

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1265 OF 2014

Ashok Ganghadhar Khutade ..Petitioner

V/s.

The State of Maharashtra & Anr. ..Respondents

Mr. Mahesh Rawool i/by Mr. Kayval P. Shah for the Petitioner.
Mrs. M.P. Thakur, AGP for Respondent Nos.1 & 2.

CORAM: ABHAY S. OKA &
C.V. BHADANG, JJ.

DATE : 08TH MAY 2015

P.C.

1. The petitioner, who is a practicing Advocate, has filed this petition challenging Clause (c) of Sub-Section (2A) of Section 5 of the Bombay Public Trusts Act, 1950 (for short, “the said Act”). Sub-Section (2A) of Section 5 of the said Act lays down the qualifications for the appointment to the posts of Assistant Charity Commissioners. Sub-Section (2A) of Section 5 reads thus:-

“(2A) A person to be appointed as an Assistant Charity Commissioner shall be a person –

(a) who is holding or has held a judicial office not lower in rank than that of a Civil Judge (Junior

Division), for not less than one year,

(b) who has been for not less than four years,

(i) an advocate enrolled under the Indian Bar Councils Act, 1926 (38 of 1926) or the Advocates Act, 1961 (25 of 1961); or

(ii) an attorney of a High Court, or

(iii) a pleader enrolled under the Bombay Pleaders Act, 1920 (Bom. 17 of 1920), or

(c) who holds a degree in Law of any University in India established by law or any other University recognised by the State Government in this behalf and has worked in the Charity Organisation after obtaining such degree for not less than five years in an office not lower in rank of Superintendent or Legal Assistant.”

2. The main submission of the learned counsel appearing for the petitioner is that in view of Clause (c) of Sub-Section (2A), a person who is a fresh law graduate and who has no experience of practicing law or working as a Judicial Officer can be appointed to the post of Assistant Charity Commissioner. The submission is that the person holding the post of Assistant Charity Commissioner is required to hold inquiries of judicial nature. It is submitted that to allow a person who has no judicial experience or an experience as a practicing Advocate to

hold the post of Assistant Charity Commissioner will be detrimental to the objects of the said Act.

3. There is a reply filed by Shri M.A. Sayeed, Principal Secretary and R.L.A., Law and Judiciary Department, Mantralaya, Mumbai. We have perused the said reply.

4. As per Clause (c) of Sub-Section (2A) of Section 5, a person who holds a degree in Law of any University and who has worked in the charity organization for a period of not less than five years after obtaining the degree in an office not lower in rank than the office of Superintendent or Legal Assistant is eligible to apply to the post of Assistant Charity Commissioner. It is pertinent to note what is stated in paragraph 7 of the affidavit of Shri M.A. Sayeed.

“7. It is respectfully submitted that fresh law graduates can compete for the post of Civil Judge, Junior Division, who performs judicial functions as per the provisions of rule 5 of the Maharashtra Judicial Service Rules, 2008.”

5. Thus, what is pointed out is that a fresh law

graduate is entitled to apply for the post of Civil Judge (Junior Division), First Class in accordance with Rule 5 of the Maharashtra Judicial Service Rules, 2008. What is pointed out is that a fresh law graduate, who may not have much experience of legal practice, can be appointed to a judicial post.

6. As per Clause (c), candidates who have the experience of working in the post of Superintendent or Legal Assistant in the Charity Organization for a period of not less than five years for obtaining a degree in Law are made eligible. The nature of duties performed by the Superintendent or Legal Assistant have been set out in paragraph 6 of the affidavit of Shri.Sayeed.

“6. I say and submit that the petitioner has also failed to understand that the duties of the post of the Superintendent and Legal Assistant in Charity Organization is mainly to assist the Assistant Charity Commissioners/Deputy Charity Commissioners/Joint Charity Commissioners in the work of quasi judicial functions. In fact, the post of Legal Assistant in Charity Organization is created, after considering the increasing rate of the court matters, mainly to deal with such court matters filed before the Hon'ble High Court, Civil Courts and Maharashtra Administrative Tribunals.”

7. Thus, what is suggested is that a law graduate who has worked in the posts of either Superintendent or Legal Assistant for the period of minimum five years has a sufficient exposure to the nature of the duties of Assistant Charity Commissioners, Deputy Charity Commissioners or Joint Charity Commissioners, as the case may be. Thus, what is suggested is that a law graduate covered by Clause (c) has sufficient experience of working in Charity Organisation. Such a law graduate has sufficient opportunity to observe the working of the Assistant Charity Commissioners/Deputy Charity Commissioners.

8. We, therefore, see no arbitrariness or illegality in Clause (c) of Sub-Section (2A) of Section 5 of the said Act. Accordingly, the challenge in the petition cannot be sustained. The petition is rejected.

[C.V. BHADANG, J.]

[ABHAY S. OKA, J.]