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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.04.2022

Coram:

The Hon'ble Mr.Justice R.MAHADEVAN
and
The Hon'ble Mr.Justice J.SATHYA NARAYANA PRASAD

W.P.No.9826 of 2014
and M.P.No.1 of 2014

P.H.Porkodi

...Petitioner

Versus

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

...Respondents

Writ 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 17.03.2014 of the fourth respondent herein in R.O.C.No.1108 of 2014 and to quash the same.

For Petitioner : Mr.S.Thiruvengadam

For Respondents - 1 & 2 : Mr.Haja Mohideen Gisthi

Respondent - 3 : Mr.S.R.Raghunathan

Respondent - 4 : Mr.C.K.Chandrasekar



ORDER

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

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Heard both sides and perused the materials available on record.

2. This Court by order dated 03.02.2014, in W.P(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. Placing reliance on the same, the second respondent / Bar Council of Tamil Nadu and Puducherry issued show cause notice, calling upon the petitioner to explain as to why her name should not be removed from the rolls of the Bar Council of Tamil Nadu and Puducherry, for the alleged violation referring to her age. Challenging the said notice, the petitioner has come up with this writ petition to quash the same.

3. The issue involved herein is no longer res integra. The Hon'ble Supreme Court in the case of Indian Council of Legal Aid and Advice and others v. Bar Council of India and another reported in 1995 (1) SCC 732, has 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. Paragraph 13 of the said judgment 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



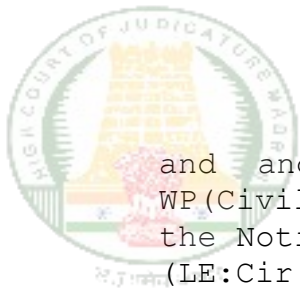
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have completed 45 years of age on the date of seeking enrolment. Thirdly, those who were enrolled as advocates while they were young and had later taken up some job in any Government or quasi-Government or similar institutions and had kept the sanad 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."

4. Following the aforesaid decision, a Division Bench of this Court in the case of M.Radhakrishnan v. the Secretary, Bar Council of India and another reported in 2006 (5) CTC 705, has also held that "the object of the rule is only to curtail group of persons from entering into profession 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. Therefore, from the above judgments, it is clear that the fixation of upper age limit in enrolling in the Bar is construed to be unreasonable.

6. However, Mr.C.K.Chandrasekar, learned counsel appearing for the Bar Council of Tamil Nadu and Puducherry and Mr.S.R.Raghunathan, 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 the case of 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.

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7. In view of the above, this writ petition is disposed of subject to result of the Writ Petition (Civil) No.1023 of 2016 pending before the Hon'ble Supreme Court. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

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To

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

W.P.No.9826 of 2014

RSV(CO)
CB(20/04/2022)