

(2010) 04 CHH CK 0031
In the Chhattisgarh High Court
Case No : W.A. No. 86 of 2009

Chandrabhas Kashyap and Another

APPELLANT

Vs

The State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 05-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 2, 24, 25, 25(3)

Citation : (2010) 04 CHH CK 0031

Hon'ble Judges : Prashant Kumar Mishra, J; I.M. Quddusi, J

Bench : Full Bench

Judgement

I.M. Quddusi, J.—Heard counsel for the parties at length.

2. This Writ Appeal has been filed against the impugned order dated 28/02/09 passed by learned Single Judge in Writ Petition (S) No. 59/08.

3. It is alleged in the writ appeal that the writ appellants were selected by the Public Service Commission in a selection process conducted in the year 2006 for the post of Assistant District Public Prosecution Officer (ADPPO) vide advertisement dated 21/09/06, issued by the Chhattisgarh Lok Seva Ayog, in which the total number of posts advertised was 32 with a condition that the number of vacancies may vary. Secondly their names were found place in the merit list, but they were not given appointments and the District Magistrates were directed by the State Government to make appointment u/s 25 of the Cr.P.C. on contract basis. Thereafter, the District Magistrate advertised the vacancies for making contractual appointments on 12/14.12.07 for a period of one year. It has been mentioned that the post of ADPPO is a Class-II Gazetted post and is within the purview of the Public Service Commission, therefore in the year 2006, the Public Service Commission, after making selection, made recommendations to the State Government submitting merit list of 105 candidates in respect of all categories, including reserved category candidates.

4. The learned Single Judge has in his judgment and order observed that the

State Government alone is competent to appoint the Assistant Public Prosecutors or ADPPOs. However, in accordance with the above quoted provisions, in a situation where 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 u/s 25 of Cr.P.C. However, the learned Single Judge has directed that the contract appointees may continue till regular appointment is made through proper selection by the Public Service Commission or term of extension of the candidates appointed on contract basis is over, whichever is earlier.

5. Before proceeding further, it is necessary to peruse the provisions of Section 25 of Cr.P.C. which are quoted 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 Magistrates.

(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.

6. A perusal of the above quoted provisions of Section 25(3) Cr.P.C. would show that the District Magistrate has been given powers to appoint a person to be Assistant Public Prosecutor in charge of that case with a condition that where no Assistant Public Prosecutor is available for the purpose of any particular case. The expression of words "any other person" shows that if a person in charge of a particular case is not available, only in that case any other person be appointed to be Public Prosecutor in charge of that case. The Legislature has taken care of writing the words "any other person" and as such there is difference between the phrases "any other person" and "a person". The phrase "any other person" denotes the substitute of a person and as such if any person appointed as Assistant Public Prosecutor to conduct a case is not available, only in that circumstance, the District Magistrate can appoint any other person in his place to act as Assistant Public Prosecutor in charge of that case.

7. Therefore, a plain reading of Section 25 Cr.P.C. shows that the State

Government in every District of the State and the Central Government, are empowered to make appointments of one or more Assistant Public Prosecutors as a whole. The difference in appointment by the State and the Central Government is that the State Government to appoint in each district of the State one or more Assistant Public Prosecutors for conducting the prosecution in the courts of Magistrates, but it is not the obligation of the central Government to appoint one or more public prosecutors in each district and also the central Government may appoint the Assistant Public Prosecutor to conduct any case or class of cases in the Courts of Magistrates. The above power of the State Government cannot be exercised by the District Magistrate under Sub-section (3) of Section 25. Therefore, the District Magistrate can exercise powers which are to be exercised in emergent cases where the Assistant Public Prosecutor to conduct a particular case is not available.

8. It is also pertinent to mention here that "Public Prosecutor" has been defined in 2(u) of the Code of Criminal Procedure, according to which, the "Public Prosecutor" means any person appointed u/s 24, and includes any person acting under the directions of a Public Prosecutor. Therefore, if the Public Prosecutor directs any person to act as Public Prosecutor, the same is valid appointment in view of Section 2(u). Hence, the Public Prosecutor appointed u/s 24 of Cr.P.C., has power to direct any person to act as Public Prosecutor which the District Magistrate does not enjoy u/s 25 of Cr.P.C.

9. In view of the above discussion, we are in full agreement with the view taken by the learned Single Judge that the District Magistrate cannot appoint ADPPOs in general on contract basis u/s 25(3) Cr.P.C. The learned single judge has also directed that the appointments of ADPPOs on contract basis shall continue till regular selection is made or till the end of the period of extension of appointment, whichever is earlier.

10. The service of ADPPOs are essential service as the Courts of Magistrates cannot remain without prosecuting officer, and therefore, the Courts may not remain without a prosecuting officer and it was necessary to give some time to the State Government to make some alternative arrangements and as such the learned single judge specifically directed that the contractual appointments shall continue till the end of the period of extension of these ADPPOs granted after the expiry of the period of their initial appointments, but the State Government has not made any alternative arrangements and their appointments of ADPPOs continued even after expiry of the period of extension of their appointments, which appears to be violative of the directions of the learned single judge and we do not expect this action by the State Government.

11. We have been informed by the learned State Counsel that according to his instructions, the total number of posts of ADPPOs are 193, out of which, only 51 are working and thus there are 142 vacancies, out of which, selection was made by the Public Service Commission against 99 posts by issuing advertisement, but the said selection process is under challenge in W.P(S). No. 6383/2008, in which,

the final arguments have been heard and the judgment has been reserved and the interim order was also granted therein. The statement of the learned Counsel for the Public Service Commission was also recorded in the court proceedings by this Court that "learned Counsel appearing for the Public Service Commission submits that no results shall be declared till the next date of hearing." Any how, since the judgment has been reserved, the State had to make an alternative arrangement complying with the orders passed by the learned single Judge as mentioned above.

12. Learned Counsel for the appellants submits that the State Government has acted upon the selection list of 2006, in which, their names find place by making appointments of Mr. Raj Kumar Mishra, Mr. Slok Shrivastava, Mr. Krishna Kumar Chaturvedi and Miss. Seema Jagdalla on 28.7.2009 and as such once the select list of 2006 was being acted upon in 2009, there was no occasion for the District Magistrate to make appointments on contract basis.

13. Though the above facts could be raised by the writ appellants at the initial stage but the same cannot be considered in the instant writ appeal as those contentions are not available in the writ petition. Therefore, for that purpose, it will be open for the writ appellants to approach the State Government or to take recourse to any further provisions of law, if they are so advised.

14. Learned Counsel for the writ appellants states that the appellants shall approach the State Government by filing representations within a week. If it is so, the State Government shall consider the same in the light of the observation made above, as early as possible, within a period of one month from the date of moving such representations.

15. The writ appeal stands disposed of with the above direction.

16. No order as to costs.