

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

WP (C) No. 959/2025,

Reserved on: 22.08.2025
Pronounced on: 01.09.2025

John Mohammad Wani

...Petitioner(s)..

Through:- Mr Syed Faisal Qadri, Sr. Advocate with
Ms Mariya Ashraf, Advocate

v.

Bar Council of Jammu and Kashmir
th. Registrar General and another

Through:- Mr Shah Aamir, Advocate

**CORAM: HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE
HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE**

JUDGMENT

Moksha, J

1. By the instant petition, the petitioner has challenged order dated 5th August, 2024, hereinafter for short as impugned order, issued by the respondent no. 1, while exercising the powers of the State Bar Council under Section 58 of the Advocates Act, 1961, read with the notification bearing No. 1677 of 2024 RG/LP dated 5th August, 2024, whereby the provisional (Advocate) license of the petitioner bearing No. JK 664/2019 dated 31.12.2019 has been cancelled.
2. The grievance projected by the petitioner is that the provisional license to practice law granted in favour of the petitioner in the year 2019, after having qualified integrated course of law from the Central University of Kashmir in terms of provisional degree dated 14.10.2019, has been cancelled by the respondent no. 1 in terms of the impugned order read with impugned notification in violation of the rules governing the field.

3. It is stated that the petitioner had been enrolled as an Advocate on 31.12.2019 in terms of notification dated 10.01.2020. The said provisional license of the petitioner came to be extended from time to time; the last one having been granted in terms of notification dated 27.03.2023, as the lifespan of the said license was one year and was subject to renewal. Therefore, the petitioner is stated to have been on the rolls of the State Bar Council as a practicing Advocate w.e.f. 31.12.2019 till 31.03.2024.
4. The provisional license of the petitioner was subsequently required to be converted into permanent one on the production of the degree certificate in its absolute form. The petitioner was awarded the degree in its absolute form on 21.09.2022, he accordingly submitted the same along with an application before respondent no. 1 to convert the provisional license of the petitioner into permanent one, however, no steps were taken by respondent no. 1 in processing the case of the petitioner for issuance of Permanent/Absolute License.
5. Subsequently, the petitioner applied for the post of Prosecuting officer and got selected also on 19.10.2022. Thereafter, the petitioner assumed the office of Prosecuting Officer on 31.03.2023 after having been appointed as vide appointment order dated 27.03.2023.
6. The respondent no. 1 despite knowledge of the appointment of petitioner, initiated action against the petitioner in terms of Rule 49 of the Bar Council Rules and accordingly issued the impugned order and notification. Aggrieved of such an action, the petitioner

challenges the same inter alia on the grounds that the impugned order is without jurisdiction as the respondent no. 1 could not have acted as a Bar Council of the Union Territory of Jammu & Kashmir; no opinion from the Bar Council of India has been obtained by the respondent no. 1 which is a prerequisite for initiating action against an advocate; the respondent no. 1 has invoked the power of refusal as envisaged in terms of Section 26 of the Advocates Act of 1961 which applies to a candidate seeking enrollment while as the petitioner in the instant case had been enrolled as an advocate w.e.f. 31.12.2019, therefore, the action undertaken is bad in law on that count also; the respondent no. 1 did not take recourse to Section 35 of the Advocates Act to inform the State Bar Council that the appointment of the petitioner is a misconduct; even if the respondent no. 1 had taken recourse to Section 35 of the Advocates Act, yet it was obligatory upon him to refer the case of the petitioner to the disciplinary committee constituted for the purpose; the appointment of the petitioner does not bar him from remaining enrolled with the State Bar Council; the action undertaken by the respondent no. 1 has prejudiced the petitioner inasmuch as the petitioner would lose practice undertaken by him for the period i.e. 31.12.2019 till 27.03.2023 while he was on provisional license and the said experience would not be counted for any future employment; the principles of natural justice were not followed in the case.

7. Upon notice, the respondent No. 1 appeared and filed his reply stating *inter alia* therein that no fundamental, statutory or legal right of the petitioner has been violated to give him cause to file the writ petition; the petitioner has suppressed and concealed material fact of him having joined the government service as well as the fact that he was granted provisional enrollment temporarily for a period of one year that has expired on 31.03.2024; the disputed questions of act have been raised which cannot be gone into by this court in its writ jurisdiction; the impugned order and notification do not suffer from any legal infirmity at all; the impugned order and notification have been issued by the competent authority with complete authority and jurisdiction having regard to the rules and law governing the subject. The respondent has additionally stated in the reply that the petitioner had submitted an application for issuance of Absolute License along with original verification report dated 02.03.2023 which was furnished by the concerned University in respect of petitioner's LLB degree, however, the said verification was found against the rules because verification of the certificates of the candidates is confidential and secret and such documents are dispatched only to the concerned department under Confidential Cover.
8. It is also stated that in terms of Notification No. 593 of 2023/RG/LP dated 27.03.2023, the provisional license of the petitioner was extended upto 31.03.2024, in the meantime on 28.03.2023, the petitioner had taken back his original LL.B degree to do the legal

formalities in the J&K Public Service Commission. It is also stated in the reply that the petitioner was addressed a communication bearing No. 22881/RG/LP dated 20.06.2024, asking him to intimate as to whether he was appointed in government service and if so, a copy of appointment order and date of joining the government service, in response whereof the petitioner submitted reply/application on 25.06.2024 along with copy of appointment order issued vide Govt. Order No. 154-Home of 2023 dated 27.03.2023 besides requesting for issuance of Absolute License. It is further stated by the respondent that the said act of the petitioner has been found to be violative of Rule 49 of the Bar Council of India Rules as the petitioner ceased to be an advocate on his joining the government service and has voluntarily suspended from legal practice as an advocate. It is further stated in the reply that the matter was placed before the Hon'ble Enrollment Committee, which upon consideration, recommended that:

- a. "i) the application of the applicant for grant of Absolute License is devoid of merit and may be rejected and the applicant may be informed accordingly;
- b. ii) Provisional license bearing Enrolment No. JK-664/2019 dated 31.12.2019, which has already been expired on 31.03.2024, of the applicant may be treated as cancelled as he has been appointed in government service as Prosecuting Officer and necessary notification may also be issued in this behalf."

9. The said recommendations are stated to have been accepted and approved by the competent authority and accordingly the provisional license of the petitioner was cancelled in terms of the impugned order and notification.
10. We have heard learned counsel for the parties and considered the submissions made.
11. Learned senior counsel for the petitioner Mr Faisal Qadri, submitted that the impugned order and notification have been issued in complete disregard to the procedure laid down in the Advocates Act. It is also submitted that the respondent no. 1 has issued the impugned order and notification in haste as he has assumed unto himself all the powers while issuing the same. The learned senior counsel also submitted that the provision of law pressed into service by the respondent no. 1 while issuing the impugned order and notification is not applicable to the petitioner, therefore, the impugned order and notification being an outcome of the exercise undertaken in disregard of the mandate of law cannot withstand its scrutiny.
12. *Per contra* Mr Shah Aamir, learned counsel for the respondents, has submitted that the respondent has followed the procedure and the rules governing the subject while issuing the impugned order and notification. He has further submitted that the petitioner is guilty of misrepresentation and concealment of facts, therefore, court cannot come to his rescue.
13. The impugned order and notification, in the first instance are desired to be deduced herein, thus:

“Order No. 1202 of 2024/RG/LP dated 05/08/2019

1. Whereas, on 27.11.2019, the applicant has submitted an application for grant of Provisional License as an Advocate on the roll of Bar Council of Jammu & Kashmir.
2. Whereas, vide High Court Notification No. 1063 dated 10.01.2020 he was admitted and enrolled as an Advocate on the roll of Jammu and Kashmir Bar Council under S.No. JK-664/2019 dated 31.12.2019, provisionally for a period of one year from the date of issuance of the Notification subject to the verification of his provisional LL.B. Degree Certificate from concerned University and verification of his character and antecedents from C.I.D. It was specifically provided therein that the renewal/extension of Provisional License/enrolment must be sought before the date of expiry unless the absolute/final enrollment as an Advocate is ordered there before.
3. Whereas, on 18.01.2021, the applicant has submitted an application for extension of this Provisional License that has been expired on 10.01.2021 stating therein that he has not obtained LL.B. Degree Certificate from the University till date.
4. Whereas, vide High Court Notification No. 1617 of 2021/RG dated 18.12.2021 his Provisional License was extended up to 31.12.2022.
5. Whereas, on 31.12.2021, the applicant has submitted an application for release of all the original documents on the pretext that he has not received his LL. B Degree from the concerned University.
6. Whereas, on 15.09.2022, the applicant has submitted another application for release of his all original certificates/documents for the reason that he has qualified the Prosecuting Officer Mains Examination result of which was declared on 14.09.2022 and documents were immediately required by him for future course of action, which were returned to him on the same date at this request.
7. Whereas, on 12.10.2022, he has submitted another application, wherein he has stated that he has obtained LL.B. Degree and requested for issuance of Absolute/Final License.
8. Whereas, vide Notification No. PSC/Exam/2022/32 dated 19.10.2022 issued by J&K Public Service Commission Srinagar, he was selected as Prosecuting Officer (G) as per the Declaration of the Result of J&K Prosecuting Officer (G) Examination 2021-Deployment of candidates for Medical Examination thereof.

9. Whereas, on his request this registry has issued a reminder to the Central University, Ganderbal Srinagar for verification of his LL.B. Degree vide No. 6780/RG/LP dated 27.02.2023.
10. Whereas, on 28.03.2023 the applicant has taken back his original LL.B. Degree to do the legal formalities in the Public Service Commission, Srinagar.
11. Whereas, vide High Court Notification No. 593 of 2023/RG/LP dated 27.03.2023 his provisional License was extended up to 31.03.2024 as verification of his LL.B. Degree was not received from the concerned University at that point of time.
12. Whereas, on 13.03.2023, the applicant has submitted another application for issuance of Absolute License along with original verification report dated 02.03.2023 of his LL.B. Degree issued by the concerned University which is against the rules, for verification of the certificates of the candidates are confidential and secret documents and are dispatched to the concerned department only under confidential cover.
13. Whereas, vide Government Order No. 154-Home of 2023 dated 27.03.2023, he was appointed as Prosecuting Officer (G) under direct recruitment quota in J&K Prosecuting Service in Government Service.
14. Whereas, vide this registry communication No. 22881/RG/LP dated 20.06.2024, the applicant was asked to intimate this office as to whether he has been appointed in Government Service and if so, he shall submit copy of order of appointment and date of joining in Government Service.
15. Whereas, in response to this office communication dated 20.06.2024 the applicant has submitted an application/reply on 25.06.2024 along with the copy of his appointment order issued vide Government Order No. 154-Home of 2023 dated 27.03.2023, wherein he has declared that he has joined the said Government Service on 31.03.2023 as Prosecuting Officer(G) in violation of Rule 49 of the Bar Council of India Rules, as he ceases to be an advocate of his joining Government Service and has voluntary suspended from Legal Practice as an Advocate.

Rule 49 of Chapter II, Part VI, and Rule 5(1) of Chapter III Part VI of the Bar Council of India Rules, provided as under:

“Rule 49. An advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practice, and shall,

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

“Rule 5(1). An advocate who voluntarily suspends his practice for any reason whatsoever, shall intimate by registered post to the State Bar Council on the rolls of which his name is entered, of such suspension together with his certificate of enrolment in original.”

16. Whereas, the application dated 25.06.2024 of the applicant for grant of Absolute License was placed before Hon’ble the Chief Justice and His Lordship on 04.07.2024 desired that the matter be placed before the Hon’ble Enrolment Committee.
17. Whereas, as per the direction of the Competent Authority the matter was placed before the Hon’ble Enrolment Committee on 06.07.2024.
18. Whereas, on 16.07.2024, the Hon’ble Enrolment Committee, after thorough consideration of the matter under rules, has been pleased to recommend that :-

- I. ***“The application of the applicant for grant of Absolute License is devoid of merit and may be rejected and the applicant may be informed accordingly.***
- II. ***Provisional License bearing Enrolment No. JK-664/2019 dated 31.12.2019 which has already been expired on 31.03.2024 of the applicant may be treated as cancelled as he has been appointed in Government Service as Prosecuting Officer and necessary notification may also be issued in this behalf.”***

19. Whereas, the Competent Authority has been pleased to accord the approval to the recommendation of the Hon’ble Enrolment Committee dated 16.07.2024.

Now, therefore in compliance to the recommendation of the Hon’ble Enrolment Committee and the approval accorded by the Competent Authority to the recommendation of the Hon’ble Enrolment Committee, the applications dated 13.03.2023 & 25.06.2024 of the applicant for grant of

Absolute License has been considered and found devoid of merit, hence rejected and Provisional License bearing Enrolment No. JK-664/2019 dated 31.12.2019 of the applicant is hereby treated as cancelled which has already been expired on 31.03.2024 and the applicant has joined the Government Service as Prosecuting Officer (G) on 31.03.2023, pursuant to this appointment vide Government Order No. 154-Home of 2023 dated 27.03.2023.”

Notification No. 1677 of 2024 RG/LP dated 05.08.2024

“It is hereby notified for general information that Shri John Mohammad Wani S/O Sh. Mohammad Yaseen Wani R/O Herman, Wani Mohalla Shopian, who was admitted and enrolled as an Advocate provisionally under Enrolment No. JK-664/2019 dated 31.12.2019 by the High Court of Jammu & Kashmir and Ladakh vide Notification No. 1063 dated 10.01.2020 for a period of one year and simultaneously the same was extended up to 31.03.2024 vide Notification No. 593 of 2023 RG/LP dated 27.03.2023 that has been expired on 31.03.2024 therefore, the same shall be treated as cancelled as he has joined the Government Service as Prosecuting Officer (G) on 31.03.2023 pursuant to the appointment order vide Government order No. 154-Home of 2023 dated 27.03.2023.”

14. Admittedly, the petitioner has been enrolled as an advocate on provisional basis in the year 2019, continued to be on the rolls till the time the impugned order and notification came to be issued. It is not the disputed eligibility of the petitioner, to have an absolute license to practice law that has formed basis for cancellation of his provisional license but an alleged non-communication of his appointment in government service that has prompted the respondent no. 1 to issue the impugned order and notification.
15. The perusal of the impugned order and notification would reveal that the provisional license of the petitioner has been extended from time to time and that he has been in constant touch with the respondent

no. 1, so much so that an application dated 15.09.2022, was submitted by him seeking release of his all original certificates/documents for the reason that he has qualified the Prosecuting Officer Mains Examination result of which was declared on 14.09.2022. It further appears from the perusal of the impugned order that on 12.10.2022, the petitioner has submitted another application stating therein that he has obtained LL.B. Degree and requested for issuance of Absolute/Final License in his favour. Subsequently, the petitioner, vide Notification No. PSC/Exam/2022/32 dated 19.10.2022, issued by J&K Public Service Commission Srinagar, came to be selected as Prosecuting Officer (G).

16. The impugned order, thus, would itself make it clear that petitioner has, all along been, pursuing his cause of obtaining the Absolute/Final License having submitted his application in this behalf on 12th October, 2022 much before the date of selection of the petitioner as Prosecuting Officer. The petitioner, thereafter, is shown to have been appointed in terms of Government Order No. 154-Home of 2023 dated 27.03.2023. The application of the petitioner for issuance of Absolute/Final License, was, therefore, lying with the respondent no. 1 for a period of at-least five months, without any progress. Since the petitioner had submitted an application for issuance of Absolute/Final License before the date of his selection and appointment, the reasonable prognosis was that the petitioner should get his Absolute/Final license. In this case the issuance of the

Absolute/Final License has been delayed by the respondent no. 1, as such petitioner cannot be held accountable/ responsible for it.

17. No doubt the petitioner was under an obligation to inform respondent no. 1 about his appointment in the Government Service, but since the learned senior counsel has submitted that the petitioner was under a reasonable belief that his application might have been decided by the time the appointment order was issued on account of fact that the application of the petitioner for issuance of Absolute/Final License remained pending with respondent no. 1, for over a period of five months without any significant progress, the same cannot be read against him to initiate an action as harsh as the impugned order and notification.
18. In the scenario as taken note of in the preceding paragraphs, the controversy is only related to non-issuance of Absolute/Final License in favour of the petitioner for over a period of five months from the petitioner's perspective and from the other side it is about non-communication of the factum of petitioner's appointment in Government Service.
19. The Rule 49 and 5 (1) which have been taken recourse of do not require to be quoted afresh separately as the same have been extracted in the impugned order which has been reproduced in verbatim. The said rule, on the face of it, envisages only that a salaried person should not practice as a full-time Advocate and in order to achieve such objective, as rightly pointed out by the learned senior counsel for the petitioner; the respondent no. 1 could have

treated the petitioner to have lost his right of practice from the date of his appointment i.e. 27.03.2023.

20. We have given our thoughtful consideration to the submissions made by the learned appearing counsel for the parties and we feel that the impugned order and notification issued by respondent no. 1 are unreasonable to say the least in view of the rule position on the subject coupled with the fact that the application of the petitioner for issuance of Absolute/Permanent License was pending with the respondent no. 1 for over a period of five months before the petitioner came to be selected and appointed in the Government Service and for which no explanation has been tendered.
21. For the foregoing reasons, the writ petition is allowed, the impugned order dated 05.08.2024 read with notification no. 1677 of 2024 RG/LP dated 05.08.2024, issued by respondent no. 1, cancelling the provisional license of the petitioner, are quashed. The respondent no. 1 is directed to treat the petitioner to be on the rolls of the State Bar Council of Union Territory of Jammu and Kashmir from the date of his enrolment dated 31.12.2019 till his date of appointment i.e. 27.03.2023.
22. Disposed of on the above lines.

(MOKSHA KHAJURIA KAZMI)
JUDGE

(JAVED IQBAL WANI)
JUDGE

Srinagar.

01.09.2025

Amjad lone, Secretary

Whether the judgment is speaking :Yes/No

Whether the order is reportable :Yes/No