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SATISH KUMAR SHARMA

v

BAR COUNCIL OF HIMACHAL PRADESH

JANUARY 3, 2001

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[DR. A.S. ANAND C.J., R.C. LAHOTI AND
SHIVARAJ V. PATIL, JJ.]

Advocates Act, 1961:

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Sections 24(1)(e) and 28(2)(d)—Enrolment of advocate—Conditions for—Certificate of enrolment—Cancellation of—Powers of State Bar Council—Law Officer of State Electricity Board enrolled as advocate—Said Law Officer promoted as Additional Secretary (Law), was governed by service conditions and required to work as a full-time salaried employee—After a decade and half enrolment cancelled by Bar Council—Validity of—Held: Appointment order of Law Officer does not indicate that he was required to mainly or exclusively act or plead in courts on behalf of the employer—Therefore, said Law Officer does not come within; the meaning of 'Law Officer' for the purposes of R. 49—Hence, cancellation of enrolment valid as he is not entitled to be enrolled as an advocate—Bar Council of India Rules, 1975,

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R.49.

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Section 28(2)(d)—Law Officer—Enrolment—Cancelled after a decade and half—Due to ineligibility—Estoppel—Applicability of—Held: Neither principle of equity nor promissory estoppel is applicable as the Law Officer suffered threshold bar and was not at all eligible to be enrolled as an advocate.

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Section 35(d)—Law Officer—Enrolment of—Cancellation of—On grounds of being full-time salaried employee—Whether amounted to punishment—Held: There is no action for misconduct since he was not entitled for enrolment—Cancellation of enrolment only corrected mistake committed on misunderstanding—Hence, removal of name from the Rolls of the Bar Council without following prescribed procedure not a punishment for misconduct.

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Section 21—Seniority—Maintenance of—Law Officer—Enrolment of—Cancelled due to his being ineligible at the threshold—Held: When he is not at all entitled to be enrolled question of maintaining his seniority does not

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arise.

Bar Council of India Rules, 1975:

Rule 49—Law Officer—Meaning of—Held: Should not be a full-time salaried employee—The appointment order must indicate that his work is mainly or exclusively to act or plead in Courts on behalf of his employer.

Words and Phrases:

"Law Officer"—Meaning of—In the context of R.49 of the Bar Council of India Rules, 1975.

The appellant, after securing his LL.B degree, was appointed as Law Officer by the State Electricity Board. The appellant was subsequently enrolled as an advocate by the respondent-Bar Council.

The appellant was a full-time salaried employee at the time of his enrolment as an advocate. He was promoted as Additional Secretary (Law), and was governed by the conditions of service and disciplinary Rules applicable to the employees of the Board. The appellant's duties were not exclusively or mostly to act or plead in courts.

Subsequently, after a decade and half, the Bar Council withdrew the enrolment of the appellant on the ground that the appellant was debarred from being an advocate under Rule 49 of the Bar Council of India Rules, 1975. The High Court dismissed the writ petition filed by the appellant. Hence this appeal.

On behalf of the appellant it has contended that since the respondent had not framed any Rules expressly barring Law Officers from being enrolled as an advocate the appellant was entitled for enrolment; that the respondent was estopped from withdrawing the appellant's enrolment after a decade and half; that the cancellation of the appellant's enrolment amounted to punishment which was not valid as the prescribed procedure under Section 35(d) of the Advocates Act, 1961 was not followed; and that the appellant should be allowed to maintain his seniority as an advocate from the date of his enrolment if he gave up his full-time employment.

Dismissing the appeal, the Court

HELD : 1.1. Under rule 49 of the Bar Council of India Rules, 1975 it is not every Law officer but only a person who is designated as Law Officer by the terms of his appointment and who by the said terms is required to act

A and/or plead in courts on behalf of his employer can avail the benefit of the exception contained in paragraph 2 of Rule 49. [49-B]

B 1.2. No Rules were framed by the respondent entitling a Law Officer appointed as full-time salaried employee coming within the meaning of paragraph 3 of Rule 49 to enroll as an Advocate. Such an enrolment has to come from the Rules made under Section 28(2)(d) read with Section 24(1)(e) of the Advocates Act, 1961. Hence, it necessarily follows that if there is no Rule in this regard, there is no entitlement. In the absence of express or positive Rule, the appellant could not fit in the exception and the bar contained in the first paragraph of Rule 49 was clearly attracted. [49-D]

C 1.3. There is no indication in any of the appointment/promotion order issued to the appellant that he was to act or plead in the courts of law on behalf of the Board except in one earlier order. At any rate from these orders it cannot be said that he was/is required to act or plead in courts on behalf of the employer mainly or exclusively so as to come within the meaning of 'Law Officer' for the purpose of Rule 49. [49-F]

D 2. The appellant was required to work in the Legal Cell of the Secretariat of the Board; was given different pay scales; rules of seniority were applicable; promotions were given to him on the basis of the recommendations of the Departmental Promotion Committee; was an enable to disciplinary proceedings, etc. The appellant being a full-time salaried employee had/had to attend to so many duties, which are substantial and pre-dominant. The appellant was/is a full-time salaried employee and his work was not mainly or exclusively to act or plead in court. [49-H; 50-A-B]

F *Dr. Haniraj L. Chulani v. Bar Council of Maharashtra & Goa*, [1996] 3 SCC 342, relied on.

Sushma Suri v. Govt. of National Capital Territory of Delhi, [1999] 1 SCC 330, held inapplicable.

G 3. Even if no Rules were framed under Section 28(2)(d) read with Section 24(1)(e) of the Act by a State Bar Council, enrolment of a person shall be subject to the provisions of the Act and the Rules. In other words, the Rules made by the Bar Council of India are to be satisfied. Mere non-framing of Rules by a State Bar Council under Section 28(2)(d) read with Section 24(1)(e) of the Act cannot dispense with obedience to Rule 49 of the H Rules. [43-E; 44-B]

4. The contention that the respondent could not have cancelled enrolment of the appellant almost after a decade and half and that the respondent was estopped from doing so on the principle of promissory estoppel is not acceptable for the simple reason that the appellant suffered threshold bar and was not at all eligible to be enrolled as an advocate and his enrolment itself was clearly contrary to Rule 49 of the Rules. Hence, neither the principles of equity nor promissory estoppel will come to the aid of the appellant. [52-A-B]

5. Action was not taken against the appellant on the ground of misconduct by initiating any disciplinary proceedings. But in this case the very enrolment of the appellant as an advocate itself was contrary to law and he was not at all entitled for enrolment. By cancellation or withdrawal of enrolment things were only set right and the mistake committed on misunderstanding was corrected. Hence, removal of the name of the appellant from the Rolls of the State Bar Council does not amount to a punishment under Section 35(d) of the Act without following the procedure. [52-C]

6. When the appellant was not entitled for enrolment and his enrolment itself was opposed to law, such enrolment was non-est. Hence, the question of maintaining his seniority on the Rolls of the respondent does not arise. [52-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5395 of 1997.

From the Judgment and Order 18.3.97 of the Himachal Pradesh High Court in C.W. No. 1232 of 1996.

Vinod A. Boabde, K.K. Lahiri, B.K. Mishra, Ms. Safali Shukla and Ejaz Maqbool for the Appellant.

Atul Sharma and M.A. Chinnaswamy, for the Respondent.

The Judgment of the Court was delivered by

SHIVARAJ V. PATIL, J. In this appeal, the appellant has assailed the resolution of the respondent dated 12.05.1996 withdrawing his enrolment as well as the order of the High Court upholding it.

The facts, which are considered necessary and relevant for the purpose of disposal of this appeal, are the following:

- A After securing LL.B. in 1975-76 the appellant was appointed as Assistant (Legal) by the Himachal Pradesh State Electricity Board (for short the Board). The said post was re-designated as Law Officer Grade-II in 1978. The Board, by its order dated 6.9.1983 allowed the appellant to act as an advocate of the Board and also ordered that the expenditure of his getting licence from the
- B Bar Council shall be met by the Board. His application seeking enrolment was sent by the Secretary of the Board to the respondent on 13.10.1983. The Secretary of the respondent by letter dated 28.3.1984 informed the Board that the Office Order dated 6.9.1983 of the Board did not meet the requirements of the Rules and that the appellant should first be designated as a Law Officer. The respondent also requested the Board to send the order of appointment and the terms of such appointment of the appellant. The Board by order dated
- C 11.6.1984 modified the earlier order dated 6.9.1983 and declared the appellant as a Law Officer of the Board. On 5.7.1984 another order was passed by the Board by changing the designation of the post of Law Officer Grade-II as Law Officer. It is, thereafter, the respondent issued a certificate of enrolment dated
- D 9.7.1984 to the appellant. By Office Order dated 8.5.1991 the appellant was given ad hoc promotion to the post of Under Secretary (Legal)- cum-Law Officer, which order also stated that he would continue to work in the Legal Cell of the Secretariat of the Board. Further on 14.1.1993 he was promoted as Under Secretary (Legal)- cum-Law Officer on officiating basis.
- E By its communication dated 13.9.1993 the respondent called upon the appellant to appear before the Committee on 28.9.1993 along with all connected documents/evidence in regard to his enrolment as an advocate. The said communication indicated that in the meeting held on 10.7.1993 the respondent considered the matter regarding enrolment of certain Law Officers and decided
- F to constitute a committee to examine the same. Thereafter on 27.12.1993 a show cause notice was sent to the appellant requiring him to explain as to why his enrolment No. HIM/35/1984 issued to him be not withdrawn. Reply to the said show cause notice was to reach by 30.12.1993. After taking extension of time twice the appellant sent a communication on 25.2.1994
- G stating that there was no ground for withdrawal of his enrolment reserving his right to file a detailed reply. He also stated that he would like to be represented by an advocate.

The appellant was promoted as Deputy Secretary (Legal)-cum- Law Officer on ad hoc basis by the Office Order of the Board dated 30.1.1995 and

H he was required to continue to work in the Legal Cell.

In the meeting held on 12.5.1996 the respondent passed a resolution A
unanimously withdrawing the enrolment of the appellant with immediate effect
and directed him to surrender the enrolment certificate within 15 days therefrom.
The relevant and material part of the resolution reads:-

“....

Shri Satish Sharma is a permanent employee of the HPSEB and B
presently he is holding the post of Deputy Secretary in the HPSEB
and is in continuous employment of the HPSEB and under Rule 49 he
is debarred to be an Advocate. Moreover, he was enrolled as an
Advocate initially when he was appointed as Law Officer. Thereafter C
he had been getting promotions and working as Assistant Secretary/
Deputy Secretary in the HPSEB. In fact he was required to intimate
the said fact to the Bar Council immediately on promotion and should
have surrendered the licence but he failed to do so.

Under these circumstances there is no justification to retain Shri D
Satish Sharma on the Roll of the Bar Council as an Advocate.

It is, thus, resolved that the Enrolment No. HIM/45/1984 be and
is hereby withdrawn with immediate effect and he is ordered to
surrender his Enrolment Certificate within a period of 15 days. E

It is this resolution, validity and correctness of which was challenged
by the appellant before the High Court in the writ petition contending that
the enrolment was validly granted to him as he fulfilled the requirements of
relevant provisions of the Advocates Act, 1961; he also pointed out that
advocates, who obtained enrolment and later on joined State Government F
service in the Prosecution Department, have continued to retain their enrolment
and defend the State Government in the courts; no rules have been framed
by the respondent preventing persons like the appellant from getting enrolled,
it was not open to the respondent to withdraw the certificate of enrolment;
according to him Rule 49 of the Rules framed by the Bar Council of India has G
been misconstrued and misunderstood by the respondent. In short it was
contended that the respondent had no jurisdiction to withdraw the enrolment
certificate granted to the appellant. The Division Bench of the High Court by
an elaborate and well- considered order dealing with all aspects dismissed the
writ petition. Hence the appellant has filed this appeal assailing the order of
the respondent as well as the order of the High Court affirming it. H

- A Learned senior counsel for the appellant, while reiterating the contentions urged before the High Court, submitted that the High Court failed to appreciate that the second para of the Rule 49 carves out an exception to the Bar created by Rule 49, precluding a full time salaried employee from practicing as an advocate; the said exception was subject only to one limitation, i.e., an
- B express bar created by Rules, made by any State Bar Council in exercise of its powers under Section 28(2)(d) read with Section 24(1)(e) of the Advocates Act, 1961; since the respondent has not framed any rules expressly barring such Law Officers from being enrolled as advocates the appellant was entitled for enrolment. According to the learned counsel the High Court also failed to note that it was not a case of refusal of enrolment to a Law Officer but
- C it was a case wherein the respondent was estopped from cancelling the certificate of enrolment issued to the appellant by the very respondent as early as on 9.7.1984; therefore, cancellation of enrolment after almost a decade and half based on an erroneous interpretation of Rule 49 of the Rules of Bar Council of India, was unjust. It was also urged that the appellant had placed all the material before the respondent before obtaining his enrolment certificate and there was no concealment of facts on his part and that the appellant was
- D discriminately treated. The learned counsel added that the impugned action of the respondent was unwarranted as it amounted to a punishment of removal of the name of an advocate from the Roll of the State Bar Council as postulated by Section 35(d) of the Act without following the procedure.
- E Per contra, the learned counsel representing the respondent made submissions supporting the orders impugned in this appeal. According to him the appellant was not at all entitled for enrolment as an advocate having regard to Rule 49 of the Bar Council of India Rules in the absence of any enabling provision to a full time salaried employee for enrolment as an advocate.
- F The learned counsel submitted when the appellant was not at all entitled to be enrolled as an advocate the action taken by the respondent after lapse of some time is of no consequence and the delay in taking action in a case like this itself does not give protection so as to sustain the enrolment. He further submitted that there was no discrimination as alleged by the appellant looking to the nature of duties of the prosecutors in the State Departments and the
- G appellant.

- H We have carefully considered the submissions made by the learned counsel for the parties. We consider it useful and appropriate to look at the relevant provisions of the Advocates Act, 1961 (for short the 'Act') and of the Bar Council of India Rules (for short 'the Rules') before examining the

rival contentions on their merits. The provisions are:-

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Section 24. "Persons who may be admitted as advocates on a State roll. (1) subject to the provisions of this Act, and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfills the following conditions, namely

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(a)

(b)

(c)

(d)

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(e) he fulfills such other conditions as may be specified in the rules made by the State Bar Council under this Chapter;"

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Section 28. "Power to make rules.—(1) A State Bar Council may make rules to carry out the purposes of this Chapter.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for

(a)

(b)

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(d) the conditions subject to which a person may be admitted as an advocate on any such roll;

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(3) No rules made under this Chapter shall have effect unless they have been approved by the Bar Council of India."

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Section 49. "General power of the Bar Council of India to make rules.—

(1) The Bar Council of India may make rules for discharging its functions under this Act and in particular, such rules may prescribe.

(a)

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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. A

Nothing in this rule shall apply to a Law Officer of the Central Government of a State or of any Public Corporation or body constituted by statute who is entitled to be enrolled under the rules of his State Bar Council made under Section 28(2)(d) read with Section 24(1)(e) of the Act despite his being a full-time salaried employee. B

Law Officer for the purpose of this Rule means a person who is so designated by the terms of his appointment and who, by the said terms, is required to act and/or plead in Courts on behalf of his employer.” C

In terms of Section 24 of the Act, a person shall be qualified to be admitted as an advocate if he satisfies the provisions of the Act, the Rules and the rules, if any, made by the State Bar Council besides fulfilling other conditions as laid down in this Section. Even if no rules were framed under Section 28(2)(d) read with Section 24(1)(e) of the Act by a State Bar Council, enrolment of a person shall be subject to the provisions of the Act and the Rules. Section 28 has conferred rule making power on a State Bar Council to carry out the purposes of Chapter III of the Act. A State Bar Council can prescribe conditions subject to which a person may be admitted on any such roll under Section 28(2)(d) of the Act. In the present case the respondent has not framed rules in this regard. Under Section 49 of the Act the Bar Council of India has power to make rules for discharging its functions under the Act. Rules are framed by the Bar Council of India exercising the powers conferred on it. In the Preamble, extracted above, to the Rules made under Section 49(1)(c) of the Act read with the proviso thereto it is stated that an advocate shall at all times conduct himself in a manner befitting to his status as an officer of the court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate. It is further stated that an advocate shall fearlessly uphold the interest of his client, and in his conduct conform to the rules. As is clear from the Rules contained in Chapter II of the Rules an advocate has a duty to court, duty to the client, duty to opponent and duty to colleagues unlike a full time salaried employee whose D
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A duties are specific and confined to his employment. Rule 49 has a specific purpose to serve when it states that an advocate shall not be a full time salaried employee of any person, government, firm, corporation or concern. As already noticed above, Section 24(1) specifically states that a person in addition to satisfying other conditions has also to satisfy the provisions of the Act and Rules. In other words, the Rules made by Bar Council of India are to be satisfied. Mere non framing of rules by a State Bar Council under Section 28(2)(d) read with Section 24(1)(e) of the Act cannot dispense with obedience to Rule 49.

C The profession of law is called a noble profession. It does not remain noble merely by calling it as such unless there is a continued, corresponding and expected performance of a noble profession. Its nobility has to be preserved, protected and promoted. An institution cannot survive in its name or on its past glory alone. The glory and greatness of an institution depends on its continued and meaningful performance with grace and dignity. The profession of law being noble and honourable one, it has to continue its meaningful, useful and purposeful performance inspired by and keeping in view the high and rich traditions consistent with its grace, dignity, utility and prestige. Hence the provisions of the Act and Rules made thereunder inter alia aimed at to achieve the same ought to be given effect to in their true spirit and letter to maintain clean and efficient Bar in the country to serve cause of justice which again is noble one.

F This court in *Dr. Haniraj L. Chulani v. Bar Council of Maharashtra & Goa*, while dealing with the validity of Rule 1 of the Maharashtra and Goa Bar Council Rules relating to enrolment of Advocates eligibility conditions, in para 20 has observed that 'legal profession requires full time attention and would not countenance an Advocate riding two horses or more at a time'. That was a case where a medical practitioner wanted to enroll himself as an Advocate after obtaining a degree of Bachelor of Law. Rules framed by the Maharashtra Bar Council denied simultaneous practice of another profession alongwith practice of law. It was contended for the appellant that even though he was a practicing surgeon, if given entry to legal profession, he would give an undertaking that he would not practice medicine during the court hours. Such a plea was not accepted stating that he would be torn between two conflicting loyalties; loyalty to his clients on the one hand and loyalty to his patients on the other. The court proceeded to say "It is axiomatic that an advocate has to burn the midnight oil for preparing his cases for being argued in the court next day. Advocates face examination every day when they

appear in courts. It is not as if that after court hours an advocate has not to put in hard work on his study table in his chamber with or without the presence of his clients who may be available for consultation. To put forward his best performance as an advocate he is required to give wholehearted and full-time attention to his profession. Any flinching from such unstinted attention to his legal profession would certainly have an impact on his professional ability and expertise. If he is permitted to simultaneously practise as a doctor then the requirement of his full-time attention to the legal profession is bound to be adversely affected. Consequently however equally dignified may be the profession of a doctor, he cannot simultaneously be permitted to practise law which is a full-time occupation. It is for ensuring the full-time attention of legal practitioners towards their profession and with a view to bringing out their best so that they can fulfill their role as an officer of the court and can give their best in the administration of justice, that the impugned rule has been enacted by the State Legislature." The High Court also has referred to and relied on this judgment.

With this background we proceed to consider merits of the contentions raised by the respective parties.

There appeared to be difficulty for the Advocates even to take up teaching of law as full time employees. The Central Government in exercise of the powers conferred by Section 49-A of the Act framed the Advocates (Right To Take Up Law Teaching) Rules, 1979. As per Rule 3 of the said Rules, a practicing Advocate has a right to take up teaching of law in any educational institution affiliated to university so long as teaching of law does not exceed three hours a day and such employment may be deemed to be a part time employment.

Since the terms of appointment, nature of duties and service conditions relating to the appellant have also bearing in resolving the controversy, it is considered appropriate to briefly refer to them. By the Memorandum dated 24.6.1976, the appellant was appointed for the first time by the Board to the post of Assistant (Legal) in the pay-scale of Rs. 225-15-300-20- 500 + 50 per month as special pay. In the said Memorandum, it is stated that the post was temporary and his services were liable to be terminated at any time without any reasons being assigned to; his confirmation in the permanent vacancy depended inter alia on his work and conduct and he will have to serve anywhere in the organization of Himachal Pradesh State Electricity Board. The appellant accepting these terms of appointment, joined service of the Board.

- A By the Office Order dated 6.9.1983, the Board was pleased to allow the appellant, Law Officer, Grade-II to act as Advocate of the Board in the existing scale of Rs. 700-1200/-. The Board was further pleased to order that the expenditure for getting enrolment as an Advocate shall be borne by the Board. In response to the application made for the enrolment of the appellant as an Advocate, the Secretary of the respondent by a letter dated 28.3.1984
- B informed the appellant that the Office Order dated 6.9.1983 of the Board did not meet the requirements of the Rules and that he first be designated as Law Officer. Accordingly the Board, by its order dated 11.6.1984 modifying its earlier order dated 6.9.1983, declared him as 'Law Officer' of the Board in the existing pay-scale. The Board passed one more order on 5.7.1984 changing
- C the designation of the post of 'Law Officer (Grade-II)' as 'Law Officer' with immediate effect and appointed the appellant as Law Officer in the existing pay scale. In the said order it is also stated that by virtue of the said appointment the appellant shall be required to act and plead in any court of law on behalf of the Board. It is only thereafter, the appellant was enrolled as an advocate on 9.7.1984 by the respondent. By the Office Order dated
- D 8.5.1991 the Board promoted him as Under Secretary (Law)-cum-Law Officer in the given pay-scale purely on ad hoc basis making it clear that the said ad hoc promotion would not confer any right on the appellant to claim seniority in that Grade. In the said order it is also stated that he will continue to work in the Legal Cell of the Secretariat of the Board. He was promoted
- E on 14.1.1993 on the recommendation of Class-I Departmental Promotion Committee on officiating basis in the pay-scale of Rs. 3000-4500 plus Rs. 400 as special pay per month indicating that he would continue to work in the same Legal Cell. By order dated 30.1.1995 the Board again promoted him as Deputy Secretary (Law)-cum-Law Officer in the pay-scale of Rs. 3700-5000 plus Rs. 400 as special pay per month purely on ad hoc basis with the other
- F conditions remaining the same.

This Court on 10.8.2000 passed the following order:-

- G "During the course of hearing, a question arose as to whether the appellant, while serving on full time basis with Himachal Pradesh State Electricity Board, is confining his work only to acting as an Advocate for and on behalf of the Board, including appearances in the Court, or has some other duties also assigned to him in his capacity as Deputy Secretary-cum-Law Officer. Mr. V.A. Bobde, learned senior counsel appearing on behalf of the appellant submits that since this
- H issue never arose before, he shall have to seek instructions and file

an appropriate affidavit supported by relevant documents. Four weeks time, as prayed for, is granted for the purpose. An advance copy shall be furnished to the learned counsel opposite who will have four weeks thereafter to file response, if any.

List after nine weeks.”

Pursuant to the said Order, the appellant has filed the affidavit on 12.09.2000. The affidavit shows that he was further promoted as Additional Secretary (Law). In the affidavit he has stated that his duties with the Board right from Law Officer to Additional Secretary (Law) have been exclusively those of an Advocate and he had been personally appearing before various courts. It is also stated that he was/is heading Legal Cell/Law Section, the duties in respect of which were stipulated in the Regulation of Business issued by the Board on April 4, 1974 which were amended in February, 2000. As far as the Legal Cell was concerned, they remained the same. Regulation of Business relating to “C-Legal” are as follows:-

“25. Every wing of the Board shall consult Law Section, whenever it is proposed to:-

- (i) issue a statutory regulation, notification or order, or
- (ii) sanction under a statutory power the issue of any regulation, by law, notification or order by a subordinate authority; or
- (iii) submit to Government any draft statutory regulation, notification or order for issue by them; the draft shall be referred to the Law Section for opinion and advice.

26.(1) All Sections shall consult the Legal Section on :-

- (a) any general legal principles arising out of any case and;
- (b) the construction of statutes, Arts, Regulation, Statutory Orders and notifications etc. etc.
- (c) the institution or withdrawal of any prosecution or other legal/ quasi legal proceedings including arbitration, taxation proceedings, engagement of counsels, their fee, etc. etc.
- (d) all documents having legal implications, except routine matters, may only be accepted after legal scrutiny.

A (2) All such references shall be accompanied by an accurate statement of the facts of the case and the point or points on which the advice of the Legal Section is desired.”

B Looking to the various appointment/promotion orders issued by the Board to the appellant and Regulation of Business relating to Legal Cell of the Board aforementioned, we can gather that :-

- C (1) the appellant was a full time salaried employee at the time of his enrolment as an Advocate and continues to be so getting fixed scales of pay;
- D (2) he is governed by the conditions of service applicable to the employees of the Board including disciplinary proceedings. When asked by us, the learned counsel for the appellant also confirmed the same;
- E (3) he joined the services of the Board as a temporary Assistant (Legal) and continues to head the Legal Cell after promotions, a wing in the Secretariat of the Board;
- (4) his duties were/are not exclusively or mostly to act or plead in courts; and
- (5) promotions were given from time to time in higher pay- scales as is done in case of other employees of the Board on the basis of recommendation of Departmental Promotion Committee.

On a proper and careful analysis, having regard to the plain language and clear terms of Rule 49 extracted above, it is clear that:-

- F (i) the main and opening paragraph of the Rule prohibits or bars an advocate from being a full time salaried employee of any person, Government, firm, corporation or concern so long as he continues to practice and an obligation is cast on an Advocate who takes up any such employment to intimate the fact to the concerned Bar Council and he shall cease to practice so long as he continues in such employment;
- G (ii) para 2 of the Rule is in the nature of an exception to the general Rule contained in main and opening paragraph of it. The bar created in para 1 will not be applicable to Law Officers of the Central Government or a State or any public corporation or body constituted by a statute, if they are given entitlement under the
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Rules of their State Bar Council. To put it in other way, this provision is an enabling provision. If in the Rules of any State Bar Council, a provision is made entitling Law Officers of the Government or authorities mentioned above, the bar contained in Rule 49 shall not apply to such Law Officers despite they being full time salaried employees;

- (iii) not every Law Officer but only a person who is designated as Law Officer by the terms of his appointment and who by the said terms is required to act and/or plead in courts on behalf of his employer can avail the benefit of the exception contained in para 2 of Rule 49.

It is an admitted position that no rules were framed by the respondent entitling a Law Officer appointed as a full time salaried employee coming within the meaning of para 3 of Rule 49 to enroll as an Advocate. Such an enrolment has to come from the rules made under Section 28(2)(d) read with Section 24(1)(e) of the Act. Hence it necessarily follows that if there is no rule in this regard, there is no entitlement. In the absence of express or positive rule, the appellant could not fit in the exception and the bar contained in the first paragraph of Rule 49, was clearly attracted as rightly held by the High Court. Added to this, in the light of terms of appointment/promotion orders issued by the Board to the appellant, it is clear that the first appointment of the appellant was as Assistant (Legal). Subsequent promotions as Under Secretary (Legal)-cum-Law Officer, Deputy Secretary (Legal)-cum-Law Officer and Additional Secretary (Law) show that the appellant was not designated as Law Officer. Similarly, there is no indication in any of the appointment/promotion orders issued to the appellant that he was to act or plead in the courts of law on behalf of the Board except in the order dated 5.7.1984. At any rate from these orders it cannot be said that he was/is required to act or plead in courts on behalf of the employer mainly or exclusively so as to come within the meaning of Law Officer for the purpose of Rule 49. It appears the modified orders dated 11.6.1984 and 5.7.1984 were issued by the Board in order to get enrolment of the appellant as an advocate on the roll of the respondent. None of the appointment/promotion orders issued to the appellant indicate that his duties were exclusively to act or plead in courts on behalf of the Board as Law Officer. These orders clearly show that the appellant was required to work in the Legal Cell of the Secretariat of the Board; was given different pay

- A scales; rules of seniority were applicable; promotions were given to him on the basis of the recommendations of the Departmental Promotion Committee; was amenable to disciplinary proceedings, etc. Further looking to the nature of duties of Legal Cell as stated in the regulation of business of the Board extracted above, the appellant being a full time salaried employee had/has to attend to so many duties which appear to be substantial and pre-dominant. In short and substance we find that the appellant was/is a full time salaried employee and his work was not mainly or exclusively to act or plead in court. Further there may be various challenges in courts of law assailing or relating to the decisions/actions taken by the appellant himself such as challenge to issue of statutory regulation, notification or order; construction of statutory regulation, statutory orders and notifications, the institution/withdrawal of any prosecution or other legal/quasi legal proceedings etc. In a given situation the appellant may be amenable to disciplinary jurisdiction of his employer and / or to the disciplinary jurisdiction of the Bar Council. There could be conflict of duties and interests. In such an event, the appellant would be in an embarrassing position to plead and conduct a case in a court of law. Moreover, mere occasional appearances in some courts on behalf of the Board even if they be, in our opinion, could not bring the appellant within the meaning of 'Law Officer' in terms of para 3 of Rule 49. The decision in *Sushma Suri v. Govt. of National Capital Territory of Delhi and Another*, in our view, does not advance the case of the appellant. That was a case where meaning of expression "from the Bar" in relation to appointment as District Judge requiring not less than seven year's standing as an Advocate or a pleader came up for consideration. The word "Advocate" in Article 233(2) was held to include a Law Officer of Central or State Government, public corporation or a body corporate who is enrolled as an Advocate under exception to Rule 49 of Bar Council of India Rules and is practicing before courts for his employee. Para 10 of the said judgment reads :-
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- G "Under Rule 49 of the Bar Council of India Rules, an advocate shall not be a full-time employee of any person, Government, firm, corporation or concern and on taking up such employment, shall intimate such fact to the Bar Council concerned and shall cease to practise as long as he is in such employment. However, an exception is made in such cases of law officers of the Government and corporate bodies despite his being a full-time salaried employee if such law
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officer is required to act or plead in court on behalf of others. It is only to those who fall into other categories of employment that the bar under Rule 49 would apply. An advocate employed by the Government or a body corporate as its law officer even on terms of payment of salary would not cease to be an advocate in terms of Rule 49 if the condition is that such advocate is required to act or plead in courts on behalf of the employer. The test, therefore, is not whether such person is engaged on terms of salary or by payment of remuneration, but whether he is engaged to act or plead on its behalf in a court of law as an advocate. In that event the terms of engagement will not matter at all. What is of essence is as to what such law officer engaged by the Government does-whether he acts or pleads in court on behalf of his employer or otherwise. If he is not acting or pleading on behalf of his employer, then he ceases to be an advocate. If the terms of engagement are such that he does not have to act or plead, but does other kinds of work, then he becomes a mere employee of the Government or the body corporate. Therefore, the Bar Council of India has understood the expression "advocate" as one who is actually practicing before courts which expression would include even those who are law officers appointed as such by the Government or body corporate."

[emphasis supplied]

As stated in the above para the test indicated is whether a person is engaged to act or plead in a court of law as an Advocate and not whether such person is engaged on terms of salary or payment by remuneration. The essence is as to what such Law Officer engaged by the Government does.

In the present case on facts narrated above relating to his employment as well as in the absence of rule made by the respondent entitling a Law Officer to enroll as an Advocate despite being a full time salaried employee, the appellant was not entitled to enrolment as an advocate. Hence, the appellant cannot take benefit of the aforementioned judgment.

The argument of the learned senior counsel for the appellant was that what is not prohibited may be taken as permitted and when the appellant satisfied the requirements of Section 24, he was entitled for enrolment. This argument overlooks a positive requirement as already stated above contained in para 2 of Rule 49 that unless a concerned State Bar Council has framed rules entitling Law Officers to enroll as Advocates even though they are full-

- A time employees, they are not entitled to enrolment. The contention that the respondent could not have cancelled enrolment of the appellant almost after a decade and half and that the respondent was estopped from doing so on the principle of promissory estoppel, did not impress us for the simple reason that the appellant suffered threshold bar and was not at all eligible to be enrolled as an Advocate and his enrolment itself was clearly contrary to Rule 49 of the Rules in the light of the facts stated above. Hence neither the principles of equity nor promissory estoppel will come to the aid of the appellant. Similarly, there is no substance in the argument of the learned counsel for the appellant that removal of the name of the appellant from the roll of the State Bar Council amounted to a punishment under Section 35(d) of the Act without following procedure. It is clear from the facts of the case that action was not taken against the appellant on the ground of misconduct by initiating any disciplinary proceedings. But in this case the very enrolment of the appellant as an advocate itself was contrary to law and he was not at all entitled for enrolment. By cancellation or withdrawal of enrolment things were only set right and the mistake committed on misunderstanding was corrected.

We find no merit in the ground urged that the appellant was discriminated against the prosecutors and the Government pleaders. The duties, nature of work and service conditions of the appellant, details of which are already given above, are substantially different from the duties and nature of work of prosecutors and Government pleaders particularly in relation to acting and pleading in court. Thus the appellant stood on a different footing. The High Court in paragraphs 24-26 has dealt with this aspect of the case and rightly rejected the argument based on the ground of discrimination.

The last and alternative submission of the learned counsel for the appellant was that in case the appellant gives up his full time employment or ceases to be employee of the Board, he may be allowed to practice maintaining his seniority as an advocate from the date of his enrolment on the rolls of the respondent; if the enrolment is cancelled or withdrawn he would lose the seniority for no fault of him. There is a difficulty in accepting this argument. When the appellant was not entitled for enrolment and his enrolment itself was opposed to law, such enrolment was non-est. Hence the question of maintaining his seniority on the rolls of the respondent does not arise. However, we make it clear that in case the appellant resigns or ceases to be a full time employee of the Board, it is open to him if so desired to apply afresh for enrolment as an advocate. This order does not stand in the way

of the appellant seeking enrolment if he is otherwise eligible and entitled. A

In the light of the facts stated and discussions made above, we do not find any merit in this appeal. Hence it is dismissed. No cost.

V.S.S.

Appeal dismissed.