
(2007) 10 JH CK 0033
In the Jharkhand High Court

Pratap Narayan Gope, Anil Kumar Mahato and Premchandra
Agarwal and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-10-2007

Acts Referred:

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

Citation : (2008) CriLJ 1550 : (2008) 1 JCR 491

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—In all the three writ applications common question is involved and, as such, they were heard together and are being disposed of by this common order.

2. The petitioner in WPS No. 3461 of 2007 namely Pratap Narayan Gope has prayed for quashing of the notification contained in memo No. 2389 dated 22/06/2007 whereby the respondent No. 6 Tribhuvan Nath Upadhyay was asked to function as Public Prosecutor in the Civil Court, Jamshedpur, which, which, according to the petitioner, is contrary to the provisions of Sections 24 and 25 of Cr. P.C as well as the law laid down by Patna High Court in the case of " Jaidhari Roy and Others Vs. State of Bihar and Others " wherein it has been held that no Assistant Public Prosecutor can be appointed on the post of Public Prosecutor or Additional Public Prosecutor unless he resigns from his original post on which he was appointed by the State Government. According to the petitioner his name was recommended by the Deputy Commissioner to the State Government for his continuance on the post of Public Prosecutor, which had expired in 2005 since it was a tenure post for three years only but no decision has yet. been taken by the State Government.

3. The petitioner Anil Kumar Man to in WPS No. 3983 of 2007 has also challenged the same very notification dated 22/06/2007 whereby respondent No.

6 Ram Bilas Prasad Sah has been asked to function as Public Prosecutor in Civil Court, Jamtara.

4. The petitioners Prem Chandra Agrawal, Mahendra Kumar Tiwari, Shashi Bhushan Prasad Bhagat and Akhileshwar Prasad Yadav in WPS No. 4389 of 2007 have also challenged the same notification dated 22/06/2007 whereby respondent nos. 11 to 14 namely, Mr. Haripad Mahto, Mr. Shyam Narayan Sahu, Mr. Mukesh Kumar Choudhary and Md. Abdush Salam were asked to function as Assistant Public Prosecutor in the Civil Courts at Bokaro, Daltonganj, Latehar and Deoghar.

5. The grounds for challenge of the aforesaid notification are exactly the same in all the aforesaid three writ applications.

6. All the writ petitioners were appointed as Public Prosecutors in between the year 2002-2003 for a period of three years. Admittedly, the tenure of the said post has already expired after completion of three years from the date of their appointment.

7. The grievance of the petitioners is that though their names were sent to the Government duly recommended by the respective Deputy Commissioners of the Districts but in stead of acting on the recommendation of the Deputy Commissioner for their appointment as Public Prosecutors, the State Government by issue of notification contained in Memo No. 2389 dated 22/06/2007 has asked the persons named in the said notification to work as Acting Public Prosecutors on their own posts as additional charge and on their own pay scale till further orders. A copy of the notification has been annexed as Annexure-1 to the writ application.

8. The petitioners have based their whole case on the basis of the judgment passed by a Division Bench of Patna High Court in the case of Jaidhari Roy and Others Vs. State of Bihar and Others " in which the Patna High Court while interpreting Section 24(6) (as amended by Bihar Act 16 of 1984) and Section 25 of the Code of Criminal Procedure has held that the Assistant Public Prosecutors cannot claim appointment as Public Prosecutors/Additional Public Prosecutors on the basis of Sub-section (6) of Section 24 of the Code of Criminal Procedure because the Assistant Public prosecutors belong to a service in which there is no post of Public Prosecutor or Additional Public Prosecutor. The Assistant Public Prosecutors conducting cases before the Magisterial Courts in the State of Bihar under the control and supervision of Director of Prosecution do not belong to a regular cadre of prosecuting officers as contemplated u/s 24 of the Code of Criminal Procedure.

It has further been held in the said judgment that a person, who does not belong to a regular cadre of prosecuting officers but is appointed as a prosecuting officer by whatever name called, may qualify for appointment as a Public Prosecutor or Additional Public Prosecutor if he has the requisite experience as prescribed, by Sub-section (7) read with Sub-section (9) of Section 24 of the Code of Criminal

Procedure. He cannot claim such appointment under Sub-section (6) of Section 24, as he cannot claim promotion to the higher post, since he does not belong to such cadre. Such a prosecuting officer belonging to a service, if selected for appointment as Public Prosecutor has to resign his service to join the post of Public Prosecutor.

9. Mr. Pandey, learned senior counsel appearing for the petitioners heavily relied on the aforesaid judgment of the Patna High Court and submitted the concerned private respondents admittedly are Assistant Public Prosecutors and, therefore, in view of the judgment of Patna High Court they cannot be appointed or made Incharge Public Prosecutors under the provision of Section 24(6) of the Code of Criminal Procedure and they even cannot joint the post of Public Prosecutor unless they resign from the post of Assistant Public Prosecutors.

10. On the other hand, on behalf of the State Mr. Sumeet Gadodia, learned JC to A.G. submitted that the case of the petitioners has no legs to stand because the judgment of the Patna High Court on which the petitioners have strongly relied, has already been set aside by the Supreme Court on 08/08/1997 in Civil Appeal No. 5507/1997. The order of the Supreme Court setting aside the aforesaid judgment of the Division Bench of the Patna High Court has been annexed as Annexure-A to the Counter Affidavit filed on behalf of the respondent State. Therefore, no reliance can be placed on such overruled decision of the Patna High Court. He submitted that as a matter of fact such overruled judgment should not have been cited in order to mislead this Court.

Secondly, he submitted that in the year 2005 itself there has been an amendment in Section 24 of the Code of Criminal Procedure by Amendment Act 25 of 2005, which reads as under:

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) ACT, 2005 (25 OF 2005):

3. Amendment of Section 24. - In Section 24 of the principal Act, in Sub-section (6), after the proviso, the following Explanation shall be inserted and shall be deemed to have been inserted with effect from the 18th day of December, 1978, namely:-Explanation. - For the purposes of this subsection;-

(a) "regular Cadre of Prosecuting Officers" means a Cadre of Prosecuting Officers which includes therein the post of a Public Prosecutor, by whatever name called, and which provides for promotion of Assistant Public Prosecutors, by whatever named called, to that post;

(b) "Prosecuting Officers" means a person, by whatever name called, appointed to perform the functions of a Public Prosecutor, an Additional Public Prosecutor or an Assistant Public Prosecutor under this Code.

Therefore, in view of such aforementioned amendment, now a Public Prosecutor cannot be appointed directly but the said post of Public Prosecutor has to be filled up by promotion from Assistant Public Prosecutors.

11. The learned senior counsel for the petitioners could not dispute the fact that the judgment of the Patna High Court (Jaidhari Roy and Ors. v. State of Bihar) has already been set aside by the Supreme Court.

12. In view of the amendment of Section 24 of the Code of Criminal Procedure made in the year 2005 by amendment Act 25 of 2005, which is not under challenge in these writ petitions, the petitioners now cannot base their claim for appointment to the post of Public Prosecutors even if their names have been recommended by the concerned Deputy Commissioners of the concerned Districts therefore, no case at all is made out by the petitioners for any interference by this Court.; Moreover, the impugned notification of the State Government is only by way of stopgap arrangement till any regular Public Prosecutor is appointed by the Government. Accordingly, having found no merit, all the three writ petitions are dismissed.

The interim order passed on 29/06/2007 in WPS No. 3461/2007 and on 02/08/2007 in WPS No. 3983/2007 are hereby vacated.