

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.11519 of 2016

Date of Decision: June 02, 2016

Union Territory, Chandigarh and anotherPetitioners

versus

Central Administrative Tribunal, Chandigarh Bench and another
.....Respondents

**CORAM:HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE A.B.CHAUDHARI.**

Present: Mr.IPS Doabia, Advocaes, for the petitioners.
Mr.Naveen Singh Panwar, Advocate,
for the caveator-respondent No.2.

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1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Surya Kant, J. (Oral)

The challenge herein is to the order dated 28.01.2016 whereby the Central Administrative Tribunal, Chandigarh Bench, has directed to appoint respondent No.2 as Assistant District Attorney in the Directorate of Prosecution, Chandigarh Administration.

[2] The facts are not in dispute. 10 posts of Assistant District Attorney were advertised by the Chandigarh Administration, out of which 03 were reserved for Other Backward Class category. The prescribed qualification was two years' experience at Bar as an Advocate. Respondent No.2 who belongs to Other Backward Class category also applied. He has been practicing as a lawyer at District Courts, Karnal from 03.10.2012 to 12.06.2014. Thereafter, he joined as Law Officer in Chandigarh Transport

Undertaking. His practice at the Bar was about 1 year and 8 months, i.e., short of 4 months.

[3] In a dispute over his eligibility, the question that arose for consideration before the Tribunal was whether the experience gained by respondent No.2 as Law Officer in Chandigarh Transport Undertaking while appearing before the Labour Court on regular and continuous basis, can be counted as experience at Bar? The Tribunal has answered the question in affirmative. Since respondent No.2 was meanwhile interviewed under the interim direction issued by the Tribunal and he was declared successful in the final result, the Tribunal has issued the direction for his appointment as per merit in the final result.

[4] We have heard learned counsel for the parties as respondent no.2 is on caveat.

[5] Reiterating that respondent No.2 is ineligible and his experience as Law Officer in Chandigarh Transport Undertaking cannot be treated as practice at Bar, learned counsel for the petitioner relies upon a Full Bench Decision of this Court in M/s Hygienic Foods Malerkotla Road, Khanna versus Jasbir Singh and others, 2010(1) RCR (Civil) 243.

[6] Having given our thoughtful consideration to the submissions, we are satisfied that no case to interfere with the order passed by the Tribunal is made out. We say so for the reason that as per the eligibility conditions notified in the advertisement, the candidate was required to have "two years' experience at Bar as an Advocate". The phrase "experience" preceded by the word 'Advocate' connotes that the candidate should have appeared in Court besides undertaking the responsibility like drafting of pleadings etc. It has come on record and has been duly certified by the

Director of Transport, U.T. Administration that “respondent No.2 while working as Law Officer in Chandigarh Transport Undertaking has been regularly pleading the Court cases on behalf of this Department before the Labour Court Chandigarh”. It obviously means that respondent No.2 has been drafting the pleadings besides defending the department in Labour Court cases as a Management representative. The professional services rendered by respondent No.2 before the Labour Court are in no way different than what an Advocate gains while practicing at the Bar. There is no material difference between the nature and quality of experience except that an Advocate may have the advantage of appearing in different type of cases but as a Management's representative before the Labour Court, he was dealing with only specialized cases under the Labour Laws. Nonetheless, the practice before the Labour Court, so long as it involves appearance before the Court, drafting of pleadings or examination of witnesses etc., it would amount to experience as an Advocate for all intents and purposes. We may in this regard quote the following text from the judgment of the Hon'ble Supreme Court in Deepak Aggarwal versus Keshav Kaushik and others, 2013(5) SCC 277:-

“.....85. 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 inconsistent with his practicing as an advocate, shall send a declaration to that effect to the respective State Bar Council within 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 practicing 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 practicing as an advocate or, in other words, whether pursuant to such employment, he continues to be act and/or pled in Courts. If the answer is yes, then despite employment, he continuous to be an advocate. On the other hand, if the answer is negative, he ceases to be an advocate.....”

[7] To test the petitioners' contention, the matter may be viewed from another angle also. There may be a young Advocate duly enrolled as Member of the Bar but unfortunately does not have any brief, he does not join any senior's office and does not get opportunity to appear as a legal aid counsel also. Can the petitioners be heard to say that such young Lawyer would not be eligible for the advertised post, for he does not have any 'actual experience' as an Advocate? The answer has to be in negative as the advertisement simply postulates two years' experience as an Advocate be it with or without brief.

[8] For the reasons afore-stated, we do not find any ground to interfere with the order passed by the Tribunal.

[9] Dismissed.

**[SURYA KANT]
JUDGE**

June 02, 2016
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**[A.B.CHAUDHARI]
JUDGE**