

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Ijaz ul Ahsan
Mr. Justice Munib Akhtar

CIVIL PETITION NO.4740 OF 2017

[Against the judgment dated 23.10.2017, passed by the Peshawar High Court, Peshawar in W.P.No.524-P of 2016 with CMs No.1023-P of 2016 & No.425-P of 2017]

Mian Hikmatullah Jan son of Mian Abdul Wahid, resident of Tarujabba District Nowshera.

...Petitioner(s)

Versus

Chairman and Members of Selection Board Constituted for Selection and Interview for the Post of Additional District and Sessions Judges for District Subordinate Judiciary Khyber Pakhtunkhwa, Peshawar High Court, Peshawar and another.

...Respondent(s)

For the Petitioner(s) : Mr. Ghulam Mohy-ud-Din Malik,
ASC
(via video link from Peshawar)

Respondent(s) : N.R.

Date of Hearing : 22.12.2021

JUDGMENT

GULZAR AHMED, CJ.- The Peshawar High Court, Peshawar (**the High Court**) had invited applications for the post of Additional and District Sessions Judges. The petitioner applied for the said post and appeared in the written examination, which the petitioner claimed to have been qualified. The interview was scheduled and the petitioner was also called for the interview but subsequently, the petitioner

was not interviewed rather his documents were sent to the Khyber Pakhtunkhwa Provincial Bar Council for verification. Pursuant thereto, it was found that the petitioner's name has been struck off from the Roll of the Advocates vide Khyber Pakhtunkhwa Bar Council order dated 24.08.2013. The petitioner was, thus, disqualified from being appointed to the post of Additional District and Sessions Judge. The petitioner filed a writ petition in the High Court with a prayer that he may be allowed to appear in the interview and may be considered for the post of Additional District and Sessions Judge on merit. By the impugned judgment dated 23.10.2017, the writ petition of the petitioner was dismissed.

2. The learned counsel for the petitioner has contended that the petitioner was not disqualified as his license has merely been suspended by the Khyber Pakhtunkhwa Bar Council and further the High Court was not justified in seeking verification of his *Wakalat Namas*.

3. The learned counsel for the petitioner was asked to show the order of the Khyber Pakhtunkhwa Bar Council showing that the license of the petitioner has been suspended. The learned counsel referred to page 73 of the paper book which contains the reasons for disqualification made by the High Court and at Serial No.10 appears the name of the petitioner where it is noted that his membership remained suspended from July, 2013 to 29.01.2016 and has submitted *Wakalat Namas* for the same period and so disqualified.

4. We note from the document appearing at page 74 of the paper book, which is a letter of Khyber Pakhtunkhwa Bar Council, wherein it is specifically mentioned that the petitioner's name was struck off from the Roll as per executive order dated 24.08.2013. The learned counsel for the petitioner did not refer to this document, which is available in the paper-book. The name of the advocate being struck off from the Roll of the Advocates, apparently, means that he is no more practicing advocate under the Legal Practitioners and Bar Councils Act, 1973, and cannot claim himself to be a practicing advocate.

5. The very advertisement for appointment to the post of Additional District and Sessions Judges specifically require the candidate to be a practicing advocate, which condition was not fulfilled by the petitioner. The High Court in the impugned judgment has addressed this very aspect of the matter and found that the petitioner was not a practicing advocate when he applied for being appointed as an Additional District and Sessions Judge.

6. So far the argument of the learned counsel for the petitioner regarding *Wakalat Namas*, we note that in the face of the fact that the petitioner was not a practicing advocate at the time when he applied for being appointed to the post of Additional District and Sessions Judge, thus, was not eligible for being appointed. The question of petitioner continuing practice and filing his *Wakalat Namas* even after his name had been struck off from the roll of the advocates, is a matter which is to be attended to by the Khyber Pakhtunkhwa Bar Council

and the Khyber Pakhtunkhwa Bar Council should take notice of such fact and take action as per the law.

7. No illegality in the impugned judgment is pointed out calling for interference by this Court. The petition is, therefore, dismissed and leave refused.

8. Let a copy of this judgment order be sent to the Vice Chairman, Khyber Pakhtunkhwa Bar Council for dealing with it accordingly.

Bench-I

Islamabad

22.12.2021

NOT APPROVED FOR REPORTING

Mahtab/*