequence. However, while considering the claim for enrolment as Advocates, the Enrolment committee had examined the matter and found that the petitioners were not qualified. It deserves notice that in the case of V. Sudeer (supra), the rule relating to training has been struck down by the Apex Court. Thus, even if it is assumed that the petitioners were enrolled as trainees, the fact remains that the action was taken by the respondents under a legally void provision. They can derive no advantage therefrom.

(22) Referring to the case of Mr. Hari Krishan the petitioner in CWP No. 11269 of 2000, the counsel contended that he had even attended the moot courts. Reliance was placed on the certificate at Annexure P. 5. We have examined the document. It is an undated

certificate. It does not disclose as to when the moot courts were held. If the dates had been disclosed, it would have been possible to know whether the petitioner was present in the office or at the college. The silence does not appear to be innocent.

(23) Lastly, it was contended by the counsel that various other persons who were similarly situate had been enrolled as Advocates. Thus, the action suffers from the vice of discrimination. Is it so ?

(24) The onus of proving that equals have been treated unequally lay on the petitioners. They have not shown that the persons who were similarly situate have been treated differently. Still further, even if it is assumed that the respondents have enrolled certain persons despite the fact that they did not fulfil the prescribed conditions of eligibility, this court cannot compel the respondents to repeat the wrong. No direction to act in violation of a rule can be issued by the court. Resultantly, the plea of discrimination cannot be sustained.

(25) The order was pronounced by us after hearing arguments today. We have now recorded our reasons. The writ petitions are dismissed. In the circumstances, there will be no order as to costs.

R.N.R.

Before J. S. Narang J,

ALTAF HUSSAIN—*Petitioner*

versus

HAMID HUSSAIN—*Respondent*

E. P. No. 13 of 2000

17th August, 2001

Representation of People Act, 1951—S. 100 (1) (c)—Election to the Haryana Legislative Assembly—Rejection of nomination papers—Nomination paper as nominee of a political party filed—Party neither recognised nor registered—Candidate failing to produce ten proposers for treating as a nominee of an independent candidate—Returning Officer correctly rejecting the nomination paper—Nomination paper of a covering candidate of a registered/recognised party filed—