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W.P.A No. 6189 of 2020
IA No: CAN/1/2020(Old No. CAN 4511 of 2020)
Vinay Kushwaha
Versus
Union of India & Ors.

Mr. Probal Kumar Mukherjee,
Mr. Suhrid Sur
...For the petitioner.

Mr. Baidurya Ghosal
for the respondent nos. 2, 4 and 5.

Mr. Dipanjan Dutta,
Mr. Sayan Dutta ... for the respondent no. 3.

Considering the urgency pleaded by the petitioner in CAN 4511 of 2020, the instant writ petition is taken up for hearing via video conference.

Accordingly, the application being CAN 4511 of 2020 is disposed of.

The short question raised in the writ petition is the interpretation of the expression “two years as an advocate” under the heading “experience” in the process of selection in recruitment, inter alia, to the post of law officer scale-II for the Paschim Banga Gramin Bank in the advertisement issued on June 14, 2019.

Post	Educational Qualification	Experience
“Officer Scale-II Special Officers (Manager)	<u>Law Officer</u> Degree from a recognised University in Law or its equivalent with a minimum of 50% marks in aggregate.	Two years as an advocate or should have worked as Law Officer in Banks or Financial Institutions for a period of not less than two years

The writ petitioner participated in the selection process qualified in the written examination and was called for interview. The respondent no . 3 who is a recruiting consultant conducted the selection process and recommended the petitioner's name. However, by communication dated June 20, 2020, the petitioner was informed by the Paschim Banga Gramin Bank, i.e. the employer that his experience is not in consonance with the post applied for.

The communication, which is admittedly vague, has been otherwise clarified in the affidavit-in-opposition. It is the contention of the Bank that the expression "two years as an advocate" would count from the date on which the petitioner qualified in the "All India Bar Examination" (AIBE).

Counsel for the respondent /Bank submits that the confusion arose by reason of the fact that the petitioner could not submit or did not submit all relevant documents at the time of interview or examination or even in the application for the above post.

The petitioner enrolled as an advocate with the Bar Council of Uttar Pradesh on October 20, 2016. On March 9, 2018 he was issued a certificate of practice after having qualified in the 11th AIBE. In this regard it would be relevant to look at a letter issued by the Bar Council of India being No. BCI:D:564/217 [AIBE/Council] dated

January 31, 2017. The relevant paragraph is set out herein below.

“BCI:D:564/2017[AIBE/Council]

31.1.2017

To
The Secretaries
Of all the State Bar Councils

Dear Secretaries,

The office of the Bar Council of India is receiving various queries from different State Bar Councils, seeking clarification as to whether an advocate who has been enrolled for more than two years on State Bar Council Roll, can be allowed to appear in All India Bar Examination X or not.

It is hereby reiterated and clarified any Advocate who has graduated after 1st July, 2010 can appear in All India Bar Examination for as many times as it requires him or her to pass such exam irrespective of the fact that he or she has been enrolled for more than two years as an Advocate on a State Bar Council Roll. The concerned Advocate is only barred from practicing as an advocate, if even after two years of being enrolled as an Advocate on a State Bar Council Roll, he or she is unable to clear/pass the All India Bar Council Examination.

*Thus, an Advocate enrolled on a State Roll is not debarred from appearing in the All India Bar Council Examination and as per Resolution No. 73/2010 dated 30th April, 2010, passed by the General Council of the Bar Council an unsuccessful candidate may appear in the All India Bar Examination, without any limit on the number of attempts, till he or she clears/passes such exam.
.....”*

A plain reading of the above clarification of the Bar Council of India clearly indicates any law graduate who has enrolled with the State Bar Council is entitled to practice as an advocate for a period of two years even without a certificate issued by the AIBE.

However, if he is unable to obtain a certificate from the AIBE within two years of enrolment, he is debarred from practising as an advocate. He may however make

any number of attempts to sit and qualify for the AIB Examination thereafter.

It is therefore clear that any enrolled advocate shall be deemed as a practicing as an advocate/functioning as an advocate/being an advocate, for a period of two years from the date of enrolment with a concerned Bar Council within the Country.

The petitioner therefore in no uncertain terms fulfils the experience criteria stipulated for the recruitment of post of law officer scale-II to the Paschim Banga Gramin Bank for the process of recruitment conducted by the respondent no. 3 pursuant to advertisement dated June 14, 2019 which has been set out in the 3rd paragraph hereinabove.

In view of the aforesaid, there shall be a writ of mandamus directing the Paschim Banga Gramin Bank to recruit him as a law officer scale-II from the date of first posting of all law officers who qualified and were absorbed pursuant to the advertisement dated June 14, 2019.

It is made clear that the petitioner's permanent absorption would, however, be subject to fulfilling all other criteria, particularly, that of probation, if applicable, in the facts of the case. Upon successful completion of formalities and probation, the appointment of the petitioner shall get back to the same date of appointment of all specialist officers scale-II in the Paschim Banga Gramin Bank, who were recruited and

engaged pursuant to the advertisement dated June 14, 2019.

In view of the above order, the submissions of the Bank as regards non-submissions of documents timely by the petitioner, become irrelevant. It is nobody's case that the Paschim Banga Gramin Bank or any particular official had any personal grudge or animosity against the petitioner. It is only an incorrect interpretation of provision of law that has affected the petitioner.

It has been understood by all the parties that in the order dated September 3, 2020, the direction to keep one post vacant passed by a Co-ordinate Bench of this Court was made to the Paschim Banga Gramin Bank and not the respondent no.3.

With the above observations, the instant writ petition is disposed of.

All parties are to act on a server copy of this order on the usual undertakings.

(Rajasekhar Mantha, J.)