

HIGH COURT OF GUJARAT (D.B.)

BAR COUNCIL OF GUJARAT & 1

Versus

JALPA PRADEEPBHAI DESAI & 1

Date of Decision: 22 December 2016

Citation: 2016 LawSuit(Guj) 1998

Hon'ble Judges: [R Subhash Reddy](#), [Vipul M Pancholi](#)

Eq. Citations: 2017 139 SCL 289

Case Type: Letters Patent Appeal; Special Civil Application; Civil Application

Case No: 1296 of 2016; 19743 of 2015; 11919 of 2016

Subject: Civil

Acts Referred:

[Advocates Act, 1961 Sec 26\(2\)](#)

[Bar Council Of India Rules, 1975](#) R 49

Advocates: [R C Jani & Associate](#), [Manan A Shah](#)

R.Subhash Reddy, C.J.

[1] This Letters Patent Appeal, under clause-15 of the Letters patent is filed by the original respondent nos. 2 and 3, aggrieved by the order of the learned single Judge dated 17.11.2016 passed in Special Civil Application No. 19743 of 2015, granting interim relief in terms of para 7(C) of the petition.

[2] Special Civil Application No. 19743 of 2015 is filed by the 1st respondent-original petitioner with the prayers which read as under:

"A) your Lordships be pleased to issue the writ of Mandamus or in the writ in the nature of Mandamus or any other such appropriate writ directing the respondents to act in accordance with the guidelines suggested by the respondent no.1 vide letter dated 21.9.2013.

B) your lordships be pleased to issue writ directing the respondents to issue the permanent enrollment number to the petitioner in view of the decision taken by the

respondent no.1 vide letter dated 21.9.2013.

C) pending hearing and final disposal of the captioned petition your lordships be pleased to direct the respondent no. 2 and 3 grant temporary enrollment number to the petitioner in view of the fact that the petitioner has cleared her bar examination and is entitled to practice."

[3] 1st respondent completed her studies of B.A. LL.B. 5 years integrated course from Baroda School of Legal Studies, from Maharaja Sayaji Rao University, Baroda. As stated in the petition, it is her case that during her academic period, in the last year, she was selected in the campus interview of the Gujarat Industrial Development Corporation as Legal Consultant known as Legal Expert on contract basis. She applied for certificate of practice to the Bar Council of Gujarat, but she was informed that her enrollment form for certificate of practice is put on hold as she is rendering services to the Gujarat Industrial Development Corporation and the same is in violation of Rule 49 of Chapter II, Part-6 of the Bar Council of India Rules. Mainly it is her case in the petition that contractual arrangement of her service with the Gujarat Industrial Development Corporation cannot be viewed as employment and it is her case that remuneration paid to her is not by way of salary, as such, there is no employee-employer relationship.

The 1st appellant herein referred the issue under Section 26(2) of the Advocates Act, 1961 to the 2nd respondent. Even after the reference, when decision was not taken by the 2nd respondent-Bar Council of India, learned single Judge by order dated 2.5.2016 directed the Bar Council of India to take decision and place on record such decision in relation to the entitlement of the 1st respondent herein to get enrollment as an advocate on or before 13th June, 2016. Further it is observed that if no decision is taken, the 1st respondent-party in person is entitled to press for interim relief in terms of para 7(C) of the petition.

[4] Learned single Judge, referring to earlier order dated 2.5.2016, by recording a finding that the Bar Council of India has not finally accepted or rejected the claim of the 1st respondent herein, passed order dated 17.11.2016 granting interim relief in terms of para 7(C) of the petition, by which directions were issued to the Bar Council of Gujarat to give temporary enrollment number to the 1st respondent herein forthwith. Aggrieved by such direction issued by the learned single Judge, this Letters Patent Appeal is filed by the 2nd and 3rd respondent of the petition.

[5] Heard Mr. R.C. Jani, learned counsel appearing for the appellants, Ms. Jalpa Pradeepbhai Desai, respondent no.1 appearing as party-in-person and Mr. Manan Shah, learned counsel for respondent no.2.

[6] When the matter is called for hearing, learned counsel produced a copy of the letter dated 3.12.2016 addressed by the Bar Council of India. By the aforesaid letter, the Bar Council of India has informed the Secretary, Bar Council of Gujarat about the Resolution No. 231/2016 passed by the Bar Council of India. The said Resolution No. 231/2016 reads as under:

"The Council has gone through the Judgment/order dated 20.8.2016 passed by Hon'ble Mr. Justice R.c. Mankad, former Judge High Court of Gujarat. After consideration, the Council approves and ratifies the same. The office is directed to take further course of action."

[7] In this appeal, it is mainly contended by the learned counsel for the appellants that as the 1st respondent is full-time salaried employee of the Gujarat Industrial Development Corporation, she is not entitled to practice as advocate so long as she continues in such employment. It is further submitted that when interim relief was sought earlier, it was rejected by the learned single Judge of this Court, in spite of the same, the learned single Judge again considered the matter and issued directions by granting interim relief. It is submitted that when the 1st respondent is getting salary of Rs. 25,000/- per month by rendering services for full time, she is not entitled for grant of certificate of practice.

[8] On the other hand, it is contended by the party-in-person-the 1st respondent herein, that her services in Gujarat Industrial Development Corporation cannot be termed as employment. It is further submitted that she is charging for bill of Rs.25,000/- by certifying the bill to the Corporation and her services which are being rendered as expert services cannot be equated with the employment within the meaning of Rule 49 of the Bar Council of India Rules which are framed under the Advocates Act, 1961. It is submitted that as per the bill which she is raising as professional fees, she is given form No. 16A as per the provisions of the Income Tax Act, 1961 and tax at source is also deducted from the payment of the professional fees, in that view of the matter, it cannot be termed as employment within the meaning of Rule 49 of the Rules.

[9] For the purpose of better appreciation of the issue, we deem it appropriate to refer to Rule 49 of the Bar Council of India Rules, which read as under:

"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 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.

"That as Supreme Court has struck down the appearance by Law Officers in Court even on behalf of their employers the Judgement will operate in the case of all Law Officers. Even if they were allowed to appear on behalf of their employers all such Law Officers who are till now appearing on behalf of their employers shall not be allowed to appear as advocates. The State Bar Council should also ensure that those Law Officers who have been allowed to practice on behalf of their employers will cease to practice. It is made clear that those Law Officers who after joining services obtained enrolment by reason of the enabling provision cannot practice even on behalf their employers."

"That the Bar Council of India is of the view that if the said officer is a whole time employee drawing regular salary, he will no be entitled to be enrolled as an advocate. If the terms of employment show that he is not in full time employment he can be enrolled."

[10] As per the aforesaid Rule, 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. So as to examine whether any person is full-time salaried employee or not is a matter which depends on the facts of each case. To render services as a professional, the 1st respondent has entered into contract with the Gujarat Industrial Development Corporation. Conditions 2,7,9 and 10 of her Contract with the Corporation read as under:

"Condition No.2: With a view to discharge the duties properly and efficiently, the second party agrees to visit/attend the office of the first party regularly as per the standard office hours in force.

Condition No.7: The second party also agrees to deposit an amount equal to one month's remuneration or give appropriate security/bank guarantee for the same, which will be forfeited by the first party in case of premature termination of contract by the second party without completion of one year of service in the corporation. First party will be at liberty to terminate the contract with prior notice of 1 month.

Condition No.9: If during the discharge of its assigned work, the second party has to visit any outstation place, the second party shall be entitled for appropriate travelling and daily allowances as are normally available to the employees of the first party.

Condition No.10 : The second party, with the consent of the first party may be excused from clause (2) of this agreement, entitled to avail leave for 12 days in his/her total tenure i.e. one per month."

[11] As per condition no. 2, the 1st respondent agreed to visit/attend the office of the first party-Gujarat Industrial Development Corporation regularly as per the standard office hours in force. As per condition no. 7, the 1st respondent agreed to deposit an amount equal to one month's remuneration which is agreed to be forfeited by the first party, that is, the Corporation in case of premature termination of contract by the 1st respondent/original petitioner. It is also not in dispute that she is paid fixed sum of Rs.25,000/- per month. If we consider the dictionary meaning of "salary", it is nothing but fixed regular payment made by an employer to an employee in return of work. The term "full time" used in Rule 49 of the Rules is also to be considered as full-time office standard number of hours. When it is admitted that 1st respondent has to be in the office from 11.00 a.m. to 5.00 p.m which are standard hours of work, prima facie it is to be considered as full-time employment. Having regard to such terms of contract to render services by attending office for full-time, that is, from 11.00 a.m to 5.00 p.m and further having regard to fixed salary of Rs.25,000/- per month being given to the 1st respondent, prima facie we are of the view that the 1st respondent-petitioner is not entitled to grant of certificate of practice under the Advocates Act, 1961 in view of Rule 49 of the Bar Council of India Rules. Learned single Judge, mainly on the ground that Bar Council of India has not taken any decision, has passed orders granting interim relief in terms of para 7(C) of the petition. It is also to be noticed that in para 7(C) of the petition, the petitioner sought direction to grant temporary enrollment number on the ground that she has cleared the Bar Council examination and she is entitled to practice. Under the scheme of the Advocates Act, 1961 and the rules framed thereunder there is no provision for grant of temporary certificate by the Bar Council for practising as an advocate. Even assuming that tax at source is deducted from the remuneration/fees payable to the 1st respondent-petitioner under the provisions of the Income Tax Act, 1961, but at the same time, the same by itself cannot be determinative factor when the claim of the 1st respondent is barred under Rule 49 of the Rules. In view of the conditions of the service contract of the 1st respondent with the Gujarat Industrial Development Corporation, we are convinced that the service of the 1st respondent is full-time employment and she is not entitled for grant of an temporary certificate as per the interim orders passed by the learned single Judge. Further we also notice from the material placed on record that when the interim relief was sought on earlier occasion, the same was refused by the learned single Judge. In that view of the matter, we are also of the view that grant of such interim relief amounts to allowing the main petition filed by the 1st respondent.

[12] For the aforesaid reasons, we find merits in this appeal. Accordingly, the Letters Patent Appeal is allowed by setting aside the order dated 17.11.2016 passed by the learned single Judge in Special Civil Application No. 19743 of 2015. However, we make it clear that the findings and observations recorded in this judgment are made for the

purpose of disposal of this appeal and the Special Civil Application is to be disposed of on its own merits. Liberty is granted to 1st respondent-original petitioner to move the learned single Judge for expeditious disposal of the petition. Since the main appeal itself is allowed, the connected Civil Application does not survive and the same stands disposed of.

