

RAMESHWAR
LAXMAN
DILWALE
Digitally
signed by
RAMESHWAR
LAXMAN
DILWALE
Date:
2024.01.09
10:05:00
+0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.16755 OF 2023

Rajan Krishna Kawale .. Petitioner

Vs.

The State of Maharashtra & Ors. .. Respondents

...

Mr. Sharad T. Bhosale for the Petitioner.

Mr. B. V. Samant, Addl. GP a/w Mr. R. P. Kadam, AGP for Respondent-State.

Mr. Hrishikesh S. Shinde a/w Mr. Rahul B. Khot for Respondent No.3.

...

**CORAM : A.S. CHANDURKAR &
JITENDRA SHANTILAL JAIN, JJ**

DATE : 2 JANUARY, 2024.

PC. :

1. Heard learned counsel for the parties.
2. The challenge raised in this Writ Petition is to the order passed by the Maharashtra Administrative Tribunal on 04/12/2023 thereby dismissing the Original Application preferred by the Petitioner. The Petitioner as well as the Respondent Nos. 3 & 4 had responded pursuant to advertisement dated 03/11/2022 issued by the Maharashtra Public Service Commission with regard to the recruitment on the post of Under Secretary, Legal (Group-A). According to the Petitioner, the Respondent No.3 did not satisfy the requirement prescribed by Clause 8.2 (d) of the said advertisement. The said Clause reads as under:

(d) Have been Advocates in a High Court or Courts

1/4

subordinate thereto, for a period of not less than five years;

3. It is case of the Petitioner that as the Respondent No.3 pursued the LL.M. course with the Indian Law Institution which was a full time regular course conducted by the University Grants Commission, the period spent during academic Session 2018-19 could not be treated as the period spent as an Advocate. If this period was excluded, the Respondent No.3 did not satisfy the requisite experience of practise for period of five years as prescribed. The Tribunal while considering this ground has taken into consideration the resolution passed by the Bar Council of India to the effect that an Advocate enrolled with any State Bar Council can pursue the LL.M. course without suspending the license to practice. The Tribunal further accepted the certificate dated 09/11/2022 issued by the learned Principal District Judge, Solapur certifying that the Respondent No.3 had practiced as an Advocate since 31/07/2017. On that premise, the Tribunal did not grant any relief in the Original Application.

4. Having heard the learned counsel for the parties and having perused the documents on record, we do not find that the Tribunal committed any error in refusing to interfere in the Original Application. As per Clause 8.5.2 of the advertisement, a certificate issued by the concerned Court/Registrar was treated as sufficient to consider the period of experience indicated therein. The certificate dated 09/11/2022 has

been considered in that backdrop and the experience of five years gained by the Respondent No.3 has been considered. According to the learned counsel for the Petitioner, the period spent while pursuing the LL.M. course was however liable to be excluded. We find that the Tribunal was justified in observing that in the light of the resolution passed by the Bar Council of India, there was no requirement of suspending the license to practice. The conduct of Respondent No.3 could result in violating the terms and conditions imposed by the University Grants Commission but that would not reduce the period of experience as an Advocate. We therefore find that the Tribunal has taken into consideration all relevant aspects and has thereafter declined to interfere. The reliance placed by the learned counsel for the Petitioner on the decision in ***(Archana Girish Sabnis Vs. Bar Council of India & Ors.)***, 2015 AIR (SC) 913, is misplaced for the reason that the issue involved therein is distinct from the one that arises in the present matter. Once the license to practice is not suspended, the enrolment with the Bar Council for the entire period would be required to be taken into consideration.

5. The learned counsel for the Respondent No.3 has rightly placed reliance on the judgment of the Division Bench of the Delhi High Court in ***(Karan Antil Vs. High Court of Delhi & Ors.)***, (2023) DHC:2409, wherein it has been held that it would be an erroneous assumption that the person

who is enrolled on the rolls of the State Bar Council ceases to practice law if he peruses further education.

6. For the aforesaid reasons, we do not find any case made out to interfere in writ jurisdiction. The Writ Petition is thus dismissed with no order as to costs.

[JITENDRA SHANTILAL JAIN, J]

[A.S. CHANDURKAR, J.]