

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 10.04.2023

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W.P.(C) 3467/2023 & CM APPL. 13507/2023

KARAN ANTIL

..... Petitioner

versus

HIGH COURT OF DELHI & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Akhil Sibal, Sr. Advocate with Mr. Praveen Kumar, Advocate.

For the Respondents : Dr. Amit George, Mr. Piyo Harold Jainmon, Mr. Amil Acharya, Mr. Raya Durgam Bharat and Mr. Arkaneil Bhaumik, Advocates for R-1.

Mr. Dayan Krishnan, Sr. Advocate for R-3.

Mr. Sacchin Puri, Sr. Advocate, Mr. Praveen Kumar Sharma, Ms. Nidhi Rana, Mr. Praveen Kumar, Mr. Mitesh Tiwari, Mr. Mukesh Kumar Sharma and Mr. Manish Bhardwaj, Advocates for R-4.

Mr. Devansh A Mahta, Mr. Mrigank Prabhakar and Ms. Sakshi Banga, Advocates for R-5.

Ms. Rinku Parewa, Mr. Nikhil Jayant and Mr. Nitesh Kumar, Advocates for R-6.

Mr. Akshay Makhija, Sr. Advocate and Mr. Sahil Khurana, Advocate for R8.

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HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

INTRODUCTION

1. The petitioner has filed the present petition impugning the Notification No. F.1/10/2022-Judl./Suptlaw/213-220 dated 31.01.2023 appointing thirty-two persons (listed in the order of merit) as members of the Delhi Higher Judicial Services (hereafter '**the DHJS**') against permanent posts. The petitioner, essentially, assails the inclusion of the names of respondent nos. 2 to 5 in the select list of candidates who have been offered appointment in the DHJS.

2. The petitioner had also appeared for the Delhi Higher Judicial Services Examination - 2022 (hereafter '**DHJSE-22**') along with other candidates and is placed at serial no.36 in the order of merit. The petitioner has not been appointed in the DHJS as the number of vacancies under the general category are limited to thirty-two.

3. Respondent no.6 is placed at serial no.33 in the order of merit but has joined Uttar Pradesh Higher Judicial Service and is no longer interested in seeking appointment in the DHJS. However, another candidate, Aashish Rastogi, who was considered disqualified for being appointed, has prevailed in his challenge to being considered disqualified. In terms of the order dated 17.03.2023 passed in his petition – *Ashish Rastogi v. Hon'ble High Court of Delhi & Anr.*¹ –

¹ WP(C) No. 15705/2022 decided on 17.03.2023

he is now required to be placed at serial no.17 in the order of merit in the select list.

4. It is also relevant to note that the candidate placed at serial no.5 in the select list (Sh. Murari Singh) has since withdrawn his candidature.

5. In view of the above, the petitioner stands at serial no.35 in the order of merit in the select list and seeks directions for his appointment in the DHJS. In the aforesaid context, the petitioner seeks to challenge the selection of respondent nos. 3 to 5. The petitioner's challenge to selection of respondent no.3 is premised on the ground that respondent no.3 had not qualified the DHJS Mains (Written) Examination as his marks in Law Paper-III were one mark less than the qualifying threshold; respondent no. 3 was declared qualified by virtue of the notice dated 13.10.2022, whereby additional 0.5 in the paper of General Knowledge & Language and one mark in the paper of Law-III were awarded to all candidates who appeared in the DHJS Mains (Written) Examination. The petitioner impugns the said notice dated 13.10.2022 awarding additional marks as being illegal and contrary to the Delhi Higher Judiciary Services Rules, 1970 (hereafter '**the DHJS Rules**'). The petitioner assails the selection of respondent nos.3 and 4 on the ground that they do not satisfy the eligibility criteria of seven years of continuous practice as on the last date of receipt of application. According to the petitioner, respondent no.4 was ineligible to apply as he was engaged as a legal consultant on contractual basis with the Department of Legal Affairs during the period 06.03.2017 to 12.09.2019. The eligibility of respondent no.5 is questioned on the

ground that he had pursued a full time Master of Law Program at the University College London (UCL) during the period September, 2015 to June, 2016. Thus, the continuous period of practice for respondent no.5 was required to be reckoned from June, 2016.

6. It is apparent from the above that the petitioner would be entitled to being included in the list of candidates only if he prevails in his challenge to the appointment of all three contesting respondents (respondent nos.3 to 5). On 29.03.2023, we had heard the counsel for the parties on the question as to the eligibility of respondent no.5. The learned counsel for the parties had submitted that it would not be necessary to consider the petitioner's challenge to the other respondents in the event the petitioner did not prevail in its challenge to the selection of respondent no.5.

THE CONTROVERSY

7. Thus, the only question that this Court proposes to address at this stage is whether respondent no.5 was eligible to appear for the DHJSE-22 and for appointment in the DHJS.

Factual Context

8. Briefly stated, the controversy arises in the following context.

8.1 On 23.02.2022, the establishment of the Delhi High Court (hereafter '**DHC**') issued an advertisement inviting applications for appearing in the DHJSE-22 for filling up forty-five vacancies, which

comprised of thirty-two vacancies in the general category, seven vacancies reserved for candidates belonging to Scheduled Castes, and six vacancies reserved for candidates belonging to Scheduled Tribes. The number of vacancies, under the general category, comprised of thirty extant vacancies and two anticipated vacancies.

8.2 In terms of the afore-mentioned advertisement, the last date for filing the online application form for the DHJSE-22 was 12.03.2022.

8.3 The DHJSE-22 entailed three successive stages. The first stage being the DHJS Preliminary Examination, which was an objective type examination. The candidates who qualified the said preliminary examination were admitted to appear for the DHJS Mains (Written) Examination, and those who had qualified the said written examination, were admitted to the third stage – *viva voce*.

8.4 The DHJS Mains (Written) Examination comprises of four papers as set out in the appendix to the DHJS Rules. The brief description of the said papers, as set out in the appendix, is set out below:-

MAIN (WRITTEN) EXAMINATION

<u>Papers</u>	<u>Description</u>	<u>Max. Marks.</u>
Paper-I	General Knowledge & Language – This is to test the candidate's knowledge of current affairs etc. and power of expression in English. Credit will be given both for substance and expression. Conversely deduction will be made for bad expression, faults of grammar and misuse of words etc.	150
Paper-II	Law – I – Constitution of India, Code of Civil Procedure, Indian Evidence Act, Limitation Act,	200

	Registration Act and such other subjects as may be specified by the High Court from time to time.	
Paper- III	Law – II – Transfer of Property Act, Indian Contract Act, Sale of Goods Act, Partnership Act, Specific Relief Act, Arbitration Law, Personal Law and such other subjects as may be specified by the High court from time to time.	200
Paper -IV	Law – III – Indian Penal Code, Criminal Procedure Code, Indian Evidence Act and such other subjects as may be specified by the High court from time to time.	200

8.5 The general category candidates were required to secure 45% marks in each paper and 50% in aggregate for qualifying the DHJS Main (Written) Examination. In terms of the scheme of the DHJSE-22, the marks of those who qualified the DHJS Mains (Written) Examination were not disclosed (except the three candidates who were initially declared unsuccessful, but qualified by virtue of award of additional marks) and the said candidates were admitted to *viva voce*. The consolidated marks secured by the candidates in the DHJS Mains (Written) Examination and *viva voce* formed the basis for placing the candidates in the order of merit for selection in the DHJS.

8.6 The DHJS Preliminary Examination was held on 03.04.2022 and its results were declared on 22.04.2022. In all one thousand nine hundred and nine (1,909) candidates appeared for the said examination and one hundred and forty (140) candidates secured the minimum qualifying marks. Out of the aforesaid candidates, one hundred and twenty-three (123) candidates were from the general category.

8.7 The DHJS Mains (Written) Examination was held on 14.05.2022 and 15.05.2022. The results of the said examination were declared on 26.08.2022. Those candidates who qualified the said written

examination were admitted to *viva voce*.

8.8 On 13.10.2022, the DHC issued a notification awarding additional 0.5 marks in the paper of General Knowledge and Language and one additional mark in Law Paper-III to all candidates who had appeared for the DHJS Mains (Written) Examination. By virtue of the additional marks, three additional candidates including respondent no.3, qualified the DHJS Mains (Written) Examination and were admitted to *viva voce*.

8.9 The final results of the DHJSE-22 were declared on 10.11.2022. On 31.01.2023, the notification appointing the selected candidates – which is impugned in this petition – was published by the Government of National Capital Territory of Delhi.

8.10 Respondent no.5 did exceedingly well in the DHJSE-22 and secured the first position in the order of merit. He is, accordingly, placed at serial no.1 in the merit list as well as in the select list of candidates as notified on 31.01.2023.

8.11 Respondent no.5 had graduated in law from the National University of Juridical Science, Kolkata in March, 2008. He performed well in the said course as well and was awarded three gold medals in the subject of constitutional law and jurisprudence. He enrolled as an advocate with the Bar Council of India on 05.07.2008 and commenced his practice. There is no dispute that he has been in active practice in the Supreme Court and has appeared in a number of matters.

8.12 Respondent no.5 pursued the Master of Law Program at the University College London (UCL) from 23.09.2015 to 06.06.2016.

9. The principal question to be addressed is whether respondent no.5 fails to satisfy the eligibility criterion as set out in Rule 9(2) of the DHJS Rules which requires the candidate to “*have been continuously practicing as an Advocate for not less than seven years as on the last date of receipt of the application.*”

SUBMISSIONS

10. Mr. Akhil Sibal, learned senior counsel appearing for the petitioner, submitted that the period spent in pursuing a full time Master’s program in law cannot be considered as a period during which respondent no.5 was in active practice as an advocate. He submitted that during the said period, respondent no.5 was not engaged in acting or pleading in a court of law as an advocate; thus, could not be considered to be in practice. He referred to the decision of the Supreme Court in ***Deepak Aggarwal v. Keshav Kaushik & Ors.***² and drew the attention of this Court to paragraph no.91 of the said decision wherein the Supreme Court had referred to the earlier decision in the case of ***Sushma Suri v. Govt. of National Capital Territory of Delhi & Anr.***³ and observed that the “*test was not whether such person is engaged on terms of salary or by payment of remuneration but whether he is engaged to act or plead on its behalf in a court of law as an advocate... If he is not acting or pleading on behalf of his employer then he ceases*

² (2013) 5 SCC 277

³ (1999) 1 SCC 330

to be an advocate.” He submitted that the answer to the question whether a person was in practice is dependent on the functions performed by the said person. He contended that pursuing a Master’s course in law could not be considered as practice.

11. He referred to the decision of the Coordinate Bench of this Court in **Ashish Rastogi**¹ and submitted that a person employed with the public sector undertaking was held to be in continuous practice solely on the basis of the functions that he performed. He, thus, submitted that the function performed by an advocate in practice is the vital test for determining whether a person is in practice as an advocate. Next, he also referred to the decision of the Coordinate Bench of this Court in **Union Public Service Commission v. Dr. R.J.R. Kasibhatla & Anr.**⁴ On the strength of the said decision, he contended that it was not possible for a person to claim that he was in practice as an advocate at one place while pursuing an L.L.M. course at another place. He contended that the court had repelled the contention that the period spent by the respondent in pursuing L.L.M. would be considered as a part of experience of an advocate.

12. Lastly, Mr. Sibal contended that there was a difference in the language of Article 233(2) of the Constitution of India and Rule 9 of the DHJS Rules. He submitted that whereas Article 233(2) of the Constitution of India requires that a person would be eligible to be appointed as the District Judge if he has been for not less than seven

⁴ 2019 SCC OnLine Del 7593

years an advocate or a pleader. However, Rule 9 of the DHJS Rules requires the candidate to be practicing as an advocate for not less than seven years as on the last date of receipt of the application. He submitted that it was not sufficient for a candidate to be enrolled as an advocate. He would also be required to establish that he was in continuous practice. Mr. Sibal emphasized that the word ‘practice’ would necessarily mean practice of law and undergoing a full time LL.M. course would not qualify being in professional practice.

13. Dr. Amit George, learned counsel appearing for the DHC countered the aforesaid submission. He contended that the question whether the period during which a candidate was pursuing a Master’s course on law was required to be excluded from the period of being an advocate was settled by the decision of the Division Bench of the Andhra Pradesh High Court in *Tirumala Devi Eada v. State of Andhra Pradesh & Ors.*⁵ He submitted that in the said case, qualification of two candidates for appointment to the Andhra Pradesh Higher Judicial Service was challenged on the grounds that they did not satisfy the criteria of being in practice if the period spent in pursuing an LL.M. degree course was excluded. Further, one of the candidates had also not completed the minimum age of 35 years at the time of issuance of notice inviting application. The court repelled the challenge that the period in pursuing an LL.M. degree course constituted a break in practice but accepted that one of the candidates did not satisfy the minimum age criterion. However, the said candidate succeeded in his appeal against

⁵ 2012 SCC OnLine AP 480

the said decision holding him disqualified before the Supreme Court in *Sasidhar Reddy Sura v. State of Andhra Pradesh & Ors.*⁶

14. He also referred to the decision of the Division Bench of the Punjab and Haryana High Court in *Devinder Singh v. State of Haryana & Ors.*⁷ in support of his contention.

15. The learned counsel appearing for respondent no.4 advanced submissions on the same lines as Dr. George. He also referred to the decision of the Jammu & Kashmir High Court in *Tahir Ahmad Dar v. State of J&K & Ors.*⁸ as well as the decision of Punjab and Haryana High Court in *Lovekesh Kumar v. Haryana State Industrial & Infrastructure Development Corporation & Ors.*⁹ in support of his contention that the period spent in pursuing LL.M. could not be considered as a period during which respondent no.5 was not in practice.

ANALYSIS

ELIGIBILITY CONDITIONS UNDER ARTICLE 233(2) AND RULE 9(2) NOT DIFFERENT – ‘ADVOCATE’ AND ‘PRACTISED AS AN ADVOCATE’ ARE THE SAME

16. At the outset, this Court considers it apposite to address the petitioner’s contention that there is a distinction as to the eligibility conditions for being appointed as a District Judge under Article 233(2)

⁶ (2014) 2 SSC 158

⁷ 1997 SCC OnLine P&H 1541

⁸ 2017 SCC OnLine J&K 426

⁹ CWP No. 12187/2009 decided on 27.05.2011

of the Constitution of India and Rule 9 of the DHJS Rules. Article 233 of the Constitution of India reads as under:-

“233. Appointment of District Judges.-

1. Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State

2. A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment”

17. In terms of Article 233(2), a person is eligible to be appointed as a District Judge if he has been an advocate or a pleader for a period not less than seven years.

18. Rule 9 of the DHJS Rules as applicable prior to 08.02.2022 read as under:-

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

(1) must be a citizen of India.

(2) must have practiced as an Advocate for not less than seven years.

(3) must have attained the age of 35 years and have not attained the age of 45 years on the 1st day of January of the year in which the applications for appointment are invited.”

19. Sub-rules (2) and (3) of Rule 9 of the DHJS Rules were further amended by a notification dated 08.02.2022. Rule 9, as in force thereafter, reads as under:-

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

- (1) must be a citizen of India.
- (2) must have been continuously practising as an Advocate for not less than seven years as on the last date of receipt of applications.
- (3) must have attained the age of 35 years and have not attained the age of 45 years on the 1st day of January of the year in which the applications for appointment are invited.”

20. There was no material difference between the eligibility criteria as set out for an advocate under Article 233(2) of the Constitution of India and Rule 9(2) of the DHJS Rules. In terms of Article 233(2) of the Constitution of India, any person who has been an advocate for not less than seven years, is eligible to be appointed as a District Judge. It is implicit that the term ‘advocate’ would mean a person who is in practice as an advocate. We are not persuaded to accept that there is a difference between a person who is an advocate, and a person who has practiced as an advocate.

21. Section 2(1)(a) of the Advocates Act, 1961 (hereafter ‘**the Advocates Act**’) defines the term ‘advocate’ as under:-

“(a) ‘advocate’ means an advocate entered in any roll under the provisions of this Act”

22. Section 16(1) of the Advocates Act specifies that there shall be two classes of advocates, namely, senior advocates and other advocates. Section 17(1) of the Advocates Act requires every State Bar Council to maintain a roll of advocates, specifying certain particulars. Section 24

of the Advocates Act stipulates the mandatory qualifications for being admitted as an advocate on a State roll. Section 24A of the Advocates Act stipulates that no person would be admitted as an advocate on a State roll if he is convicted of an offence involving moral turpitude; or is convicted of an offence under the Untouchability (Offences) Act, 1955; or has been dismissed or removed from employment or office under the State or any charge involving moral turpitude.

23. In terms of Section 29 of the Advocates Act, the advocates are the only class of persons entitled to practice the profession of law. In terms of Section 33 of the Advocates Act, no person is entitled to practice in any court or before any authority or person unless he is enrolled as an advocate under the said Act. Section 49(1) of the Advocates Act empowers the Bar Council of India to make rules for discharging its functions under the Act. In terms of Clause (ah) of Section 49(1), the rules made by the Bar Council of India, in particular, prescribe the conditions subject to which an advocate shall have the right to practise and the circumstances under which a person shall be deemed to practise as an advocate in a court.

24. In exercise of the said powers, the Bar Council of India has made the rules (The Bar Council of India Rules – hereafter ‘**the BCI Rules**’). Part VI of the BCI Rules contains rules governing advocates. Chapter II of part VI of the BCI Rules sets out the standards of professional conduct and etiquette. Chapter III of the BCI Rules sets out the condition for right to practice, made in exercise of powers under Section 49(1)(ah) of the Advocates Act.

25. In terms of Rule 5(1) of Chapter III of the BCI Rules, an advocate, who suspends his practice, is required to intimate the same by registered post to the State Bar Council which has entered his name in the rolls, together with the certificate of enrolment in original.

26. In terms of Rule 5(2) of Chapter III of the BCI Rules, an advocate, who has suspended his practice and is desirous to resume the same, is required to apply to the Secretary of the State Bar Council for assumption of practice along with an affidavit stating whether he had incurred any disqualification under Section 24A of the Advocates Act during the period of his suspension. In terms of Rule 5(3) of Chapter III of the BCI Rules the BCI Rules, the Enrolment Committee of the State Bar Council may order resumption of practise and return the certification of practice to the advocate with necessary endorsement. In terms of Rule 6(2) of the BCI Rules, an advocate, who is under suspension, incurs the same disability as an advocate whose name has been removed from rolls.

27. By definition, an advocate is one whose name is entered in any roll maintained for the said purpose. It is necessary for a person to be enrolled to practise the profession of law. It would be erroneous to assume that a person, who is not practising the profession of law, can continue as an advocate on the rolls of the State Bar Council. In this regard, it is also relevant to refer to the Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015. The said rules have been enacted to verify that an advocate, who has been issued a certificate of practice, continues to be engaged in the profession of law.

Every advocate is, thus, required to apply for verification of certificate of practice issued by the State Bar Council periodically. Under Rule 13 of the said rules, the application for verification of certificate of practice and the place of practice is required to be scrutinised by the office. The said application is required to be dismissed if it is found that the advocate has left the practice and has no *bona fide* intent or interest in continuing it in future. An advocate, who is found to be not in actual practice and is engaged in some public or private employment, business etc., which is not related to the legal profession, is not entitled to practice the profession of law. He cannot continue to be enrolled as an advocate.

28. It is clear from the above, the enrolment of a person as an advocate and grant of certificate is synonymous to him being in practice of law. An advocate, who is not practicing the profession of law, is a misnomer.

29. In the aforesaid view, there is no material difference in the eligibility criteria for an advocate to be appointed as a District Judge as stipulated under Article 233(2) of the Constitution of India and erstwhile Rule 9(2) of the DHJS Rules.

RULE 9(2) OF THE DJHS RULES AMENDED TO CONFORM TO THE SUPREME COURT'S INTERPRETATION OF ARTICLE 233(2) OF THE CONSTITUTION OF INDIA

30. Rule 9(2) of the DHJS Rules was amended by a notification dated 08.02.2022 solely to bring it in conformity with the law as settled by

the Supreme Court. In *Deepak Aggarwal*², the Supreme Court had accepted that the criterion that a person “*has been for not less than seven years an advocate*”, as stipulated in Article 233(2) of the Constitution of India, was required to be considered as seven years as an advocate immediately preceding the application and not seven years at any time in the past. In *Dheeraj Mor v. Hon’ble High Court of Delhi*¹⁰, the Supreme Court noted various decisions including the decision in the case of *Deepak Aggarwal*² and observed that there were apparently divergent views whether the eligibility has to be considered only at the time of appointment or at a time of application, and by an order dated 23.01.2018, referred the matter to the Chief Justice of India for constituting a Larger Bench.

31. The Larger Bench of the Supreme Court rendered the authoritative decision in *Dheeraj Mor v. Hon’ble High Court of Delhi*¹¹ on 19.02.2020. The Supreme Court concurred with the decision in the case of *Deepak Aggarwal*² that a period of seven years as an advocate, as mentioned in Article 233(2) of the Constitution of India, was required to be a continuous period of seven years on the last date of application. In view of the said decision, Rule 9(2) of the DHJS Rules was amended to specifically stipulate that the eligibility period as an advocate is a continuous period of seven years as on the date of application.

32. This is in conformity with the eligibility criteria as set out in

¹⁰ (2018) 4 SCC 619

¹¹ (2020) 7 SCC 401

Article 233(2) of the Constitution of India as interpreted by the Supreme Court in *Dheeraj Mor*¹¹.

33. In view of the above, we reject the contention that Rule 9(2) of the DHJS Rules contemplates the condition of active practice as an advocate, in addition to the eligibility criteria stipulated under Article 233(2) of the Constitution of India. We are of the view that the Rule 9(2) of the DHJS Rules has to be read embodying the eligibility criteria for appointment of an advocate as set out in Article 233(2) of the Constitution of India.

PURSUIT OF MASTER'S COURSE IN LAW NOT A BREAK IN PRACTISE

34. Bearing the aforesaid in mind, we now proceed to address the question whether the period spent by respondent no.5 in pursuing the Master's course in law was required to be considered as a period when he was not in practice as an advocate.

35. We are of the view that the aforesaid question must be answered in the negative in view of the Resolution No.160/2009 of the Bar Council of India. The said Resolution adopted by the Bar Council of India at its meeting held on 28.12.2009 reads as under:-

“RESOLUTION NO. 160/2009

“RESOLVED that the practising advocates can join in LL.M. course as a regular student without suspending the practice.”

36. The above Resolution amply clarifies that an advocate would continue to be considered in practice during the period he pursues a full-

time LL.M. course as a regular student.

37. A similar issue also came up for consideration of the Division Bench of Andhra Pradesh High Court in the case of ***Tirumala Devi Eada***⁵. Selection of one of the candidates for appointment in Andhra Pradesh Higher Judicial Service was challenged on the ground that the said candidate (Sh. Sasidhar Reddy Sura) did not meet the eligibility criteria. It was contended that although he had claimed to have seven years and two months standing at the Bar as on 01.08.2010, he had, during the said period, proceeded abroad for further studies for about nine months. In that context, his eligibility for being appointed was called into question. His eligibility was also questioned on the ground that his age was below the minimum age as prescribed. The Division Bench of the Andhra Pradesh High Court found that there was no provision in the Advocates Act that prohibited an advocate from pursuing further studies in law. The Court referred to Section VII of Chapter II of Part VI of the BCI Rules, which proscribe an advocate from taking up certain activities and engagements. The Court noted that none of the said rules had prohibited an advocate from undertaking a postgraduate course in law. Therefore, the eligibility of the candidate could not be questioned on the ground that he had pursued a Master's course in law during the period of seven years preceding his application for appointment in the Andhra Pradesh Judicial Service. The Court held that it is sufficient "*if it is made out that the candidate has been on the rolls of the State Bar Council as an advocate for a minimum period of seven years.*" The relevant extract of the said decision is set out below:

“227. However, the question that requires consideration is whether the period of nine months during which the candidate had pursued higher studies in United States can be taken into consideration while reckoning the seven years standing at the Bar.

228. Section 2(a) of the Advocates Act, 1961 defines the expression "advocate" as: 'Advocate' means an advocate entered in any roll under the provisions of this Act

229. As per Section 17(1)(b) of the Advocates Act, 1961, every State Bar Council shall prepare and maintain a roll of advocates in which shall be entered the names and addresses of the persons who are admitted to be advocates on the roll of the State Bar Council under the said Act on or after the appointed day. Section 49 of the Advocates Act, 1961 empowers the Bar Council of India to make rules for discharging its functions under the said Act. Section 49(1)(ah) stipulates that the Bar Council of India may make rules prescribing the conditions subject to which an advocate shall have the right to practice and the circumstances under which a person shall be deemed to practice as an advocate in a Court. Chapter III of Part VI of the Bar Council of India Rules made under Section 49(1)(ah) of the Advocates Act, 1961 does not require that an advocate pursuing higher studies in shall suspend his practice. It is also relevant to note that Chapter 11 of the part VI of the BCI Rules made under Section 49 (1)(c) of the Advocates Act, 1961 which provided for the standards of professional conduct and etiquette, does not impose any restriction on the advocates pursuing higher studies in law. The Rules contained in Section VII of Chapter II are as under

“47. An advocate shall not personally engage in any business; but he may be a sleeping partner in a firm doing business provided that in the opinion of the appropriate State Bar Council, the nature of the business is not inconsistent with the dignity of the profession.

48. An advocate may be a Director or Chairman of the Board of Directors of a Company with or without any ordinary sitting fee, provided none of his duties are of an executive character. An advocate shall not be a Managing Director or a Secretary of any Company.

49. An advocate shall not be a full-time salaried employee of any person Government, firm, corporation or concern, so long

as he continues to practice, and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears and shall thereupon cease to practice as an advocate so long as he continues in such employment

50. An advocate who has inherited, or succeeded by survivorship to a family business may continue it, but may not personally participate in the management thereof. He may continue to hold a share with others in any business which has devolved to him by survivorship or inheritance or by will, provided he does not personally participate in the management thereof.

51. An advocate may review Parliamentary Bills for a remuneration, edit legal text books at a salary, do press-vetting for newspapers, coach pupils for legal examination, set and examine question papers; and subject to the rules against advertising and full-time employment, engage in broadcasting, journalism, lecturing and teaching subjects, both legal and non-legal.

52. Nothing in these rules shall prevent an advocate from accepting, obtaining the consent of the State Bar Council, part-time employment provided that in the opinion of the State Bar Council, the nature of the employment does not conflict with his professional work and is not inconsistent with the dignity of the profession. This rule shall be subject to such directives if any as may be issued by the Bar Council of India from time to time,"

230. A reading of the above Rules shows that an advocate shall not personally engage in any business and shall not be a Managing Director or a Secretary of any company. Similarly an advocate shall not be a full-time salaried employee of any person, Government and etc. If he takes up any such employment he shall intimate to the Bar Council on whose roll his name appears and shall thereupon cease to practice as an advocate so long as he continues in such employment. There is also a bar that the advocate should not personally participate in the management of a family business. However as per Rule 51 an advocate can edit legal text books at a salary, he can do press vetting for newspapers, he can coach pupils for legal examination, he can set and examine question papers. He can also engage in broadcasting, journalism, lecturing and teaching subjects both legal and non-legal subject to the rules against advertising and full time employment. Rule 52 further provides that an advocate with the consent of the State Bar Council can

accept part time employment provided that in the opinion of the State Bar Council the nature of the employment does not conflict with his professional work and is not inconsistent with the dignity of the profession

231. As could be seen, none of the above rules prohibits an advocate from undertaking post-graduation course or any further studies. Nothing in the above rules either expressly or by necessary implication requires seeking permission of the State Bar Council or suspending his practice during the period when an advocate undertakes further studies either part time or full time.

232. The Advocates Act and the Rules made thereunder are also silent as to the steps required to be taken when an advocate on rolls of the State Bar Council goes out of the country for pursuing higher studies or in connection with his personal work. There is no provision requiring the advocate even to suspend his practice when he is out of the country. Therefore, it can be safely concluded that there is no prohibition as such for pursuing further studies in Law as a regular course.

233. Be it noted that as per Article 233(2) of the Constitution of India the only requirement is that the candidate should be an advocate for a minimum period of seven years. Rule 5(1)(a) of A.P. State Judicial Service Rules, 2007 also contains a similar provision. Though the 2nd proviso to the said Rule specified certain disqualifications, the same have nothing to do with pursuing higher studies by an advocate.

234. Therefore, on a combined reading of the definition of advocate under Section 2 (a) of the Advocates Act together with the other provisions under the Bar Council of India Rules noticed above, particularly in view of the fact that the advocate is not required to suspend his practice while pursuing further studies in Law either in India or abroad, we are of the opinion that it is sufficient if it is made out that the candidate has been on the rolls of the State Bar Council as an advocate for a minimum period of seven years.

235. Therefore, the contention on behalf of the petitioners that the nine months period during which the candidate at Sl. No.5 pursued L.L.M. Court in United States Ought to have been excluded while reckoning his standing at the Bar deserves to be

rejected.”

38. In *Deepak Aggarwal*² – one of the decisions relied upon by the petitioner – the Supreme Court had held as under:-

“89. We do not think there is any doubt about the meaning of the expression “advocate or pleader” in Article 233(2) of the Constitution. This should bear the meaning it had in law preceding the Constitution and as the expression was generally understood. The expression “advocate or pleader” refers to legal practitioner and, thus, it means a person who has a right to act and/or plead in court on behalf of his client. There is no indication in the context to the contrary. It refers to the members of the Bar practising law. In other words, the expression “advocate or pleader” in Article 233(2) has been used for a member of the Bar who conducts cases in court or, in other words acts and/or pleads in court on behalf of his client. In *Suchma Suri*, a three-Judge Bench of this Court construed the expression “members of the Bar” to mean class of persons who were actually practising in courts of law as pleaders or advocates. A Public Prosecutor or a Government Counsel on the rolls of the State Bar Council and entitled to practice under the 1961 Act was held to be covered by the expression “advocate” under Article 233(2). We respectfully agree.”

(emphasis supplied)

39. It follows from the aforesaid observations of the Supreme Court that a person, who was enrolled as an advocate on the rolls of the State Bar Council for a period of seven years preceding the date of his application, would satisfy the eligibility criteria as set out in Article 233(2) of the Constitution of India.

‘STANDING AT THE BAR’; ‘PRACTICE AS AN ADVOCATE’; AND ‘ACTUAL PRACTICE’ USED SYNONYMOUSLY

40. Mr. Sibal sought to distinguish the judgment in the case of

Tirumala Devi Eada⁵ on the ground that the eligibility criteria for being appointed to the Andhra Pradesh Judicial Services is materially different from Rule 9(2) of the DHJS Rules. He submitted that in that case, an applicant was required to be “*an advocate not less than seven years standing at the Bar*”. He submitted that the expression ‘standing at the Bar’ is materially different from the requirement of being in continuous practice as an advocate for not less than seven years.

41. We are unable to accept the aforesaid contention that the requirement of seven years standing at the Bar is materially different from the eligibility criteria as set out in Rule 9(2) of the DHJS Rules or Article 233(2) of the Constitution of India.

42. In regard to the interpretation of the expression ‘standing at the bar’, it is relevant to refer to the decision of the Bombay High Court in ***Sudhakar Govindrao Deshpande v. State of Maharashtra & Ors***¹². In that case, the Bombay High Court had considered the question whether the petitioner, who was serving at the post of Deputy Registrar at the Nagpur Bench of the Bombay High Court, was eligible for appointment for the post of District Judge. The notice issued by the Bombay High Court inviting application for the post of District Judge had set out the eligibility criteria as: “*candidate must ordinarily be an advocate or pleader who has practiced in the High Court of Bombay or courts subordinate thereto for not less than seven years*”. The Bombay High Court referred to an earlier decision of the Supreme Court in ***Chandra***

¹² 1985 SCC OnLine Bom 92

Mohan v. State of Uttar Pradesh & Ors.¹³ and observed as under:-

“17. ... the phrase “has been an advocate or a pleader” must be interpreted as a person who has been immediately prior to his appointment a member of the Bar, that is to say either an advocate or a pleader. In fact, in the above judgment, the Supreme Court has repeatedly referred to the second group of persons eligible for appointment under Article 233(2) as ‘members of the Bar’, Article 233(2) therefore, when it refers to a person who has been for not less than seven years an advocate or pleader refers to a member of the Bar who is of not less than seven years’ standing.”

(emphasis supplied)

43. The aforesaid passage was noted by the Supreme Court in the case of ***Deepak Aggarwal***². The same also finds reference in the decision of the Supreme Court in the case of ***Dheeraj Mor***¹¹. The criteria that a candidate who has practiced for not less than seven years is not different than the requirement of not less than seven years standing at the Bar.

44. It is also relevant to refer to the decision of the Punjab and Haryana High Court in the case of ***Devinder Singh***⁷. In the said case, the petitioner had challenged the selection of respondent no.4 therein for being appointed to the Haryana Civil Service (Judicial Branch) on the ground that he did not qualify the eligibility criteria of “*three years practice at the Bar*” on 24.07.1995. The candidate in that case, whose eligibility for the appointment to the Haryana Civil Service (Judicial Branch) was challenged, enrolled with the Bar Council of Punjab and

¹³ AIR 1966 S.C. 1987

Haryana with effect from 11.11.1991, however, he had joined LL.M. classes as a regular student till 1994. This, according to the petitioner, rendered the candidate ineligible for being appointed to the said service.

45. The Punjab and Haryana High Court did not accept the said challenge and held that the candidate had not suspended his practice during the period he was pursuing the LL.M. course. The Court referred to the letter issued by the Bar Council of India (referring to the Resolution No.160/2009) and observed that “*the letter issued by the Bar Council of India unequivocally shows that an Advocate is not required to suspend his licence before he joins LL.M. Course as a regular student. Thus, we do not find any reason to sustain the challenge to the selection and appointment of the respondent no.4 to Haryana Civil Service (Judicial Branch).*”

46. In the case of ***Tahir Ahmad Dar***⁸, the Jammu and Kashmir High Court referred to the decision of the Andhra Pradesh High Court in the case of ***Tirumala Devi Eada***⁵ and observed as under:-

“16. Applying the principle as has been evolved in the Division Bench judgement of the Andhra Pradesh High Court with specific reference to the Advocates Act, the position of the period spend in pursuing the LL.M. course being treated as standing at Bar and then other reasons recorded i.e. when an avocation is not different to the field of law, then that period has to be treated as standing at Bar.”

47. It is relevant to note that in ***Tahir Ahmad Dar***'s case⁸, the Jammu and Kashmir High Court was concerned with the challenge to a candidate who was appointed to the post of Legal Assistant for Kashmir

Division in the Department of Law. The prescribed qualification required the candidate to hold a “*bachelor degree in law (professional) with two years actual practice at Bar*”. It was contended before the Court that the decision in the case of Andhra Pradesh High Court in ***Tirumala Devi Eada***⁵ would be inapplicable as in that case, the court had considered the eligibility criteria of seven years standing at the Bar and “*not actual practice at Bar*”. The Jammu and Kashmir High Court rejected the said contention and held that in essence, both the expressions, “*actual practice at Bar*” and “*standing at Bar*” in the context of job requirement stand on the same footing.

ENQUIRY AS TO THE FUNCTIONS PERFORMED BY AN ADVOCATE NOT NECESSARY.

48. The profession of law has expanded manifold. It is not confined to acting or pleading before a court of law. The profession of law has many facets, which include drafting of submissions, drafting of regulatory filings, representation before various tribunals or authorities, assistance in regulatory compliance, amongst others. The eligibility criterion of being in practice for seven years does not require any inquiry into the actual area of practice of an advocate. If a person is enrolled as an advocate for a period of seven years prior to the date of the application, he would satisfy the eligibility criteria unless it is established that he was not entitled for being so enrolled as an advocate; had suspended his practice either voluntarily or otherwise; or had accepted an engagement or vocation, which was impermissible as an advocate.

49. In the present case, respondent no.5's practice, as an advocate, was not suspended during the period when he was pursuing the Master of Law Program. By virtue of Resolution No. 160/2009 passed by the Bar Council of India, he was not required to suspend his enrolment as an advocate on account of pursuing the said full-time course.

AUTHORITIES RELIED ON BY THE PETITIONER

50. Mr. Sibal's reliance on paragraph no.91 in the case of *Deepak Aggarwal*² is misplaced. The observations made in the said paragraph are in reference to an earlier decision of the Supreme Court in the case of *Sushma Suri*³. The controversy before the Court in that case was whether a law officer, who takes up employment with the Government, would cease to qualify as an advocate. In the aforesaid context, the Court had drawn a distinction between a person who ceases to practice law and takes up full time employment and a person who takes up employment and is engaged to act or plead on behalf of its employer in the court of law as an advocate. The Court held that in the former case – that is, a person who ceases to practice and takes up employment – such person, could by no stretch of imagination, be termed as an advocate. However, a law officer, who was engaged to act or plead, would continue to qualify as an advocate.

51. The import of the case in *Sushma Suri*³ was to include within the fold of an advocate, persons who are enrolled with the Bar Council of India and continue to act and plead as a part of their engagement. The Court held that such persons could not be excluded solely for the reason

that they had taken up a full-time employment with an employer. It is in the said context, the Court held that the functions performed by such person would be sufficient to also include him as an advocate. This is clearly not an authority for a proposition that an advocate, who is entitled to practice, ceases to be an advocate in practice on joining a Master's course in law. The Bar Council of India recognizes that the same would not be ground for suspension of practice. As observed earlier, there is no requirement to examine the functions performed by a person who is enrolled as an advocate with the Bar Council of India and is entitled to practice the profession of law. Unless this person is disqualified or otherwise ineligible to be enrolled as an advocate, he would satisfy the eligibility criteria of being an advocate.

52. The decision in the case of ***Dr. R.J.R. Kasibhatla & Anr.***⁴, which was relied upon by Mr. Sibal, is of little importance. In that case, the challenge related to the eligibility of a candidate, who had applied for the post of ALA in the Department of Legal Affairs, Ministry of Law and Justice. The candidate was required to satisfy the essential qualification of “*minimum legal experience of thirteen years’ experience*”. The concerned candidate (respondent) held a PhD. Degree and claimed that he had twenty-three years one month and twenty-one days experience out of which he claimed eight years and eight months as a teaching experience. The teaching experience was not relevant. After excluding the said period, he claimed that he had more than thirteen years of legal experience which included two years and nine months experience as an advocate. He claimed that he had practiced as

an advocate in the court complex at Kakinada in the State of Andhra Pradesh. However, it was found during the said period that he had pursued a LL.M. course as a regular student at another place. However, before the Court, he sought to alter his case and submitted that he could continue practice while pursuing his LL.M. course at the University Law College, Bangalore. The court did not accept the said contention on the ground that it was not the respondents' case that he had continued practice while pursuing his LL.M. course at Bangalore; on the contrary, he had claimed that he had practiced as an advocate at Kakinada Court Complex, which was more than 900 kms away.

53. The decision of the Court largely rested on the principle that a party could not be permitted to alter his stand before a superior court and set up a new case. Apart from the above, the conditions of eligibility fell for consideration of the Court in that case were materially different than specified under Article 233(2) of the Constitution of India. Mr. Sibal had also pointed out that the Division Bench had also made an observation to the effect that the observations made by the Andhra Pradesh High Court in *Tirumala Devi Eada*⁵ were *obiter dicta* because the claim of eligibility had been rejected on the ground that the candidate had not attained the age of thirty years. The observations made to the aforesaid effect in the case of *Dr. R.J.R. Kasibhatla & Anr.*⁴ are clearly in the passing and cannot be read as an opinion of the Court. This is because the Court, before making the observations, had clarified that the judgment in *Tirumala Devi Eada*⁵ was not placed before the Court. Thus, neither the decision of the Andhra Pradesh High

Court in *Tirumala Devi Eada*⁵ was placed before the Court nor was it brought to the notice of the Court that the candidate, who was held to be ineligible on account of age criterion, had succeeded before the Supreme Court in the case of *Sasidhar Reddy Sura*⁶.

CONCLUSION

54. In view of the above, we find no merit in the petitioner's challenge to the appointment of respondent no.5 in the DHJS.

55. In view of the above, the petitioner's prayer that the DHC be directed to appoint him in the DHJS must also fail. It is not necessary for this Court to consider the petitioner's challenge to the appointment of respondent nos. 3 and 4 to the DHJS.

56. The petition is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

APRIL 10, 2023

Ch