



W.P. No. 9345 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 15.12.2022

CORAM :

**THE HON'BLE MR. JUSTICE R.MAHADEVAN
AND
THE HON'BLE MR. JUSTICE J.SATHYA NARAYANA PRASAD**

**W.P. No. 9345 of 2014
and
M.P. No. 1 of 2014**

A.Santhi

... Petitioner

Vs.

1. Union of India
Rep. by its Secretary to Human Resource and
Development Department
New Delhi.
2. The Union of India
Law and Justice
New Delhi.
3. The Bar Council of India
Rep. by its Chairman
New Delhi.
4. The Secretary
Bar Council of Tamil Nadu and Pondicherry
Madras High Court Campus
Chennai – 600 104.

... Respondents



W.P. No. 9345 of 2014

PRAYER Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari Calling for the records relating to the order dated 10.3.2014 of the fourth respondent herein in R.O.C No.790 of 2014 and quash the same.

For Petitioner : M/s. AL.Ganthimathi

For Respondents : M/s. S.Janarthan, SPCGS (For R1 & R2)

Mr. S.R.Raghunathan (For R3)

Mr. C.K.Chandrasekar (For R4)

ORDER

*(Order of the Court was made by **R.MAHADEVAN, J.**)*

Heard all the parties and perused the materials available on record.

2.According to the petitioner, after completion of law graduation, she made application for enrolment as an Advocate before the Bar Council of Tamil Nadu on 30.05.2013. However, the said application was rejected, by order dated 10.03.2014 in ROC.No.790 of 2014, passed by the fourth respondent, on the ground that she has joined law course at the age of 45 years. Aggrieved by the same, the petitioner is before this court with the



W.P. No. 9345 of 2014

present writ petition to quash the said order of the fourth respondent.

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3. It is the submission of the learned counsel appearing for the fourth respondent that this Court by order dated 03.02.2014, in WP(MD)No.10315 of 2013, directed the Bar Council of Tamil Nadu and Puducherry to take necessary action for removal of advocates, who have completed the law course in violation of clause 28 Schedule III Rule 11 of Rules of Legal Education, 2008 of Bar Council of India. Therefore, the fourth respondent rejected the petitioner's application seeking enrolment as an Advocate, as she has joined the law course at the age of 45 years.

4. Adding further, the learned counsel for the fourth respondent submitted that the issue involved herein is now covered by the decision of the Hon'ble Supreme Court in *Indian Council of Legal Aid and Advice and others v. Bar Council of India and another* [1995 (1) SCC 732] wherein, it was observed that fixing a bar at the age of 45 years is violative of Article 14 of the Constitution of India, discriminatory, unreasonable and arbitrary. The relevant passage of the said decision is usefully extracted below:

"13. The next question is the rule reasonable or arbitrary and unreasonable? The rationale for the rule, as stated earlier, is to maintain



the dignity and purity of the profession by keeping out those who retire from various Government, quasi-Government and other institutions since they on being enrolled as advocates use their past contacts to canvass for cases and also pollute the minds of young fresh entrants to the profession. Thus the object of the rule is clearly to shut the doors of the profession for those who seek entry into the profession after completing the age of 45 years. In the first place, there is no reliable statistical or other material placed on record in support of the inference that ex-government or quasi-government servants or the like indulge in undesirable activity of the type mentioned after entering the profession. Secondly, the rule does not debar only such persons from entry into the profession but those who have completed 45 years of age on the date of seeking enrolment. Thirdly, those who were enrolled as advocates while they were young and had later taken up some job in any Government or quasi-Government or similar institutions and had kept the sanad in abeyance are not debarred from receiving their sanads even after they have completed 45 years of age. There may be a large number of persons who initially entered the profession but later took up jobs or entered any other gainful occupation who revert to practise at a later date even after they have crossed the age of 45 years and under the impugned rule they are not debarred from practising. Therefore, in the first place there is no dependable material in support of the rationale on which the rule is founded and secondly the rule is discriminatory as it debars one group of persons who have crossed the age of 45 years from enrolment while allowing another group to revive and continue practise even after 45 years. The rule, in our view, therefore, is clearly discriminatory. Thirdly, it is unreasonable and arbitrary as the choice of the age of 45 years is made keeping only a certain group in mind ignoring the vast majority of other persons who were in the service of Government or quasi-Government or similar institutions at any point of time. Thus, in our view the impugned rule violates the principle of equality enshrined in Article 14 of the Constitution."

The learned counsel also submitted that following the aforesaid decision, a Division Bench of this Court in ***M.Radhakrishnan v. the Secretary, Bar Council of India and another [2006 (5) CTC 705]*** has held that "the object of the rule is only to curtail group of persons from entering into profession



W.P. No. 9345 of 2014

and to satisfy other group of person who also stand on the same footing. The State Bar Council cannot widen / expand its rule-making power so extensively to discriminate or classify between two similarly placed persons based on utter arbitrariness”.

5.However, the learned counsel appearing for the Bar Council of Tamil Nadu and Puducherry and the learned counsel appearing for the Bar Council of India submitted that the subject matter in issue is pending before the Hon'ble Supreme Court in ***Rishabh Duggal and another v. the Bar Council of India and another in WP(Civil)No.1023 of 2016*** and the Hon'ble Supreme Court has stayed the Notification issued by the Bar Council of India in BCI:D:1519 (LE:Cir.-6) dated 17.09.2016, on 03.03.2017.

6.In the light of the observations of the Hon'ble Supreme Court as well as this court in the decisions cited supra, that “the fixation of upper age limit in enrolling in the Bar is construed to be arbitrary, unreasonable and discriminatory”, this court is inclined to set aside the order of the fourth respondent, rejecting the petitioner's application citing the upper age, and the



W.P. No. 9345 of 2014

same is accordingly, set aside. Consequently, the matter is remanded to the fourth respondent for reconsideration and passing orders afresh, if the petitioner is otherwise found to be eligible, within a period of six weeks from the date of receipt of a copy of this order. However, it is made clear that the order to be passed by the fourth respondent is subject to result of the Writ Petition (Civil) No.1023 of 2016 pending before the Hon'ble Supreme Court.

7.This writ petition stands disposed of in the above terms. No costs.
Consequently, connected miscellaneous petition is closed.

J.)

(R.M.D., J.)

(J.S.N.P.,

15.12.2022

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Index : Yes/No

To

1.The Secretary,
Bar Council of Tamil Nadu and Puducherry,
Madras High Court Campus,
Chennai – 600 104.



W.P. No. 9345 of 2014

2. The Secretary to Government,
Union of India,
Human Resource and Development Department,
New Delhi.

3. The Secretary to Government,
Union of India,
Ministry of Law & Justice and Company Affairs,
New Delhi.

4. The Chariman,
Bar Council of India,
New Delhi.



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W.P. No. 9345 of 2014

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W.P. No. 9345 of 2014

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