

**In Re: Padma Dat Joshi**

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**Court :** Allahabad

**Decided On :** Apr-02-1902

**Reported in :** (1902)ILR24All348

**Judge :** John Stanley, C.J., ;Blair and ;Burkitt, JJ.

**Appellant :** In Re: Padma Dat Joshi

**Judgement :**

John Stanley, C.J., Blair and Burkitt, JJ.

1. In this matter a petition has been presented to the High Court by Pandit Padma Dat Joshi, praying that certain orders of the Commissioner of Kumaun refusing to enrol him as a pleader under Section 8 of the Legal Practitioners Act (XVIII of 1879) qualified to practise in the Courts of the Sessions Judge of Kumaun and of the Subordinate Magistrates, in all the Revenue Offices, and also in the Commissioner's Court in respect of the cases referred to in Rule (11) of the Kumaun Rules, may be set aside, and that the Commissioner of Kumaun may be directed to enrol him as such pleader, and to permit him to practise in the said Courts and Offices.

2. It appears that the pleader, being duly qualified in that behalf, applied to this High Court to be admitted and enrolled as a pleader of this Court, and was duly enrolled as such on the 19th of August 1898. Subsequently he made several applications to the Commissioner of Kumaun for license to practise as a pleader in

Garhwal or at Naini Tal or Almora, as also in Kumaun. These applications were refused on the ground that the Commissioner did not consider that the number of vakils and pleaders in his Division should be increased. From this refusal the petitioner appeals to this Court on the ground that the Court of the Commissioner of Kumaun is a Court of Session subordinate to this High Court, and that the petitioner having been enrolled as pleader of this Court, is entitled, by virtue of such enrolment, to be enrolled and to practise in the Court of Session of Kumaun, and in all Courts subordinate to that Court, and in all Revenue Offices in the Province of Kumaun, and that the order of the Commissioner refusing to enrol him is contrary to law.

3. A preliminary objection has been raised by counsel on behalf of Government and the Commissioner of Kumaun to the hearing of this application on the ground of want of jurisdiction. His contention is that the Commissioner of Kumaun is the High Court of that Province for the purposes of the Legal Practitioners' Act, and alone can make rules for the qualifications and admission of proper persons to be pleaders of that Court, and in this regard, is in no way subordinate to, and cannot be controlled in his action by, this Court. The decision of this question largely depends upon the true construction to be placed upon some of the provisions of the Scheduled Districts' Act (Act XIV of 1374), and of the rules and orders passed thereunder on the 27th of June, 1894.

4. The preamble to that enactment recites that various parts of British India have never been brought within, or have from time to time been removed from, the operation of the various Acts and Regulations, and the jurisdiction of the ordinary Courts of Judicature; it further recites that doubts have arisen as to what Acts and Regulations are in force in such parts, and that it is expedient to provide readier means than now exist for ascertaining the enactments in force in the territories specified in the first schedule to the Act. Accordingly, in the third section of the Act the Local Government, with the previous sanction of the Governor-General in Council, is empowered to declare by notification in the Gazette what enactments are and what enactments are not in force in any scheduled district, or any part of such districts, which notification is to be binding on all Courts of law. Then by Section 5 the Local Government with the like sanction may be empowered to extend

by notification to any of the scheduled districts, or to any part of any such districts, any enactment which is in force in any part of British India at the date of such extension. In pursuance of the powers given by this section the Code of Criminal Procedure, the Indian Succession Act, 1885, the Indian Companies' Act, 1882, and the Indian Railways' Act, were extended to Kumaun. By Section 6 of the Act the Local Government is empowered from time to time to--'(a) appoint officers to administer civil and criminal justice...and otherwise to conduct the administration within the scheduled districts; (b) regulate the procedure of the officers so appointed...and (c) direct by what authority any jurisdiction, powers or duties incident to the operation of any enactment for the time being in force in such district shall be exercised or performed.' Amongst the scheduled districts to which this Act is applicable is the Province of Kumaun and Garhwal. The High Court of the North-Western Provinces has as such High Court no inherent jurisdiction in the Provinces of Kumaun and Garhwal; any jurisdiction that it possesses in this province is derived from the Code of Criminal Procedure and from the orders of the Local Government passed in pursuance of the powers conferred by the Scheduled Districts' Act.

5. Under Section 4(j) of the Code of Criminal Procedure, this High Court is the High Court in reference to proceedings in the Kumaun Division against European British subjects. The rules and orders which have been passed in pursuance of the power conferred by Section 6 of the Scheduled Districts' Act and which are now in force are, as we have said, the rules and orders of the 27th of June 1894. By Rule 2 of these rules and orders this High Court is appointed the High Court for the Kumaun Division for all purpose a of the Code of Criminal Procedure other than those which it already possessed under the Code. Therefore, for all the purposes of the Code of Criminal Procedure, this Court is the High Court for the Kumaun Division. By Rule (11) it is provided that for the purpose of the Indian Succession Act, the Indian Companies Act, 1882, and the Indian Railways' Act, 1890, this High Court shall be the High Court for the Kumaun Division. For these purposes, and for these purposes alone, has this High Court been appointed the High Court for the Kumaun Division. No further or other jurisdiction has been conferred upon it. The limited jurisdiction so conferred by the rules to which we have referred may apparently at any time be withdrawn by the Local Government, inasmuch as the

Local Government is empowered from time to time to direct by what authority any jurisdiction, powers or duties incident to the operation of any enactment shall be exercised or performed. The tenure of the jurisdiction which this Court at present enjoys by virtue of these rules is therefore altogether precarious. It is what we may term extraordinary appellate jurisdiction as distinguished from the ordinary appellate jurisdiction of the Court.

6. We come now to Sub-section (2) of Rule 11, which is an important sub-section; it provides as follows: 'Save as otherwise provided by any enactment for the time being in force, or by any notification issued in exercise of powers conferred by any such enactment, for the purposes of all other Acts for the time being in force, the Commissioner, i.e. of Kumaun, shall exercise the powers and perform the duties of a High Court for the Kumaun Division.' This is a very wide and far-reaching rule. It confers upon the Commissioner the powers of a High Court for the purposes of all Acts other than those in respect of and for the purposes of which this Court is declared to be the High Court. Among others, it constitutes, as it seems to us, the Commissioner the High Court in his Division for the purposes of the Legal Practitioners' Act. If it had been intended by the Local Government that this Court should be the High Court for the purposes of the Legal Practitioners' Act, it would no doubt have mentioned this Act in the Rules, as it did in the case of the other enactments to which we have referred. The maxim '*expressio unius est exclusio alterius*' appears to be not inapplicable. We are for these reasons of opinion that the Commissioner of Kumaun is the High Court for the purposes of the Legal Practitioners' Act in the Kumaun Division. It is he who is appointed by the notification to exercise the powers and perform the duties of the High Court in respect of that Act. But then it is contended on behalf of the petitioner that by reason of the fact that this High Court has been appointed the High Court of the Kumaun Division for some purposes, the Commissioner of Kumaun and the Courts in his Divisions are subordinate to this Court within the meaning of Section 8 of the Legal Practitioners' Act. This section runs as follows: Every pleader holding a certificate issued under Section 7 may apply to be enrolled in any Court or Revenue Office mentioned therein and situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted and subject to such rules consistent with this Act as the High Court or the chief controlling

Revenue Authority may from time to time make in this behalf, the presiding Judge or Officer shall enrol him accordingly, and thereupon he may appear, plead, and act in such Court or Office, and in any Court or Revenue office subordinate thereto.' It is argued that the Province of Kumaun and Garhwal is within the local limits of the appellate jurisdiction of the High Court within the meaning of this section by reason of the jurisdiction which has been conferred upon this Court by the Code of Criminal Procedure, and by the Rules and Orders passed under the Scheduled Districts' Act, and that therefore the Commissioner of Kumaun was bound by law to grant the petitioner's application and to enrol him as a pleader in the Courts of his Province. We do not accede to this argument. It is clear to our minds that by virtue of Rule (11) of the Rules passed under the Scheduled Districts' Act the Commissioner of Kumaun was constituted the proper authority for making rules for the qualifications, admission, &c., of proper persons to be pleaders of his Court and of the Courts subordinate to his Court situate within the local limits of his appellate jurisdiction. It is clear to us also that he was by the same rule empowered to exercise the powers of a High Court in the admission of persons to be pleaders in his Court and in the Courts subordinate to it. He exercises in his Province appellate jurisdiction, except in so far as such jurisdiction has been withdrawn from him by the enactments and rule as to which we have referred. It cannot be said that the Province of Kumaun and Garhwal is within the local limits of the appellate jurisdiction of this High Court for all purposes. It is so for limited purposes only, and certainly, as we have already pointed out, is not so for the purposes of the Legal Practitioners Act. The contention is based upon too wide an interpretation of the words 'within the local limits of the appellate jurisdiction of the High Court' in Section 8. It is argued that inasmuch as this Court exercises some appellate jurisdiction in the Kumaun Division, therefore the Courts of Kumaun are situate within the local limits of the appellate jurisdiction of this Court within the meaning of this section. It might as well, we think, be said that inasmuch as this Court is the High Court for the purposes of the Indian Divorce Act in the Province of Oudh, and is also the High Court in the same Province in the matter of references under Section 57, Clause (b), of the Indian Stamp Act, it is therefore the High Court in that Province for the purposes of the Legal Practitioners' Act. The language of this section cannot, we think, be so widely

interpreted : the words to which we have referred appear to us to be co-extensive in meaning with the same words as used in Section 6, Sub-section (a), and to denote the local limits or area in respect of which such High Court or Court having the powers of a High Court in that behalf is empowered to make rules for the qualification, admission, and certificates of pleaders, &c., and not to extend beyond this. In other words, that the words 'appellate jurisdiction' as used in the section denote the ordinary as distinguished from what we have termed the extraordinary appellate jurisdiction of this Court. If this were not so, we should have two Courts exercising the powers of a High Court in the Kumaun Division for the purposes of the Legal Practitioners' Act, namely, the Commissioner of Kumaun appointed by and acting under the rules passed by the Local Government, and this Court acting in virtue of its extraordinary appellate jurisdiction. This cannot be. For the foregoing reasons we are of opinion that this Court 'has no jurisdiction to entertain this application. It is therefore rejected with costs.

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