

RAM AVTAR v. STATE OF HARYANA, (2022-3)207 PLR 006 , 2022 PLRonline 1770

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Augustine George Masih and Mr. Justice Sandeep Moudgil.

RAM AVTAR – Petitioner,

Versus

STATE OF HARYANA and others – Respondents.

Civil Writ Petition No.22996 of 2021

(i) Haryana Superior Judicial Services Rules, 2007, Rule 11(1)(bb) - Assistant District Attorney - Ineligible for appointment to the post of Additional District Judge - It is an admitted position that the petitioner was appointed as an Assistant District Attorney on 11.08.2017 and is continuing as such in the Prosecution Department of the Government of Haryana with the State Vigilance Bureau, Hisar Range, Hisar - It is also not in dispute that Rule 13 (2) of the 2001 Rules of the Prosecution Department do not permit a member of the service to have the right of private practice and, therefore, the petitioner is not allowed to have independent/private engagements nor can he put appearance before the Court, although he may be assisting the Public Prosecutor/Government Pleaders in Court, drafting the cases, giving opinions and advises - The said aspect, therefore, as per the admission on the part of the petitioner renders the petitioner ineligible for taking part in the competition for appointment to the post of Additional District Judge, meaning thereby that the petitioner is not qualified under the 2007 Rules for consideration for appointment to the Haryana Superior Judicial service - Is not fulfilling the condition of independent engagement and conducting of the cases apart from the aspect of having professional income - It would not be out of way to mention here that after his appointment to the post of Assistant District Attorney, he had to surrender his Advocate's licence - Thus by no stretch of imagination, it can be said that the petitioner fulfills the requirement of the statutory rules for appointment to the Haryana Superior Judicial services.

[Para 6, 7]

(ii) Haryana Superior Judicial Services Rules, 2007 Rule 11(1)(bb) - Experience of seven years as an Advocate with a rider of three years recent practice requiring a minimum level of professional income as also the number of cases where a candidate has not only been engaged independently but has conducted them as well, makes it amply clear that mere appearance or being present in Court without conducting the cases or drafting them would not be enough - The basic requirement, therefore, for being eligible for appointment to the Superior Judicial

Services what is being looked forward to are mature and trained judicial minds, who are not only responsive but rationale in thinking and logical in assessing - This a person can only develop with experience and practice by conducting the cases and that too independently.

Cases referred to:-

1. Civil Appeal No.561 of 2013 decided on 21.01.2013, *Deepak Aggarwal v. Keshav Kaushik*.
2. CWP No.21026 of 2019 decided on 24.09.2019, *Dr. Gurneet Singh Randhawa v. The Registrar General, Punjab and Haryana High Court, Chandigarh*.

Mr. Ankur Sidhar and Mr. Rajesh Khandelwal, for the petitioner. *Mr. Raminder Singh* for *Mr. Rajeev Anand*, for respondent No.2. (Proceedings Through V.C.)

Augustine George Masih, J. -(16th March, 2022) – Petitioner, who is working as an Assistant District Attorney in the Prosecution Department of Government of Haryana and an aspirant of participating in the competitive examinations to be held for appointment to the Haryana Superior Judicial Services, has approached this Court praying for granting relaxation of Rule 11 (1) (bb) of the Haryana Superior Judicial Services Rules, 2007 (hereinafter referred to as '2007 Rules'), which requires proving of 'independent engagement' and 'conducting of not less than 40 cases per year' for the reserved category candidates, to which the petitioner also belongs (Backward Class), which has been introduced by way of amendment dated 06.06.2014 in the 2007 Rules. The said relaxation is being sought under Rule 31 of the 2007 Rules, where the Governor in consultation with the High Court has the powers for granting relaxation of any of the provisions of the Rules for any class or category of persons for reasons to be recorded in writing. It is pleaded that a representation dated 09.09.2021 (Annexure P-4) has been submitted by the petitioner, which has not been decided as yet.

2. Learned counsel for the petitioner submits that the petitioner had been earlier practicing as an Advocate in the Courts at Loharu, District Bhiwani, since 06.10.2012 and continued as such till 10.08.2017 after obtaining a licence dated 05.10.2012 of an Advocate from the Bar Council of Punjab and Haryana bearing enrolment No.P/2438/2012. He was selected and appointed as an Assistant District Attorney, Haryana, and joined as such on 11.08.2017 and has been working as such on the said post in the office of the State Vigilance Bureau, Hisar Range, Hisar. He being member of the Haryana State Prosecution Legal Service is not allowed to have independent/private engagement in view of Rule 13 (2) of the Haryana State Prosecution Legal Services (Group 'B') Rules, 2001 (hereinafter referred to as '2001 Rules'). According to the said Rule, no member of the service shall have a right of private practice. He contends that in the light of this fact, the petitioner is unable to fulfill the requirement of independent engagement and conducting of cases per year in the preceding three years although he is performing almost all the functions except for appearance in Courts relatable to the Advocate and practice.

Petitioner is drafting, vetting, preparing and assisting the Public Prosecutors and Government Pleaders in Court. Petitioner is being briefed by the clients i.e. the department concerned, he gives legal opinion, sends and gives replies of legal notices etc. and, therefore, performing all the functions of an Advocate. The Law Officers of the Prosecution Department are required to be well-versed and updated with the latest Acts, Rules and Regulations including the amendments and the current judgments of the Courts. With all these functions having been performed by the petitioner, he is entitled to the benefit of relaxation in the rules as provided for in Rule 31 of the 2007 Rules from the rigors of Rule 11 (1) (bb) of the 2007 Rules.

Counsel has referred to the judgment of the Supreme Court in *Deepak Aggarwal v. Keshav Kaushik and others*¹ passed in Civil Appeal No.561 of 2013 decided on 21.01.2013, where the question raised was that whether a Public Prosecutor/Assistant Public Prosecutor/District Attorney/Assistant District Attorney/Deputy Advocate General, who is in full time employment of the Government, ceases to be an Advocate or Pleader within the meaning of Article 223 (2) of the Constitution, to which the Hon'ble Supreme Court answered by holding the said appointees to be eligible for consideration for appointment to the post of Additional District and Sessions Judge on the ground that they continue to be an Advocate and do not cease to be one. He, therefore, contends that Rule 11 (1) (bb) has been introduced with an intention to circumvent the said judgment by introducing the words 'independent engagement' and 'conducting of not less than 40 cases'. Thus the petitioner is entitled to the relaxation of the Rule, as prayed for.

3. When the case came up for hearing on 15.11.2021, the Bench had brought to the notice of the counsel a Division Bench judgment of this Court passed in CWP No.21026 of 2019 titled as *Dr. Gurbuneet Singh Randhawa v. The Registrar General, Punjab and Haryana High Court, Chandigarh*,² decided on 24.09.2019, where in the case of Punjab which carries para materia Rules with the language being identical as in the case of Haryana as provided under Rule 10 (bb) of the Punjab Superior Judicial Services Rules, 2007 introduced by the notification issued on 30.05.2019 was sought to be quashed, wherein identical conditions as have been imposed in the Rule 11 (1) (bb) but the said challenge had failed.

4. When the case was taken up for hearing today, counsel for the petitioner is unable to distinguish the said judgment, however, he asserts that the only distinction therein and the present case is that the petitioner is not seeking quashing of the said amendment in the Rules but is only praying for relaxation to be provided to the petitioner and similarly placed employees as a category of employees from the rigors of Rule 11 (1) (bb) of the 2007 Rules. In the light of this aspect the counsel for the petitioner had made his submissions on the basis of the pleadings and has prayed for allowing the present writ petition.

5. We have heard the submissions made by the counsel for the petitioner and with his assistance, have gone through the pleadings, relevant rules and the various judgments which have been referred to by the Division Bench of this Court in *Dr. Gurbuneet Singh Randhawa's case* (supra).

6. The facts are not in dispute as it is an admitted position that the petitioner was

appointed as an Assistant District Attorney on 11.08.2017 and is continuing as such in the Prosecution Department of the Government of Haryana with the State Vigilance Bureau, Hisar Range, Hisar. It is also not in dispute that Rule 13 (2) of the 2001 Rules of the Prosecution Department do not permit a member of the service to have the right of private practice and, therefore, the petitioner is not allowed to have independent/private engagements nor can he put appearance before the Court, although he may be assisting the Public Prosecutor/Government Pleaders in Court, drafting the cases, giving opinions and advises. The said aspect, therefore, as per the admission on the part of the petitioner renders the petitioner ineligible for taking part in the competition for appointment to the post of Additional District Judge, meaning thereby that the petitioner is not qualified under the 2007 Rules for consideration for appointment to the Haryana Superior Judicial Services. This is so in the light of the qualifications as provided for under Rule 11 (bb) for direct recruitment, which reads as follows:-

“11. The qualifications for direct recruits shall be as follows:

“(bb) Must be an income tax assessee for at least three assessment years preceding the date of application, with gross professional income of not less than rupees five lacs per annum. The applicant shall also be required to attach the proof of his independent engagement and conducting of not less than fifty cases (other than bunch cases) per year in the preceding three years:

Provided that in case of candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Classes, physically challenged persons and Ex-Servicemen, the gross professional income shall not be less than rupees three lacs per annum and the condition of independent engagement and conducting of cases shall be forty cases (other than bunch cases) per year in the preceding three years.”

A perusal of the above would show that not only the requirement of the applicant being an income tax assessee has to be fulfilled but should have a minimum gross professional income dependent upon the category to which he/she belongs. Apart from this aspect, a condition has been imposed that the applicant should have experience of independent engagement and conducting of cases not less than 40 in the case of reserved category and 50 in case of general category.

7. Petitioner, in the light of the rules governing his service i.e. the 2001 Rules, is not fulfilling the condition of independent engagement and conducting of the cases apart from the aspect of having professional income. It would not be out of way to mention here that after his appointment to the post of Assistant District Attorney, he had to surrender his Advocate's licence. Thus by no stretch of imagination, it can be said that the petitioner fulfills the requirement of the statutory rules for appointment to the Haryana Superior Judicial Services.

8. The only question which now requires to be considered is whether the petitioner can be held entitled to relaxation of Rule 11 (bb) under Rule 31 of the 2007 Rules. The answer to this question has to be in the negative for the reason that not only the academic and know-

how of the law is required to be taken into consideration but also the intelligence, responsiveness, integrity, honesty, basic knowledge of law and robust common sense has to be assessed, which develops and grows with the appearance in Courts over a period of time. Apart from academic knowledge, communication skills and thoughts which are tactful, diplomatic with ability to defuse situations also is essential to be evaluated and assessed which requires independent engagement and handing of the cases.

A system of recruitment almost totally dependent upon assessment of a person's academic knowledge and skills as distinct from ability to deal with pressing problems of economic and social development is not only required of a Judge but he must be capable of assimilating not only the knowledge and sifting material to understand the ramifications of a situation or a problem but have the potential to develop an original and/or innovative approach to solution of such problems.

9. When all these aspects are taken into consideration, the purpose for which these rules have been incorporated and the amendment brought about, becomes apparent. Experience of seven years as an Advocate with a rider of three years recent practice requiring a minimum level of professional income as also the number of cases where a candidate has not only been engaged independently but has conducted them as well, makes it amply clear that mere appearance or being present in Court without conducting the cases or drafting them would not be enough. The basis requirement, therefore, for being eligible for appointment to the Superior Judicial Services what is being looked forward to are mature and trained judicial minds, who are not only responsive but rationale in thinking and logical in assessing. This a person can only develop with experience and practice by conducting the cases and that too independently.

10. This being the essential requirement not only under the statutory rules but for which purpose the rules have been framed and intended, the same cannot be diluted and, therefore, no relaxation therein can be granted. If the relaxation as is being sought by the petitioner is granted, the very purpose for bringing about the amendment in the Rules would be put to naught, which cannot be permitted. Relaxation can be provided for and granted only in matters and the rules which are procedural in essence and do not go contrary to the basis, purpose and intent for which the rules have been framed. By granting relaxation, the rules cannot be diluted to make them redundant leading to a situation where the purpose of the rules is thwarted. In other words, no relaxation can be granted in rules which would lead to the frustration of the very objective for which the rules have been framed.

11. In view of the above, the prayer, therefore, as made by the petitioner cannot be accepted and, therefore, the writ petition being devoid of merit, stands dismissed.

Sd/- Sandeep Moudgil, J.

R.M.S.

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Petition dismissed.