

dated 9.5.2017, vide which applications were invited for the posts of Assistant District Attorney (Group 'B') and wherein a condition was laid down that applicant should be enrolled as an advocate with Bar Council. According to the petitioner, since he is working in Government service, therefore, under Rule 49 of Bar Council of India Rules, he could not get a licence as an advocate. It is further stated that said condition is violative of Article 19 (1) (g) of Constitution of India. Further parallel has been sought to be drawn with Civil Judge (Junior Division), where one may not be required to be enrolled as an advocate with Bar Council.

We have heard learned counsel for applicant-petitioner and have also carefully gone through file.

Admittedly, the petitioner is in Government service and he wants 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.'

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 petitioner is in Government service and wants to practise as an advocate in private capacity or on behalf of Government, he could always resign from Government service, get licence to practise as Advocate from 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.

The learned counsel for petitioner has tried to draw parallel

between appointment of Civil Judge (Junior Division) and 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. That being so, the writ petition is devoid of any merit and is accordingly dismissed.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

8.10.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No