



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 06.12.2018

Date of pronounce : 13.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE C. SARAVANAN

W.P. (MD) No.237 of 2014

and

M.P. (MD).Nos.1 and 2 of 2014

S.Balasubramanian

... Petitioner

vs.

The Secretary
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C.Road,
Chennai - 600 003.

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the respondent pursuant to the impugned order of cancellation of selection passed by the respondent vide Memo No.5934/OTD-C2/2011 dated 19.11.2013 and quash the same as illegal and arbitrary and consequently direct the respondent to select the petitioner for appointment to the post of Assistant Public Prosecutor, Grade-II in the Tamil Nadu General Service 2010-2011.

For Petitioner : Mr.AR.L.Sundaresan for
Mr.M.S.Jayakarathi
For Respondent : Mr.K.K.Senthil

ORDER

The above writ petition has been filed for a writ of Certiorarified Mandamus, to call for the records on the file of the respondent pursuant to the impugned order of cancellation of selection passed by him vide Memo No5934/OTD-C2/2011 dated 19.11.2013 and quash the same as illegal and arbitrary and consequently direct the respondent to select the petitioner for appointment to the post of Assistant Public Prosecutor, Grade-II in the Tamil Nadu General Service 2010-2011.

2.The petitioner is a Law graduate enrolled with the Tamil Nadu and Puducherry Bar Council on 11.07.2001. After practicing for about eight years, the petitioner took employment with the Life Insurance Corporation of India on 09.02.2009 as a Development Officer.



3. In the year 2012, by notification dated 02.04.2012, the Tamil Nadu Public Service Commission called for applications from the suitable candidates possessing requisite qualification for appointment as an Assistant Public Prosecutor, Grade-II.

4. The petitioner also applied for the said post under the reservation of PSTM candidates. However, the petitioner was not able to get PSTM certificate. Therefore, he was considered as a regular SC candidate. The petitioner was provisionally selected by the respondents on 03.04.2013.

5. Thereafter, the impugned order came to be passed. In the impugned order it has been stated that the petitioner was not qualified to be appointed as an Additional Public Prosecutor as he was working as Development Officer with the Life Insurance Corporation of India on the date of notification. Therefore, he failed to satisfy the condition stipulated in para 3(B) of the Commission's notification dated 02.04.2012, which reads thus:

Qualification	Experience
B.L.Degree and must be a Member of Bar and must possess adequate knowledge of Tamil.	Must have had active practice in Criminal Courts for a period of not less than 5 years.

6. The learned senior counsel for the petitioner submits that even though the petitioner was employed with LIC, his service was temporary and his service has been terminated later. Therefore, he submitted that the petitioner was entitled to be selected as an Assistant Public Prosecutor and did not suffer from any infirmity.

7. The learned senior counsel would further submitted that the petitioner had not suspended his practice and his name continued to be on the rolls of the Bar Council of Tamil Nadu and Pudhucherry allthrough. Therefore, even if there was a violation of the condition of the Bar Council Rules, the petitioner did not suffer from any disqualification as per Para 3(B) of the Commission's notification dated 02.04.2012.

8. In support of the other contentions regarding experience, the petitioner produced certificate from the Tirunelveli Bar Association, wherein, it has been certified that the petitioner was a Member of the Tirunelveli Bar Association and he had been in active practice in Tirunelveli Court for more than seven years.

9. The learned senior counsel drew the attention of this Court to the decision of the Division Bench of the Hon'ble Calcutta High Court in the case of Bishnu Devi Shaw and others Vs. The Federal Bank Ltd., and others AIR 2014 Calcutta 90.

10. It is submitted that as per the above decision of the Division Bench of the Hon'ble Calcutta High Court an advocate does not cease to be an advocate unless an order was specifically

passed by the bar Council to that effect.

11. In para-27, the Court has held that "An Advocate can under no circumstances automatically cease to be an advocate unless specific order was passed by the Bar Council in accordance with the law removing and/or suspending the name of the said advocate from the role of concern bar Council".

12. The above conclusion was arrived by the Division Bench of the Calcutta High Court after referring to Rule 49 of the Bar Council India Rules.

13. Therefore, it was submitted that on the date of the Notification calling for the application for the post of Asst Public Prosecutor, Grade-I I (2010-2011) the petitioner was on the rolls of the Bar Council of Tamil Nadu and Pondicherry and that the petitioner had requisite qualification and therefore there was no justification in rejecting his application on the ground that he was in employment with the Life Insurance Corporation of India as a Development Officer.

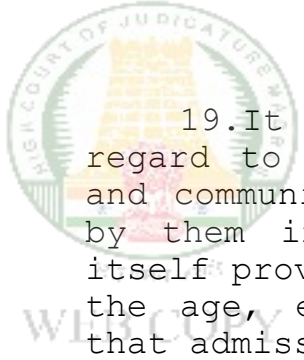
14. It was further submitted that the petitioner was appointed on 9.2.2009 and later confirmed on only 9.2.2010 and was there for a very short period. It was therefore submitted that his tenure as an employee of the Life Insurance Corporation should not be disqualification as per para 3 (B) of the commission's notification dated 2.4.2014. It was further submitted that the petitioner is longer in the service of the Life Insurance Corporation of India.

15. Countering the argument advanced by the learned senior counsel for the petitioner, learned counsel for the respondent drew my attention counter filed on behalf of the respondent.

16. According to the respondent petitioner ceased to be a member of the Bar the moment he took employment with the Life Insurance Corporation of India and was therefore disqualified from applying for posts of Assistant Public prosecutor, Grade II.

17. It is submitted that the respondent came to know about the petitioner's employment with the Life Insurance Corporation of India pursuant to letter received from one Thiru Packkiaraj, who submitted that he was not allowed to attend the oral test for the post of Asst Public prosecutor during the previous years recruitment who had taken employment.

18. Under these circumstances, it was further submitted that failure to disclose online application against the column "Post-Qualification Work Experience" regarding the petitioner's employment with the Life Insurance Corporation of India is a material suppression and therefore the respondents were justified in rejecting the applicant's name .



19. It was further submitted that the claims of candidates with regard to the date of birth, educational/technical qualifications and community are accepted only based on the information furnished by them in their application and therefore the candidature was itself provisional subject to the commission satisfying itself about the age, educational/technical qualifications, community etc. and that admission to the interview or inclusion of the name on the list will not entitle a candidate any right for appointment.

20. It was therefore submitted that the candidates are only always provisionally selected and this was made clear in para-5 (IV) of the Commission's "Instruction to Candidates".

21. It was further contended that as per para 15 (g) of the Commission's Instruction to candidates, person in employment of state government or central government or local bodies or universities or was a government organisation constituted under the authority of the government of India or office to India with the regular or temporary service need not send their applications through their head of the Department of employer.

22. Instead, they may directly apply the commission duly informing their employer in writing that they are applying for a particular recruitment and with the condition that they should produce "No Objection Certificate" in the prescribed form from an authority not below the rank superior officer at the time of oral test in respect of which selection comprises a written examination computers or at the time of sending of the original certificates for verification in respect of course for which selection comprises only a written examination.

23. According to the respondent petitioner has not complied with the above requirements and therefore his candidature was rightly rejected by the respondent.

24. Learned counsel for the respondent drew my attention to the following cases in support of his contention:-

(a) Deepak Agarwal versus Keshav Kaushik and Others
(2013) 5 SCC 277;

(b) Sushma Suri versus Government of National Capital Territory of New Delhi and others (1999) 1 SCC 330;

(c) Order Dated 31.7.2015 in WP No. 17802 of 2015; And

(d) Order Dated 2.9.2015 of the Honourable Supreme Court in SLP.No 26720/2015.

25. I have gone through the facts and circumstances of the case including the case cited by the learned counsel for the petitioner



and the respondent. I have also considered the rival contentions of the respective parties.

26. Section 49 of the Advocates Act, 1961 gives power to the Bar Council of India to make rules for discharging its functions and also to frame rules in respect of the subjects enumerated in clauses (a) to (j).

27. Clause (ah) to Section 49 of the Act deals with the conditions subject to which an advocate shall have the right to practice and the circumstances under which a person shall be deemed to practice as an advocate in a court. The first proviso following the main Section provides that no rules made with reference to clause (c) or (gg) shall have effect unless they have been approved by the Chief Justice of India.

28. The second proviso provides that no rules made with reference to clause (e) shall have effect unless they have been approved by the Central Government. Pursuant to the power given under Section 49, the Bar Council of India has framed the Bar Council of India Rules (for short, 'BCI Rules').

29. Rule 43 of the Rules provides that an advocate, who has taken a full-time service or part-time service or engaged in business or any avocation inconsistent with his practising as an advocate, shall send a declaration to that effect to the respective State Bar Council within 90 days.

30. On his failure, to do so or in the absence of sufficient cause for not doing so, he may face suspension of licence to practice. Prior to 2001, Rule 49 of the BCI Rules read as under :

"49. An advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practice, and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears, and shall thereupon cease to practice as an advocate so long as he continues in such employment.

(2) Nothing in this rule shall apply to a Law Officer of the Central Government or a State or of any Public Corporation or body constituted by statute who is entitled to be enrolled under the rules of his State Bar Council made under Section 28(2)(d) read with Section 24(1)(e) of the Act despite his being a full time salaried employee.

<https://hcservices.ecourts.gov.in/hcservices/> Law Officer for the purpose of this Rule means a person who is so designated by the terms of his appointment and who, by the said terms, is required to

act and/or plead in courts on behalf of his employer.

31. By resolution dated 22.06.2001, the Bar Council of India deleted the second and third sub clause of the above rule. The said resolution was published in the Government Gazette on 13.10.2001.

32. The Chief Justice of India gave his consent to the said deletion on 23.04.2008. Rule 49 in its present form, consequent on amendment, reads as under:

"An advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practice, and shall, on taking up any employment, intimate the fact to the Bar Council on whose roll his name appears, and shall thereupon cease to practise as an advocate so long as he continues in such employment".

33. On the one hand on behalf of the petitioner, it was submitted that petitioner was still an Advocate and a member of the Bar Council of Tamil Nadu and Pondicherry since his membership was not suspended as was required under Rule 43 of the Bar Councils Rules and was therefore an eligible candidate and suffered no disqualification.

34. On the other hand as per the decision of the Honourable, Supreme Court in Deepak Agarwal case, it has been observed that what Rule 49 of the Bar Council 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 practice. 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 a 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 49 and he continues to practice 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, prohibition in Rule 49 immediately comes into play and then he becomes a mere employee and ceases to be an advocate.

35. Honourable Supreme Court further held that this view is fortified by rule 43 of the bar Council Rule which provides that an advocate, who has taken a full-time service or a part-time service inconsistent with those practising as an advocate, shall send a declaration to that effect to the respective bar Council within the time specified therein and any default in that regard may entail suspension of the right to practice.

36. In other words, no such declaration is necessary, if full-time service or part-time service taken by an advocate is inconsistent with that of a practice of an advocate,. The fact of employment is not material but the key aspect is whether such an employment is inconsistent with those practicing as an advocate or,

in other words, whether pursuant to such employment, he continues to act and or plead in the courts.

37.Hon'ble Supreme Court further held that "If the answer is yes, despite employment he continues to be an advocate. On the other hand if the answer is in the negative, the ceases to be an advocate". The above case rendered in the context of appointment of persons to the office of the Additional District and Sessions Judge by persons who were Assistant District Attorney, Public Prosecutors and Deputy Advocate General.

38.Thus, it is clear that the petitioner ceased to be an advocate as a Development Officer of LIC as per the decision of the Hon'ble Supreme Court though as per the definition of "advocate" in Section 2(a) of the Advocate Act, 1961 he was still an advocate as "An advocate is a person whose name is enrolled in the Bar Council." .

39.Thus, the petitioner was not an advocate as per the decision of the Hon'ble Supreme Court in Deepak Agarwal versus Keshav Kaushik and Others (2013) 5 SCC 277.

40.The Hon'ble Division Bench of the Calcutta High Court in Souvik Mukherjee Vs State of West Bengal AIR 2014 Calcutta 85 has taken a diametrically opposite view that even if an advocate is engaged to act as an advocate, as long as the names were on the rolls of the Bar Council he continues to be an advocate.

41.However, the question in the present case is not whether the petitioner was an advocate or not. The question is whether the petitioner was a Member of the Bar Council of Tamil Nadu and Puducherry or not? Therefore both the decisions are not relevant to the present case to decide whether the petitioner was a member of the Bar.

42.The Bar Council of India resolved to modify resolution No.169 of 2014 dated 17.10.2014. The Certificate and Place of Practice (Verification) Rules, 2015 was framed by the Bar Council of India in the exercise of powers conferred with it under Section 49 (1)(ag), 49(ah) and 49(i) of the Advocates Act, 1961 and in the exercise of power under Part V, Chapter 1, Rule 1(1) & (2) and Rule 2 of Bar Council of India Rules, Chapter III sub-Rule 3, 4 and Part IX, Rule 17, 18(h), 20, 22, 24 of Bar Council of India Rules.

43.The above rules have been framed with a view to preserve and protect the civil and constitutional rights of the citizen by way of independent and fearless Bar to sustain and promote a true and healthy democracy. The Statement of Objects to the above Rules, states that Bar was being manipulated and influenced by extraneous powers, and therefore concerns of Advocates switching over to other professions/services/business without any information to the State Bar Council had reached an alarming proportion. Thus, the Bar Council of India recognized endangering of the legal profession as



a whole which had a dent in its sanctity and standards of the legal profession.

44. It was noted that the names of Advocates continued to be included on the "Roll of Advocates" maintained by the State Bar Councils, notwithstanding the fact they have left the legal profession or have died.

45. The Statement of Objects also observes that under Section 19 of the Advocates Act, the State Bar Councils are under a legal obligation to send a copy of the Roll of Advocates prepared by it under Section 17 of the Act and subsequent alterations/additional thereto. However, this was observed in breach.

46. Though the above Rule came into force subsequent to the period in dispute it has relevance to the issue to answer the question as to whether the petitioner was a Member of the Bar or not? As per the above Rules, it has now been made mandatory for Advocates to obtain Certificate of Practice. The new Rules recognizes "non practicing advocates" in Rule 2(j) as extracted above. The said rules defines the expression "An non practicing Advocate" as follows:

"Rule (2(j))- An non-practicing advocate means an Advocate enrolled with any State Bar Council, but is not in actual practice of Law and is engaged in some other public or private job, business, contract etc. not related to Legal profession: and who has been so declared under Rule 13 and Rule 20.2 of these Rules and whose name stands published under Rule 20.4".

47. The above Rule also contemplates that an Advocate cannot practice law unless he holds a valid and verified Certificate of Practice issued either under All India Bar Examination Rules or under these rules.

48. In Rule 21, it has been mentioned that from the date of publication of the list of non practicing advocates, all such advocates whose name/names have been included in the list shall not be entitled to appear in any Court of Law, before any Tribunal or person legally authorised or person before whom such advocate is by or under any law for the time being in force entitled to practice, notwithstanding the fact that name/names of such advocates is/are entered in the State Roll and that he is holding certificate of enrolment under Section 22 of the Act.

49. Rule 2 reads as under:-

"21. Non-practicing advocates as included in the list of "non-practicing advocates" not entitled to practice law and to other privileges and rights:

21.1. From the date of publication of the aforesaid list of non-practicing-advocates, all such advocate/s whose name/names has/have been included in the aforesaid list



shall not be entitled to appear in any Court of Law, before any Tribunal or person legally authorized to take evidence and before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practice. Notwithstanding the fact that name/names of such advocates is / are entered in the State Roll and that he is holding certificate of enrolment under section 22 of the Advocates Act.

Further name/s of such advocate/s shall not be included in the electoral roll for the purposes of elections to the State Bar Councils. Such an advocate/s shall cease to be a member of any Bar Association and further he/she shall not be entitled to cast vote/s in any elections of the Bar Associations .

The status and rights of such advocate/s as advocate/s entitled to participate and receive benefits" under Welfare Schemes of Bar Council of India created under Rules 40 to 44 B of Section IV -A of Chapter II contained in part VI of the Bar Council of India Rules and other schemes floated by the State Bar Council shall come to an end w. e. f the date of publication of the List / name/names of Non-Practicing Advocates under Rule 20.4 with the exception that such an advocate would be entitled to receive such benefits under the relevant scheme/s if any, which have already accrued in his/her favor"

50.The petitioner would have been dis-entitled to practice notwithstanding his name is entered in the State Roll even if he is holding a certificate of enrollment under Section 22 of the Act. He would have been then governed by Rule 22 of the said Rules, which reads as under:

"22. Record with respect to practicing and non-practicing Advocates:

22.1 That on culmination of the initial process of identification of Non-practicing Advocates in the aforesaid manner in the publication of the List of such advocates under Rule 20.4 the State Bar Council shall create and maintain a separate record of such Advocates with all particulars as to name, address. date of birth, date of enrolment, enrolment number, particulars of application for issuance/verification of Certificate of Practice if any, and of its dismissal. This record shall be updated regularly.

22.2 Every State Bar Council shall send to the Bar Council of India an authenticated soft copy of the record as maintained under Rule 22.1 every year.



22.3 All the Advocates whose certificate of Practice are duly verified shall be issued a certificate of Practice affixing his photograph and mentioning the period of its validity FORM "B", and the State Bar Council shall also issue an Identity card to such Advocates containing a Xerox copy of his photograph and the period of its validity in FORM "D". The Advocates would be supposed to carry it while practicing in Courts / Tribunals or other Forums, so that in case of demand by any Law Court / Authority or any Advocate or any Litigant or citizen one can easily establish that he is an Advocate.

22.4 An Advocate after getting the verified Certificate of Practice under these Rules can appear before any Court of Law/Tribunal or other forum in India as per Section 30 of the Advocates Act subject to fulfillment of any condition imposed by any competent Court of Law.

51. Though Rule 43 of the Bar Council of India contemplates that an Advocate who was taken up full time or part time employment/service inconsistent with his practicing 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 attract suspension of the right to practice. However, this Rule was observed in breach.

52. The said procedure was hardly followed. The petitioner also had not filed the declaration. The Certificate of Enrollment granted to him under Section 22 of the Advocates Act, 1961 continued to be in force. The expression "roll" has been defined in 2(k) of the Advocate Act, 1961 as follows:

"Rule 2(k): "roll" means a roll of advocates prepared and maintained under this Act"

53. It will be also useful to refer to Condition of Practice in Chapter III to the Bar Council Rules reads as under:-

"1. Every advocate shall be under an obligation to see that his name appears on the roll of the State Council within whose jurisdiction he ordinarily practices. Provided if an advocate does not apply for transfer of his name to the roll of the State Bar Council within whose jurisdiction he is ordinarily practising within six months of the start of such practice, it shall be deemed that he is guilty of professional misconduct within the meaning of Section 35 of the Advocates Act.

2. An advocate shall not enter into a partnership or any



other arrangement for sharing remuneration with any person or legal practitioner who is not an advocate.

3. Every advocate shall keep informed the Bar Council on the roll of which his name stands, of every change of his address.

4. The Council or a State Council can call upon an advocate to furnish the name of the State Council on the roll of which his name is entered, and call for other particulars.

5. (1) An advocate who voluntarily suspends his practice for any reason whatsoever, shall intimate by registered post to the State Bar Council on the rolls of which his name is entered, of such suspensions together with his certificate of enrolment in original.

(2) Whenever any such advocate who has suspended his practice desires to resume his practice, he shall apply to the Secretary of the State Bar Council for resumption of practice, along with an affidavit stating whether he has incurred any of the disqualifications under Section 24A, Chapter III of the Act during the period of suspension.

(3) The Enrolment Committee of the State Bar Council may order the resumption of his practice and return the certificate to him with necessary endorsement. If the Enrolment Committee is of the view that the advocate has incurred any of the disqualifications, the Committee shall refer the matter under proviso to Section 26(1) of the Act.

(4) On suspension and resumption of practice the Secretary shall act in terms of Rule 24 of Part IX.

6. (1) An advocate whose name has been removed by order of the Supreme Court or a High Court or the Bar Council as the case may be, shall not be entitled to practice the profession of law either before the Court and authorities mentioned under Section 30 of the Act, or in chambers or otherwise.

(2) An advocate who is under suspension, shall be under same disability during the period of such suspension as an advocate whose name has been removed from the roll.

7. An officer after his retirement or otherwise ceasing to be in service for any reasons, if enrolled as an Advocate shall not practice in any of the Judicial,



Administrative Courts/Tribunals/Authorities, which are presided over by an officer equivalent or lower to the post which such officer last held.

Explanation :An 'Officer' shall include a Judicial Officer, Officer from State or Central Services and Presiding Officers or Members of the Tribunals or Authorities or such Officers as referred under section 30(ii) of the Advocates Act, 1961.

"7A. Any person applying for enrolment as an Advocate shall not be enrolled, if he is dismissed, retrenched, compulsorily retired, removed or otherwise relieved from Government service or from the service under the control of the Hon'ble High Courts or the Hon'ble Supreme Court on the charges or corruption or dishonesty unbecoming of an employee and a person having such disqualification is permanently debarred from enrolling himself as an advocate".

8.No advocate shall be entitled to practice if in the opinion of the Council he is suffering from such contagious disease as makes the practice of law a hazard to the health of others. This disqualification shall last for such period as the Council directs from time to time.

8.No advocate enrolled under section 24 of the Advocates Act, 1961 shall be entitled to practice under Chapter IV of the Advocates Act, 1961, unless such advocates successfully passes the All India Bar Examination conducted by Bar Council of India. It is clarified that the Bar Examination shall be mandatory for all law students graduating from academic year 2009-2010 and onwards and enrolled as advocates under section 24 of the Advocates Act, 1961."

54.Chapter III of Bar Council Rules also makes it clear that on taking up employment, such advocate shall suspend his practice and surrender his certificate of enrollment in original. To resume practice he has to apply to the Secretary of the Bar Council on the rolls of which his name is entered. Thus, he could not have practiced while having a parallel career. The Petitioner was thus a member of Bar but was required to suspend his practice. He would have lost all the privilege that are available to a practicing advocate had he complied with the requirement of Chapter III. The Enrolment Committee of the Bar Council would have allowed the petitioner to resume his practice after due scrutiny.

55.In fact, Rule 24 of Part IX of recognizes different types of persons who are dis entitled to practice. Rule 24 of Part IX reads as under:-



"24.(a)When the name of an Advocate is removed from the rolls, or an Advocate is suspended from practice or otherwise punished under an order of any Disciplinary Committee or an order of the Supreme Court under section 38, or when an intimation of voluntary suspension from practice is received from the Advocate, the State Council in respect of a person in its roll and the Council in respect of a person whose name is not in any State Roll, shall furnish information thereof giving the name of the Advocate, his roll number and date of enrolment, his address, nature of the punishment inflicted-

(i)to the Registrar of the High Court of the State;
(ii)to the Registrar of the Supreme Court of India'
(iii)to the Bar Association in the High Court;
(iv)to the District Court of the State; and
(v)to such other authorities as the State Council or the Council may direct.

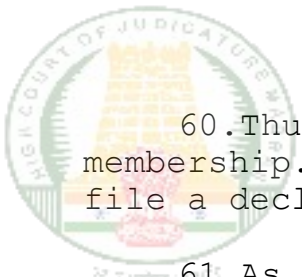
(b)The State Bar Councils and the Bar Council of India will also cause to be published in the State Gazettes or the Gazette of the Government of India as the case may be, information relating to the removal from the roll or the suspension of an Advocate for misconduct."

56.Even on reading of the above rule, it is clear that the petitioner was required to merely suspend his practice and not his membership. His name is removed from roll.

57.From the reading of the provisions of the Advocates Act, 1961, Bar Council of India and Certificate and Place of Practice Verification Rules, 2015 and Bar Councils Rules, particularly Chapter III, it is clear that for the very first time an attempt was made to implement the requirement of Rule 43 of the Bar Council of India Rules with vigour. It is clear an advocate does not cease to a Member of the Bar even if such a person complied with the requirement of Rule 43 of the Act. They merely suspended the practice..

58.Under Rule 28.1 of Certificate and Place of Practice (Verification) Rules, 2015, if an advocate whose name has been included in the "list of non-practicing Advocates" published under rule 20.4, intends to resume law practice in the changed circumstances, may apply to the State Bar Council with a request that name may be taken out of such a list.

59.As per Rule 28.03 of the Rules, the State Bar Council shall refer such an application for resumption of practice to the Administrative Committee which may pass an appropriate order allowing or dismissing such application provided that such an application shall be allowed only if the Administrative Committee is satisfied that the intent of the applicant to resume law practice is bona fide.



60. Thus, it is clear that an advocate does not suspend membership. Advocate merely suspends practice and is required to file a declaration to that effect.

61. As per Rule 28.4 of the 2015 Rules, in case application for resumption is allowed, the name of the applicant shall be taken out of the list of the "non-practicing Advocates" and such exclusion shall be duly notified and published as provided by Rule 20.3 qua "list of non-practicing Advocates".

62. Further, as per Rule 28.5 of the above Rules, that from the date of publication under Rule 28.4, all disabilities suffered by the applicant under Rule 21, shall not survive but shall not be entitled for any benefits/privileges that were denied under Rule 21 for the period when the name remained in the "list of non-practicing Advocates".

63. Now coming to clause 3B of the Notification calling for applications for the post of Assistant Public Prosecutor Grade II, it is noticed that the candidate should be a "Member of the Bar" and with a 5 year practice in Criminal Court.

64. If Place of Practice (Verification) Rules, 2015 had been in force at the time when the cause of action arose, the petitioner would have still been a member of the Bar though as a "non practicing advocate". He would have become a non practicing advocate and his name would have been included in such list as per Rule 21 of the aforesaid Rules.

65. Thus, Rule 21 and 22 of New Rules make it clear that the petitioner was a member of the Bar ie. as a non-practicing member of the Bar /non practicing advocate. Nevertheless, the petitioner was a member of the Bar. Though he ought to have suspended practice as per Rule 43. However, such suspension would not have impacted his member. The mandate of Rule 43 was not properly implemented due to lack of enabling provision and therefore 2015 Rules came to be issued.

66. The advertisement also does not stipulate that the candidate should have been in active practice as on the date of application. It merely stipulates "Must have had active practice in criminal Court for a period of not less than 5 years".

67. Therefore, the deletion of the name of the petitioner and other persons named in the counter for being considered to the post of Asst. Public Prosecutor was not justified.

68. Rules governing the legal profession has changed for the better as has been noted in the Statement of Objects and Reason. The circumstances of the petitioner has also changed as was submitted by the petitioner.



69. There was only an embargo on the petitioner from practicing as an advocate. However, the petitioner's name was not removed from the roll. The fact that the petitioner was required to file a declaration under Rule 49 read with 43 of the Bar Councils Rule did not mean the petitioner's name was removed from the rolls of the Bar. Therefore, the petition deserves to be partly allowed under the changed circumstances.

70. Therefore, if the petitioner's name was not in the list of "non practicing advocate", and has obtained a Certificate of Practice under Rule 13 of the Certificate And of Place of Practice Rules (Verification) Rules, 2015 and has been allowed to resume Practice under Rule 28.4, the petitioner should be accommodated and should not be denied of the opportunity to be selected as an Asst. Public Prosecutor.

71. In view of the above observation and changed circumstances, the petitioner is directed to furnish a copy of Certificate of Practice contemplated under Rule 28 of Certificate And of Place of Practice Rules (Verification) Rules, 2015 within 30 days of this order with the respondent.

72. On such receipt, the respondent shall examine and conduct oral interview to appoint the petitioner as an Asst. Public Prosecutor subject to the petitioner fulfilling other criteria.

73. If the respondent finds that the petitioner unfit for being selected to the post on other grounds other than the reasons of his previous employment with the Life Insurance Corporation, the respondent is at liberty to reject the name of the petitioner.

74. The present writ petition thus stands partly allowed. Thus, impugned Memo No5934/OTD-C2/2011 dated 19.11.2013 is quashed with a direction to the respondent to call the petitioner to interview for appointment to the post of the Assistant Public Prosecutor Grade II subject to availability of the vacancies and the petitioner producing relevant Certificate of Practice. No cost. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(co)

/True Copy/

Sub Assistant Registrar(cs-III)

To
The Secretary
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
Chennai - 600 003.



+1cc to Mr.M.S.Jayakarthis Advocate in SR.No.100363
+1cc to Mr.K.K.Senthil Advocate in SR.No.100396

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W.P. (MD) No.237 of 2014

and

M.P. (MD) .Nos.1 and 2 of 2014

12.12.2018

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