

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Wednesday, the Twenty Seventh day of March Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice N.KIRUBAKARAN
and
The Hon`ble Mr.Justice S.S.SUNDAR

WP(MD) No.7257 of 2019

A.KANNAN

... PETITIONER

Vs

- 1 HIGH COURT OF MADRAS
REP. BY ITS REGISTRAR GENERAL,
HIGH COURT OF MADRAS,
CHENNAI-600 104.
- 2 THE REGISTRAR (JUDICIAL)
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI-625 023
- 3 BAR COUNCIL OF INDIA
REP. BY ITS SECRETARY,
21, ROUSE AVENUE INSTITUTIONAL AREA,
NEAR BAL BHAWAN, NEW DELHI-110 002.
- 4 THE BAR COUNCIL OF TAMILNADU AND PUDUCHERRY,
REP. BY ITS SECRETARY,
NO.19, NSC BOSE RD,
HIGH COURT CAMPUS, CHENNAI-104

... RESPONDENTS

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to issue a Writ of mandamus, directing the 1st respondent to frame appropriate rules so as to make it compulsory to pass advocate on record examination to allow the new entrant advocates for filing cases on their own names by prescribing minimum five years standing at the Bar to appear for the Advocate on Record Examination out of which one has to undergo one year compulsory training under a senior advocate having not less than ten years of actual practicing in the High Court to sit for the AOR Examination as followed in the Honourable Supreme Court and to come up with other proposals to improve the quality of the legal professionals appearing before this Honourable Court within a time frame fixed by this Honourable Court by considering the petitioner's written representation dated 26.02.2019.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.A.KANNAN PARTY IN PERSON, and of Mr.K.Samidurai, Advocate for R1 and R2, Mrs.S.Mahalakshmi, Advocate for R3 and Mrs.J.Anandhavalli, Advocate for the R4, the court made the following order:-

(Order of the Court was made by N.KIRUBAKARAN, J)

The issue raised by Mr.Kannan, who appears as petitioner in person is a very important and the decision in this issue, is the need of the hour. The procedure being followed by the High Court in filing as well as in appearing before this Court, is something different from appearing before the Subordinate Courts. Moreover, the exposure in the field of law is important before appearing before the Courts, especially, before the Chartered High Court. Now, a new trend has crept in the legal profession, namely, the Law Graduates after coming out the Law Colleges without any experience in the legal profession, start appearing before the Court without even giving the material details in the affidavit and arguing the matters. As a result, the Court is unable to effectively adjudicate the matters. There is no assistance from those Lawyers. It requires at least 3 to 5 years experience in Senior's office, so that, they will be able to know from the Seniors as to what are all the particulars to be collected from the parties, how a petition/plaint should be drafted and what are all the things to be omitted and how the case should be presented before the Court and how the queries raised by the Court could be answered by the Advocate. Though they have the fundamental knowledge, without the basic procedures followed by the Trial Courts, they venture into the legal profession, which makes very difficult for the Courts to render justice effectively.

2. One of the dangers faced from the inexperienced Advocates is with regard to getting material details from the clients. The rights of the parties get affected once and for all as without material details, if the case is presented, it will only invite an order of dismissal from the Court violating their rights. The legal profession is not a child's play. The rights of the people who are approaching the Advocates, are involved. Therefore, sufficient knowledge and experience are required not only for giving legal advice, but also for filing and presenting the case before the Court, supported by statutes and precedents. We cannot expect everything from the newly enrolled Lawyers, who have just completed the law course. By observing so, this Court does not mean to underestimate the newly enrolled Advocates. But, at the same time, experience is required, so that, the clients as well as the Advocates and the Courts would be benefitted. To put it in other words, by doing so, justice delivery system is safe-guarded.

India, which enables the conduct of examination for Advocates on record, so that, the standard of Advocates, who are appearing before the Court shall be maintained. Similar exercise is necessary for this Court also. This Court faced a lot of problems because of inexperienced Advocates appearing before the Court, without knowing the basic procedures. The effort of Mr.Kannan, Petitioner in person, has to be appreciated and his efforts are only to enhance the quality of advocacy and only persons who have got knowledge in law and procedure which could be tested by an examination, could be allowed to appear before the Court.

4. Apart from the High Courts, experience before the trial Court is very much necessary for the Advocates to know about the procedures followed, since most of the cases started from the lower Courts only and reach the High Courts at a later point of time. Only when the Advocates are well experienced in drafting, conducting trials, appreciating the evidence, would be in a better position to appear before the High Courts. There the Bar Council has to take steps to prescribe at least 3 years experience in the trial Courts to qualify the Advocates to appear before the High Court and 5 years of experience in the High Courts for appearing before the Supreme Court or otherwise, the procedures at no point of time would be learned by the Advocates. There is a misconception amongst some of the young Advocates that practice in High Court and Supreme Court would give status and money without gaining any experience from the trial Court. The trial Court experience cannot be obtained anywhere from the Constitutional Courts. In the trial Court only, they could be exposed to the application of provisions of Civil Procedure Code, Criminal Procedure Code, Law of Evidence and witnesses, especially, the art of cross-examination and deciding about the admissibility of documents. Therefore the Bar Council should also consider this issue also.

5. This Court has got power under Article 225 and 226 of the Constitution of India, apart from Section 34 of the Advocates Act to frame such Rules, like, the Supreme Court Rules, 2013. Only those who are qualified in the examination to be conducted by the High Court as per the proposed new Rules, the Supreme Court Rules, 2013, the Advocates with sound knowledge in law would be made as Advocate on Record. This exercise will enable the Court to get good assistance from the Advocates on Record and it is necessary to use the judicial time qualitatively. Prescribing such Rules is not to get away any individual Advocate or section of Advocates from the High Court. It is only to test the knowledge of the Advocates who would be in a better position to adjudicate the matters effectively. Any Advocate who has got sound knowledge in law and in current position of law and the latest judgments could easily crack the said test.

respondent and Mrs.J.Anandhavalli, learned Counsel takes notice for the fourth respondent.

7. Post the matter on 10.04.2019 in the motion list itself.

sd/-
27/03/2019

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE REGISTRAR GENERAL,
HIGH COURT OF MADRAS
HIGH COURT OF MADRAS,
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- 2 THE REGISTRAR (JUDICIAL)
MADURAI BENCH OF MADRAS HIGH COURT,
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सत्यमेव जयते

ORDER
IN

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Date :27/03/2019

MSI/PN/SAR 3/01.04.2019/4P-5C

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