

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

THE HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION Nos. 16640, 16621 & 16207 OF 2015

Dt:17.06.2015

Between:

The Association of Public Prosecutors (Cadre) AP.,

Rep. by its General Secretary.

... Petitioner

And

The Hon'ble High Court of Judicature at
Hyderabad for the State of Telangana and the
State of Andhra Pradesh,

Rep. by its Registrar (Recruitment),

Hyderabad and others.

... Respondents

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

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PC: (per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)

Heard learned counsel for the parties. Rule. By consent of learned counsel for the parties, the petitions are heard for final disposal forthwith.

These writ petitions seek similar relief. In the first writ petition, filed by the Association of Public Prosecutors (Cadre) Andhra Pradesh, they have challenged the action of the first respondent in not permitting the members of the petitioner-Association of Additional Public Prosecutors/Public Prosecutors (for short ‘the Association’) to participate in the selection process for the post of District & Sessions Judge (Entry Level) in pursuance of the notification, dated 15.04.2014. They have also challenged the order rejecting their applications solely on the ground that they had suspended their right to practice before Bar Council as bad, illegal, arbitrary, discriminatory and unconstitutional and so also contrary to the judgment of the Supreme Court in **Deepak Aggarwal Vs. Keshav Kaushik**. The petitioners in the other two writ petitions are also members of the Association. They have also made the similar prayer.

At the outset, our attention was invited to the order, whereby applications of 18 Additional Public Prosecutors/Public Prosecutors (APPs/PPs) were rejected on the basis of the information furnished by the Secretary, Bar Council of A.P. *vide* their letter, dated 06.05.2015, stating that the names, shown in Column No.3, have suspended their practice and hence, their applications were rejected. The order impugned in the instant writ petitions reads thus:

Sl.No.	Appl. No.	Name of the CandidateSarvasri	Reason for rejection
(1)	(2)	(3)	(4)

1.	230	G.Manohar Reddy	As per the information furnished by the Secretary, Bar Council of Andhra Pradesh through letter ROC No.288/2014, dated 06.05.2015, the names of the candidates shown in column No.3 have suspended their practice. Hence, their applications REJECTED.
2.	233	V.Krishnaveni	
3.	238	C.Krishna Reddy	
4.	241	A.Ram Reddy	
5.	260	T.Jyothi	
6.	660	V.Prasanna	
7.	664	V.Prasad Naik	
8.	666	M.Nagesh	
9.	667	P.V.D.Lakshmi	
10.	670	N.Kalpana	
11.	671	R.Aseervadam Paul	
12.	690	S.Rama Krishna Patnaik	
13.	691	G.Danial Kumar	
14.	692	B.Sirisha	
15.	695	S.S.S.Sukumar	
16.	706	G.Venkateswarlu	
17.	708	V.Sreenivasulu	
18.	890	E.Hanumantha Rao	

It is not in dispute that though all 18 members of the Association in the first writ petition are employed by the State Government as APPs/PPs, their services are engaged to act and/or plead like any other practising Advocate in the Court of law. In other words, despite their employment as APPs/PPs, they continued to act and/or plead in the Courts.

It is against this backdrop, our attention was invited to the observations made by the Supreme Court in **Deepak Aggarwal's** case (supra). The relevant observations made by the Supreme Court in the judgment read thus:

“Admittedly, by the above resolution of the Bar Council of India, the second and third paragraphs of Rule 49 have been deleted but we have to see the effect of such deletion. What Rule 49 of the BCI Rules provides is that an advocate shall not be a full-time salaried employee of any person, Government, firm, corporation or concern so long as he continues to practise. The “employment” spoken of in Rule 49 does not cover the employment of an advocate who has been solely or, in any case, predominantly employed to act and/or plead on behalf of his client in Courts of law. If a person has been engaged to act and/or plead in Court of law as an advocate although by way of employment on terms of salary and other service conditions, such employment is not what is covered by Rule 49 as he continues to practise law but, on the other hand, if he is employed not mainly to act and/or plead in a Court of law, but to do other kinds of legal work, the prohibition in Rule 49 immediately comes into play and then he becomes a mere employee and ceases to be an advocate. The bar contained in Rule 49 applies to an employment for work, other than conduct of cases in Courts as an advocate. In view of the matter, the deletion of the second and third paragraphs by the Resolution dated 22.06.2001 has not materially altered the position insofar as advocates who have been employed by the State Government or the Central Government to conduct civil and criminal cases on their behalf in the Courts are concerned.

What we have said above gets fortified by Rule 43 of the BCI Rules. Rule 43 provides that an advocate, who has taken a full-time service or part-time service consistent with his practising as an advocate, shall send a declaration to that effect to the respective State Bar Council within the time specified therein and any default in that regard may entail suspension of the right to practice. In other words, if full-time service or part-time service taken by an advocate is consistent with his practising as an advocate, no such declaration is necessary. The factum of employment is not material but the key aspect is whether such employment is consistent with his practising as an advocate or, in other words, whether pursuant to such employment, he continues to act and/or plead in the Courts. If the answer is yes, then despite employment he continues to be an advocate. On the other hand, if the answer is in the negative, he ceases to be an advocate.

An advocate has a twofold duty: (1) to protect the interest of his client and pursue the case briefed to him with the best of his ability, and (2) as an officer of the Court. Whether full-time employment creates any conflict of duty or interest for a Public Prosecutor/Assistant Public Prosecutor? We do not think so. As noticed above, and that has been consistently stated by this Court, a Public Prosecutor is not a mouthpiece of the investigating agency.

In our opinion, even though Public Prosecutor/Assistant Public Prosecutor is in full-time employ with the Government and is subject to disciplinary control of the employer, but once he appears in the Court for conduct of a case or prosecution, he is guided by the norms consistent with the interest of justice. His acts always remain to serve and protect the public interest. He has to discharge his functions fairly, objectively and within the framework of the legal provisions. It may, therefore, not be correct to say that an Assistant Public Prosecutor is not an Officer of the Court. The view in *Samarendra Das* ((2004) 2 SCC 274) to the extent it holds that an Assistant Public Prosecutor is not an Officer of the Court is not a correct view.”

Learned counsel appearing for the Bar Council of the State of Andhra Pradesh has filed a counter-affidavit and placed on record a report of the Committee constituted for considering the representation of Sri G.Manohar Reddy, APP Guntur. In the representation, Sri G.Manohar Reddy had placed heavy reliance upon the judgment of the Supreme Court in **Deepak Aggarwal's** case (supra) and had prayed for similar relief, as prayed for in the instant petitions. After having considered the judgment, the Bar Council of the State of Andhra Pradesh have permitted to revoke the suspension of APPs/PPs.

Keeping the judgment of the Supreme Court in view and so also the stand of the Bar Council of the State of Andhra Pradesh as reflected in their counter-affidavit and the aforementioned report of the Committee, and considering that it is not in dispute that all the 18 APPs/PPs are in active practice in the Courts of Law representing the State Government, the order rejecting their applications deserves to be set aside. Order accordingly

In view thereof, the first respondent is directed to issue hall-tickets to all the 18 members of the Association to appear for written examination, which is scheduled to be held on 28.06.2015. In the light of the observations made in the judgment, the decision of the first respondent in calling upon about 111 APPs/PPs, who had applied for the post of the District Judge notified in the year 2014, to submit in writing whether they have suspended their practice on being appointed as APPs/PPs within one week for considering their applications

also deserves to be set aside. Order accordingly.

Learned Standing Counsel for the first respondent is also directed to inform the first respondent to allow all the APPs/PPs, who have applied for the posts, to appear for written examinations. They are further directed to issue hall-tickets to enable them to appear for written-examinations, scheduled to be held on different dates during next two months. Order accordingly.

The writ petitions are disposed of in terms of this order.

Consequently, miscellaneous petitions, if any, also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V. BHATT, J

Dt:17.06.2015

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