

Before A.B. Chaudhari & Kuldip Singh, JJ.

SEEMA DEVI—Petitioner

versus

STATE OF HARYANA AND OTHERS—Respondents

C.W.P. No.13621 of 2017

October 09, 2018

Constitution of India, 1950—Art. 19(1)(g)—Advocate Act, 1961—S.29 and 30—Bar Council of India Rules, 1975—Rl. 49—Enrolment as an Advocate is a necessary condition to appear for Assistant District Attorney—Bar Council of India Rules, 1975—Rule 49 of Bar Council of India Rules bars a government servant from practising as an Advocate—Assistant District Attorney appears in Court as an Advocate.

Held, that the petitioner is in Government service and she 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.

(Para 5)

Further held, 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.....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.

(Para 8)

Further held, that 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.

(Para 10)

Ferry Sofat, Advocate, *for the petitioner.*

Vivek Saini, D.A.G., Haryana.

Kanwal Goyal, Advocate, for respondent No. 2.

Amit Khatkhar, Advocate, for respondent No. 3.

KULDIP SINGH, J.

(1) Petitioner is serving as a Constable in Haryana Police Academy since 2008. At that time, she was in third year of her law course. After getting permission from department, she completed her LL.B course in the year 2009. Respondent No 2 had advertised 180 posts of Assistant District Attorney (Group 'B') on 9.5.2017, wherein following essential qualifications were laid down :-

'Essential Qualifications for the post of Assistant District Attorney in Prosecution, Haryana

(i) Degree of Bachelor of Laws (Professional) of a recognized University. Should have enrolled as an Advocate with Bar Council.

(ii) Hindi/Sanskrit upto Matric standard or higher.'

(2) In the said advertisement, no experience for an Advocate is required. It is further stated that Rule 49 of Bar Council of India Rules bars the Government servant from practising as an Advocate as long as he/she continues in such Government service. Due to said rule, petitioner did not enroll herself with Bar Council. The advocate, who join Government service or private service or service on contract basis, has to surrender his/her sanad/licence. It is claimed by petitioner that since no experience was required, therefore, Notification No. GSR 23/Const./Art.309/2001, as applicable to Haryana State Prosecution Legal (Group 'B') Service Rules, 2001 (Annexure-P-1), so far as it lays down the condition of enrollment of the candidate with State Bar Council, is liable to be quashed being violative of Article 19 (1) (g) of Constitution of India. Petitioner also seeks direction for quashing the

advertisement dated 9.5.2017 (Annexure-P-2), which restrains petitioner from participating in the selection process as she is not enrolled as an advocate with the Bar Council being a Government employee though being a law graduate from a recognized University/College.

(3) Respondent No. 2, in reply, stated that they have merely advertised the posts as per the requisition. It is stated that relevant rules are in consonance with the requirement given in the advertisement. Therefore, there is no fault in the advertisement. It was stated that after appointment, the candidates become notified as Government Pleader/Public Prosecutor for appearance on behalf of Government before various Courts within the State of Haryana. Recently, the Apex Court in *Deepak Aggarwal versus Kesav Kaushik*, has held that Assistant District Attorney/Public Prosecutor are the advocates. Therefore, the enrollment as an advocate with Bar Council, is required for appointment as Assistant District Attorney in Prosecution Department of State.

(4) We have heard learned counsel for parties and have also carefully gone through file.

(5) Admittedly, the petitioner is in Government service and she 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.

(6) 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.'

(7) 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.'

(8) 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, she could always resign from Government service, get licence to practise as Advocate from the 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.

(9) The learned counsel for petitioner has tried to draw parallel between appointment of Civil Judge (Junior Division) and Assistant District Attorney.

(10) 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.

Amit Aggarwal