

(2009) 02 CHH CK 0023
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 59 of 2008

Chandrahas Kashyap and Another

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 28-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 25, 25(1), 25(3)

Citation : (2009) 2 MPJR 101

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Judgement

Satish K. Agnihotri, J.

By this petition, the petitioners seek the following reliefs:

Firstly, a writ/direction not to appoint any one on the post of Assistant Public Prosecutor on contract basis;

Secondly; quash the appointment order to the post of Assistant District Public Prosecution Officer issued by the Collector on contract basis; and

Thirdly; the respondents may be directed to appoint the Assistant Public Prosecutors as per Annexure - P/2 who have been selected by the Chhattisgarh Public Service Commission under CGADPPO Exam-06 with all the consequential benefits.

The indisputable facts, in nutshell, as projected by the petitioners, are that the second respondent - Chhattisgarh Public Service Commission made an advertisement inviting applications for appointment on the post of Assistant District Public Prosecution Officer (for short "the ADPPO") on 27.09.2006 (Annexure - P/1). The post of ADPPO is gazetted class-II. After due selection the results of the examination were declared on 31.08.2007 and the petitioners were placed at S. No. 45 & 59, respectively in the merit list. The petitioners were not appointed on the ground that some of posts were filled up by appointment of

ADPPOs on contract basis by the Collector. It is alleged that contrary to the provisions of Section 25(1) of the Code of Criminal Procedure, 1973 (for short "the Cr. PC") the appointments were made by the Collector. The power of appointment is with the State Government and, as such, the Collector is not competent to appoint any person as ADPPO on contract basis.

Shri Kotecha & Shri Pradhan, learned counsel appearing on behalf of the petitioners would submit that the appointment of ADPPO is governed by the provisions of Cr.P.C. read with the Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966.

Sub-section (1) of Section 25 of the Cr.P.C. provides that "the State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates".

Sub-section (3) of Section 25 of the Cr.P.C. provides that "where no Assistant Public Prosuector is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of the case".

Learned counsel would further submit that the appointment of ADPPO by the Collector may be done only when in a particular case no ADPPO is available, not all the appointments of ADPPOs on contract basis. The exercise of power by the Collector for appointing the ADPPO on contract basis is de hors provisions of law and un-constitutional.

Per contra, Shri Shrivastava, learned panel lawyer appearing for the State/respondent No. 1 and 3, would submit that admittedly the Collectors do not have the authority to appoint the ADPPOs. The present appointments, on contract basis, were done pursuant to the order passed by this Court in Tijau Kanwar & Others Vs. The State of Chhattisgarh (Cr. A. No. 222 of 2005). According to the directions, a scheme was revised and all the vacant posts of ADPPOs were filled through selection process on the contract basis. In all 74 posts of ADPPOs have been filled on contract basis. The Collector is fully competent to appoint the ADPPOs. Learned counsel would further submit that all the 74 posts of ADPPOs are purely on contract basis till the said posts are filled up by regular selection process through second respondent.

I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

This Court in Tijau Kanwar (supra) by order dated 17.04.2006 observed as under:

7. The Law Secretary and the Director (Prosecution) to devise a scheme whereby it is ensured that Assistant Public Prosecutors and Additional Public Prosecutors forward judgments/orders for further action including filing of appeal, revision and other proceeding just after passing of the judgment/order with their comments directly to the Law Department with a copy to the District Magistrate for necessary order/action at his level. The officers of the Law Department after

examining the papers, other relevant judgment/order to direct the Law Officers working in the High Court for further action.

On perusal of the advertisements, it appears that the Collectors have not appointed the ADPPOs pursuant to the order dated 17.04.2006 passed by this Court in Tijau Kan war (supra).

The second respondent issued an advertisement dated 27.09.2006 (Annexure P/1) inviting applications for appointment on the post of ADPPOs. After due selection, a merit list was prepared (Annexure P/2) and some of the candidates were appointed from the said merit list. The petitioners name find place in the merit list at S. Nos. 45 & 59, respectively. The petitioners could not be appointed on account of the fact that 74 posts were filled up by appointment on contract basis. The District Collectors also issued advertisement in the month of December, 2007 for appointment of ADPPOs on contract basis for a period of one year and pursuant to that, the appointment, on contract basis, were made in the month of January/February, 2008 for a period of one year, which has further been extended for a period of six months.

Section 25 of the Cr. P.C. reads as under:

25. Assistant Public Prosecutors :

(1) The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates.

(1 A) The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrate.

(2) Save as otherwise provided in sub-section (3), no police officer shall be eligible to be appointed as an Assistant Public Prosecutor.

(3) Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case:

Provided that a police officer shall not be so appointed :

(a) if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; or

(b) if he is below the rank of inspector.

A bare perusal of the provisions of Section 25 of the Cr. PC, it is clear that the State Government alone is competent to appoint the Assistant Public Prosecutors (for short "the APP") or ADPPOs, however, in a situation wherein no APP is available for the purpose of any particular case the District Magistrate may appoint any other person to be the APP in charge of that case alone. The District Magistrate cannot appoint the ADPPOs, in general, on contract basis. Thus, at this stage, when the contract appointees have already completed the term of

appointment and thereafter for want of regular appointees, their terms has been extended for a period of six months, it is not necessary to adjudicated upon the legality of appointment of ADPPOs by the Collector on contract basis. The contract appointees may continue till regular appointment is made through proper selection by the second respondent - Chhattisgarh Public Service Commission or the term of extension is over, whichever is earlier.

With the aforesaid observations and directions the petition stands disposed of.

Consequently, all the pending applications also stand disposed of.