

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1159 OF 2023

DISTRICT : SOLAPUR
Sub.:- Selection

Shri Rajan Krishna Kawale.)
Age : 35 Yrs, Occu.: Advocacy,)
R/at Wadachiwadi, Post : Uplai (B),)
Tal. Madha, District : Solapur.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Law & Judiciary Department,)
M.S, Mantralaya, Mumbai – 32.)

2. The Secretary.)
Maharashtra Public Service)
Commission, having office at)
Trishul Gold Field, Plot No.34,)
Sector-11, Opp. Sarovar Vihar,)
Belapur CBD, Navi Mumbai – 614.)

3. Mr. Sarjerao A. Padwalkar.)
Age 30 Yrs., Occu.: Advocacy,)
R/o. Aundi, Tal.: Mohol,)
District : Solapur.)...**Respondents**

Shri S.T. Bhosale, Advocate for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents 1 & 2.

Shri H.S. Shinde, Advocate for Respondent No.3.

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Debashish Chakrabarty, Member-A

DATE : 04.12.2023

JUDGMENT

1. The Applicant has applied for the post of Under Secretary in Law & Judiciary Department. The Advertisement for the said post was issued on 03.11.2023. The Applicant cleared the Written Examination and was called for the Interview. He appeared for the Interview and he has secured 3rd rank. The candidate having first rank was found ineligible. He was not eligible as the condition was the candidate should have been Advocate in High Court or subordinate thereto for the period not less than five years. The Respondent No.3 – Shri Sarjerao A. Padwalkar was at that time pursuing LL.M from Delhi University. However, the post of Under Secretary which was advertised was reserved for NT(C) category and Respondent No.2 is from NT(D) category. So both are not qualified and eligible and the name of the Applicant should be recommended.

2. The Learned Advocate for the Applicant submits that the name of Respondent No.3 is recommended. However, till today, the Applicant is not appointed. The Learned Advocate for the Applicant by way of 'Interim Relief' prays that the recommendation of Respondent No.3 be stayed.

3. The State Government has filed the Affidavit-in-Reply.

4. Learned Advocate for the Applicant filed Rejoinder. It is taken on record. The copy of Rejoinder is furnished to all the parties.

5. The learned Advocate for Respondent No.3 submits that Respondent No.3 obtained 'Sanad' on 31.07.2017. So he had completed 5 Years on 31.07.2022 and so he was eligible on 31.07.2022. The learned Advocate for Respondent No.3 relies on the Affidavit-in-Reply filed by Mr. Sarjerao A. Padavalkar dated 8th November, 2023. He also relies on letter dated 27.09.2023. It was issued by Bar Council of India

to Respondent No.3. The copy was addressed to Bar Council of Maharashtra/Goa.

6. The learned Advocate for Respondent No.3 also submits that there is one letter of Mr. A.K. Varma, Joint Director. The learned Advocate for the Applicant submits that as per this letter, it was resolved by Bar Council of India during meeting dated 18/20th December, 2009 regarding pursuing LL.M Course without suspending the practice in law (Sanad) and thus, as per the said Resolution, the practicing Advocates can join in LL.M. Course as a regular student without suspending the practice. He further relies on the letter dated 05.09.2023 written by Dr. A.K. Varma, Joint Director to Respondent No.3 that no 'Undertaking' was obtained from the students in the Session 2018-2019 in respect of surrendering 'Sanad', if candidate joins the course of LL.M. The learned Advocate for Respondent No.3 submits that thus Respondent No.3 does not give any 'Undertaking' to Indian Law Institute at Delhi nor surrendered the 'Sanad'. He further submits that Hon'ble District Judge, Solapur issued a Certificate of having experience of 5 Years' practice in Solapur Court and that Certificate is not challenged.

7. The learned Advocate for Respondent No.3 relies on the judgment in **W.P.(C) 3467/2023 and CM Appl. 13507/2023 (Karan Antil Vs. High Court of Delhi & Ors.) Decided on 10.04.2023**. This pertains to recruitment of Members of 'Delhi Higher Judicial Services Examination – 2022'. In Para Nos.35 and 36, there is mention of Resolution dated 28.12.2009 regarding LL.M.

8. The learned Advocate for Respondent No.3 relies on the decision given by Division Bench of Andhra Pradesh High Court in Para 235, which is as under :-

“235. Therefore, the contention on behalf of the petitioners that the nine months period during which the candidate as Sl. No.5 pursued LL.M Course in United States ought to have been excluded while reckoning his standing at the Bar deserves to be rejected.”

9. Shri S.T. Bhosale, learned Advocate for Applicant points out Affidavit-in-Reply dated 29.11.2023 filed by Shri Sanjay Khedekar, Deputy Secretary, Law & Judiciary Department, Mantralaya. He points out Para 88 of the judgment in **2013(2) SCC 277 (Deepak Aggarwal Vs. Keshav Kaushik & Ors.)**, which states as under:-

“88. As regards construction of the expression, “if he has been for not less than seven years an advocate” in Article 233(2) of the Constitution, we think Mr. Prashant Bhushan was right in his submission that this expression means seven years as an advocate immediately preceding the application and not seven years any time in the past. This is clear by use of ‘has been’. The present perfect continuous tense is used for a position which began at some time in the past and is still continuing. Therefore, one of the essential requirements articulated by the above expression in Article 233(2) is that such person must with requisite period be continuing as an advocate on the date of application.”

10. The learned CPO relying on Affidavit-in-Reply dated 29.11.2023 submits that Principle Judge, District Solapur has issued Certificate dated 09.11.2022 that Applicant is holding experience as practicing Advocate from 31.07.2017 to 09.11.2022 and that Certificate is not challenge by the Applicant and there is no occasion to disbelieve the authenticity of that Certificate and the eligibility of the Applicant.

11. The learned Advocate for Respondent No.3 produces ‘Experience Certificate’ issued by Principal Judge, Solapur in favour of Respondent No.3 that he has been practicing as an Advocate from 31.07.2017 till the date of issuance of ‘Experience Certificate’ i.e. 09.11.2022. It is taken on record and marked as Exb.‘1’.

12. Shri S.T. Bhosale, learned Advocate for the Applicant points out Para Nos.18 and 19 of the judgment in **Civil Appeal No.5395 of 1997 [Satish Kumar Sharma Vs. Bar Council of Himachal Pradesh] decided on 03.01.2001.**

13. Shri S.T. Bhosale, learned Advocate for the Applicant then points out Para Nos.14 and 31 of the judgment in **Civil Appeal No.4232 of**

2007 [Archana G. Sabnis Vs. Bar Council of India & Ors.] decided on 26.11.2014.

14. Shri S.T. Bhosale, learned Advocate for the Applicant further points out Para No.41 of the judgment in **Civil Appeal No.7875-7879, 7170 & 8028 of 2015 [Bar Council of India Vs. A.K. Balaji & Ors.] decided on 03.03.2018.**

15. Shri S.T. Bhosale, learned Advocate for the Applicant also points out the definition of 'Advocate' from 'The Advocates Welfare Fund Act, 2001' which is as under :-

“(a) ‘advocate’ means Advocate entered in any roll under the provisions of this Act.”

16. Shri S.T. Bhosale, learned Advocate for the Applicant also points out BCI Resolution regarding practicing Advocates can join LL.M. Course as a regular student without suspending practice. The said Resolution clarifies that as per the aforesaid Resolution of the Council, an Advocate enrolled with any State Bar Council may take admission and pursue LL.M. Course without suspending licence to practice law.

17. It is assumed that Respondent No.3 might have violated the terms and conditions of UGC. However, it does not come in the way of his enrollment as an Advocate with Bar Council of Maharashtra. We also rely on the Resolution which states as follows :-

“An Advocate enrolled with any State Bar Council may take admission and pursue LL.M. Course without suspending licence to practice law.”

18. The Applicant has not challenged the Certificate issued by District Judge, Solapur that he has practiced in Solapur Court as an Advocate. We accept that fact.

19. As judgment of Hon'ble Supreme Court pertaining to the person who has worked and salaried Advocate is concerned, this is not a case of Respondent No.3 pursuing law while practicing advocacy does not mean that he is either salaried or he has suspended his licence to practice, and therefore, there is no merit in the case of Applicant.

20. Shri S.T. Bhosale, learned Advocate for the Applicant prays that 'Interim Relief' which was granted on 30.10.2023 is to be continued.

21. In view of the facts and law which is discussed above, we are not inclined to continue this 'Interim Relief'. Hence, OA stands rejected.

Sd/-
(DEBASHISH CHAKRABARTY)
Member-A

Sd/-
(MRIDULA BHATKAR, J.)
Chairperson

Mumbai

Date : 04.12.2023

Dictation taken by :

S.K. Wamanse.

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