

Before A. B. Chaudhari & Harnaresh Singh Gill, JJ.

SUSHIL KUMAR AND ANOTHER—*Petitioner*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

CWP No. 16966 of 2018

January 23, 2019

***A.) Constitution of India, 1950— Art. 19(1)(g) and 226—
Advocates Act, 1961—Ss. 17, 19, 24, 29 Bar Council of India
Rules— Rl. 49— Haryana State Prosecution Legal Group B Service
Rules, 2001—Challenge to Notification—Advertisement—
Enrolment as an Advocate with Bar Council essential qualification
for Assistant District Attorney—Government servants restrained
from participating in selection—Held, not violative of Art. 19 1g.***

Held that, since the Government Pleaders/Assistant District Attorneys are advocates, who practise in the Court, may be on behalf of Government, still licence to practice as an advocate is pre condition to appear in the Courts. That being so, respondents could legally impose the condition that only those, who are having licence to practise as an advocate, are eligible to apply. There is no violation of Article 19 (1) (g) of Constitution of India.

(Para 9)

B) ADVOCATES ACT, 1961— No parity between Civil Judge (Junior Division) and Assistant District Attorney.

Further held that, parity cannot be drawn between the appointment of Civil Judge (Junior Division) and of Assistant District Attorney. We are of the view that Civil Judge (Junior Division) does not practise in the Court. He presides over the Court as a Judge. Therefore, the comparison made is misconceived and misplaced. The mere fact that no experience was required for the post of Assistant District Attorney, is no ground to hold that even enrollment as an advocate is not required for the appointment as Assistant District Attorney in Prosecution Department of State. Bar Council of India is appropriate statutory authority under the Advocates Act, 1961 competent to recognize the law degree of any University or other institution for the purpose of enrolment of the decree holders as Advocate with Bar council.

(Para 10)

C) BAR COUNCIL OF INDIA— Competent authority to examine LL.B. degrees.

Further held the, Moreover in the country there are so many unscrupulous institutions which award the LL.B degrees even though they have not been recognized by the Bar Council of India. So, only a Bar Council is the competent authority to examine regarding the propriety of an LL.B degree for the purpose of enrolment of the incumbent as an advocate. In this background, the condition of enrolment of the incumbent as an Advocate with Bar Council was felt essential for recruitment to the post of Assistant District Attorney.

(Para 12)

Gaganpreet Kaur, Advocate for
Vipin Yadav, Advocate
for the petitioner in
CWP-16252-2018.

Kirti Singh, DAG, Haryana.

Kanwal Goyal, Advocate
for respondent No.2.

Amit Khatkar, Advocate
for respondent No.3.

Rishi Pal Singh, Advocate
for respondent No.4.

HARNARESH SINGH GILL, J.

(1) This order shall dispose of the aforementioned 3 petitions. However, for convenience and clarity, facts are being taken from writ petition no. 16966 of 2018.

(2) The present writ petition has been filed by the petitioners being aggrieved by the notification dated 10.10.2001 (Annexure P1) and advertisement dated 09.05.2017 (Annexure P-2) restraining petitioners in participating in the selection process for the post of Assistant District Attorney, as they are not enrolled as Advocate with Bar Council being government employees.

FACTS

(3) Petitioner No.1 is serving as Clerk/Ahlmad in Sessions Division at Hisar since 20.05.2014 and petitioner No.2 is serving as Steno since 25.01.2002. After getting permission from department, they

completed their LL.B course in the years 2017 and 2018. Respondent No. 2 had advertised 180 posts of Assistant District Attorney (Group 'B') on 9.5.2017, wherein following essential qualifications were laid down :-

'Essential Qualifications for the post of Assistant District Attorney in Prosecution, Haryana

(i) Degree of Bachelor of Laws (Professional) of a recognized university.

(ii) Should have enrolled as an Advocate with Bar Council.

(iii) Hindi/Sanskrit upto Matric standard or higher.'

ARGUMENTS

(4) As per counsel for the petitioners in the said advertisement, no experience for an Advocate is required. It is further stated that Rule 49 of Bar Council of India Rules bars the Government servant from practising as an Advocate as long as he/she continues in such Government service. Due to said rule, petitioners did not enroll themselves with Bar Council. The advocate, who joins Government service or private service or service on contract basis, has to surrender his/her sanad/licence. It is claimed by petitioners that since no experience was required, therefore, Notification No. GSR 23/Const./Art.309/2001, as applicable to Haryana State Prosecution Legal (Group 'B') Service Rules, 2001 (Annexure-P-1), so far as it lays down the condition of enrollment of the candidate with State Bar Council, is liable to be quashed being violative of Article 19 (1) (g) of Constitution of India. Petitioners also seeks direction for quashing the advertisement dated 9.5.2017 (Annexure-P-2), which restrains petitioners from participating in the selection process as they are not enrolled as an advocate with the Bar Council being a Government employee though being a law graduate from a recognized University/College.

(5) It has also been argued that for the appointment of Civil Judge (Junior Division) no experience is required.

(6) Per contra, learned counsel for the State opposed the present petition and submitted that they have merely advertised the posts as per the requisition. It is stated that relevant rules are in consonance with the requirement given in the advertisement. Therefore, there is no fault in the advertisement. It was stated that after appointment, the candidates become notified as Government Pleader/Public Prosecutor for

appearance on behalf of Government before various Courts within the State of Haryana.

CONSIDERATION

(7) We have heard learned counsel for parties and have also carefully gone through file.

(8) Admittedly, the petitioners are in Government service and they want that since no experience is required for an advocate for appointment as an Assistant District Attorney in Prosecution Department of State, therefore, the condition in advertisement, requiring the enrollment with Bar Council as an advocate, should be quashed. We are not impressed with the said contention. The Assistant District Attorney is basically an advocate, who appears on behalf of Government to prosecute or defend the case for or on behalf of Government. The Assistant District Attorney thus has to practise in Court basically as an advocate though, on behalf of Government. The Advocates Act, 1961, allows only advocates to practise in the Courts.

Section 29 of Advocates Act, 1961, lays down as under :-

'29. Advocates to be the only recognized class of persons entitled to practise law.- Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates.'

Section 30 of Advocates Act, 1961, further lays down as under :-

'30. Right of advocates to practise.- Subject to provisions of this Act, every advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the territories to which this Act extends-

- (i) in all courts including the Supreme Court;
- (ii) before any tribunal or person legally authorised to take evidence; and
- (iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise.'

(9) The said provisions clearly show that only an advocate, who is enrolled with the Bar Council, shall be entitled to practise in Court. Since the Government Pleaders/Assistant District Attorneys are advocates, who practise in the Court, may be on behalf of Government,

still licence to practise as an advocate is pre condition to appear in the Courts. That being so, respondents could legally impose the condition that only those, who are having licence to practise as an advocate, are eligible to apply. There is no violation of Article 19 (1) (g) of Constitution of India. If petitioners are in Government service and want to practise as an advocate in private capacity or on behalf of Government, they could always resign from Government service, get licence to practise as Advocate from the Bar Council and then could apply for the post of Assistant District Attorney in Prosecution Department of State. Therefore, there is no illegality in the said condition, requiring that only those persons, who are enrolled with Bar Council, can apply for the post of Assistant District Attorney in Prosecution Department of State. On the contrary, the same meets the requirement of law.

(10) Further parity cannot be drawn between the appointment of Civil Judge (Junior Division) and of Assistant District Attorney. We are of the view that Civil Judge (Junior Division) does not practise in the Court. He presides over the Court as a Judge. Therefore, the comparison made is misconceived and misplaced. The mere fact that no experience was required for the post of Assistant District Attorney, is no ground to hold that even enrollment as an advocate is not required for the appointment as Assistant District Attorney in Prosecution Department of State. Bar Council of India is appropriate statutory authority under the Advocates Act, 1961 competent to recognize the law degree of any University or other institution for the purpose of enrolment of the decree holders as Advocate with Bar council.

"24. Persons who may be admitted as advocates on a State roll.- (1) Subject to the provisions of this Act, and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfills the following conditions, namely:-

(a) he is a citizen of India: Provided that subject to the other provisions contained in this Act, a national of any other country may be admitted as an advocate on a State roll, if citizens of India, duly qualified, are permitted to practise law in that other country;

(b) he has completed the age of twenty-one years;

(c) he has obtained a degree in law-

(i) before the [12th day of March, 1967], from any University in the territory of India; or

(ii) before the 15th August, 1947, from any University in any area which was comprised before that date within India as defined by the Government of India Act, 1935; or

(iii) after the 12th day of March, 1967, save as provided in sub-clause

(iiia), after undergoing a three year course of study in law from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or

(iiia) after undergoing a course of study in law, the duration of which is not less than two academic years commencing from the academic year 1967-68 or any earlier academic year from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or]

(iv) in any other case, from any University outside the territory of India, if the degree is recognised for the purposes of this Act by the Bar Council of India] or;

4[or has passed the article clerks examination or any other examination specified by the High Court at Bombay or Calcutta for enrolment as an attorney of that High Court;] or has obtained such other foreign qualification in law as is recognised by Bar Council of India for the purpose of admission as an advocate under this Act;]

(d) xxx xxx xxx xxx

(e) he fulfils such other conditions as may be specified in the rules made by the State Bar Council under this Chapter.....”

The State Bar councils enroll only such LL.B Degree holders as Advocate whose degrees stand recognized for this purpose by the Bar Council of India. The State Bar Councils are required to maintain Roll of Advocates under Section 17 of the Advocates Act, 1961 and also to send copies of Rolls of Advocates to the Bar Council of India under section 19 of the said Act, which is reproduced as under:-

"19. State Bar Councils to send copies of rolls of advocates to the Bar Council of India.—Every State Bar Council shall send to the Bar Council of India an authenticated copy of the roll of advocates prepared by it for the first time under this Act and shall thereafter communicate to the Bar Council of India all alterations in, the additions to, any such roll, as soon as the same have been made".

(11) Recently, the Apex Court in *Deepak Aggarwal* versus *Kesav Kaushik and others*¹ has held that Assistant District Attorney/Public Prosecutor are the advocates. Therefore, the enrollment as an advocate with Bar Council, is required for appointment as Assistant District Attorney in Prosecution Department of State. Relevant extract of judgment i.e. para No. 77 reads as under:-

"77. We do not think there is any doubt about the meaning of the expression "advocate or pleader" in Article 233(2) of the Constitution. This should bear the meaning it had in law preceding the Constitution and as the expression was generally understood. The expression "advocate or pleader" refers to legal practitioner and, thus, it means a person who has a right to act and/or plead in court on behalf of his client. There is no indication in the context to the contrary. It refers to the members of the Bar practising law. In other words, the expression "advocate or pleader" in Article 233(2) has been used for a member of the Bar who conducts cases in court or, in other words acts and/or pleads in court on behalf of his client. In *Sushma Suri*, a three-Judge Bench of this Court construed the expression "members of the Bar" to mean class of persons who were actually practising in courts of law as pleaders or advocates. A Public Prosecutor or a Government Counsel on the rolls of the State Bar Council and entitled to practice under the 1961 Act was held to be covered by the expression 'advocate' under Article 233(2).

(12) Moreover in the country there are so many unscrupulous institutions which award the LL.B degrees even though they have not been recognized by the Bar Council of India. So, only a Bar Council is the competent authority to examine regarding the propriety of an LL.B degree for the purpose of enrolment of the incumbent as an advocate. In this background, the condition of enrolment of the incumbent as an Advocate

¹ 2003(1) S.C.T. 752

with Bar Council was felt essential for recruitment to the post of Assistant District Attorney.

(13) Similar view has been taken by the co-ordinate Bench in CWP No.20643 of 2017 titled as *Mandeep Singh* versus *State of Haryana and others* decided on 08.10.2018 and in CWP No. 13621 of 2017 titled as *Seema Devi* versus *State of Haryana and others* decided on 09.10.2018. The net result is that these petitions must be dismissed. Hence we make the following order:-

ORDER

(14) CWP No. 16966 of 2018, CWP No. 13619 of 2017 and CWP No. 16252 of 2018 are dismissed. No costs.

Shubhreet Kaur