
(2022) 03 JH CK 0077

In the Jharkhand High Court

Case No : Writ Petition (S) No.5802 Of 2010, 31 Of 2011, Cont. (Cvl.) No. 272 Of 2012

Ranchi District Bar Association And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 08-03-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 5, 24, 24(6), 25, 225

Citation : (2022) 03 JH CK 0077

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Nilesh Kumar, Rahul Saboo

Final Decision : Disposed Of

Judgement

Anubha Rawat Choudhary, J

1. Heard Mr. Nilesh Kumar, learned counsel appearing on behalf of the petitioner(s).
2. Heard Mr. Rahul Saboo, learned counsel appearing on behalf of the respondent – State.
3. These two writ petitions have been filed for similar relief.
4. In both the writ petitions, prayer has been made to set-aside the letter No. 3985 dated 29.09.2010 issued by the Joint Secretary, Home Department, Govt. of Jharkhand, Ranchi, by which he has directed the Deputy Commissioner of Jamshedpur [in W.P. (S) No. 31/2011] and Deputy Commissioner, Ranchi [in W.P. (S) No. 5802/2010] to give charge of the Additional Public Prosecutor to the Assistant Public Prosecutor to conduct the prosecution before the Sessions Court at Ranchi [in W.P. (S) No. 5802/2010] and Jamshedpur[in W.P. (S) No. 31/2011]. The grievance of the petitioner is that such direction is against the provision of Section 24, 25 and 225 of the Code of Criminal Procedure.

5. A further prayer has been made to set-aside the follow-up order contained in Memo No. 140/2 dated 01.10.2010 by which Deputy Commissioner, S.S.P. and Public Prosecutor of Ranchi and Jamshedpur, given the charge of Additional Public Prosecutors to the Assistant Public Prosecutors.

6. The grievance of the petitioner in W.P. (S) No. 5802/2010 has been recorded in order dated 30.11.2010, wherein an interim order was passed that until further orders, the Additional Public Prosecutors will go on conducting the cases, which they were conducting earlier. The order dated 30.11.2010 passed in W.P. (S) No. 5802/2010 is quoted as under:

"Learned counsel appearing for the petitioner submits that while the criminal cases pending in the court of Additional Sessions Judge, Ranchi are being conducted by the Additional Public Prosecutors on behalf of the State, an order has been passed on 01.10.2010 by the Deputy Commissioner, Ranchi on an instruction issued on 29.09.2010 by the Joint Secretary, Home Department, Govt. of Jharkhand, Ranchi whereby Assistant Public Prosecutors have been asked to take charge of the cases from those Additional Public Prosecutors whose terms are over, but the term of the Additional Public Prosecutors, who were conducting the criminal cases before the Sessions court or Additional Sessions court at Ranchi, have still not been over, as they had been appointed for a period of three years or until a fresh panel of Additional Public Prosecutors is prepared and that fresh panel of the Additional Public Prosecutors has still not been prepared and, thereby, the Sessions Court or Additional Sessions court, are still discharging their duties as Additional Public Prosecutors and moreover, cadre of the Prosecuting Officers as mentioned under Sub Clause (6) of Section 24 is still not there and in absence of such cadre, the Assistant Public Prosecutors cannot be directed to take charge from Additional Public Prosecutors.

However, learned counsel appearing for the State seeks two weeks' time to seek instruction and to file counter affidavit.

Until further orders, the Additional Public Prosecutors will go on conducting the cases, which they were conducting earlier.

Put of this case on 14.12.2010.

Let a copy of this order be handed over to Mr. Saurav Arun, learned J.C. to A.G. for needful."

7. So far as W.P. (S) No. 31/2011 is concerned, vide order dated 04.07.2011, the case was tagged along with W.P. (S) No. 5802/2010 with an interim order that in the meanwhile, the sessions case allotted to the Additional Public Prosecutors shall not be withdrawn.

8. In the meantime, one contempt case being Contempt (Civil) Case No. 272/2012 was filed before this Court by the petitioner of W.P. (S) No. 31/2011, wherein the petitioner has prayed for initiation of contempt proceedings against the opposite parties for willful and conscious disobedience of order dated

04.07.2011 passed in W.P. (S) No. 31/2011. The said contempt petition was tagged along with the writ petition being W.P. (S) No. 31/2011 vide order dated 07.08.2014 observing that since the main writ petition is pending, the contempt petition be listed along with the writ petition.

9. As per order dated 07.12.2021, a prayer was made by the learned counsel for the respondent-State, enabling him to file latest policy with regard to appointment of Public Prosecutor and the matter was directed to be posted on 06.01.2022.

10. A counter-affidavit dated 16.01.2022 has been filed, interalia, bringing on record Jharkhand Prosecution Service Rules, 2011 notified vide notification contained in memo No. 3418 dated 27.08.2011, whereby the post of Additional Public Prosecutors and Public Prosecutors have been made cadre post; Assistant Public Prosecutor are appointed through direct recruitment after examination conducted by and the recommendation made by the Jharkhand Public Service Commission as per Section 5 of the Code of Criminal Procedure; the post of Additional Public Prosecutor is filled up through promotion from amongst the Assistant Public Prosecutor, whereas the posts of Public Prosecutors are filled up through promotion amongst the Additional Public Prosecutors as per provision of Section 24(6) of the Code of Criminal Procedure. It has been also stated that after framing Jharkhand Prosecution Service Rules, 2011, the post of Additional Public Prosecutor and Public Prosecutor have been and being filled up through promotion.

11. On 03.02.2022 it was submitted by the learned counsel for the petitioners that new rules, namely Jharkhand Law Officer (Engagement) Rules, 2018 has been notified but the counter affidavit filed by the respondents refer to Jharkhand Prosecution Service Rules, 2011.

12. Pursuant to the last order dated 03.02.2022, the respondent State has filed a supplementary counter affidavit and they have brought on record the Gazette Notification dated 19.02.2018 which is the Jharkhand Law Officer (Engagement) Rules, 2018. The learned counsel for the State has submitted that the said Rules have not yet been implemented so far in view of certain litigation which is pending before the Hon'ble Division Bench. He has referred to two writ petitions i.e., W.P.(S) 2568 of 2018 as well as W.P.(C) No.1659 of 2020.

13. The learned counsel for the respondents has also submitted that the limited grievance of the petitioner in both the cases as prayed for in the writ petitions is regarding giving charge of Additional Public Prosecutor to Assistant Public Prosecutor. This grievance has already been redressed and the post of Additional Public Prosecutor is being treated as a promotional post and the State is acting accordingly.

14. The learned counsel for the petitioner in response, submits that there is no impediment in implementation of 2018 Rules and so far as the appointment of Additional Public Prosecutor and Assistant Public Prosecutor is concerned, the

same is not the subject matter of dispute before the Hon'ble Division Bench. However, during the course of argument, the learned counsel for the petitioner, upon being specifically asked, as to whether the grievance of the petitioner as raised in the prayer of the present writ petitions has been redressed or not, has fairly submitted that the grievance as raised in the writ petitions and prayer made therein have been redressed. The learned counsel has also submitted that the State having issued Notification of 2018 are bound to implement that notification, but the same is not within the prayer as made in the present writ petitions.

15. After hearing the learned counsel for the parties and considering the facts and circumstances of this case, it is not in dispute that at present, the impugned letter dated 29.09.2010 issued by respondent no.3 and the impugned orders dated 01.10.2010 issued by the Deputy Commissioner of Jamshedpur and Ranchi directing to give charge of Additional Public Prosecutor to Assistant Public Prosecutor, have lost their force on account of subsequent developments of coming into force of new Rules and consequently , it is not in dispute that the Assistant Public Prosecutors are not being made in charge of Additional Public Prosecutor and the post of Additional Public Prosecutor is being treated as a promotional post. Considering the aforesaid admitted fact situation, nothing survives in these writ petitions as for all purposes and the grievance of the petitioners as raised in the writ petitions has been redressed. If the petitioner(s) have any grievance in connection with non-implementation of Jharkhand Law Officer (Engagement) Rules, 2018, the petitioners may seek their remedy in accordance with law.

16. These writ petitions are accordingly disposed of.

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17. In view of the subsequent developments which have taken place during the pendency of the writ petitions and considering the fact that the grievance of the petitioners has been redressed, the contempt proceeding is dropped.