

Appointment — Qualification/Experience — Principal of a law college affiliated to university — While under the University Statute qualification in law not a mandatory requirement, held, under Advocates Act and Bar Council of India Rules it is essential

— Principal must be duly qualified in law which would be in the interest of the students intending to pursue legal profession after passing out from the law college — Universities Act and the University Statute concerned should be construed harmoniously with Advocates Act, BCI Rules and the main purpose of legal education which is to get enrolled as advocates and practise law — Therefore, while appointing Principal of a law college, notwithstanding the procedure to be followed under Universities Act and the University Statute, recommending authority as well as State Govt. must also adhere to the requirements of Advocates Act and BCI Rules — Education Law — U.P. State Universities Act, 1973 (10 of 1973) — Education Law — Statutes of Kanpur University - Statute 11.14(i)(b) (as amended w.e.f. 13-1-1995) — Education Law — Employment and Service Matters — U.P. Higher Education Services Commission Act, 1980 (16 of 1980) - Ss. 12 and 31 — Education Law — Employment and Service Matters — U.P. Higher Education Services Commission (Procedure for Selection of Teachers) Regulations, 1983 — Advocates — Advocates Act, 1961 - Ss. 7(1)(h)(i), 24, 49(1)(af), (d) — Advocates — Bar Council of India Rules - Pt. IV, S. A, Rr. 2, 12 and 17(1) — Constitution of India - Art. 254(2) Sch. VII List I Entries 78, 79; List III Entry 25, 26 — Service Law — Appointment — Eligibility — Qualification/Experience — Interpretation of Statutes — Basic Rules — Harmonious construction

Respondent 5, who held a doctorate degree in Philosophy, was appointed Principal of the Dayanand College of Law which was affiliated to the Chhatrapati Shri Shahu Ji Maharaj, Kanpur University, Kanpur. He was teaching Ethics and Ancient Law in the College. On an inspection, the Bar Council of India found that Respondent 5 did not possess a qualification in law and hence withdrew its recognition to the College. Respondent 5 was then transferred to another college. He challenged the order of his transfer by filing a writ petition before the High Court on the ground that he was competent to hold the post of Principal of the law college even though he had no qualification in law. His stand was based on Statute 11.14(i)(b) of the Kanpur University, as amended w.e.f. 13-1-1995. The amended statute, which provided qualification for the post of Principal read as “a doctorate degree, with 7 years experience of teaching degree class”. Prior to 13-1-1995, Statute 11.14(i)(b) provided that the Principal must possess “a doctorate degree in one of the subjects taught in the college, with 7 years' experience of teaching degree class”. Thus by virtue of the amendment the requirement that the appointee must have a doctorate degree in one of the subjects taught in the college was done away with. Until 13-1-1995, a person could be appointed Principal of a law college only if he possessed a doctorate degree in law or in one of the branches of law taught in that college. But after 13-1-1995, on an ordinary literal interpretation of the amended clause, a person possessing a doctorate degree in a subject wholly unrelated to law could also be appointed as Principal of a law college.

According to the High Court, since the appointment of the Principal of the law college was made on the basis of the relevant provisions of the University Act, and the Regulations framed thereunder and based on the qualification prescribed by Statute 11.14 as it stood on the date of appointment, the provisions of the Advocates Act or the Rules of the Bar Council of India could not be invoked to nullify his appointment or to question his authority as Principal. In view of the fact that the University Act, 1973 had the assent of the President of India and it was an enactment later in point of time to the Advocates Act, 1961, the High Court took the view that since the Advocates Act is a legislation under Entry 25 or 26 of List III and the State law is under Entry 25 of List III of the Seventh Schedule to the Constitution, the State law would prevail in the context of Article 254(2) of the Constitution and since appointment to the post of a Principal of a college affiliated to a university was governed by the University Act, the appointment of Respondent 5 as Principal of the law college was liable to be upheld. The High Court also observed that the Bar Council of India had no role in legal education as such and that its role was confined to controlling the profession of advocates and the commencement of the profession, that is, enrolment as an advocate and hence the Bar Council of India could not make any prescription regarding legal education or about those who are to teach law, or who are to be the Principal of a college of law. The order transferring Respondent 5 away from the post of Principal of the law college was consequently set aside. No notice was also issued to the Bar Council of India, the apex professional body of advocates, before taking such a decision. However, taking note of the consequences of the decision rendered by the High Court, the Bar Council of India has filed these appeals challenging the decision of the High Court with the leave of the Supreme Court.

The question for consideration was whether a person, who does not possess any qualification in law, can be appointed as a Principal of a law college.

Allowing the appeals,

Held :

Consistent with the Advocates Act and the Rules of the Bar Council of India, Respondent 5 could not have been appointed as the Principal of a law college, however, eminent he might be as a philosopher, friend and guide to the students and his competence to teach Ethics could be recognised. (Para 18)

Prior to 13-1-1995, there was no conflict between Statute 11.14 and Rule 12 of the Rules of the Bar Council of India. In 1995, in the University statutes, the requirement of the Principal having to be the holder of a doctorate in one of the subjects taught in the college, was done away with. Obviously, such a provision could not be understood as controlling fully professional education like that in Medicine, Engineering or Law. No doubt, the university has not made a distinction in that regard in this context. But obviously, it does not appeal to common sense to say that an engineer could be appointed the Principal of a medical college or a great physician could be appointed as the Principal of an engineering college. Same is the position regarding the appointment of a doctorate in Science or a doctorate in Philosophy as the Principal of a law college. (Para 12)

It is true that under the University Act, the selection of a Principal of a college affiliated to the university concerned has been left to the Higher Education Services Commission and Respondent 5 was included in the panel of selected candidates pursuant to a due selection by that Commission. It is also true that theoretically the State Government on the recommendation of the Director of Higher Education could appoint any one from that list as Principal of any college including a law college. But when concerned with the appointment of a Principal of the law college, there cannot be any difficulty either for the recommending authority or for the State Government in recognising the fact that a person duly qualified in law is required to be the Principal of that law college in the interests of the students coming out of that college in the light of the Advocates Act, 1961 and the Rules framed by the Bar Council of India governing enrolment of advocates and their practice. (Para 14)

Having regard to Sections 7(1)(h) and (1)(i), 24 and 49(1)(af) and 1(d) of the Advocates Act and Rules 2, 12 and 17(1) of Section A of Part IV of the Bar Council of India Rules, it is clear that though the Bar Council of India may not have been entrusted with direct control of legal education in the sense in which the same is entrusted to a university, still, the Bar Council of India retains adequate power to control the course of studies in law, the power of inspection, the power of recognition of degrees and the power to deny enrolment to law degree-holders, unless the university from which they pass out is recognised by the Bar Council of India. It may not be correct to say that the Bar Council of India is totally unconcerned with the legal education, though primarily legal education may also be within the province of the universities. But, as the apex professional body, the Bar Council of India is concerned with the standards of the legal profession and the equipment of those who seek entry into that profession. The Bar Council of India is also thus concerned with the legal education in the country. (Paras 11 and 14)

As regards the post of the Principal of a law college, it would be necessary for the proposed incumbent also to satisfy the requirements of the Rules of the Bar Council of India. Such a harmonious understanding of the position recognising the realities of the situation, would justify the conclusion that a doctorate-holder in any of the law subjects could alone be appointed as the Principal of a law college. The Principal of a law college has to be appointed after a process of selection by the body constituted in that behalf, under the University Act, but while nominating from the list prepared, and while appointing him, it must be borne in mind that he should fulfil the requirements of the Rules of the Bar Council of India framed under the Advocates Act and it be ensured that he holds doctorate in any one of the branches of law taught in the law college. (Para 13)

Therefore, notwithstanding the procedure to be followed under the University Act and Statute 11.14 as amended, it is necessary for the recommending authority and the State Government when concerned with the appointment of a Principal of a law college, also to adhere to the requirements of the Advocates Act and the Rules of the Bar Council of India. This would ensure a harmonious working of the universities and

the Bar Council of India in respect of legal education and the avoidance of any problems for the students coming out of the institution wanting to pursue the legal profession. (Para 15)

It is therefore, necessary for the authorities concerned to consider whether clause (b), as it stood prior to 13-1-1995, should not be restored in the interests of education in general. (Para 16)

In with and substance, the Advocates Act falls under Entries 77 and 78 of List I of the Seventh Schedule. That apart, the High Court was not correct in its approach in postulating a conflict between the two laws and in resolving it based on Article 254(2) of the Constitution. Of course, the question whether the assent to the Act would also extend to the statute framed under it and that too to an amendment made subsequent to the assent are questions that do not call for an answer in this case in the light of the view adopted herein. (Para 14)

As regards the submission that the Bar Council of India itself has watered down the requirement that the Principal of a law college must have a postgraduate degree in law and has now provided that it is enough if he has a mere degree in law, it can be said that it is a matter for the Bar Council of India to ponder over and to consider whether there is any justification in watering down the qualification for a Principal as either a doctorate in law or a postgraduate degree in law. Similarly, the argument that the Bar Council of India takes no interest in legal education or in keeping up the standards of the profession, is something that the Bar Council of India should take note of so that it could take steps to rectify the situation, if there is any substance in that submission. (Para 17)

📖 *Bar Council of India v. Board of Management, Dayanand College of Law,*
(2007) 2 SCC 202 : 2006 SCC OnLine SC 1295 : (2007) 51 AIC 170 (SC) : (2007) 1 SLR 427 : (2007) 1 KLT 177 : (2007) 3 All LJ 196 :
(2007) 2 LLN 59 : AIR 2007 SC 1342

👉 Bench Strength 2. Coram : *H.K. Sema* and **P.K. Balasubramanyan**, JJ.
[Date of decision : 28/11/2006]

O.N. Mohindroo v. Bar Council of Delhi, (1968) 2 SCR 709 : AIR 1968 SC 888, relied on
Bar Council of U.P. v. State of U.P., (1973) 1 SCC 261; Ujagar Prints (II) v. Union of India, (1989) 3 SCC 488 : 1989 SCC (Tax) 469, referred to

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