

**HIGH COURT OF PUNJAB AND HARYANA**  
**Bench: JUSTICE SANJEEV PRAKASH SHARMA**  
**Date of Decision: 13 October 2023**

CWP No.13497 of 2023(O&M)

Jyotsana Rawat and others .....Petitioners

VERSUS

State of Punjab and others .....Respondents

CWP No.19629 of 2023(O&M)

Rohini Attri .....Petitioner

VERSUS

State of Punjab and others .....Respondents

CWP No. 19447 of 2023(O&M)

Amanjit Singh Dhillon .....Petitioner

VERSUS

State of Punjab and others .....Respondents

CWP No.13519 of 2023(O&M)

Sukhwinder Kaur and others .....Petitioners

VERSUS

State of Punjab and others .....Respondents

CWP No. 13525 of 2023(O&M)

Manjeet Kumar and others .....Petitioners

VERSUS

State of Punjab and others .....Respondents

CWP No. 15010 of 2023(O&M)

Deep Inder Money Sharma .....Petitioner

VERSUS

State of Punjab and others .....Respondents

CWP No. 13522 of 2023(O&M)

Vishal Chaudhary .....Petitioner

VERSUS

State of Punjab and others .....Respondents

CWP No.13634 of 2023 (O&M)

Vishivani Bansal .....Petitioner

VERSUS

State of Punjab and others .....Respondents

CWP No. 13368 of 2023 (O&M)

Isha Mehra and others .....Petitioners

VERSUS

State of Punjab and others .....Respondents

CWP No. 13465 of 2023 (O&M)

Parveen .....Petitioner

VERSUS

State of Punjab and others .....Respondents

CWP No. 15061 of 2023 (O&M)

Munish Singla and others .....Petitioners

VERSUS

State of Punjab and others .....Respondents

**Sections, Acts, Rules, and Articles:**

Punjab Prosecution and Litigation Rules of 2002

Rule 5(2) of the Punjab Prosecution and Litigation (Group B) Service Rules of 2010

Rule 5 of Prosecution Rules of 2002

Advocates Act, 1961

Rule 47 of the Bar Council of India Rules, 1975

Article 220, 320, 323 of the Constitution of India

Section 24 of the Code of Criminal Procedure, 1973

Rule 9 of the Rules of Legal Education 2008

**Subject:** Demand for additional certificates of experience from selected candidates for the posts of Assistant District Attorneys (ADAs) and Deputy District Attorneys (DDAs) in the Punjab Prosecution Department and the legality and justification of such demands.

**Headnotes:**

*Common Question of Law - Various writ petitions filed by aspiring candidates for the posts of Assistant District Attorney (ADA) and Deputy District Attorney (DDA) challenge an order issued by respondent No.3 on 05.06.2023, which directed selected candidates to produce copies of six Court orders/zimni orders of each year to prove their experience claimed. All the petitions raise common legal issues and are being heard together.*

*Legal Profession – Qualifications and Experience – Practice of law includes both litigation and non-litigation matters – An advocate may gain experience through various legal activities beyond court appearances – Certificates from Bar Associations or judicial authorities are valid proof of practice. [Para 19-23]*

*Appointment Rules – Examination of suitability by the State Government – Powers of the State to examine suitability limited to antecedents, medical fitness, forgery, impersonation, nepotism, and favoritism – State should not arbitrarily reject candidates recommended by the examining authority – Arbitrary introduction of additional requirements after selection process is improper. [Para 26-31]*

*Decision – Letter demanding certificates of court appearances quashed – Direction to proceed with filling up the posts of ADAs and DDAs within one month – Importance of clearly defined qualifications and conditions in recruitment rules and advertisements. [Para 32-34]*

**Referred Cases:**

- Sivanandan C.T & Ors. v. High Court of Kerala and Ors. 2018(1) SCC 239,
- Tej Prakash Pathak and Ors. Versus Rajasthan High Court and Ors., 2013(4) SCC 540,
- Salam Samarjeet Singh v. High Court of Manipur at Imphal & Anr. 2016(10) SCC 484,
- K.Manjusree v. State of A.P & Anr. 2008(3) SCC 512
- V.Vishnu v. State of Telangana and others Writ Appeal No. 511 of 2020, Telangana High Court (DB), decided on 12.03.2021
- State of Uttar Pradesh Versus Karunesh Kumar and Ors., 2023 AIR (Supreme Court) 52,
- Sivanandan C.T and others v. High Court of Kerala and others Writ Petition (Civil) No. 229 of 2017, The Supreme Court of India, decided on 12.07.2023
- Karan Jagdish Kaur v. Punjab School Education Board 1996(3) PLR 403
- Employees' State Insurance Corporation and Another v. Amandeep Singh and others CWP No.12722 of 2022, decided on 02.06.2022 (Punjab & Haryana High Court at Chandigarh)
- Sanjay Dhar versus Jammu & Kashmir Public Service Commission 2000(8) SCC 182 paras 11 and 14
- State of Uttar Pradesh v. Karunesh Kumar and Ors. 2023 AIR (Supreme Court) page 52

- K.Manjusree Vs. State of A.P & Anr. 2008(3) SCC 512, and K.L.Siraj versus High Court of Kerala 2006(6) SCC 395.
- Madan Lal v. State of Jammu Kashmir 1994 SCC page 546

**Representing Advocate:**

Mr.Gurminder Singh, Sr. Advocate, assisted by Mr. Jatinder Singh Gill, Advocate, Mr. Shivender Pal Singh, Advocate, Ms. Sheena Khanna, Advocate, for the petitioner(s) in CWP-13497-2023. Mr. Naresh Kaushal, Advocate, for the petitioner in CWP-19629-2023. Mr. Anil Kumar Garg and Mr. Kanav Bansal, Advocates, for the petitioner in CWP-13634-2023. Mr. Anshul Sharma and Mr. S.S.Thakur, Advocates, for the petitioner in CWP-13465-2023. Mr. Pardhuman Garg, Advocate, for the petitioners in CWP Nos.13368 and 13519-2023. Mr. Karan Nehra, Mr. Abhay Josan and Mr. Harvinder Singh, Advocates, for the petitioners in CWP-13525-2023. Mr. V.K.Sandhir, Advocate for the petitioner in CWP-19447-2023. Mr. B.S.Sidhu, Sr. Advocate, assisted by Mr. Charan Singla and Mr. Tarun Bhatta, Advocates, for the petitioners in CWP-15010-2023. Mr. D.S.Nalwa, Advocate, for the petitioners in CWP-15061-2023. Mr. D.S.Patwalia, Sr.Advocate, assisted by Mr. Kannan Malik, Advocate, for respondent no.4 in CWP-13525-2023. Mr. Prateek Mahajan and Mr. Daanish Mahajan, Advocates, for the intervenor in CWP Nos.13497 of 2023 & 13522 of 2023. Mr. Atul Goyal, Advocate, for the intervenor in CWP No.13368-2023. Mr. Vikas Arora, AAG, Punjab.

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**SANJEEV PRAKASH SHARMA, J**

1. All the aforementioned writ petitions raise common question of law and all the petitioners in various writ petitions are aggrieved of the same order dated 05.06.2023 issued by respondent No.3, hence being heard together.

2. All the petitioners are aspiring candidates had applied under the advertisement dated 05.04.2023 by the Punjab Public Service Commission (hereinafter referred to as PPSC) for the post of Assistant District Attorney (hereinafter referred to as 'ADA') and Deputy District Attorney (hereinafter referred to as 'DDA'). They have been held eligible to participate in the selection process and have been finally placed in the merit list and their names were forwarded and recommended to the State Govt. for appointment on the posts. The State Govt. has, however, issued an order on 05.06.2023 directing the selected candidates to produce copies of six Court orders / zimni orders of each year showing their presence in the Court in order to prove the experience claimed by them.

Aggrieved thereof, the present writ petitions have been filed.

### **SUBMISSIONS**

3. Learned senior counsel Mr. Gurminder Singh, appearing for the petitioners, has submitted that Rule 5(2) of the Punjab Prosecution and Litigation (Group A) Service Rules, 2002 (hereinafter referred to as 'Prosecution Rules of 2002') and the Punjab Prosecution and Litigation (Group B) Service Rules, 2010 (hereinafter referred to as 'Prosecution Rules of 2010') both restrain from appointing a person to post in service who does not possess the qualification and experience specified against the posts Appendix B. The PPSC had in its advertisement required the candidates to submit a certificate of experience in terms of the Rules by a competent authority. Accordingly, the petitioners had submitted their certificates issued by the concerned Bar Association of the District / High Court where the Advocates have been registered and are practicing. Learned counsel submits that a person who is enrolled as an Advocate with the Bar Council starts practice from the said date as he acquires a certificate of enrollment and enrollment number.

Learned counsel further submits that certificate issued by the Bar Council is a sufficient proof of the date from which the experience of practice at the Bar is to be counted and it is not necessary for an individual to get his attendance marked in the Court for proving his experience as required under the Rules. Once the certificate issued by the Bar Association has been accepted as a sufficient proof of experience by the examining body and thus, the said certificate was considered sufficient for the purpose of treating the candidates eligible for participating in the selection process, the respondents State authorities would be estopped to further examine the eligibility of selected candidates for being appointed by demanding further proof of

experience by producing 6 zimni orders / attendance in the Court. The demand by the respondents State authorities is an additional requirement beyond the scope of Rules and seeks to change the Rules of the game after the game has already been played. He submits that the respondents cannot be allowed to tinker with the select list finally prepared by the PSC who has a final say in terms of Article 320 of the Constitution of India regarding selection. The State has only say with regard to suitability relating to antecedents.

4. Learned counsel Mr. D.S.Nalwa, appearing in CWP No.15061 of 2023 for candidates who are aspirants for the posts of DDA, submits that the respondent State has no authority in law to demand for the 6 zimni orders as it amounts to adding condition which was not part of advertisement for selection. Once the petitioners have been already selected as ADAs after having submitted their Certificate of Experience at the bar at the time of their selection made much earlier, they cannot be now asked to produce appearance certificates of the period prior to their appointment as ADA. Learned counsel submits that the criteria adopted is completely alien to the Rules and the petitioners who are holding the posts of ADAs have been working on the said posts with full satisfaction of their superiors. Their earlier two years experience at the Bar was found sufficient for purpose of selection on the posts of ADA. A different yardstick cannot be adopted now without there being any amendment in the Rules. Learned counsel further submits that the eligibility on the basis of Court orders / interim orders cannot be said to be in any manner a reasonable criteria for assessing the experience. The practice at Bar does not mean that a person has to necessarily appear in the Court and would also include Court with its assisting the seniors, consultation with the clients and other activities which the lawyer has to perform after he is enrolled. There are several instances where a lawyer assists his senior who

actually is arguing a case and whose attendance is marked while that of the junior lawyer is seldom noticed in the order passed by the Court. It does not, however, mean that the concerned lawyer is not practicing in the Court. Once respondents have adopted the criteria of accepting the experience based on the certificate issued by the Bar Association and have also appointed the petitioners on the posts of ADA relied upon such certificate, the State cannot now adopt a different criteria after the selection process is over.

It has been submitted that in case of petitioners no.1 and 3 in CWP No. 15061 of 2023 for the purpose of appointment as Additional Public Prosecutor in terms of Section 24 of Cr.P.C, seven years experience as an advocate has already been counted and they have been appointed as Additional Public Prosecutors. The said 7 years experience is counted from the date of enrollment. Respondents cannot be allowed to adopt different yardsticks for different purposes.

5. Learned counsel Mr. Karan Nehra while adopting the submissions made as aforesaid, has argued that a lawyer has a multifarious job, not only for appearing in the Court but also acting as a Counsellor. Learned counsel has referred to definition of appearing at Bar and At the Bar by pointing out that they have different connotation and meaning. He further asserts that the conditions introduced vide impugned order is for extraneous considerations and to give benefit to those, who are otherwise less meritorious. He submits that respondents have adopted a different yardstick for measuring experience of practice at Bar in different selection requiring same experience while in the present advertisement they are demanding 6 zimni / interim orders of each year for proving the experience. In another advertisement issued by the respondents for the post of Legal Officer and Asstt. Legal Officer, certificate issued by the concerned Bar Association was treated as sufficient proof of



two years and seven years experience. The respondents have also proceeded to give appointment on the said posts to candidates. Thus, he submits that the order suffers from arbitrariness and deserves to be quashed.

Mr.Karan Nehra, Advocate, has also taken this Court to the definition of At Bar and The Bar to submit that the practice of a lawyer may be in the Court or in different fields. The learned counsel has mentioned about practice of a lawyer before the Tribunal formed under Article 323 of the Constitution of India to mean experience at the Bar as well as Practice before a Arbitral Tribunal or before Commission i.e RERA or other Commissions or before Consumer Commission etc. Even drafting of petitions is one of the mode of practice while there may be some lawyers who are also practicing in field of registration of documents or before the Revenue Tribunals. Since all of them have gained experience in one way or the other in the field of advocacy, limiting it to prove the experience by showing attendance in six interim / zimni orders before the Court, is wholly unjustified and impractical and is a case of complete non application of mind.

6.The above submissions made by learned counsels have been adopted by Mr. Naresh Kaushal, Advocate for the petitioner in CWP No. 19629 of 2023, Mr. Anil Kumar Garg and Mr. Kanav Bansal, Advocates for the petitioner in CWP No. 13634 of 2023, Mr. Anshul Sharma and Mr. S.S.Thakur, Advocates for the petitioner in CWP-13465-2023, Mr. Pradhuman Garg, Advocate, for the petitioners in CWP Nos. 13368 and 13519 of 2023, Mr. V.K.Sandhir, Advocate, for the petitioner in CWP No.19447 of 2023.

7. Learned counsels have relied upon the precedential law as laid down in

**Sivanandan C.T & Ors. v. High Court of Kerala and Ors. 2018(1) SCC 239,**

**Tej**



**Prakash Pathak and Ors. Versus Rajasthan High Court and Ors., 2013(4) SCC 540, Salam Samarjeet Singh v. High Court of Manipur at Imphal & Anr. 2016(10) SCC 484, K.Manjusree v. State of A.P & Anr. 2008(3) SCC 512, V.Vishnu v. State of Telangana and others Writ Appeal No. 511 of 2020, Telangana High Court (DB), decided on 12.03.2021, The State of Uttar Pradesh Versus Karunesh Kumar and Ors., 2023 AIR (Supreme Court) 52, Sivanandan C.T and others v. High Court of Kerala and others Writ Petition (Civil) No. 229 of 2017, The Supreme Court of India, decided on 12.07.2023 Karan Jagdish Kaur v. Punjab School Education Board 1996(3) PLR 403, Employees' State Insurance Corporation and Another v. Amandeep Singh and others CWP No. 12722 of 2022, decided on 02.06.2022 (Punjab & Haryana High Court at Chandigarh), Sanjay Dhar versus Jammu & Kashmir Public Service Commission 2000(8) SCC 182 paras 11 and 14, The State of Uttar Pradesh v. Karunesh Kumar and Ors. 2023 AIR (Supreme Court) page 52, K.Manjusree Vs. State of A.P & Anr. 2008(3) SCC 512, and K.L.Siraj versus High Court of Kerala 2006(6) SCC 395.**

8. *Per contra*, learned senior counsel Mr. D.S.Patwalia appearing for intervenors submits that letter dated 05.06.2023 issued by the State would have to be construed as part of process of examining the suitability for the posts. He has argued that so far as the State is concerned, it can examine whether the concerned person selected by the PPSC possess the experience as specified for the post in Appendix B to the Rules. He further submits that as per the prosecution Rules of 2010 all appointments to the service are required to be made as per the manner laid down in Appendix B. Thus, Appendix B only relates to the method of selection. However, for the appointment purpose Sub Rule 5(2) is required to be operated upon by appointing authority and no person shall be appointed to a post in service unless he possesses the qualification and experience specified against the post in Appendix B. Thus, he submits that the State has an independent power to scrutinize the documents and as the petitioners' certificates were found to be insufficient to assess their experience of practice at the bar therefore, they have been asked to produce necessary proof of appearing in Court by showing their attendance in atleast 6 zimni / interim orders for each year. Learned counsel submits that the impugned word "at the bar" has to be

understood to mean before the Court alone and not otherwise. He submits that there can be no other interpretation to the experience word used in the Rules. He, therefore, submits that the requirement as per the letter dated 05.06.2023 does not warrant interference by this Court.

### **ANALYSIS**

9. It would be apposite to notice the provisions of the Rule governing the selection process. The Punjab Prosecution and Litigation Rules of 2002 (hereinafter referred to as Prosecution Rules of 2002) provide the method and manner of selection for the post of DDA. The Punjab Prosecution and Litigation (Group B) Service Rules of 2010 (hereinafter referred to as Prosecution Rules of 2010), the method and manner of selection for the post of ADA. Rule 5 of Prosecution Rules of 2002 reads as under:-

#### ***“Rule 5. Method of Appointment and Qualifications;***

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*1.All appointments to service shall be made in the manner specified in Appendix 'B'*

*2.No person shall be appointed to a post in service unless he possesses the qualifications and experience specified against the post in Appendix 'B'*

*3. Appointment to the service by promotion shall be made on seniority cum merit basis, but no person shall have any right to claim on the basis on seniority alone.”*

#### ***APPENDIX 'B'***

<i>Sr.No.</i>	<i>Designation of</i>	<i>Percentage for appointment</i>	<i>Method</i>	<i>of</i>
<i>Appointment</i>	<i>Post</i>	<i>by</i>	<i>Direct appointment</i>	
		<i>qualifications and</i>		
		<i>experience for appointment by</i>	<i>Promotion</i>	

1.	2.	3.	4.	5.	6.	
1.	<i>Deputy Distt. Attorney</i>	<i>Seventy five percent</i>	<i>1) From amongst the Punjab Prosecution and Litigation (Group-B) Service who have an experience of working as such for a minimum period of five years</i>	<i>Assistant District Attorneys of</i>	<i>Twenty five</i>	<i>From amongst the lawyers having 7 years experience at the Bar.</i>

Rule 5 of Prosecution Rules of 2010 reads as under:-

**5 Method of appointment, qualifications and experience.-**

(1) *All appointments to the service shall be made in the manner specified in Appendix 'B':*

*Provided that if no suitable candidate is available for appointment by direct appointment, then appointment to the Service shall be made by the transfer of a person holding a similar or an identical post under a State Government or Government of India.*

(2) *No person shall be appointed to a post, in Service unless he possesses the qualifications and experience specified against the post in Appendix 'B'.*

**APPENDIX 'B'**  
**(See rule 5)**

*Sr.No. Designation Percentage for appointment Method of appointment, of the post by direct recruitment qualifications and experience for appointment*

1. *Assistant District Attorney*     *Hundred percent*     *(a) By direct, appointment of persons who possess a degree of Bachelor of Law (Professional*

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*Degree) of a recognized university or institution or who are Barristers of England or Ireland or are members of Faculty of Advocates of Scotland and are eligible for being enrolled as an*

*Advocate under Advocates Act, 1961, and who have two years experience of practice at the Bar.*

*(b) In case no suitable candidate is available by direct appointment the Government shall make recruitment by transfer of persons already in service of the State Government possessing the requisite qualifications and experience specified for the post for direct appointment’.*

### **DISCUSSION RELATED TO DDA**

- 10.** The PPSC while issuing advertisement for filling up 119 posts of ADA required under the advertisement in para 8.6 as under:-

*“**8.6**The following **SELF ATTESTED CERTIFICATES** shall be submitted by*

*candidates along with printout of online application form when asked for at short notice:*

- i) Proof of Date of Birth: Certificate of Matriculation/ Higher Secondary ii) Proof of having passed Punjabi language iii) Relevant Degree and DMC Certificate iv) Reserve Category Certificate issued by the competent authority (if applicable) v) Experience certificate issued by competent authority (if applicable).*
- vi) For ESM, certificates/documents mentioning the following:-*
  - a) Date of Enrolment*
  - b) Date of Release/Discharge*
    - C) Reason of Release/ Discharge*
  - vii) Certificate as proof of age relaxation claim (if applicable) viii) Certificate as proof of fee concession (if applicable) ix) Proof of being a government employee (if applicable) x) Copy of Bank Challan (PPSC Copy only)*

***The Candidates SHALL sign the declaration on the last page of the printout of***

***Online Application Form before submitting the same.”***

Similarly for filing up 41 posts of DDA, the PPSC issued an advertisement dated 05.04.2022 whereby 41 posts of DDA were advertised. Therein the candidates were asked to submit following certificates:-

8.3 The list of SELF ATTESTED CERTIFICATES that shall be submitted by candidates along with the print out of Online Application Form is as follows:

- 1). Proof of Date of Birth : Certificate of Matriculation/Higher Secondary.
- 2) Proof of having passed Punjabi Language.
- 3) Relevant Degree and DMC Certificate.
- 4) Reserved Category Certificate issued by the Competent Authority If Applicable)
- 5) Experience certificate issued by Competent Authority.
- 6) If ESM, certificates/documents mentioning the following:-
  - i) Date of Enrolment ii) Date of Release/Discharge iii) Reason of Release/ Discharge
- 7) Certificate as proof of age relaxation claim. (If Applicable)
- 8) Certificate as proof of fee concession (If Applicable)
- 9) Proof of being Govt. Employee. 10) Copy of Bank Challan (PPSC Copy Only)”

### **DISCUSSIONS RELATED TO DDA**

11. The advertisement was issued by the PPSC wherein essential qualifications laid down were the same as Appendix B to the Prosecution Rules of 2002. The petitioners were to appear in the written examination where after they are to appear for interview. The petitioners have cleared the written examination which was held on 18.12.2022 and they have also submitted all the eligibility documents for scrutiny. They were asked to bring following documents at the time of interview as under:

4. The Candidate **MUST** bring the following Self Attested documents along with signed copy of the application form:
- a) Proof of Date of Birth: Certificate of Matriculation/ Higher Secondary;
  - b) Proof of having passed Punjabi language up to matric or its equivalent Standard.
  - c) Degree and DMC Certificates as mentioned in Essential Qualification of General Information.
  - d) Experience Certificate with accurate dates and reference no. issued by the Competent Authority.

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- e) *Caste Reserved Category Certificate issued by the Competent Authority(if applicable).*
  - f) *Latest Punjab Residence Certificate (all Reserve Categories including female candidates who have applied in General Category) issued by competent authority.*
  - g) *If ESM/LDESM (in original), Certificates/Documents mentioning the following;*
    - i) *Date of Enrolment.*
    - ii) *Date of Release/Discharge.*
    - iii) *Reasons of Release Discharge.*
  - h) *Original Documents to claim exemption from Punjabi Language pass upto matric or its equivalent Standard (if applicable).*
    - i) *Certificate as proof of age relaxation claim (if applicable).*
    - j) *Certificate as proof of fee concession (if applicable).*
    - k) *Proof of being Govt. Employee (if applicable).*
    - l) *Enrolment Certificate as Advocate.*
    - m) *Any other certificate (if applicable).*
    - n) *Copy of Bank Challan form.*
5. *Candidates are also required to bring original Documents at the time of submission of Copies of documents for Scrutiny.”*

Where after the interviews were held and the final merit list for 41 posts of DDA was published by the PPSC on 02.03.2023 wherein names of the petitioners have been shown. The PPSC has sent the said list to the State to the Department of Home Affairs and Justice where after letter has been issued to them to the selected candidates to provide for Experience Certificates and every year six Court orders/interim orders which proves their attendance in the Court. E-mail has also been sent to the petitioners later on 05.06.2023. Feeling aggrieved, the petitioners have preferred the present writ petitions.

12. After selection the PPSC sent the list to the State Department of Home Affairs and Justice where after the letter dated 05.06.2023 has been issued to the selected candidates demanding them to provide 6 Court orders / interim orders of each year to prove their experience in the Court.

## **ISSUE**

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13. Issue which arises for adjudication of this Court is whether such demand could have been raised after the selection process is over and whether such demand is justifiable, legal and in accordance with Rules.

## **PRECEDENTIAL LAW**

14. In **Tej Prakash Pathak's case (supra)**, the Supreme Court had referred the matter with regard to the change of Rules of the game to be placed before a Larger Bench. The said question is yet to be pronounced by the Supreme Court. Therefore, this Court would refrain from adverting to the said aspect in the present case. However, the legality of the issue of the letter dated 05.06.2023 has to be examined on merits.

15. Once a Law Graduate is enrolled as an Advocate, the condition under the Advocate's Act apply on him. He is not allowed to do any other business nor he can join any service or be holder of office of profit or gain. He is, therefore, presumed to be only practicing law. Rule 47 of Bar Council of

India Rules, 1975 is reproduced as under:-

### ***"Section VII-Restriction on other Employments***

*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."*

16. Bar has been defined in the Findlaw Legal dictionary to mean:

- (a) Where the business of the Court is transacted;
- (b) the Court, Tribunal;
- (c) whole body of lawyers;
- (d) the profession or occupation of a lawyer for example member of Bar.



“At Bar” is defined as before the Court and “at the bar means” in the Legal Profession.

17. In **Bar Council of India v. A.K.Balaji's case (supra)** the Supreme Court has held as under:-

*“4. When the matter against the judgment of the Madras High Court came up for hearing before this Court on 4-7-20123, following interim order was passed: "In the meanwhile, it is clarified that Reserve Bank of India shall not grant any permission to the foreign law firms to open liaison offices in India under Section 29 of the Foreign Exchange Regulation Act, 1973. It is also clarified that the expression "to practice the profession of law" under Section 29 of the Advocates Act. 1961 covers the persons practicing litigious matters as well as non-litigious matters other than contemplated in para 63(i) of the impugned order' and, therefore, to practice in non-litigious matters in India the foreign law firms, by whatever name called or described, shall be bound to follow the provisions contained in the Advocates Act, 1961. The said order has thereafter continued and is still in force.*

***10.** Stand of the Bar Council of India before the High Court is that even nonlitigious practice is included in the practice of law which can be done only by advocates enrolled under the Act. Reliance was placed on the judgment of b the Bombay High Court, in Lawyers Collective?. Further reference was made to Sections 24 and 29 of the Act. Section 47(2) read with Section 49(1)(e) provides for recognition of qualifications of foreigners being recognized for practice. I was submitted that practice of foreign lawyers in India should be subject regulatory powers of the Bar Council.”*

18. The Supreme Court in **Bar Council of India v. A.K.Balaji's case (supra)** was examining the question regarding allowing practice by Foreign Law, Firms, Companies or Foreign Lawyers in India. It held that they cannot practice Law, Foreign Law, Firms, Companies in India either on litigation or non litigation side.

Thus, it recognized that practice of Advocates can be a practice of litigious matters as well as non litigious matters. One of the issue before the Court was Whether the expression “practice of professional law” includes only litigation practice or non litigation practice also and while considering the said issue, it observed as under:-

41. *In Pravin C. Shah v. K.A. Mohd. Ali*<sup>27</sup>, it was observed that right to practice is genus of which right to appear and conduct cases is specie. It was observed: (SCC pp. 658-59, para 16)

*"16.... The right of the advocate to practise envelopes a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, etc...." In Harish Uppal v. Union of India, same view was reiterated.*

42. *Ethics of the legal profession apply not only when an advocate appears before the court. The same also apply to regulate practice outside the court. 9 Adhering to such Ethics is integral to the administration of justice. The professional standards laid down from ane to time are required to be followed. Thus, we uphold the view that practise of law includes litigation as well as non- litigation.*

43. *We have already held that practising of law includes not only appearance in courts but also giving of opinion, drafting of instruments, participation in conferences involving legal discussion. These are parts of non- litigation practice which is part of practise of law. Scheme in Chapter IV of the Advocates Act makes it clear tha advocates enrolled with the Bar Council alone are entitled to practise law, except as otherwise provided in any other law. All others can appear only with the permission of the court, authority or person before whom the proceedings are pending. Regulatory mechanism for conduct of advocates applies to non-litigation work also. The prohibition applicable to any person in India, other than advocate enrolled under the Advocates Act, certainly applies to any foreigner also."*

**19.** In **Devinder Singh v. State of Haryana's case (supra)**, the Division Bench of Punjab and Haryana High Court has held as under:-

*“11 In order to avoid the need of a detailed investigation at its end into the genuineness of the certificates produced by the candidates, the Commission has been accepting the certificates issued by the Bar Associations duly counter-signed by the District Judge who heads the judicial institution in the district. In cases where the candidate has been practising in the High Court, the certificate of the Registrar of the High Court is being treated as conclusive. In our opinion, this approach of the Commission is quite reasonable and fair. If the Commission and the Government were to make detailed enquiries about the actual appearance of the candidate in the Court for a period of three years in order to determine his/her eligibility for recruitment to the service, it will become impossible for them to complete the process of recruitment within a reasonable time frame. The District Judge concerned or the Registrar of the High Court are presumed to have satisfied themselves about the fact that the person in whose favour the certificate is being issued has practised for a particular length of time and we do not find any objection to the Commission reposing implicit faith and confidence in the Head of the district judiciary and the Registrar of the High Court.*

**12.** Annexure R4/3 is the certificate issued by the Secretary, District Bar Association, Rohtak. A perusal thereof shows that the respondent No. 4 had been practising as an Advocate at the District Courts, Rohtak from 11.11.1991 to 13.7.1995. This certificate has been counter-signed by the District & Sessions Judge, Rohtak on 13.7.1995. If we read Annexure R4/3 along with Annexure R4/4, there remains no doubt that the respondent No. 4 had practised at the bar for more than three years as on 24.7.1995. Thus, no illegality has been committed by the respondents No. 1 and 3 in treating the respondent No. 4 eligible for recruitment to the Haryana Civil Service (Judicial Branch). No doubt, in *All India Judges Associations' case (supra)*, the Supreme Court has laid emphasis on the first hand experience of working of the Court system and the administration of justice begotten through legal practice, but we do not find any rationale in the argument of the learned counsel for the petitioner that such experience can be gained only by arguing cases in a Court of law. An Advocate may be actually on the rolls of the Bar Council and the Bar Association and he may be actually coming to the Court

*for a particular length of time but may not be able to get an opportunity to argue the case. A new entrant in the profession may join a Senior Advocate. He may remain attached to such Advocate for sufficiently long time but may not get opportunity to argue the case. However, only on that count it cannot be said that the new entrant has not practised at the bar or that he has not gained experience as an Advocate. We, therefore, hold that for satisfying the conditions of eligibility prescribed in the rules, it is not necessary that an Advocate must have actually appeared and argued the cases in the Courts for a period of three years.”*

20. In **Madan Lal v. State of Jammu Kashmir 1994 SCC page 546**

somewhat similar issue came up before the Supreme Court and it was held that the candidates who were recommended namely respondents no.10 and 13 in the petition were not eligible to be appointed as they failed to satisfy the requirement of having to be into two years of actual practice at the Bar. The Supreme Court has held as under:-

*“**20.** It was next vehemently contended by the petitioners that actual practice would mean that the concerned candidates should have appeared before courts and conducted cases during these two years. It is difficult to accept this contention. A member of the Bar can be said to be in actual practice for 2 years and more if he is enrolled as an Advocate by the concerned Bar Council since 2 years and more and has attended law courts during that period. Once the Presiding Officer of the District Court has given him such a certificate, it cannot be said that only because as an advocate he has put in less number of appearances in courts and has kept himself busy while attending the courts regularly by being in the law library or in the bar room, he is not a member of the profession or if not in actual practice for that period. The words 'actual practice' as employed in rule 9 indicate that the concerned advocate must be whole time available as a professional attached to the concerned court and must not be pursuing any other full time avocation. To insist that the terms 'actual practice' should mean continuous appearances in*

*the court would amount to re-writing the rule when such is not the requirement of the rule. There is no substance even in this additional aspect of the matter canvassed by the learned senior counsel for the petitioners. It must therefore be held that respondent Nos. 10 and 13 were eligible for competing for the said posts of Munsiffs.”*

1. From the aforesaid judgments, this Court reaches to the conclusion that an advocate who is enrolled with the Bar Council starts actually practice and a certificate of such nature can be given to him by the concerned Bar Association or by the concerned Court where he is practicing or even from any of the judicial or quasi judicial forums where he may be practicing. A certificate issued by the Bar Association of the concerned Court would have the same force as that of a certificate from any other judicial or quasi judicial authority and he, therefore, is not required to necessarily provide further proof of his experience. However, if it is shown by other proof or documents that the concerned Advocate enrolls with the Bar Council is actually not practicing law but is doing any other business or engaged in gainful employment, the said aspect would result in his being ousted from the Bar Council Rules. Self attestation or an affidavit of being engaged in advocacy alone can be obtained from a candidate. State may also consider amendment in Rules.

2. The practice of law has been defined in the Rules of Legal Education 2008 framed by the Bar Council of India under the Advocates Act, 1961 to mean as under:-

**“(xx) Practice of law”** means and includes (a) practising before the Court, Tribunal, Authority, Regulator, Administrative Body or Officer and any Quasi Judicial and Administrative Body, (b) giving legal advice either individually or

*from a law firm either orally or in writing, (c) giving legal advice to any government, international body or representing any international dispute resolution bodies including International Court of Justice, (d) engaged in Legal Drafting and participating in any Legal Proceedings and (e) representing in Arbitration Proceedings or any other ADR approved by law.”*

3. The Article 220 of the Constitution of Law is reproduced as

under:-

**“ Article 220 in The Constitution Of India 1949**

*220. Restriction on practice after being a permanent Judge No person who, after the commencement of this Constitution, has held office as a permanent Judge of a High Court shall plead or act in any court or before any authority in India except the Supreme Court and the other High Courts Explanation In this article, the expression High Court does not include a High Court for a State specified in Part B of the First Schedule as it existed before the commencement of the Constitution (seventh Amendment) Act, 1956.”*

Thus, practice constitutes generally to mean pleading ,submitting pleadings, acting as an attorney in any Court or before any authority.

4. If a lawyer is regularly appearing in arbitration matters or is only practicing in the field of registration of documents or is appearing before a Wakf Board, Service Tribunal, Labour Courts, Industrial Tribunals and various other Central Administration Tribunals, Income Tax Appellate Tribunal or Distt. Consumer Courts and Commission, he or she cannot said to be not having an experience of practice at Bar limiting the practice to mean only appearing in the Court and that too having appearances in atleast 6 interim orders is limiting the participation of Advocate’s in the open competition for appointment of the ADA. Similarly is the situation of the DDAs. The decision taken by the State Govt. for scrutinizing experience of the candidates is thus, found to be too circumscribe.

5. Similarly, Section 24 of Cr.P.C reads as under:-



**“24. Public Prosecutors.—**(1) *For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.*

(2) *The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district or local area.*

(3) *For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district: Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.*

(4) *The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.*

(5) *No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub-section (4).*

(6) *Notwithstanding anything contained in sub-section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre: Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4).*

2 [Explanation.—For the purposes of this sub-section,—

(a) *“regular Cadre of Prosecuting Officers” means a Cadre of Prosecuting Officers which includes therein the post of a Public Prosecutor, by whatever name called, and which provides for promotion of Assistant Public Prosecutors, by whatever name called, to that post;*



(b) *“Prosecuting Officer” means a person, by whatever name called, appointed to perform the functions of a Public Prosecutor, an Additional Public Prosecutor or an*

*Assistant Public Prosecutor under this Code.]*

(7) *A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2) or sub-section (3) or subsection (6), only if he has been in practice as an advocate for not less than seven years.*

(8) *The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor: 3 [Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.]*

(9) *For the purposes of sub-section (7) and sub-section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate.”*

Thus, those Public Prosecutors who are appointed by the State would be presumed to have practice for seven years to their credit and the respondents demanding them for another certificate or proof of experience is nothing but a case of non application of mind.

6. The submission of Mr. D.S.Patwalia that the State has the power to further examine the suitability of the selected candidates who have been recommended by the PPSC for appointment cannot be accepted as it would amount to allowing the State to act arbitrarily and reject persons who have been found to be meritorious by the examining authority. Article 320 of the Constitution of India empowers the Commission to conduct the selection process. The PPSC is a statutory authority and a Superintendent or a Secretary of the State Govt. cannot be allowed to ignore the recommendations of the PPSC by introducing an additional requirement after

the selection process has been concluded and recommendations have been forwarded to the said authorities to appoint persons according to merit.

7. Only power available with the State Govt. regarding examining the suitability of the said candidate is with reference to his antecedents or his medical fitness for the post. The State may also deny such selected person appointment if it finds that forgery has been committed or impersonation may have been done. The recommendations can also be rejected or denied in the cases where the State reaches to the conclusion that the selection was suffering from nepotism or favoritism.

8. In Civil Writ Petition No.13497 of 2023 directions had been issued to the respondents to complete the selection process prior to 30.06.2023.

9. Since none of the aforesaid circumstances have been shown to exist in the selection process by the State, introduction of demanding certificates of appearances in the Court by obtaining the opinion of one Additional Advocate General, Punjab is only to put unnecessary spokes in the selection process. It is noticed that this Court in Civil Writ Petition No. 13497 of 2023 had directed the State to conduct the selection process and conclude the same before 30.06.2023 and an assurance was given by the State authorities that they shall take steps to conclude the selection process and appoint the DDAs and ADAs. However, on account of the impugned action, the selection process has been put to a standstill. It has not been brought on record as to why an opinion was taken from the concerned DDA and on whose request, an Additional Advocate General, Punjab has given the opinion which has resulted in issuing of the letter dated 05.06.2023. This Court does not want to comment further on the approach of the officers of the State and the action of the Additional Advocate General, Punjab except to stat that the said action is deplorable. Even the opinion placed on record is not based on any law or judgment and appears to have been given at the asking.

0. In view of the above discussion, this Court concludes that the letter issued by the Superintendent of the Home Affairs and Justice Department, Punjab Government demanding from the selected candidates to submit certificates is not sustainable in law; is wholly arbitrary; unjustified and is not sustainable in law.

1. Before concluding, this Court, however is of the view that the ADAs are required to present the case of the State Govt. effectively in the Courts and it appears that the State Govt. essentially intends to select those advocates who have rich experience of practice in the Courts alone. However, the method and manner adopted for searching out such ADAs by introducing the letter dated 05.06.2023 is wholly unjustified and incorrect approach. If at all the State wants to have only those advocates who have practiced in the Court of law and nowhere else should incorporate such condition in the rules by making appropriate amendments. They can also put a condition in the advertisement and demand of particular certificate from the candidates at the stage of participation. However, demanding of 6 zimni orders / interim orders with attendance of the lawyer cannot be said to be a sufficient proof of experience.

### **CONCLUSION**

32. Accordingly, in view of the aforesaid discussion, all these writ petitions are allowed. The letter dated 05.06.2023 is quashed and set aside.

33. The respondents are now directed to immediately take steps for proceeding to fill up the posts of ADAs and DDAs within a period of one month from the date of receipt of certified copy of this order.

34. All pending civil misc. application(s) in this writ petition shall also stand dispose of.

**(SANJEEV PRAKASH SHARMA)**

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