

Ramu S. Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Feb-28-2002

Reported in : 2002(2)KarLJ375

Judge : R.V. Raveendran and ;K.L. Manjunath, JJ.

Acts : [Advocates Act, 1961](#) - Sections 22 and 24; Bar Council of India (Training) Rules, 1995 - Rule 15; Karnataka Judicial Services (Recruitment) Rules, 1983

Appeal No. : Writ Petition Nos. 1054, 1120 to 1122, 1315 and 1316 of 2002

Appellant : Ramu S.

Respondent : State of Karnataka and ors.

Advocate for Def. : M.B. Prabhakar, Addl. Govt. Adv. and ;Suresh S. Joshi, Adv.

Advocate for Pet/Ap. : Party-in-person, ;M. Vinayakeerthy, ;Lex-Nexus and ;P.S. Rajagopal, Adv.

Disposition : Petition allowed

Judgement :

ORDER

1. The petitioners are all practicing Advocates. As per the Certificates of Enrolment issued to them by the Karnataka State Bar Council, the date on which they have signed the Roll of the State Bar Council and the deemed date of commencement

of their legal practice as Advocate are as follows:

W.P. No.

Name

Date of signing the Roll

Date on which deemed to have become an Advocate

1054 of 2002

S.Ramu

5-2-1999

29-11-1997

1120 of 2002

T.K Shridevi

4-9-1998

4-9-1997

1121 of 2002

R.Manjuladevi

23-10-1998

18-10-1997

1122 of 2002

R.Rekha

6-11-1998

15-3-1997

1315of 2002

Pramodha

9-1-1998

24-10-1996

1316of 2002

Ganapati

29-8-1998

23-8-1997

2. The Civil Judges (Junior Division) Selection Committee of High Court of Karnataka ('Selection Committee' for short) issued a notification dated 8-10-2001 inviting applications for recruitment of candidates for the posts of Civil Judge (Junior Division). Clause (3) of the Schedule to the Karnataka Judicial Services (Recruitment) Rules, 1983 prescribes the minimum qualifications for the post which is extracted in clause (3) of the said Notification. The relevant portion of clause (3) is extracted below:

'(a) Must be a holder of degree in law or equivalent qualification, and

(b) Must on the last date fixed for submission of applications be-- (i) practicing as an Advocate and must have so practised for not less than four years as on such date....'.

The last date prescribed for receipt of applications was 19-11-2001 subsequently extended as 30-11-2001.

3. Clause (19) of the said Notification requires the candidates to submit the applications in the prescribed form in duplicate accompanied by the documents enumerated therein. One of the documents to be produced is a certificate from the

Presiding Officer of the Court in which he is actually practicing (or from the Registrar (Judicial), High Court, in case he is practicing in the High Court) indicating the length of his practice. Another document to be produced is the true copy of the Enrolment certificate. Petitioners claim that they applied against the said recruitment notification with the necessary documents.

4. The petitioners have received identical communications dated 27-12-2001 from the Selection Committee informing them that as they have not completed the required years of practice (four years) as an Advocate on the last date for receipt of the applications, their applications were rejected. We extract below the reason given by the Selection Committee for such rejection (from Annexure-D in W.P. No. 1054 of 2002):

'One of the requirements for the posts of the Civil Judges (Junior Division), as per clause (3) of the Notification bearing No. CJRC-1/2001, dated 8th October, 2001, is that the applicant must be practicing as an Advocate and must have so practised for not less than four years as an Advocate on the last date for submission of the applications. The enrolment certificate furnished by you along with your application shows that you were enrolled as an Advocate on the roll of the Karnataka State Bar Council, Bangalore on 5-2-1999. Though, there is an endorsement by the Secretary, Karnataka State Bar Council, on the said certificate of enrolment that your seniority as an Advocate will count with effect from 29-11-1997, that does not indicate that prior to your enrolment, you were practicing as an Advocate. The period of practice as a trainee Advocate, prior to the above said date of enrolment as an Advocate does not count as the period of practice for the purpose of considering your application for the post of Civil Judge (Junior Division)'.
(emphasis supplied)

5. Feeling aggrieved, the petitioners have filed these petitions for quashing the rejection letter dated 27-12-2001 issued by the Selection Committee and seeking a direction to the Selection Committee to consider their applications for appointment to the post of Civil Judge (Junior Division) in accordance with law in pursuance of the notification dated 8-10-2001. They also sought an interim

direction to the Selection Committee to permit them to participate in the selection process including written test which was scheduled to be held on 12th and 13th January, 2002.

6. The learned Single Judge who heard the matter issued an interim direction on 9-1-2002 in W.P. No. 1054 of 2002, relevant portion of which is extracted below:

'4. Since the examination is already fixed on 12th January, 2002, I am of the view that it is in the interest of justice to permit the petitioner and all other Advocates, who are similarly situated like the petitioner, to appear for the examination fixed on 12th January, 2002 subject to the following conditions:

(i) Such of those candidates (i.e., all the candidates who have applied for the post of Civil Judge (Junior Division) and who are similarly situated like the petitioner, shall appear before the Registrar-General, High Court of Karnataka, for the purpose of receiving the Hall Ticket before 6.00 P.M. on 10th or 11th January, 2002 and collect the Hall Tickets and give a letter to the Registrar-General to the effect that their appearance in the examination shall be subject to the result of the writ petition and that they will not claim any equity in their favour merely because they are permitted to appear for the examination.

(ii) Permission granted to the petitioner and other similarly situated Advocates to appear for the examination, as stated above, is made subject to the result of this petition.

(iii) It is made clear that the benefit of this interim order is made available to such of those candidates who comply with the direction given above and it will not be available to others who fail to appear before the Registrar-General to receive the Hall Tickets, as stated above'.

He also referred the matter to the Division Bench in view of the important question involved in the case. We are informed that the petitioners and the similarly situated candidates have been permitted to take the written examination which was held on 12th/13th January, 2002.

7. The Selection Committee, the High Court and the State have filed common objections. They have contended that a person could not have practised as an Advocate before he has enrolled as an Advocate by signing the Roll of the State Bar Council and therefore no period prior to such date (of enrolment can be considered as period of practice; that the endorsement by the Karnataka State Bar Council on the enrolment certificate stating that the petitioners' seniority as an Advocate will count from the date of beginning of training as Trainee Advocate does not mean that the candidates have practised during the period of training, and that therefore the period of 'practice' as a Trainee Advocate prior to the date of enrolment as an Advocate cannot be counted for calculating the minimum period of four years practice which is the eligibility criterion for the post of Civil Judge (Junior Division). Reliance is placed on Section 22 of the [Advocates Act, 1961](#) and the decision of the Supreme Court in *V. Sudeer v. Bar Council of India and Anr.* : [1999]1SCR1048 , in this behalf.

8. On the rival contentions, the question for consideration is whether a candidate can be said to have practised as an Advocate from the date of commencement of training as Trainee Advocate, as contended by petitioners, or only from the date on which he has signed the Roll of the State Bar Council, as contended by the Selection Committee.

9. The notification dated 8-10-2001 requires that an applicant should be practicing as an Advocate on the date of the application and must have practised for not less than four years as on the last date fixed for submission of applications.

10. Section 22 of the Advocates Act ('Act', for short) relates to certificate of enrolment. Sub-section (1) thereof which is relevant is extracted below:

"22. (1) There shall be issued a certificate of enrolment in the proscribed form by the State Bar Council to every person whose name is entered in the Roll of Advocates maintained by it under this Act'.

Section 24 prescribes the eligibility conditions to be fulfilled for being admitted as an Advocate on a State roll. It provides that any citizen of India who has completed 21 years of age and who has obtained a degree in Law after undergoing the

prescribed course of study in law from any University of India which is recognised for purpose of the Advocates Act by the Bar Council of India, is entitled to be admitted as an Advocate on the said Roll.

11. If the requirements of Section 24 alone are to be considered, all the petitioners would have been entitled to be enrolled as Advocates immediately after they successfully completed the course in law from any University which is recognised by the Bar Council of India. But, the Bar Council of India framed the Bar Council of India (Training) Rules, 1995 (Training Rules', for short) which came into effect on 2-4-1996. The said rules were amended by the Bar Council of India on 19-7-1998.

11.1 Clause (2) of the said Rules provided that no person shall be entitled to be enrolled as an Advocate unless he was eligible to be enrolled as such under Section 24 of the Act, and had undergone training as prescribed under the said rules. It further provide that while undergoing training, the trainees shall be enrolled provisionally as 'Trainee Advocates' and shall be issued identity cards for identification. Rule 7 prescribed the period of training as one year.

11.2 Rule 10 provided that no Trainee Advocate shall engage himself in any employment, profession, trade or calling during the course of training in any manner. Rule 8 required the Trainee Advocates to regularly attend the chamber or office of the guide and study the case papers and correspondence, draft pleadings, attend Courts and in particular study cases with a view to get acquainted with the practice in Courts during the period of training and provided that a minimum attendance of 225 days in a year in Courts and chambers shall be a condition precedent for successful completion of the training. Rule 13 required the Trainee Advocates to attend compulsorily the lectures organised by the State Bar Council, given by legal luminaries and jurists on professional ethics and other topics and such lectures were deemed to be part of the training.

11.3 Rule 9 required the Trainee Advocates to maintain two diaries in the form approved by the State Bar Council containing a record of the work done in the Guide's chambers and the work done in Court, during the period of training and such diaries duly scrutinised by the guide twice a month, should be submitted to the State Bar Council at the end of the training period.

11.4 Rule 15 provided that a Trainee on successful completion of the training period shall be entitled to the seniority from the date of provisional enrolment as Trainee under the rules. Rules 15-A to 15-C which described the status and position of Trainee Advocates are extracted below:

'15-A. A Trainee shall be enrolled provisionally as 'Trainee Advocate' after approval of name of his Guide by State Bar Council and on successful completion of training period he shall be enrolled as 'Advocate' as defined under Section 2(a) of the [Advocates Act, 1961](#) and shall be entitled to seniority as Advocate from the date of provisional enrolment but if in any case period of training of particular candidate is extended by State Bar Council under Rule 9 of these Rules on the ground of inadequate training, said extended period shall not be counted towards seniority.

15-B. The "Trainee Advocates' after their provisional enrolment shall be entitled to appear in Court for seeking adjournments and to make mentioning on instruction of their Guide and shall be under disciplinary control of State Bar Council and Bar Council of India under [Advocates Act, 1961](#) and Rules made thereunder.

15-C. The benefit of seniority under new rule given to 'Trainee Advocates' shall be granted to those trainees also who have either completed their training and have been enrolled as Advocates or are undergoing training under this rule with effect from the date of approval of name of their guides under Rule 4 of the Rules treating them enrolled provisionally as 'Trainee Advocates'.

(emphasis supplied)

12. It is evident from the said rules that during the period of training, the Trainee Advocates were required to compulsorily attend Courts and Chambers, for 225 days in a year and study the papers, draft pleadings and appear in Courts for seeking adjournments and making mentions on instructions from their Guide. They were prohibited from engaging themselves in any other profession, business or trade. Thus, as per the Training Rules, the Trainee Advocates were required to devote themselves full time in regard to the work associated with legal practitioners. The rules also provided that when they completed the training, the

period of training was to be treated as Legal Practice and the candidate shall be deemed to be an Advocate for all purposes from the date of commencement of training under the [Advocates Act, 1961](#). In fact, the Bar Council of India passed a resolution in October 1998 (Resolution No. 82 of 1998) giving the following clarification to the State Bar Councils in regard to the status of the Trainee Advocates on completion of the period of training (vide circular dated 15-12-1998 issued by Bar Council of India to all State Bar Councils):

'The date of seniority will be determined by the Enrolment Committee on successful completion of training and that shall be endorsed on the enrolment certificate of such Advocate. An entry in the relevant enrolment register will also be made to that effect. The following endorsement may be made in the enrolment certificate.-- 'Period of training from..... to..... is to be treated as legalpractice and he/she is deemed to be Advocate for all intents and purposes of the [Advocates Act, 1961](#)' '.

(emphasis supplied)

Thus according to the Bar Council of India and State Bar Council, once the training was successfully completed, the period of training was treated as legal practice and the candidate was deemed to be an Advocate for all purposes from the date of commencement of training. In other words, the enrolment relates back to the date of commencement of training.

13. It may be of some relevance to note that the said rules were the subject-matter of challenge before the Supreme Court in V. Sudeer's case, supra. The said rules were struck down by the Supreme Court on the ground that the Bar Council of India did not have the authority to frame such Training Rules contrary to the provisions of Section 24 of the Act. Though the Supreme Court noted the need for training and suggested that entrance into the Bar should be only after 12 to 18 months of apprenticeship with an entrance examination, the rules were struck down only on the ground that the Bar Council of India did not have the power to make such rules which ran counter to provisions of Section 24. The Supreme Court also clarified that the said decision will not have retrospective effect and will not apply to those applicants for enrolment who have successfully completed their

pre-enrolment training as per the said rules. Therefore, the validity of the training undergone under the Rules and Act of State Bar Council in recognising the period of training as 'practice' as Advocate is not disturbed, in regard to the period upto 15-3-1999.

14. We therefore hold that period during which Advocates underwent training, as certified by the State Bar Council in the enrolment certificate will have to be treated as period of practice by such Advocate.

15. The learned Additional Government Advocate submitted that what is 'deemed' as practice under the Act or Training Rules is not relevant. He contended that Judicial Recruitment Rules and the notification required and contemplated 'actual' practice as an Advocate for four years. In this behalf, he referred to Clause 15 of the notification which requires the candidates to obtain and furnish certificates from the Presiding Officer of the Court in which he is actually practicing (or from the Registrar in case he is practicing in High Court) indicating the length of practice. He contended that Clause 15 indicated that what was required was actual practice. He argued that the period of 'training', though deemed as 'legal practice' of an Advocate under the Advocates Act cannot be treated as actual practice which is the required qualification for recruitment. He stated that actual practice for four years has been prescribed to ensure that persons selected have basic experience in procedural laws and adequate acquaintance with substantive laws. He submitted that even a person who has been enrolled as an Advocate more than four years prior to the notification will not be eligible, if he or she has sat at home without practicing. He stated that the emphasis is on 'practicing' as Advocate and not 'enrolment' as Advocate.

16. The term 'practice' or 'practicing as Advocate' is not defined either in the Advocates Act or in the Karnataka Judicial Services (Recruitment) Rules, 1983 or in the notification dated 8-10-2001. The Chambers 21st Century Dictionary defines the term 'practicing' as 'actively engaging in or currently pursuing or observing'. In general parlance, 'practicing as an Advocate' would encompass activities such as appearing and conducting cases in Courts or other Dispute Resolution Fora, giving legal advice and drafting pleading and documents.

17. The Training Rules which were in force at the relevant point of time and the Resolution of the Bar Council of India referred to above, apart from clarifying that on successful completion of the training, the period of training will be treated as period of legal practice as an Advocate, also ensure that during the period of training, the Trainee Advocate is actively and continuously engaged in and pursuing the work related to legal practice, that is attending the Courts and Chambers, studying papers, drafting pleadings and documents and also making mentions in Courts. We may take judicial note of the fact that even when a period of training is not prescribed or required for enrolment, normally, the first year of the career of an young Advocate is spent in such work as was done by the Trainee Advocates. Seldom does an Advocate start conducting trials from day one of his career as an Advocate. We therefore find no reason to exclude the period of active training in advocacy, which has been treated by the Bar Council of India itself as the period of legal practice of an Advocate, in calculating the period of 'practice' as an Advocate. We may also take note of the fact that a considerable number of the candidates seeking appointment as CivilJudges (Junior Division) are Advocates who are practicing as Juniors with Senior Counsels, without having filed a single Vakalath independently. Will it be possible to exclude those applicants on the ground that they have not 'practised' as they have never appeared or handled any case independently? We are afraid it may not be possible as the rule now stands. We may give another analogy. The Judicial Officers when selected and appointed, are given an initial training in Karnataka Judicial Academy for a period of four months. During those four months, they do not hear cases and decide cases. Can it therefore be said that during the period of such training, they should not be considered as Judicial Officers. The answer will be an emphatic 'no'. Be that as it may.

18. We therefore, allow these petitions and quash the communication dated 27-12-2001 rejecting the applications of the petitioners and direct the respondents to accept the period of training of Advocates as legal practice, by calculating the four years period not from the date of enrolment but from the date specified by the State Bar Council in the enrolment certificate for purposes of seniority. As the petitioners and similarly situated candidates have been permitted to take the examinations subject to the final order in these petitions, their results if withheld

shall be declared and they shall be treated on par with the other candidates, subject to their fulfilling other qualification requirements.

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