these as being nearest to B B B. It is significant that the idea of Religion did not appeal to him when he started importing cement from Japan, and at one time he even adopted his own initials though he says that the letter B in A E B represents the name of God. From what I have seen of the defendant's son in the witness-box I have no hesitation in rejecting his evidence.

Having regard to these facts, I must hold that the get-up of the defendant's goods is a colourable imitation of the plaintiffs' goods and that the plaintiffs are entitled to succeed.

[The judgment discussed matters not material to this report, and concluded :] In the result there will be a decree in favour of the plaintiffs restraining the defendant and his agents and servants from importing and selling cement in bags with the mark " R R R " or any other mark so designed as to be a colourable imitation of the plaintiffs mark.

The other prayers have not been pressed.

The defendant to pay the costs of the suit.

Counterclaim dismissed with costs.

Attorneys for plaintiffs : Messrs. *Little & Co.*

Attorneys for defendant : Messrs. *Ghulamali, Noorani & Co.*

Suit decreed.

B. K. D.

APPELLATE CIVIL.

Before Mr. Justice Rangnekar, Acting Chief Justice, and Mr. Justice Tyabji.

IN RE AN ADVOCATE (APPLICANT).*

1936
July 10

Disciplinary jurisdiction—Pleader—Conviction for criminal breach of trust—Professional misconduct—Pleader struck off the Roll—Power of High Court to reinstate on the Roll and to readmit to the office of a pleader—Conditions of reinstatement.

The High Court, in the exercise of its power of general superintendence over the members of the legal profession practising in that Court as well as in Courts

*Civil Application No. 544 of 1936.

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subordinate to it, has jurisdiction to reinstate on its Roll a pleader even though the Court has struck him off the Roll for professional misconduct.

King v. *Greenwood*,[1] and *In re Pyke*,[2] followed.

In reinstating and readmitting a practitioner, who has been struck off the Roll, the principle which should guide the High Court is whether the sentence of expulsion has had the salutary effect of awakening in the practitioner a higher sense of honour and duty, and whether, during the period between his expulsion and the date of the application for reinstatement his conduct has been such as to satisfy the Court that he might be safely entrusted with the affairs of his clients and readmitted to an honourable profession without that profession suffering degradation.

APPLICATION praying that the order of the High Court for cancellation of applicant's sanad as a pleader may be set aside and that he may be reinstated to the Roll of pleaders.

Disciplinary jurisdiction.

The applicant was a B.A., LL.B., of the Bombay University and was enrolled as a High Court pleader under a sanad issued to him by the High Court on January 31, 1917, and commenced practising in the High Court as well as in Courts subordinate to it.

In 1922 the applicant succumbed to the lure of the stock exchange and on account of sudden crisis in the local stock exchange in 1922–23 he incurred heavy losses. Ultimately in 1925 the applicant found it necessary to apply for being adjudged an insolvent. The applicant continued to practise without applying for permission to the High Court and therefore an action under its disciplinary jurisdiction was taken and the High Court by its order dated April 4, 1928, suspended the applicant's sanad for such period as he may remain an undischarged insolvent.

In September 1927 while his application in the insolvency Court was still pending the applicant misappropriated a sum of Rs. 100 entrusted to him by one of his clients, in consequence of which he was prosecuted for an offence under section 409 of the Indian Penal Code and convicted and sentenced to pay a fine of Rs. 100 and to suffer rigorous

[1] (1760) 1 Black W. 222.

[2] (1845) 1 N. P. C. 330.

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imprisonment for two months. On appeal the conviction was confirmed but the sentence of imprisonment was reduced to a period of two days during which he had been in jail.

On December 9, 1929, the High Court under its disciplinary jurisdiction ordered that the applicant's name be removed from the list of pleaders under section 24 and section 25 (*a*) of Bombay Pleaders' Act, 1920. In May 1934 the applicant obtained his discharge from the insolvency Court on condition of submitting to a decree of Rs. 1,500 in favour of the Official Assignee.

In June 1936 the applicant applied to the High Court to set aside the order for cancellation of his sanad as a pleader and for his reinstatement on the Roll of pleaders and his readmission to the office of a pleader.

The application was heard.

H. C. Coyajee, and *M. G. Dave* with *W. B. Pradhan,* for the applicant.

B. G. Rao, Assistant Government Pleader, opposing the application.

RANGNEKAR Ag. C. J. This is an application made to us under our general power of superintendence over pleaders. The applicant is a B.A., LL.B., of the Bombay University and was enrolled as a High Court Pleader and was practising as such in this Court as well as in Courts subordinate to it from January, 1917, under a sanad issued to him by this Court. It appears that in 1922 he succumbed to the lure of the Stock Exchange, and that apparently seems to be the beginning of his difficulties. Ultimately in 1925 he found it necessary to apply for being adjudged an insolvent. Pending his application in the Insolvency Court he was permitted to practise, but for some reason or other which is not clear that permission was withdrawn. In May, 1934, he obtained his discharge from the Insolvency Court on the condition of his submitting to a decree for Rs. 1,500 in favour of the Official Assignee. Pending his insolvency

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application he misappropriated a sum of Rs. 100 entrusted to him by one of his clients, in consequence of which he was prosecuted and convicted and sentenced to pay a fine of Rs. 100 and two months' rigorous imprisonment. On appeal the conviction was confirmed, but the sentence of imprisonment was reduced to the period of two days during which he had been in jail. In December, 1929, on a petition presented by the Government Pleader, the Court ordered him to be struck off the Roll. He now applies that the sentence of expulsion should be set aside and he should be reinstated on the Roll and readmitted to the office of a pleader.

The first question is whether this Court has jurisdiction to reinstate a pleader after he has been struck off the Roll. I entertain no doubt on that question. It is clear from the authorities that the Court has and must have the power to reinstate a pleader even though the Court for professional misconduct had struck him off the Roll. I need only refer to *King* v. *Greenwood*,[1] in which it was held that the striking off the Roll was not to be understood as a perpetual disability, but was sometimes only meant as a punishment, and might be considered in the light of a suspension only, if the Court saw good cause. In *In re Pyke*,[2] Cockburn C. J. observed that both on principle and precedents sentences of exclusion from either branch of the profession need not necessarily be exclusion for ever.

Then the only question is what are the principles which should guide this Court in considering whether a person in the position of the applicant should be reinstated and readmitted to the office which he once held. The authorities to which we have been referred show that the test is whether the sentence of exclusion has had the salutary effect of awakening in the delinquent a higher sense of honour and duty, and whether, during the period between his expulsion

[1] (1760) 1 Black. W. 222.

[2] (1845) 1 N. P. C. 330.

and the date of the application for reinstatement, the applicant's conduct has been such as to satisfy the Court that he might be safely entrusted with the affairs of clients and readmitted to an honourable profession without that profession suffering degradation: per Cockburn C. J. in *In re Pyke*. What the Court has to see is whether the applicant has, since he was expelled, honestly endeavoured to rehabilitate his character so that, if restored to the bar, he will be upright and honest in his dealings.

It remains, therefore, to be considered whether the applicant has put before us sufficient evidence to satisfy our conscience that he has fulfilled the test to which I have referred. On that point we entertain no doubt. The evidence, which has not been impugned by the Government Pleader, who after stating some facts left the matter entirely to us, clearly furnishes cogent proof that the applicant has not only sufficiently atoned for the offence which he had committed, but that his conduct during this period during which he was prevented from carrying on his ordinary profession has been such as to inspire confidence in this Court that should he be readmitted the profession as a whole will not be degraded. This evidence consists of three affidavits made by persons in whose employment he was from time to time after the sentence was inflicted on him. These affidavits show not only that he discharged the duties which he had undertaken to the satisfaction of his employers, who seem to be respectable men, and that he attended to their legal affairs to their satisfaction, but that although he was entrusted with large sums of moneys he scrupulously accounted for the same to their satisfaction. Then there is further evidence as regards the character and conduct of the applicant which in my opinion is entitled to much greater weight, and this consists of a statement signed by numerous members of the bar, with whom he must come in contact if his application is accepted. Among the signatories there are some who are the leaders of

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the bar to which the applicant belonged, and some of whom have also held responsible judicial offices under Government. According to these gentlemen "the applicant has done his utmost to make amends for his previous misconduct and conducted himself honourably during the period of six years". Then they say that if this Court in the exercise of its powers of general superintendence is pleased to readmit him to the roll of pleaders, they are satisfied that he would justify the clemency shown to him and act with integrity and honour. Then there is an affidavit of the very client whose money the applicant had embezzled, and it shows that the amount which as I have stated was Rs. 100 has been made good to him and he has now no complaint against him. When the sentence of expulsion was passed the Chief Justice in his judgment observed as follows :—

> "His counsel is naturally unable to challenge the conviction which has been affirmed by this Court. But he has pleaded that his client ought to be treated with leniency having regard to the apology that he makes, and his promises for future good conduct, and to the fact that he is a pleader of some eleven years' standing with originally a creditable and even a brilliant academic record."

These remarks as regards the antecedents of the applicant seem to be borne out by the materials before us. In these circumstances, I think, we should accept the application, set aside the sentence passed upon him and order that he should be readmitted to the roll of pleaders.

The applicant will have to pay the costs of the Government Pleader.

TYABJI J. I agree. The cases have been collected in *In re Abiruddin Ahmed*[1]; and the principle derived is that the Court will grant a petition by a practitioner who has been struck off the roll, and re-admit him, on being satisfied that the sentence of expulsion has had the salutary effect of awakening in the petitioner a higher sense of honour and

[1] (1910) 38 Cal. 309.

duty than he evinced when disciplinary action became necessary ; and that in the interval his conduct has been such that notwithstanding his prior delinquency he might be safely entrusted with the affairs of clients and received once again as a member of an honourable profession without detriment to the profession or the disparagement of the colleagues with whom he must work and without impairing the dignity of the Courts.

To ensure adequate atonement and amelioration the Courts require sufficient time to elapse before re-admission. In the earliest case referred to in *In re Abiruddin Ahmed*[a] the comparatively short period of two years was deemed sufficient ; in two cases three years ; but in the majority of cases the lapse of five, seven and ten and even twelve years was insisted upon. The period must naturally depend upon the nature of the offence and the evidence regarding the petitioner's conduct and activities after his name was struck off the roll. The petitioner before us has reimbursed and otherwise made reparation to the client who suffered loss by the petitioner s misconduct. The injured party has made an affidavit evidencing that he is entirely propitiated by the amends he has received. The petitioner has in the meantime stood the test of working in capacities where considerable trust had to be reposed in him and in which susceptibility to temptation would be put to the proof. He also acted with honour in the exacting and elevating profession of a teacher. The materials before us are sufficient to show that the petitioner has for an adequate period acted in such a manner as will permit the Court to exercise its discretion of allowing him a chance of redeeming his character. I, therefore, agree in the order proposed.

Petition granted.

J. G. R.

[a] (1910) 38 Cal. 309.