

**Raj. High Court Adv.Clerks Asso.Soci. and Vs. Registrar General, Raj. High Court and ors**

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**Court :** Rajasthan Jodhpur

**Decided On :** Jul-03-2014

**Appellant :** Raj. High Court Adv.Clerks Asso.Soci. and

**Respondent :** Registrar General, Raj. High Court and ors

**Judgement :**

-1- SB Civil Writ Petition No.10510/2013 Rajasthan High Court Advocates' Clerks Association Society, Jodhpur and another Versus Registrar General, Rajasthan High Court, Jodhpur & Ors. Date of Order ::

3. d July, 2014 HON'BLE MR.JUSTICE GOVIND MATHUR Dr. Nupur Bhati, for the petitioners. Mr. Vinit Kumar Mathur, for the respondent No.1. Mr. P.R.Singh, Additional Advocate General with Mr. Dinesh Ojha, for the respondent State. .... The petitioner, an association of the Advocates' Clerks has preferred this petition for writ to have direction for the respondent State to frame and promulgate schemes for the welfare of the Advocates' Clerks. As per the petitioner, the Advocates' Clerks are an integral part of the justice delivery machinery, therefore, their profession is having recognition even under the Rajasthan High Court Rules, the General Rules (Civil) 1986 and in several other enactments, but no protection to them has been provided as given to the other professionals like Advocates, Chartered Accountants, Medical Practitioners etc. A need to regulate the profession of Advocates' Clerks has been emphasised with a view to extend

efficient service and contribution to the system with higher degree of protection from the hardships attached. It is pointed out that the Advocates' Clerks though are under employment of the individual advocates, but are discharging statutory duties in addition to their -2- private responsibilities with advocates. It is asserted that a deep sense of insecurity exists among the Advocates' Clerks due to non-availability of any set of rules or norms to regulate their service and its conditions. While accepting significance of the Advocates' Clerks in the justice delivery system, it is stated by Shri Prithvi Raj Singh, learned Additional Advocate General that no direction to legislate welfare enactments as claimed for can be given by this Court while exercising powers under Article 226 of the Constitution of India or otherwise. The significance of Advocates' Clerks in the court management is well known and well recognised and looking to that necessary provisions have been incorporated in several enactments pertaining to the court management. Chapter XXVI of the High Court of Judicature for Rajasthan 1952 regulate functioning of the Advocates' Clerks. Rule 495 of the High Court Rules prescribes that no Advocates' Clerk shall be allowed to do any work in the High Court, unless he has been registered under the Rules and no Advocate shall be permitted to have more than two registered clerks. Rules 496 and 497 of the High Court Rules relate to qualifications and disqualifications for registration of a person as an Advocate's Clerk. The acts, those can be performed by an Advocate's Clerk are given in Rule 499 of the High Court Rules, as follows:- (1)Receiving notice on behalf of his master; (2)taking back an appeal or application filed before the Registrar, if found - 3- defective or returned by him for presentation in Court; (3)presenting to the Registrar or the Deputy Registrar an application signed by his master for- (a)copy of a document; (b)inspection of a record; (c)return of a document; (d)refund of a surplus balance; (e)translation and printing; or (f)transliteration or translation of a document or the verification of such transliteration or translation; (4)taking notes from the deficiency report of the Stamp Reporter and filing the necessary stamps; (5)depositing money and paying court-fees; (6)receiving paper-book, certified copies etc.; (7)filing Vakalatnama or retainer's slip or certificate of fee; or (8)identifying persons personally known to him inspecting record or swearing affidavit.

. The acts permitted to be performed by an Advocate's Clerk are quite important and, therefore, their access to various administrative/judicial sections of the High Court is necessary. The assistance provided by the Advocates' Clerks to the High Court staff is also quite valuable and importance of that cannot be ignored. The Rajasthan High Court by its standing order dated 20.9.2007 prescribed several conditions required to be adhered by Advocates' Clerks while discharging their duties in court campus. The High Court by an another -4- standing order dated 4.4.2008 prescribed uniform for the Advocates' Clerks. Relevant portion of the standing order aforesaid reads as under:-

01. The Advocate's Clerk shall wear the blue coloured safari and shall put badge detachable or stitched on the dress showing their name and the registration number. 02. Entry of the Advocate's clerk in the prescribed uniform in the Administrative and Judicial Sections of this Hon'ble Court is permissible 11.00 A.M. to 1.00 P.M. and from 4.00 P.M. to 5.00 P.M. Chapter XXII of the General Rules (Civil), 1986 relates to the Law Clerks and as per Rule 459, following are the acts to be done by the registered Advocate Clerks:- (1) to present applications signed by their masters for -- (a) copies, (b) return of documents, (c) repayment of deposits, (d) inspection, and (e) all applications of a routine nature. (2) to take delivery of copies; (3) to tender money; (4) to identify persons verifying affidavits before the Munsarim; (5) to take notes from the Memorandum Books of Dates.

. The other provisions under the Rules of 1986 relating to Advocates' Clerks (Lawyers' Clerks) are as under:-

460. Names of the clerks to be registered with the Presiding Officer of Courts.-- All -5- practicing lawyers who wish their clerks to do the above acts must register them with the Presiding Officer of the Court giving their full names, parentage, caste and address. These will be entered in a register (Reg.80) to be maintained by the Court.

461. In case of several Courts, the clerks to be registered in the senior most Court.-- When several Civil Courts are located at the same place, the clerk need only be registered in the senior most court whose register shall be circulated to all the subordinate civil courts every quarter for their information.

461. Changes in the registered clerks to be duly notified.-- All changes in their clerk must be duly notified by practicing lawyers. No unregistered clerk will be allowed to act on behalf of his master. All changes duly notified will be entered in the register of clerks.

463. Powers of the District Judge or the Presiding Officer of a Court.-- The District Judge (or the Presiding Officer of any other Court, subject to the control of the District Judge) may remove from the register, the name of any clerk guilty of any misconduct such as to unfit him for the exercise of such duties or convicted of any offence involving moral turpitude.

464. Clerks not be inspect records.-- Clerks will not be allowed to inspect records.

465. Restrictions as to the persons who may be employed as clerks.-- No restriction of any sort can be placed on members of the Bar as to the persons whom they may employ as Clerks, but the -6- District Judge (or the Presiding Officer of any other Court, subject to the control of the District Judge), may in the exercise of his discretion refuse to register a person whose name has once been struck off for misconduct or who has been convicted of any offence involving moral turpitude.

. The Central Administrative Tribunal Rules enacted under the Administrative Tribunals Act, 1985 are also having Chapter XIII relating to register clerks of legal practitioner and the provisions prescribed thereunder are as follows:-

70. Prohibition of employment of tout.-- No legal practitioner shall employ as his clerk any person who is a tout. EXPLANATION.-- Tout. means a person who procures or attempts to procure for any consideration from any legal practitioner or from any person acting on his behalf, the employment of such legal practitioner in any legal business, or who, for purposes of such procurement, frequents the precincts of the Tribunal.

71. Disqualification for registration of clerks.-- No person who is or has been declared a tout or is an undischarged insolvent or has been convicted of an offence involving moral turpitude or has been dismissed from the service of the

Government for corruption or dishonesty or is otherwise unfit to be a clerk shall be registered as legal practitioner's clerk as provided in Rule 25(1) of the Procedure Rules.

72. Registration of legal practitioner's -7- clerks.-- (a)When an application in Form No.IV of the Procedure Rules is made by the legal practitioner for registration of his clerk and the same is allowed by the Registrar, the name of the clerk shall be entered in the Register of Clerks in Register No.9. (b)The Registrar may, for reasons to be recorded in writing, decline to register any clerk, who in his opinion suffers from any disqualification specified in Rule 71 or is otherwise unsuitable to be registered as such. (c)An appeal may be filed within thirty days from the date of the order of the Registrar under sub- rule(b) to the Chairman/Vice-Chairman.

73. Cancellation of registration.-- (a)The Registrar may, for reasons to be recorded in writing, cancel the registration of any clerk after giving him and his employer an opportunity to show cause against such cancellation. (b)An appeal may be filed against the order of the Registrar made under sub-rule(a) within thirty days from the date of the order.

74. Notifying registration and cancellation.-- Orders registering a clerk or cancelling the registration shall be notified on the Notice Board of the Tribunal and a copy sent to the Advocates' Association.

75. Issue of Identity Card.-- (a)An Identity Card as referred to in sub-rule(3) of Rule 25 of the Procedure Rules shall be issued in Form No.13 to every registered clerk of the legal practitioner on his remitting a fee of Rs.5 by way of IPO/DD drawn in favour of the Registrar. -8- (b)The registered clerk shall carry with him the Identity Card and produce the same when required by any official of the registry for identification. (c)An Identity Card once issued shall be in force for a period of five years unless cancelled earlier.

76. Access to information by registered clerks.-- The Registered Clerks, may communicate personally with any Sectional or Departmental Head not below the rank of a Section Officer for information regarding their employers' matters pending in the Tribunal.

77. Carrying out corrections.-- The Section Officer-in-charge of Judicial Branch may permit a registered clerk to correct any clerical or typographical mistake in any pleadings or other proceedings. The correction shall be made in the presence of the Section Officer and duly initialled by the maker as well as the Section Officer.

78. Discharge of duties of an absentee clerk.-- In case of illness or absence on leave of a registered clerk, the Deputy Registrar or the Sectional Head of the Judicial Branch may, on the requisition of the legal practitioner under whom such registered clerk is engaged, permit the registered clerk of another legal practitioner to discharge the absentee's duties for a specified period.

79. Presentation and return of papers.-- Registered clerk may present or take return of papers on behalf of the legal practitioner whom he represents.

. -9- The provisions aforesaid clearly indicate role and significance of the Advocates' Clerks in justice delivery system. The provisions presently existing mainly relate to registration of Advocates' Clerks, their duties in office of the Court and the cancellation of registration in certain eventualities, however, no provision is available to regulate service conditions of the Advocates' Clerks. It appears that the same has not been extended with assumption that the Advocate's Clerk is essentially an employee of the Advocate and, therefore, his master is required to take necessary care of the service conditions. True it is, an Advocate's Clerk is essentially an employee of the Advocate with whom he is working, but his functioning in court office is well established and well recognised, thus, it is not a service to an individual but to the system by a class of professionals attached mainly with Advocates'. Looking to this functional significance, several State legislatures have made provisions to regulate service conditions of the Advocates' Clerk. The Kerala Advocates' Clerks Welfare Fund Act, 2003. was enacted by the State legislature of the State of Kerala for constitution of a welfare fund for benefit of Advocates' Clerks. As per the Act aforesaid an Advocate Clerk. means a Clerk employed by an Advocate and recognised as such by such Authority and in such manner as may be prescribed and who is a member of an Advocates' Clerks Association. Under the Act of 2003 a fund has been established to ensure welfare

of the Advocates' Clerks. -10- In the State of Orissa also The Orissa Advocates' Clerks Welfare Fund Act, 2008. is in operation and that too provides Advocates welfare fund and several other amenities to the Advocates' Clerks. A similar kind of enactment is in existence in the State of Andhra Pradesh in the name of The Andhra Pradesh Advocates' Welfare Fund Act, 1987.. Pertinent to mention here that the Rules of the Gauhati High Court enacted under the Assam High Court Order 1948 also provides several protections to the Advocates' Clerks. The provisions referred above clearly indicate existence of a professional class of the Advocates' Clerks and its importance in justice delivery system. We have also seen in our day to day functioning that an Advocate's Clerk plays a very vital role in the court management, though he is not an employee of the court. The profession of the Advocates' Clerks, thus, certainly deserves to be recognised in line of the other professions like Advocates, Chartered Accountants, Doctors, Nursing etc. While feeling necessity of the provisions for regulating service conditions of the Advocates' Clerks, the Court is aware about the limitations of its authority in giving directions to frame the provisions, therefore, instead of giving any direction as claimed for, I deem it appropriate to direct the State Government to constitute a committee under the Chairmanship of the Secretary to the Government of Rajasthan, Department of Law to examine viability of an enactment for welfare of the Advocates' -11- Clerks. The committee, beside the Secretary to the Government of Rajasthan, Department of Law, shall also be having six other members including the Registrar (Administration) of the Rajasthan High Court; the Chairman, Bar Council of Rajasthan or his nominee; two representatives of the petitioner association, Dr. (Mrs.) Nupur Bhati, Advocate and Shri Prithvi Raj Singh, Advocate, presently the Additional Advocate General to the Government of Rajasthan at Jodhpur. Necessary order constituting committee as above is required to be passed by the competent authority on or before 20th July, 2014. The first meeting of the committee shall be convened at Jodhpur by the Secretary to the Government of Rajasthan, Department of Law, on 26th July, 2014. The committee shall examine viability to have an enactment to regulate service conditions and for other welfare benefits for the Advocates' Clerks within a period of two months thereafter. The report of the committee shall be submitted to this Court on or before 27th September, 2014. Let this petition for writ be listed for

further orders on 29th September, 2014. ( GOVIND MATHUR ),J.

kkm/ps.

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