

**S.Thamizh Muthar Pavalan Vs. Union of India and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/906908](http://sooperkanoon.com/906908)

**Court :** Delhi

**Decided On :** Nov-29-2010

**Judge :** Pradeep Nandrajog; Siddharth Mridul, Jj.

**Appeal No. :** W.P.(C) 6674/2010

**Appellant :** S.Thamizh Muthar Pavalan

**Respondent :** Union of India and anr.

**Advocate for Def. :** Mr.A.K.Bhardwaj; Mr.M.K.Bhardwaj, And Ors.

**Advocate for Pet/Ap. :** Mr.G.Umapathy, Adv

**Judgement :**

1. Under the Indian Legal Service there exists a post of Deputy Legal Advisor which is a duty post in Grade III. The post has to be filled up by direct recruitment. Rule 7 of Indian Legal Service Rules 1957 regulate appointment to duty posts in the service and covers direct recruitment to posts in Grade I, Grade II, Grade III and Grade IV.

2. In the present case we are concerned with appointment to duty post by direct recruitment in Grade III and hence we reproduce the relevant part of Rule 7:- "7. APPOINTMENT TO DUTY POST BY DIRECT RECRUITMENT:

1) A person shall not be eligible for appointment by direct recruitment-

a) to a duty post in Grade III, unless he holds a Degree in Law of a recognized University or equivalent and unless he has been a member of a State Judicial Service for a period of not less than ten years or has held a superior post in the legal department of a State for a period of not less than ten years of a Central Government servant who has had experience in legal affairs for not less than ten years or possesses a Masters Degree in Law and has held teaching or research experience in Law for not less than eight years or is a qualified legal practitioner of not less than 35 years.

3. For the purposes of sub-rule (1)-

a) in computing the period during which a person has held any office in the State Judicial Service or in the Legal department of a State or under the Central Government, there shall be included any period during which he has held any of the other aforesaid offices or any period during which he has been a legal practitioner;

b) in computing the period during which a person has been a qualified legal practitioner, there shall be included any period during which he has hold any office in the State Judicial Service or has held a superior post in the legal department of a State or has been a Central Government servant having experience in legal affairs."

3. A perusal of clause

(c) of sub-rule 1 of Rule 7 makes it evident that two eligibility conditions have been prescribed. The first pertains to the minimum educational qualification and the other experience. Degree in law from a W.P.(C) No.6674/2010 Page 2 of 8 recognized university or equivalent is the minimum educational qualification for 3 categories and qua them experience stipulated is 10 years as a Member of a State Judicial Service or a superior post in the Legal Department of a State or under Central Government with reference to legal affairs. Pertaining to those in the teaching line the requirement is a Masters Degree in Law with 8 years teaching experience. Qua legal practitioners the norm is of being not less than 35 years but the definition of Qualified Legal Practitioner as per Rule 2(e) makes it apparent

that in relation to a duty post in Grade III an advocate having at least 10 years experience is deemed to be a qualified legal practitioner.

4. A perusal of sub-rule 3 of Rule 7 makes it clear, with reference to clause (a) and (b) thereof that in computing the period pertaining to those who have held office in the State Judicial Service or a superior post in a Legal Department of the State or have experience in legal affairs as a Central Government servant or have been legal practitioners, while computing 10 years experience the same could be achieved by clubbing the relevant experience in the 4 disciplines. This benefit is not available to those who rely upon teaching or research experience in law to qualify for being appointed to the post in question.

5. The petitioner has the undernoted experience:-

S.No.	Experience	Years	Months	Days
1	As an Advocate	6	3	2
2	As a Lecturer (SS)	7	7	0
3	As a Legal Officer	1	0	22
Total Experience		14	10	24

6. It is apparent to the reader that the issue at hand pertains to whether sub-rule 3 of Rule 7 is arbitrary and/or is discriminatory and requires to be quashed or it can be read down directing that while computing experience all 5 categories have to be clubbed.

7. It is settled law that before striking down a statutory rule an attempt has to be made, if possible, to read it down so as to make it conform with the Constitution of India.

8. Except for urging that the rule could be read down, learned counsel for the petitioner could guide us no further i.e. in what manner. The only way we can intermix teaching experience while computing the total experience by intermingling teaching with the other disciplines is to insert another clause and number it as (c) as an extended limb of sub-rule 3 of Rule 7 and this would be plain legislation. It would not be a case of reading down but would be a case of supplementing and supplanting a complete clause to an existing rule and thus we hold that there is no scope to read down anything in existing sub-rule 3 of Rule 7.

9. We deal with the issue of constitutionality of sub- rule 3. The submission urged by learned counsel for the petitioner is that whereas to be a legal practitioner the degree required is a bachelors degree in law and for said reason Qualified Legal Practitioner has been defined to be a person who has been an advocate for 10 years. From this counsel drew the conclusion that legal practitioners would be those who have 10 years experience as an advocate and since for State Judicial Officers, Officers in the Legal Department of the State or a Central Government servant having experience in legal affairs, 10 years experience has been provided and this can be achieved by intermingling all avocations, it would be an insidious discrimination if those with teaching or research experience in law are left out, notwithstanding said persons apparently requiring 8 years experience; counsel highlighted that qua such persons minimum education norm for eligibility is a Masters Degree in Law which needs 2 years study of law after the bachelors degree and thus for all practical purposes these persons would have 10 years experience in the field of law after they had obtained a bachelors degree.

10. Article 14 permits reasonable classification founded on different basis. It is now well-established that the classification can be based on some qualities or characteristics of persons/groups grouped together and not in others who are left out. Those qualities or characteristics must, of course have a reasonable relation to the object sought to be achieved.

11. In service matters experience has been treated as a valid basis for classification to promote efficiency in administration inasmuch as it is accepted that the work by persons having experience is qualitatively superior to that of a new comer. It has recognized by courts that while determining the rational nexus of a criteria with the object sought to be achieved a certain amount of value judgment of the administrative authorities has to be left to their discretion for the reason 100% accuracy is virtually impossible to be achieved. For said reason Courts have held that unless it is demonstrated that either the criteria is irrational or based on no basis or arrived mala fide either in law or in fact, courts would not interfere with policy matters. Article 14 of the Constitution of India does not provide for an absolute equality of treatment to all persons in utter disregard of every conceivable circumstance. In other words a wooden equality as between all

citizens of India, regardless of qualifications, nature of job and responsibility, in the field of service, is neither intended nor is practicable if the administration is to run. Broad classification based on reason, executive pragmatism and experience having a direct relation with the achievement of efficiency in administration, is permissible.

12. Having set the preamble to guide us, we revisit the factual matrix. From a perusal of clause (c) of sub-rule 1 of Rule 7 it is apparent that 5 disciplines of law are envisaged by the Rule. The same are:-

(i) State Judicial Service

(ii) Legal Department of a State

(iii) Central Government department pertaining to legal affairs

(iv) Legal practice

(v) Teaching or research in law.

13. A perusal of sub-rule 3 shows that to compute experience the first 4 disciplines can be merged and not the 5th.

14. The legislative intent is clear. The disciplines where the subject of law is practiced not in theory but in its applicability to the affairs with which law is concerned i.e. law is applied to facts to adjudicate disputes or give opinion on the rival viewpoints adopted with reference to the facts and law have been clubbed for the obvious reason they have a common genus. The 5th i.e. teaching or research in law has been treated in isolation for the reason teaching or research in law do not relate to the practice of law as the other 4 do.

15. It is thus not a case of insidious, palpable or ex facie discrimination. The criteria adopted is clearly discernable being the discipline of law where the practice of law is the avocation and the discipline of law where law in its theory is the avocation and not law as in practice. This criteria has a clear nexus with the object sought to be achieved, being that there must be 10 years experience in the practice of law and for others 8 years experience in the teaching or research in

law. Whereas experience in the practice of law can be the sum total of experience earned in the different branches where law is practiced it cannot be so followed by merging experience gained in the practice of law with the experience gained in the theory of law.

16. As long as the legislative intent is founded on a rational criteria, the desirability or not thereof or whether an alternative would be a better solution is not within the domain of this Court.

17. We would be failing if we do not note that learned counsel for the petitioner cited: 2009 (1) SCC 610 *Guru Nanak Dev University v. Sanjay Kumar Katwal & Anr.*, 2009 (10) SCC 755 *CIT v. McDowell & Co.* and 1996 (1) SCC 95 *Housing Board of Haryana v. Employees' Union* to urge that the principle of *eiusdem generis* cannot be attracted in the instant case.

18. We see no scope to apply said decisions as we are not concerned with the principle of *eiusdem generis*. No doubt, while determining whether 4 out of 5 avocations contemplated by sub-rule 1 have a common feature for purposes of being clubbed while determining experience as per Rule 3, the exercise requiring classification to be determined does take us into whether the 4 avocations have something common on which commonality they can be treated as different than the 5th, but this exercise has nothing to do with the principle of *eiusdem generis*.

19. That Masters Degree in Law is a norm prescribed for those who entered the line of teaching or research in law and Masters Degree requires 2 years course to be undertaken, is neither here nor there for the reason the criteria we have determined as evidenced from the rules is the discipline of practice of law versus the discipline of the theory of law.

20. Expressing our sympathy for the petitioner who has to stand out alone, but we find that he is not excluded from any fraternity, we regrettably dismiss the writ petition but without any orders as to costs.