



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MR. JUSTICE VIJU ABRAHAM

TUESDAY, THE 15TH DAY OF MARCH 2022 / 24TH PHALGUNA, 1943

OP (KAT) NO. 39 OF 2022

AGAINST THE ORDER/JUDGMENT IN OA 880/2020 OF KERALA

ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONER/S:

SAUMYA M.S, AGED 38 YEARS
W/O.RATHEESH.G., UPPER DIVISION TYPIST, EXCISE
DIVISION OFFICE, ALAPPUZHA-688 011, RESIDING AT
PUTHENVEEDU, PATHIRAPPALLY P.O., ALAPPUZHA,
KERALA-688 521

BY ADV N.ASHOK KUMAR

RESPONDENT/S:

- 1 STATE OF KERALA, REPRESENTED BY SECRETARY TO
GOVERNMENT, HOME DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695 001
- 2 THE DIRECTOR GENERAL OF PROSECUTION,
ERNAKULAM-682 031
- 3 KERALA PUBLIC SERVICE COMMISSION,
PATTOM, THIRUVANANTHAPURAM, -695 004, REPRESENTED
BY ITS SECRETARY
- 4 ANILA.K.N., AGED 38 YEARS
D/O. M.K.NARAYANAN NAIR, RESIDING AT PADMAM,
2/1998 C, CHALIKKARA ROAD, CIVIL STATION P.O.,
KOZHIKODE-673 020
- 5 MITHRA.J., AGED 31 YEARS
W/O. ANURAJ.S., ANU BHAVAN, PALLIMUKKU, KADAKKAL
P.O., KOLLAM-691 536



- 6 SHAJAHAN.K.S., AGED 40 YEARS
S/O. SHANMATHURA DAS, RESIDING AT KALATHIL,
VARANAD P.O., CHERTHALA, ALAPPUZHA-688 539
- 7 RAJMOHAN.M.R. AGED 38 YEARS
S/O. MADHAVANKUTTY, RESIDING AT THARAYIL VEEDU,
VENGARA, THODIYUR NORTH P.O., THAZHAVA, KOLLAM-
690 523

BY ADVS.
NIRMAL V NAIR
M.ANEESH
RAHUL S.NATH

OTHER PRESENT:

SRI.SAIGI JACOB PALATTY, SR.GOV.T.PLEADER,
SRI.P.C.SASIDHARAN,SC, KPSC

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP
FOR ADMISSION ON 15.03.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

HIGH COURT OF KERALA
CERTIFIED COPY

**(C.R)****ALEXANDER THOMAS & VIJU ABRAHAM, JJ.**

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O.P(KAT) No. 39 of 2022*[Arising out of the final order dated 5.5.2021 in O.A.No. 880/2020 on the file of the KAT, TVM Bench]*

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Dated this the 15th day of March, 2022**J U D G M E N T****ALEXANDER THOMAS, J.**

The final verdict rendered by the Division Bench of the Kerala Administrative Tribunal, Thiruvananthapuram Bench on 5.5.2021 in the instant original application, O.A.No. 880/2020 is under challenge before us in the instant Original Petition filed under Arts.226 and 227 of the Constitution of India.

2. The sole petitioner in the Original Petition is the sole applicant in the O.A. and the respondents in the OP are the respondents in the O.A..

3. Heard Sri.N.Asok Kumar, learned counsel appearing for the petitioner in the O.P./sole applicant in the O.A., Sri.Saigi Jacob Palatty, learned Senior Govt. Pleader appearing for respondents 1 & 2 in the O.P./R-1 & R-2 in the OA, Sri.P.C.Sasidharan, learned Standing Counsel for the Kerala Public Service Commission appearing for R-3 in the O.P/R-3 in the O.A. and Sri.Nirmal V.Nair, learned Advocate appearing for contesting respondents 4 to 7 in the O.P./R-4 to R-7 in



the O.A.

4. The main issue posed before us in this OP is as to whether a serving Government employee, who had earlier secured enrollment as an Advocate in terms of the provisions contained in the Advocates Act, and who had later suspended his legal practice for taking up the above Government employment, can be treated as a “*member of the Bar*” for the purpose of selection and appointment as Assistant Public Prosecutor Grade II. Our answer to the abovesaid issue is in the negative and thus against the petitioner in the OP. The reasonings for arriving at the abovesaid conclusion will be dealt with hereunder. The original petitioner herein/original applicant will be referred for convenience as “the applicant”. The respondent Kerala Public Service Commission will be referred for convenience as “PSC”.

5. A brief reference to the factual aspects in this case would be pertinent and relevant. According to the applicant, she had secured a degree in law from the University of Calicut and thereafter she had duly got herself enrolled as Advocate before the Bar Council of Kerala on 30.12.2007, in terms of the provisions contained in the Advocates Act, 1961 and the rules framed thereunder. According to her, she has commenced practice as an Advocate in the courts at



Alappuzha, including the criminal courts there. Later she got appointment as Lower Division Typist (LDT) in the Excise Department of the Government of Kerala and pursuant to the said appointment order, she has joined Government service as LDT on 16.10.2012. It is also her admitted case that before that, she had given the requisite application before the Bar Council of Kerala and had got her legal practice suspended in terms of the provisions contained in the Advocates Act and the Bar Council of India Rules and that the abovesaid voluntary suspension from legal practice was rendered on 10.10.2012. The last date of submission of the application as per Anx.A-1 notification dated 30.8.2017, was upto 4.10.2017.

6. The 3rd respondent PSC had issued Anx.A-1 selection notification dated 30.8.2017, inviting applications from eligible and qualified candidates for appointment as Assistant Public Prosecutor Gr.II (APP Gr.II) in the State of Kerala. The qualifications prescribed to hold the post of APP Gr.II as per the rules and as per clause 7 of Anx. A-1 selection notification are as follows:

- i. *Must be a Graduate in Law.*
- ii. *Must be member of the Bar and must have had not less than three years of active practice in Criminal Courts.*

Note: Certificate of enrollment issued by the Bar Council and 3 years experience certificate of active practice in criminal courts as on First January 2017 issued by the Judicial Officer not below the rank of a First Class Judicial Magistrate should be produced."



(see page 29 of the paper book of the OP).

7. According to the applicant, she had earlier secured the certificate of enrollment issued by the Bar Council of Kerala and she had active practice in the criminal courts since 30.12.2007 and that she had also secured the necessary certificates certifying about her active practice in criminal courts, etc. Further that there is no dispute that she is a graduate in law, etc.

8. She would also contend that since she had already secured enrollment with the Bar Council of Kerala, as an Advocate, the mere fact that she had later suspended her legal practice, for the purpose of taking up Government employment, will not result in a scenario that she cannot be treated as a member of the Bar. It is contended that all what is involved in the process of suspension of legal practice for the purpose of taking up any permanent employment, is only to suspend legal right to practise, but the enrollment in the Bar continues and therefore, persons like the applicant should be treated as a member of the Bar. Hence, it is contended that the petitioner has all the qualifications and the eligibility conditions for being considered as APP Gr.II, in terms of Clause 7 of Anx.A-1 selection notification, as on 4.10.2017 (last date of submission of the applications), etc. There is no serious dispute as between the petitioner and the respondents that



she is a graduate in law and that she had earlier secured certificate of enrollment, issued by the Bar Council, on 30.12.2007, etc. The only dispute raised by the respondents is that, after having suspended her legal practice for the purpose of taking up Government employment, the applicant as a serving Government employee, cannot be treated as a member of the Bar after her voluntary suspension of legal practice on 10.10.2012 and at any rate, she cannot be treated as a member of the Bar as on 4.10.2017 (the last date of submission of the application as per Anx. A-1). So the only issue to be determined by us is the one mentioned herein above.

9. For a proper determination of the abovesaid issue, it will be pertinent to note some of the relevant provisions of the Advocates Act, 1961 and the Bar Council of India Rules framed thereunder. Sec. 2(1)(a) of the Advocate Act, 1961, defines “*advocate*” as follows: :

'Sec.2. Definitions.(1). In this Act, unless the context otherwise requires,-

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

Sec.2(k) of the said Act defines, “*roll*” as to mean roll of Advocates prepared and maintained under the Act.

Sec. 2(n) defines “*State roll*” to mean a roll of Advocates prepared and maintained by the State Bar Council under Sec.17.



Sec.17 mandates that State Bar Council has to maintain roll of Advocates. Sec.22 deals with certificate of enrollment, which reads as follows:

“Sec.22. Certificate of enrolment.-- (1) *There shall be issued a certificate of enrolment in the prescribed form by the State Bar Council to every person whose name is entered in the roll of advocates maintained by it under this Act.*

(2) *Every person whose name is so entered in the State roll shall notify any change in the place of his permanent residence to the State Bar Council concerned within ninety days of such change.”*

Sec.30 of the Act deals with the Right of Advocates to practise and it is mandated therein, that subject to the provisions of the said Act, every Advocate, whose name is entered in the State roll, shall be entitled, as of right, to practise throughout the territories to which this Act applies,- (i) in all courts including the Supreme Court; (ii) before any tribunal or person legally authorised to take evidence; and (iii) before any other authority or person before whom such Advocate is by or under any law for the time being in force entitled to practise. In this context, it is also relevant to note the provisions contained in Sec. 33 of the Act, which envisages that Advocates alone are entitled to practise and it is stipulated therein that except as otherwise provided in the Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practise in any court or before any authority or person unless he is enrolled as an



Advocate under the abovesaid Act. Sec.35 (3)(c) of the Act *inter alia* stipulates that the disciplinary committee of a State Bar Council, after giving the Advocate concerned and the Advocate-General an opportunity of being heard, may make an order to suspend the Advocate from practice for such period as it may deem fit. Sub section (4) of Sec.35 further mandates that where an Advocate is suspended from practice under clause (c) of sub-section (3), he shall, during the period of suspension, be debarred from practising in any court or before any authority or person in India.

10. Sec.41 of the Act deals with alteration in the roll of Advocates. Sec.41 provides as follows:

“Sec.41. Alteration in roll of Advocates.—(1) Where an order is made under this Chapter reprimanding or suspending an advocate, a record of the punishment shall be entered against his name

—
(a) in the case of an advocate whose name is entered in a State roll, in that roll;

and where any order is made removing an advocate from practice, his name shall be struck off the State roll.

(3) Where any advocate is suspended or removed from practice, the certificate granted to him under section 22, in respect of his enrolment shall be recalled.”

It is true that the provisions contained in Sec.35 supra as well as Sec. 41(1) deal with the scenario of suspending an Advocate from the rolls, as part of penal/ punishment proceedings. Sub section (3) of Sec. 41 would specifically mandate that where any Advocate is suspended or



removed from practice, the certificate granted to him under Sec.22 in respect of his enrollment shall be recalled.

11. Now it will be pertinent to refer to some of the provisions contained in the Bar Council of India (BCI) Rules.

Rule 49 under Section VII of Chapter II of Part VI and Rule 5 under Chapter III, Part VI of Bar Council of India Rules, will have to be examined. Sec.VII of the BCI Rules deals with the section on other employments. Rule 49 supra provides as follows:

“Rule 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 practise, and shall, on taking up any employment, intimate the fact to the Bar Council on whose roll his name appears, and shall thereupon cease to practise as an Advocate so long as he continues in such employment.”

In this context it is also pertinent to refer to the provisions contained in Rule 43 under Section IVA Part VI under Chapter II of the BCI Rules. Rule 43 supra *inter alia* stipulates that, where the Advocate has taken full time service or part time service or engages in business or any avocation inconsistent with his practising as an Advocate, then he shall send a declaration to that effect to the respective State Bar Council in which the Advocate is enrolled, within ninety days from the date of such disqualification and if the Advocate does not file the said declaration or fails to show sufficient cause for not filing such



declaration provided therefor, the Committee constituted by the State Bar Council under Rule 42 may pass orders suspending the right of the Advocate to practise, etc. The cumulative effect of Rule 43 supra and Rule 49 supra is that an Advocate shall not be a full time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practise, 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 practise as an Advocate so long as he continues in such employment. Rule 43 Supra also deals with those aspects and in case the Advocate concerned does not make the requisite declaration before the State Bar Council, after securing permanent employment, which is inconsistent with the practising of an Advocate, the competent committee by the State Bar Council, under Rule 42 supra, has the power to pass orders suspending the right of the Advocate to practice. He then shall send a declaration to that effect to the respective State Bar Council in which the Advocate is enrolled, within ninety days from the date of such disqualification.

12. Reference to the provisions contained in Rule 5 under Chapter III Part VI of the BCI Rules would also be apposite. Rule 5(1) supra mandates that an Advocate, who voluntarily suspends his



practice for any reason whatsoever, shall intimate, by registered post to the State Bar Council, on the rolls of which his name is entered, of such suspension together with his certificate of enrollment in original. Hence it can be seen from the cumulative and combined effect of Rule 49 supra, Rule 5(1) supra, etc. that, upon voluntarily suspending the practice, the person concerned will have to surrender the original of the certificate of enrollment to the State Bar Council. Rule 5(2) supra envisages a situation, wherever any such Advocate who has suspended his practice, desires to resume his legal practice and if that be so, he/she shall apply to the Secretary of the State Bar Council for resumption of practice, along with an affidavit stating whether he/she has incurred any of the disqualifications under Sec. 24-A, Chapter III of the Act during the period of suspension. Rule 5(3) further provides that the Enrollment Committee of the State Bar Council may order the resumption of practice of such a person and return the certificate to him with necessary endorsement. If, on the other hand, the Enrollment Committee is of the view that the Advocate has incurred any of the disqualifications, the Committee shall refer the matter under proviso to Sec.26(1) of the Act. So, reading of Rule 5(2) and 5(3) supra would make it clear that, where the person concerned,



after voluntarily suspending his practice for taking up permanent employment, subsequently desires to resume legal practice, which obviously is after giving up the said employment, should make an application before the enrollment committee of the State Bar Council, along with the requisite affidavit and if the enrollment committee is satisfied about the *bona fides* of the said request that his request is to be allowed, etc. then the enrollment committee can order for the resumption of the legal practice and only then the surrendered original certificate of enrollment has to be returned to the person concerned. So, it can be seen that the effect of the abovesaid Rule is that once an Advocate, who is enrolled with the State Bar Council, subsequently takes up permanent employment, including Government employment, then he/she is bound to intimate the State Bar Council about the said factual aspects and then should request for voluntary suspension of the legal practice and has to surrender the original certificate of enrollment to the State Bar Council.

13. It appears that, though the Bar Council of India Rules make provisions for voluntary suspension of legal practice, there are no explicit provisions regarding the said scenario as per the provisions of the Advocates Act, 1961. Rule 49 supra mandates that, upon



voluntarily suspending the practice, the said person shall cease to practise as an Advocate as long as he continues in such employment and Rule 5(1) supra mandates that the original certificate of enrollment will have to be surrendered. In this regard, the provisions contained in Sec. 41(3) of the Act may be referred, which stipulate that, where any Advocate is suspended or removed from practice, the certificate granted to him under Sec. 22, in respect of his enrollment shall be recalled. In the light of these provisions, more particularly, provisions contained in the abovesaid Bar Council of India Rules, it can be seen that the Advocate concerned, after voluntary suspension of legal practice, will cease to have the legal right to practise. In other words, such a person who secures suspension of legal practice will cease to have the right to practise as an Advocate in terms of Secs.30 and 33 of the Advocates Act, 1961, so long as the said person is in employment, as conceived in the Bar Council of India Rules. So the inevitable consequence of the statutory provisions in such a situation is that the said person, who has initially secured enrollment with the State Bar Council and who later secured voluntary suspension of legal practice, consequent to taking up of employment, including public employment, will cease to have the right to be an Advocate or to



practise as an Advocate, so long as the voluntary suspension is in force. In other words, such a person will not have the legal right to practise as an Advocate in terms of Secs. 30 and 33 of the Act. It is in this context that we will have to adjudge the issue as to whether such a person can be treated as a member of the Bar, after having secured voluntary suspension of practice.

14. Rule 6 under Chapter III of Part VI of the BCI Rules provides as follows:

“Rule 6. (1) An Advocate whose name has been removed by order of the Supreme Court or a High Court or the Bar Council as the case may be, shall not be entitled to practice the profession of law either before the Court and authorities mentioned under Section 30 of the Act, or in chambers or otherwise.

(2) An advocate who is under suspension, shall be under same disability during the period of such suspension as an advocate whose name has been removed from the roll.”

Rule 6(1) stipulates that an Advocate, whose name has been removed by order of the Supreme Court or a High Court or the Bar Council, as the case may be, shall not be entitled to practise the profession of law either before the Court and authorities mentioned under Sec. 30 of the Act, or in chambers or otherwise. Rule 6(2) further mandates that an Advocate, who is under suspension, shall be under the same disability, during the period of such suspension, as an Advocate whose name has been removed from the roll. Rule 6(2) supra does not make any distinction as between voluntary suspension and penal



suspension and the effect of suspension is dealt in Rule 6(2) as above.

15. The expression, “*member of the Bar*” is not seen explicitly defined in the provisions of the Advocates Act or in the rules framed thereunder. In this regard, it will be pertinent to refer to the contents of para No.9 of Ext.P-5 reply statement filed by the additional respondents 4 to 7 in the above O.A., which reads as follows:

'9. *The Black's Law Dictionary, 6th Edition, defines the term “Bar” as the court in its strict sense, sitting in full term or in another sense, the whole body of attorneys or the members of the legal profession, collectively, who are figuratively called the “Bar”. Wharton' Law Lexicon published by the Universal Law Publishing Company Pvt. Ltd. also defines “Bar” as a Court, Tribunal, a place of audience or the profession of barrister, who is said to be called to the bar. The Law Lexicon in fact provides a separate and distinct definition or explanation to the terms “Bar Council”, “Bar Council of India”, etc. Thus, what emanates from these explanations to the term “Bar” is that it is a term which denotes the Court and its proceedings or it's a collective reference to the attorney or the members of the legal profession. Thus, in order for a person to (sic) called a member of the bar, such person should be member of the legal profession, who earns her livelihood through such profession carried on in the Courts, Tribunals, etc. A mere membership in the Bar Council rolls or enrolment as an Advocate no longer extends the status of being a member of the Bar which is discernible from the provisions of the Advocates Act, 1961, Bar Council of India Rules and the Certificate of place and Practice (Verification), Rules 2015.”*

16. After hearing all the parties concerned, we are of the view that the reference to the meaning of the term, “*Bar*”, etc. as appearing in the Black's Law Dictionary and Law Lexicons, would be pertinent to really understand the substance and essence of the expression, “*member of the Bar*” as envisaged in Clause 7 of Anx. A-1 selection notification and relevant provisions of Anx. R-4 (b) special rules. In the light of the above aspects, we have no hesitation to hold



that in order to describe a person as being a member of the Bar, he/she should be a member of the legal profession, who earns a livelihood through the profession of legal practice carried on the courts, Tribunals, etc. We have already noted the consequence of voluntary suspension of legal practice, which will result in the person/ Advocate concerned ceasing to have the legal right to practise and he/she should also surrender the original certificate of enrollment to the Bar Council. So long as a person like the applicant does not have the legal right to practise as an Advocate in terms of Secs.30 and 33 of the Act, in view of the abovesaid aspects and the consequences flowing from the Act and the Rules, it cannot be said that such a person should be a member of the Bar, as envisaged in Clause 7 of Anx.A-1 selection notification and the provisions contained in Anx. A-4 (b) special rules.

17. In this regard, we also refer to the decision rendered by the Apex Court in the case in ***Deepak Aggarwal v. Keshav Kaushik & Ors.*** [(2013) 5 SCC 277], wherein it has been observed that Rule 49 of the Bar Council of India Rules provides that Advocate shall not be a full time salaried employee of any person, government, firm, corporation or concern, so long as he continues to be in legal



practice and that the term “*employment*” referred to in Rule 49 does not cover the employment of an Advocate, who has been solely or, in any case, predominantly employed to act and/or plead on behalf of his client in courts of law and that if a person has been engaged to act and/or plead in a court of law as an Advocate although by way of employment on terms of salary and other service conditions, such employment is not what is covered by Rule 49 supra, as he continues to practise law but, on the other hand, if he is employed, not mainly to act and/or plead in a court of law, but to do other kinds of legal work, the prohibition in Rule 49 immediately comes into play and then he becomes a mere employee and ceases to be an Advocate, etc. In the instant case, we are not concerned with such exceptional scenario considered by the Apex Court in ***Deepak Aggarwal's case*** supra [(2013) 5 SCC 277]. It will be pertinent to refer to para 98 of the decision in ***Deepak Aggarwal's case supra***, which reads as follows:

“98. *Admittedly, by the above resolution of the Bar Council of India, the second and third paragraphs of Rule 49 have been deleted but we have to see the effect of such deletion. What Rule 49 of the BCI Rules provides is that an advocate shall not be a full-time salaried employee of any person, Government, firm, corporation or concern so long as he continues to practise. The “employment” spoken of in Rule 49 does not cover the employment of an advocate who has been solely or, in any case, predominantly employed to act and/or plead on behalf of his client in courts of law. If a person has been engaged to act and/or plead in court of law as an advocate although by way of employment on terms of salary and other service conditions, such employment is not what is*



covered by Rule 49 as he continues to practise law but, on the other hand, if he is employed not mainly to act and/or plead in a court of law, but to do other kinds of legal work, the prohibition in Rule 49 immediately comes into play and then he becomes a mere employee and ceases to be an advocate. The bar contained in Rule 49 applies to an employment for work other than conduct of cases in courts as an advocate. In this view of the matter, the deletion of the second and third paragraphs by the Resolution dated 22-6-2001 has not materially altered the position insofar as advocates who have been employed by the State Government or the Central Government to conduct civil and criminal cases on their behalf in the courts are concerned.”

(emphasis supplied)

18. In the instant case, the applicant is a full time Government servant employed as a Lower Division Typist in the Excise Department of the State Government and the applicant has no case that she has been employed in a public employment solely or predominantly to act and or plead on behalf of a party in courts of law, etc. Since the applicant has taken up a full time Government employment, as an LD Typist, then consequent to the voluntary suspension of legal practice, she ceases to be having the legal right to practise as an Advocate and consequently she ceases to be an Advocate so long as the voluntary suspension is in force.

19. There is yet another aspect which will have to be dealt with by us. Sri.P.S.Sasidharan, learned Standing Counsel for the Kerala Public Service Commission appearing for R-3 would point out that when special rules require that the candidate should be a member of the Bar and must have had active practice of not less than



3 years on the first day of the year, in which the applications are invited, it is clear that the applicant must be having active practice not only as on the last date of submission of the application but also thereafter and upto his/her date of advice and regular appointment, etc. In that regard, it will be pertinent to refer to the relevant portion of para 5 of the decision of a Division Bench of this Court in **Mahin v. State of Kerala** [2013 (3) KLT 639], which reads as follows:

“5. It is trite law that an applicant has to possess the prescribed qualification as on the last date fixed for the receipt of applications by the P.S.C.. Such qualification that an applicant possesses, has to continue to run with that person during the selection process, to be continually carried at the selection, appointment, joining the service, and even while holding the post to which the incumbent was selected and appointed; that is, during the entire spectrum of employment from the last moment available to apply for being considered. This is a basic doctrine and salutary principle of law. This we say, not based on the interpretation of any provision of law applicable to driving of motor vehicles, but on the indefeasible legal effect of the prescriptions and terms of the recruitment rules and the P.S.C.'s notification, over which the petitioner has no dispute... ..”

20. We would also note that the Tribunal has referred to the judgment of the Patna High Court in the case **Amar Sinha v. Bar Council** [2017 KHC 2225], wherein, while upholding the legality of the Certificate and Place of Practice (Verification) Rules, 2015, the Court has held that the word, “*practice*” to mean repeated action, habitual performance and a succession of acts of similar kind. It was observed therein that a person, having licensed to practise law under the Advocates Act, abandons his profession or is having no bonafide



intend and interest to continue in the profession, there is no reason to treat him as a member of the profession merely on the strength of his enrollment and that it is to identify and weed out such fake persons and non practising Advocates that the Certificate and Place of Practice (Verification) Rules, 2015 have been introduced in the statute book. In the light of these aspects, we are constrained to hold that reliance placed by the petitioner on the contra view laid down in Anx. A-9 judgment dt.13.12.2018 by a learned Single Judge of the Madurai Bench of the Madras High Court in W.P.(MD).No. 237 of 2014 is not tenable as the same does not reflect the correct legal position.

21. The upshot of the above discussion is that, in view of the statutory consequences flowing out from the provisions contained in the Advocates Act and the Bar Council of India Rules, noted herein above, a person like the applicant, who has initially secured enrollment as an Advocate in the State Bar Council and later has taken up full time Government employment as above, and has thereupon voluntarily suspended from legal practice as above, then such a person cannot be said to have the legal right to practise as an Advocate and hence, as per the provisions of the Act and the Rules



supra, such a person cannot be said to be a member of the Bar as understood in Anx. A-1 selection notification and Anx. R-4 (b) special Rules. Such an eligibility condition of being a member of the Bar should be possessed by the candidate concerned not only as on the last date of submission of the application to the Public Service Commission but also thereafter, even as on the date of advice by the PSC and the date of appointment order issued by the appointing authority, etc.

In the light of the above aspects, it is only to be held by us that no grounds are made out to interfere with the well considered verdict of the Tribunal in the instant case. The petition fails and accordingly, the Original Petition will stand dismissed.

Sd/-

ALEXANDER THOMAS, JUDGE

Sd/-

VIJU ABRAHAM, JUDGE

sdk+



APPENDIX OF OP(KAT) 39/2022

PETITIONER EXHIBITS

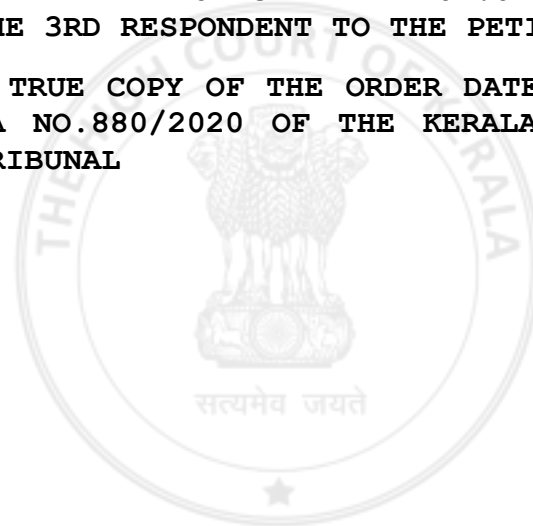
- EXHIBIT P1** A TRUE COPY OF THE AMENDED PETITION NUMBERED AS OA NO.880/2020 OF THE KERALA ADMINISTRATIVE TRIBUNAL
- ANNEXURE A1** TRUE COPY OF THE NOTIFICATION DATED 30-08-2017 ISSUED BY THE 3RD RESPONDENT IN RESPECT OF CATEGORY N.326/2017 FOR SELECTION AND APPOINTMENT TO THE POST OF ASSISTANT PUBLIC PROSECUTOR GRADE II
- ANNEXURE A2** TRUE COPY OF THE SHORT LIST PUBLISHED BY THE 3RD RESPONDENT ON 16.11.2019 IN RESPECT OF CATEGORY N.326/2017 FOR SELECTION AND APPOINTMENT TO THE POST OF ASSISTANT PUBLIC PROSECUTOR GRADE II
- ANNEXURE A3** TRUE COPY OF THE MEMO DATED NIL ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER
- ANNEXURE A4** TRUE COPY OF THE SHOW CAUSE NOTICE NO.GR2B1/50014/18-KPSC DATED 10.03.2020 WAS ISSUED BY THE 3RD RESPONDENT
- ANNEXURE A5** TRUE COPY OF THE REPLY DATED 20.03.2020 SUBMITTED BY THE APPLICANT BEFORE THE 3RD RESPONDENT
- ANNEXURE A6** TRUE COPY OF RANK LIST PUBLISHED BY THE 3RD RESPONDENT ON 14.05.2020 IN RESPECT OF CATEGORY NO.326/2017 FOR SELECTION AND APPOINTMENT TO THE POST OF ASSISTANT PUBLIC PROSECUTOR GRADE II
- ANNEXURE A7** TRUE COPY OF CERTIFICATE DATED 16.03.2020 ISSUED BY THE BAR COUNCIL OF KERALA
- ANNEXURE A8** TRUE COPY OF ORDER NO.GR2B1/50014/18-KPSC DATED 15.06.2020 ISSUED TO THE APPLICANT BY THE 3RD RESPONDENT
- EXHIBIT P2** A TRUE COPY OF THE REPLY STATEMENT DATED 23.11.2020 FILED BY THE 3RD RESPONDENT P.S.C. BEFORE THE KERALA ADMINISTRATIVE TRIBUNAL



- EXHIBIT P3 A TRUE COPY OF THE ADDITIONAL REPLY STATEMENT DATED 25.03.2021 FILED BY 3RD RESPONDENT P.S.C BEFORE THE KERALA ADMINISTRATIVE TRIBUNAL
- EXHIBIT P4 A TRUE COPY OF REPLY STATEMENT DATED 16.01.2021 FILED BY 1ST RESPONDENT-STATE OF KERALA, BEFORE THE KERALA ADMINISTRATIVE TRIBUNAL
- EXHIBIT P5 A TRUE COPY OF THE REPLY STATEMENT DATED 02.02.2021 FILED BY THE ADDITIONAL RESPONDENTS 4 TO 7 IN OA NO.880/2020
- ANNEXURE R4 (A) A TRUE COPY OF THE SPECIAL RULES FOR THE POST OF DEPUTY DIRECTOR OF PROSECUTION AND SENIOR ASSISTANT PUBLIC PROSECUTION, ASSISTANT PUBLIC PROSECUTOR GRADE I AND ASSISTANT PUBLIC PROSECUTOR GRADE II, 1996
- ANNEXURE R4 (B) A TRUE COPY OF THE SPECIAL RULES FOR THE POST OF DIRECTOR OF PROSECUTION (ADMINISTRATIVE) DEPUTY DIRECTOR OF PROSECUTION AND SENIOR ASSISTANT PUBLIC PROSECUTOR, (SENIOR GRADE) ASSISTANT PUBLIC PROSECUTOR GRADE I AND ASSISTANT PUBLIC PROSECUTOR GRADE II , 2018
- EXHIBIT P6 A TRUE COPY OF THE REJOINDER DATED 13.02.201 FILED BY THE PETITIONER IN OA NO.880/2020
- ANNEXURE A9 A TRUE COPY OF THE ORDER DATED 13.12.2018 IN WP (MD) NO.237 OF 2014 AND M.P(MD) NOS 1 AND 2 OF 2014 OF THE HON'BLE HIGH COURT OF MADRAS (MADURAI BENCH)
- EXHIBIT P7 A TRUE COPY OF THE PETITION FOR ACCEPTING ADDITIONAL DOCUMENTS AS MA NO.822 /2021 IN OA NO.880/2020
- ANNEXURE A10 TRUE COPY OF THE CERTIFICATE NO.KBC/CT/611/2021 DATAD 24.03.2021 ISSUED BY BAR COUNCIL OF KERALA
- ANNEXURE A11 TRUE COPY OF THE COMMUNICATION NO.KBCSPN/1438/12 DATED 11.10.2012 ISSUED BY THE BAR COUNCIL OF KERALA
- EXHIBIT P8 A TRUE COPY OF THE NOTIFICATION WITH CATEGORY NO.266/2011 DATED 29.07.211 ISSUED BY THE 3RD RESPONDENT



- EXHIBIT P9** THE RANK LIST NO.149/14/SSVI PUBLISHED PURSUANT TO EXT P7
- EXHIBIT P10** A TRUE COPY OF THE APPLICATION DATED 04.12.2021 SUBMITTED BY THE PETITIONER TO THE PUBLIC INFORMATION OFFICER, ACCOUNTANT GENERAL OFFICE
- EXHIBIT P11** THE REPLY DATED 05.01.2022 ISSUED BY THE PUBLIC INFORMATION OFFICER, ACCOUNTANT GENERAL OFFICE, THIRUVANANTHAPURAM
- EXHIBIT P12** THE REPLY NOTICE DATED 02.07.2021 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER
- EXHIBIT P13** A TRUE COPY OF THE ORDER DATED 05.05.2021 IN OA NO.880/2020 OF THE KERALA ADMINISTRATIVE TRIBUNAL



HIGH COURT OF KERALA
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