
(2000) 11 AHC CK 0025
In the Allahabad High Court
Case No : C.M.W.P. No. 41472 of 2000

Brajesh Kumar Singh

APPELLANT

Vs

State of U.P. and another

RESPONDENT

Date of Decision : 16-11-2000

Acts Referred:

Constitution of India, 1950 — Article 32

Citation : (2001) 1 AWC 305 : (2001) 1 UPLBEC 20

Hon'ble Judges : G.P. Mathur, J; Bhagwan Din, J

Bench : Division Bench

Advocate : Janardan Sahay and K.N. Rai, for the Appellant; Vinod Swarup, Addl. A.G., for the Respondent

Judgement

G. P. Mathur, J.—The petitioner seeks quashing of the order dated 26.8.2000 passed by the State Government whereby he has been disengaged from the post of District Government Counsel (Civil). Ballia.

2. The case of the petitioner, in brief, is that he was initially appointed as District Government Counsel (Civil), Ballia (hereinafter referred to as D.G.C.), on 15.3.1983 for a period of one year. On account of his satisfactory performance, his appointment was extended for a period of three years by the order dated 7.6.1984. After the expiry of the term on 1.4.1987, a panel of names was sent by the District Magistrate in consultation with the District Judge, Ballia, in which the name of the petitioner was on the top. The Government did not act upon the recommendation of the District Magistrate, and three panels were sent in the period 1987 to 1989 and finally the Government acted on the 4th panel and appointed the petitioner as D.G.C. for one year on 1.9.1989. Before the expiry of the term of the petitioner, the State Government issued a general Notification on 6.2.1990 whereby, all the State counsel working on civil, criminal and revenue side were disengaged. This order of the State Government was challenged by an association of D.G.C. as well as by several other D.G.C. in the High Court by filing writ petitions, which were dismissed by a Division Bench on 30.4.1990 and

the Judgment is in Triloki Nath Pandey Vs. State of U.P. and others, . Against the said judgment. Special Leave Petitions were preferred in the Supreme Court and some writ petitions were directly filed under Article 32 of the Constitution. The Supreme Court passed an interim order staying the Judgment of the High Court and finally allowed the appeal and set aside the order of the State Government dated 6.2.1990. The judgment of the Supreme Court is in Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, . The petitioner, therefore, continued to function as D.G.C. even after completion of one year when the term of his appointment came to an end on 29.9.1990. The District Magistrate in consultation with District Judge, Ballia, recommended the name of the petitioner for extension of his term for a period of three years but the Government took no action, However, the District Magistrate, Ballia, passed an order on 16.3.1991 that such State counsel whose term had not been extended, shall not be allowed to function and their term shall be deemed to have come to an end. The petitioner then filed Civil Misc. Writ Petition No. 9319 of 1991 in the High Court challenging the aforesaid order dated 16.3.1991 of the District Magistrate. Ballia, in which the petitioner was directed to file a supplementary affidavit on 5.4.1991 and no interim order was passed in his favour. However, in the meantime, the State Government issued an order dated 14.5.1991 directing that in view of the stay order passed on 7.5.1991 by the Supreme Court, all State counsel shall be allowed to continue. Thereafter, the District Magistrate. Ballia, passed another order on 3.6.1991 specifically stating that the position as it stood prior to 28.2.1990 shall be restored and the petitioner shall continue to function as D.G.C. Shortly thereafter, the State Government filed counter-affidavit in Civil Misc. Writ Petition No. 9319 of 1991 on 5.9.1991 wherein, it was specifically stated that so far the petitioner had not been disengaged by the State Government and he shall continue to work till the renewal of his term is refused in terms of procedure prescribed in para 7.06 of L.R. Manual. The case of the petitioner further is that as the District Magistrate had himself passed an order on 3.6.1991 to the effect that the petitioner shall continue to function as D.G.C., the Writ Petition No. 9319 of 1991 filed by him had become infructuous and, therefore, he did not pursue the same and it was dismissed in default on 1.12.1997. Thereafter, the petitioner continued to work as D.G.C. without any interference and the recommendations of District Magistrate and District Judge, Ballia, for renewal of his term were sent to the State Government from time to time. The copies of the letters sent by the District Magistrate to the petitioner to submit details of his work in Form-9 for being forwarded to the State Government have been filed as Annexures-13, 14 and 15 to the writ petition. The State Government thereafter passed the impugned order dated 26.8.2000 disengaging the petitioner from the post of D.G.C. (Civil) Ballia, and a copy of the same was thereafter sent to him along with the covering letter dated 7.9.2000 of the District Magistrate. Ballia.

3. We have heard Sri Janardan Sahai for the petitioner and Sri Vinod Swamp, Additional Advocate General for the respondents. We have also summoned the

record of Civil Misc. Writ Petition No. 9319 of 1991. Since we are disposing of the writ petition on the basis of admitted facts and the material contained on record regarding which there is no dispute and in order to avoid delay, we did not consider it necessary to grant time for the purposes of filing counter-affidavit.

4. The impugned order of the State Government has been passed by Sri A. K. Srivastava, Special Secretary and Additional Legal Remembrancer, U. P. Government and it recites that after the expiry of the term of the petitioner on 29.9.1990, the petitioner is continuing as DGC on the strength of a stay order passed by the High Court. It further recites that now it has been brought to the notice of the State Government that Civil Misc. Writ Petition No. 9319 of 1991, Brajesh Kumar Singh v. State of U. P., had been dismissed on 1.12.1997 and consequent upon the dismissal of the writ petition, the stay order has ceased to exist, Brajesh Kumar Singh has been functioning by concealing the material fact that his writ petition had been dismissed and, therefore, the Governor had taken a decision to disengage him from the post of D.G.C. (Civil). The order also directs the District Magistrate to submit his proposal/panel for making appointment on the post of D.G.C. (Civil) in accordance with para 7.03 of Legal Remembrancer's Manual.

5. The facts mentioned in the order of the Special Secretary and Additional L.R. dated 26.8.2000 do not appear to be correct- As mentioned earlier, the petitioner was appointed for a period of one year on 1.9.1990 which term would have come to an end on 1.9.1991. However, before his term could come to an end. the State Government issued a general notification dated 6.2.1990 disengaging all State counsel throughout the State of U. P. The said order of the State Government was set-aside by the Supreme Court on 20.9.1990 in *Km. Shrilekha Vidyarthi (supra)*, and the status quo ante as on 28.2.1990 was restored, The petitioner thereafter continued to function as D.G.C, and it was on 16.3.1991 that the District Magistrate passed an order directing that such State counsel whose terms had not been renewed shall not be allowed to function. This order was challenged by the petitioner by filing Civil Misc. Writ Petition No. 9319 of 1991. Record of the said writ petition shows that at the time of admission/hearing, an order was passed by the Division Bench of this Court on 5.4.1991 directing the petitioner to file documents to show that he continued after September. 1990. Neither the writ petition was admitted nor any interim order was passed in favour of the petitioner. Shortly thereafter the District Magistrate, Ballia, passed another order on 3.6.1991 stating that as the petitioner was working as D.G.C. on 28.2.1990 and therefore, restoring the said position, he will continue to function on the said post. The petitioner had filed Writ Petition No. 9319 of 1991 challenging the order dated 16.3.1991 of the District Magistrate by which it was directed that petitioner shall no longer work as D.G.C. but in view of the subsequent order dated 3.6.1991 passed in his favour, the writ petition filed by him had become infructuous and there was no necessity for him to pursue the said petition. It is noteworthy that a counter-affidavit sworn by Sri R. P. S. Varma, Under Secretary, Judicial Department, Government of U. P. was filed on

5.9.1991 in the aforesaid writ petition and para 3 thereof, which has a bearing on the controversy in hand, is being reproduced below :

"Contents of paras 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the petition are misleading and misconceived. Renewal proposals of the petitioner under para 7.08 L.R. Manual have not been disposed of finally so far. The petitioner has not been disengaged by the State Government so far. All the allegations to the contrary are wrong. The petitioner shall continue to work till the renewal of his terms is refused in terms of procedure prescribed in para 7.08 of L. R. Manual."

6. The stand taken by the State Government in the counter-affidavit clearly shows that the petitioner had not been disengaged by the State Government till then and that he was to continue to work till the renewal of his terms was refused in terms of procedure prescribed in para 7.08 of L. R. Manual. In view of the aforesaid stand of the State Government and also the subsequent order of the District Magistrate dated 3.6.1991, the petitioner was fully justified in not pursuing his writ petition. It is also clear that the State Government had taken no decision to disengage him and he was entitled to work till the renewal of his term was refused. The reasons given for passing the impugned order dated 26.8.2000 for disengaging the petitioner is that after his term had expired on 29.9.1990, he was continuing on the strength of the stay order passed in Writ Petition No. 9319 of 1991 and as the said writ petition had been dismissed on 1.12.1997, the stay order had ceased to exist and the petitioner had been working concealing the aforesaid fact. To say the least, the facts and reasons mentioned in the impugned order are absolutely incorrect. The impugned order having been passed on non-existent facts it is liable to be set-aside by this Court.

7. In this connection, it will be pertinent to note the following observations of the Apex Court made while considering the case of refusal to renew the appointment of a D.G.C. who was governed by the same provisions of L. R. Manual, in *State of U.P. Vs. Ramesh Chandra Sharma and others*, , in para 6 of the report :

The High Court has granted relief to respondent Nos. 1, 2 and 3 on the ground that the action was arbitrary. It cannot be disputed after the decision in *Kumari Shrelekha Vidyarthi and Others Vs. State of U.P. and Others*, , and those following it that the State action of refusing renewal can be quashed if it is arbitrary. The only question, therefore, is whether it is so as found by the High Court. The High Court has reached the conclusion that the only reasons disclosed by the State Government for refusing to consider the case of these respondents for renewal of their terms were non-existent or extraneous. In substance, the action was supported by the State Government on the ground that there was no recommendation made by the District authorities for making the renewal as required by para 7.08. This is the only ground on which the action was supported by the State Government. However, the High Court found that the report of the District Officer was favourable to these respondents and the District Judge had really recommended renewal of their term. Admittedly, the only ground on which the State Government sought to support its action is found to be non-existent in

the record. This leads to the inescapable conclusion that the action of refusing renewal to respondent Nos. 1, 2 and 3 by order dated 1.10.1992 was arbitrary and on a non-existent ground. This view taken by the High Court cannot, therefore, be faulted."

8. The impugned order of the State Government dated 26.8.2000 being based upon non-existent ground is wholly arbitrary and is, therefore, liable to be quashed by this Court. Before parting with the case, we would like to observe that the record shows that the petitioner was initially appointed as D.G.C. (Civil) on 15.3.1983 and except for a short break, he has been continuously working on the said post. Experience in the profession of law is an important factor. By handling cases on behalf of the State Government for a long period of time, the petitioner must have gained sufficient experience in the nature of work which a person is required to do as a D.G.C. It is true that no specific order of renewal of the term after 29.9.1990 has been passed in favour of the petitioner but the State Government itself allowed him to continue and further came out with a case that he shall continue to work till the renewal of his term is refused in terms of procedure prescribed in para 7.08 of L. R.. Manual. In several decisions of this Court as well as of the Supreme Court in *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, , *Harpal Singh Chauhan v. State of U. P.* 1993 ALJ 1255 and *State of U.P. Vs. Ramesh Chandra Sharma and others*, , the question of appointment and renewal of term of a D.G.C. as prescribed in L. R. Manual have been considered. The law laid down in these cases should be followed by the respondents in the present case as well.

9. For the reasons given above, the writ petition succeeds and is hereby allowed. The impugned order of the State Government dated 26.8.2000 is quashed. It is, however, made clear that it will be open to the State Government to pass a fresh order in accordance with law and in the light of the observations made above.