

In Re: Refugee

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Court : Allahabad

Decided On : Nov-23-1948

Reported in : AIR1949All511

Appellant : In Re: Refugee

Judgement :

Malik, C.J.

1. These are various applications made by refugee lawyers from the Punjab and Frontier Provinces for enrolment as advocates of this Court. The applications were sent to the Bar Council for its opinion and the Bar Council has now sent its views. The applications have been put up before us for orders under Section 8 and 9, Bar Councils Act. We were of the opinion that these were administrative matters which should be dealt with in Chambers but were informed that the practice of this Court has been to deal with these matters in Court, if the High Court does not agree with the opinion given by the Bar Council,

2. Mr. Gopi Nath Kunzm has appeared on behalf of the Bar Council and we are obliged to him for the helpful and sympathetic attitude, he has taken up. He has placed the rules before us and has stated that the Bar Council would welcome the enrolment of these advocates if the Court comes to the conclusion that they can be enrolled under the rules.

3. Under Sections 8 and 9, Bar Councils Act of 1926, this Court has framed certain rules about enrolment of advocates. The first rule to which our attention has been drawn is R.I. proviso 2 to which is as follows:

That an advocate of any other High Court of not less than two years' standing who is otherwise eligible under the rules may be admitted as an advocate....

Learned Counsel has urged that this proviso would not apply to the applicants as they were advocates of Lahore and Peshawar which were not 'High Courts' within the meaning of the Bar Councils Act, as they did not make the Bar Councils Act applicable to the advocates practising in those Courts. Reliance is placed on the definition of the word, 'High Court' which is defined in Section 2, Bar Councils Act, as meaning 'a High Court to which the Act applies' unless there is anything repugnant in the subject or context.

4. The other provision, relied upon, is the sixth proviso to Rule 1 which is to the effect:

That a graduate of a University situate in a province, the High Court and the Bar Council of which province do not admit to their rolls a graduate of any of the Universities situate in the United Provinces will not be eligible for enrolment as an Advocate of this High Court.

It is said that there was no reciprocity between the Lahore High Court and the Peshawar High Court and the graduates of the universities of this province have no right to be enrolled as advocates in Lahore or in Peshawar. On these two grounds these applications are being opposed.

5. Rule 1, framed by the Bar Council under Section 9, sets out the qualification and necessary experience that a person must possess before he can be enrolled as an advocate in this Court and it appears to us that there is no reason why the word, 'High Court' in the first proviso should be given the narrow interpretation put on it by the Bar Council. These rules are after all administrative rules and, in view of the changed circumstances, they should be given a liberal interpretation so far as it is possible to do so.

6. Learned Counsel for the Government has drawn our attention to the first proviso of Section 2 (sic) which clearly refers to any High Court in India and not only a High Court to which the Bar Councils Act has been made applicable. We are, therefore, of the opinion that it is not necessary to interpret the word, 'High Court' in the first proviso as meaning only a High Court to which the Bar Councils Act applied.

7. As regards the sixth proviso, the rules of the Lahore High Court have been placed before us and they provide for enrolment of graduates of the Aligarh and Benares Universities, provided they possess sufficient qualification in Punjab revenue, tenancy and customary laws, and the rules of the Judicial Commissioner's Court at Peshawar provide for two years' residence before a person can be enrolled as an advocate and there is no bar against enrolment of graduates of any of the universities situate in the United Provinces. The sixth proviso does not, therefore, stand in the way of enrolment of the applicants.

8. Apart from these provisions, there is the seventh proviso which is in favour of eleven out of the twelve applicants. It provides that a person, who has practised as a pleader for a period of not less than 15 years with ability and repute, may be enrolled as an advocate if his application is recommended by the District Judge. Eleven out of twelve applicants have put in more than fifteen years' practice. The applications have not been recommended by District Judges, but, in view of the circumstances in which the applicants were placed, it was not possible to get the recommendations of the District Judges. We do not, however, consider that this part of the rule is such that the High Court cannot in its discretion waive it.

9. We may point out that under the rules, framed by the Avadh Bar Council under Section 9, Bar Councils Act of 1926, any person who was an Advocate of a High Court in British India of not less than two years standing, could be enrolled as an Advocate of the Chief Court of Avadh. These rules are still in force in Avadh and if the applicants had applied for enrolment in Lucknow, they could have been enrolled under the rule mentioned above. As a matter of fact, the Bar Council in Avadh and the Chief Court of Lucknow had been admitting refugee Advocates after 15th August 1947, and so far as we know, objections similar to the objections that have been raised in these cases were never raised there. The Avadh Bar Council is still functioning and the Advocates, who apply for enrolment there, are enrolled, under the rules framed by the Avadh Bar Council, as Advocates of the High Court of Judicature at Allahabad. We see no reason why if the applicants can be enrolled if they apply in Lucknow and have the right to practise in the High Court and the Courts subordinate thereto, we should debar them from enrolment simply because they have chosen to apply in Allahabad instead of in Lucknow. We, therefore, direct that the applicants may be admitted to the role of Advocates of this Court, provided they pay to the Bar Council the fee payable under Rule 9, that is a sum of Rs. 100 each. The fee of Rs. 625 each payable to the Court is exempted under Schedule I, Article 30, Stamp Act (II 12] of 1899) in view of the fact that the applicants have paid the fee for their enrolment in the High Courts to which they had belonged.