
(2016) 04 J&K CK 0047

In the Jammu And Kashmir High Court

Case No : WPIL No. 9 of 2016 and MP No. 1 of 2016

Meenakshi Salathia

APPELLANT

Vs

State of J&K

RESPONDENT

Date of Decision : 28-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 JKJ 261

Hon'ble Judges : Mr. N. Paul Vasanthakumar, CJ. and Mr. Dhiraj Singh Thakur, J.

Bench : Division Bench

Advocate : Mr. D.C. Raina, Advocate General With Mr. M.A. Bhat, Advocate, for the Respondent; Mr. B.S. Salathia, Sr. Advocate With Mr. Bhanu Singh Salathia, Advocates, for the Petitioner

Final Decision : Disposed off

Judgement

N. Paul Vasanthakumar, C J. - This writ petition is filed by the petitioner, who is an advocate practising in this Court and has been espousing

the cause of public at large at different Forums keeping in view the interest of the legal fraternity and public at large with an aim to improve the

accountability and efficiency of justice dispensation system towards people of the State and the quality of justice as well. The prayers made in the

writ petition are as follows:-

(i) Issue appropriate writ, order or direction to the respondents 1 to 3 to implement the Jammu & Kashmir Law Officers (Appointment and

Conditions of Service) Rules, 2016 in their letter and spirit vis-a-vis the appointment of Law Officers, Public Prosecutors and Standing counsels.

(ii) Issue appropriate writ, order or direction to the respondents 1 to 13 to implement and carry out the directions and guidelines issued by the

Hon'ble Supreme Court of India in clubbed SLPs(C) in cases titled State of Punjab & Ors. v. Brijeshwar Singh Chahal & Ors. and Pardeep

Kumar Rapria v. State of Haryana & Ors. in its letter and spirit.

(iii) Issue appropriate writ, order or direction restraining the respondents 1 to 3 to make any appointment of the law officers in the State including

Public Prosecutors and State Counsels in departure to the Jammu & Kashmir Law Officers (Appointment and Conditions of Service) Rules, 2016

and judgment of the Hon'ble Supreme Court of India in clubbed SLPs in case titled State of Punjab & Ors. v. Brijeshwar Singh Chahal &

Ors. and Pardeep Kumar Rapria v. State of Haryana & Ors.

(iv) Issue appropriate writ, order or direction to the respondents 1 to 3 to produce the record pertaining to the appointment of law officers as well

as Public Prosecutors, Addl. Public Prosecutors and Standing counsels in the entire State of J&K.

(v) Issue appropriate directions to the respondent No.4 apprise the Hon'ble Court about the exact number of pending contempt petitions in both

the wings of the Hon'ble High Court of J&K at Jammu as well as Srinagar and further issue appropriate directions to the Registry to treat all the

contempt petitions as specially ordered cases besides, the constitution of special Benches in order to enable the Hon'ble Benches to expedite the

disposal of all such contempt petitions.

2. Insofar as prayer Nos. (i) to (iv), learned Advocate General was directed to take notice and get instructions. Insofar as appointment of law

officers, Public Prosecutors and Standing Counsels, it is answered by the answering respondents through counsel in the response filed before this

Court on 28.04.2016 that the Jammu & Kashmir Law Officers (Appointment and Conditions of Service) Rules, 2016 are being followed and shall

be followed both in letter and spirit regarding the aforesaid appointments. Learned Advocate General also assured this Court that the written

undertaking before this Court will be fully complied with.

3. The said stand taken by the respondents is appreciable in light of the judgment of Hon'ble the Supreme Court rendered in Civil Appeal No.

3194 of 2016 (State of Punjab & Ors. v. Brijeshwar Singh Chahal & Ors.) dated 30.03.2016 wherein the Hon'ble Supreme Court issued

directions to follow strict norms while appointing Law Officers, Public Prosecutors

and Standing Counsels by the State Governments. In the said

judgment, it was further held that the persons, who are serving on the date of the directions, can be allowed to continue till expiry of their tenure

and for re-appointing the norms issued by the Supreme Court should be followed.

4. In this case, the Rules are in place and an undertaking has been given by the respondents and the learned Advocate General, who is appearing

on behalf of the State stated that the Rules are being followed and shall be followed, which is recorded.

5. Insofar as the grievance made in the writ petition that the Government Counsels, who are defending the actions of the Government in both civil

and criminal side as well as High Court are not being paid the remuneration/retainer-ship fee, which is mentioned in paragraph No. 15 of the writ

petition, in the response filed, it is stated that it shall be ensured that the same is paid, if not otherwise paid, within a period of three months subject

to verification and in accordance with Rules and standing orders issued by Government from time to time. It is also stated that the respondents are

evolving a mechanism and a procedure for payment of counsel fee/legal fee in criminal matter which may be assigned to the law officers to

contest/argue such cases.

6. Learned Senior Counsel appearing for the petitioner submitted that even if, fee claim is made within three months as mentioned in the Rules, the

officers of the State are not processing the same and sanctioning legal fee to the advocates due to which they are put to lot of harassment and some

of them may approach the Court for redressing their grievances against the departments, whom they have defended, which is not a healthy trend.

7. The State Government having framed the Rules regarding payment of fee to the advocates, defending their action, it is bounden duty of the

concerned officers to sanction the fee claimed in accordance with the rules as well as cabinet decision already taken.

8. Learned Senior Counsel appearing for the petitioner further submitted that the fee claimed by the Standing Counsels/Law Officers can be

verified at the threshold by the Learned Advocate General's office and if it is certified the officials of the government cannot sit over the same again

and the amount can be released within three months.

9. The said suggestion is found acceptance by this Court as the Advocate General

will be in a position to verify the claim bill submitted by each advocate and also will certify that fee claim is as per the rules/norms. Hence this court directs the following procedure to be followed for

securitizing the fee bills:-

a) Learned Bar members, who defended or defending the actions of the Government; namely law officers in whatever capacity can claim their fee

in accordance with the rules and they shall submit their claims before the Advocate General's office, which in turn shall scrutinize and recommend

the concerned department for sanction. The Advocate General Office shall scrutinize the same within a period of four weeks from the date of

submission of the fee bill.

b) The concerned department shall sanction and pay the fee bill cleared by the learned Advocate General's office i.e. undisputed amount within a

period of three months from the date of clearance given by the learned Advocate General's office.

c) In case the fee payable is not paid within three months as stated supra the amount payable shall be paid with 9% interest from the date of the

expiry of three months.

10. Insofar as the prayer for directing the Registry to treat all the contempt petitions as specially ordered cases by constituting Special Benches. In

order to enable the Hon'ble Benches to dispose of such contempt petitions, the Registry on administrative side is directed to furnish year wise and

Judge-wise list of all contempt petitions for posting the matters on priority basis.

11. The writ petition is disposed of with above directions. No costs.