
(2001) 08 AHC CK 0031
In the Allahabad High Court
Case No : C.M.W.P. No. 9681 of 2001

R.D. Gupta

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 29-08-2001

Acts Referred:

Bar Council of India Rules, 1975 — Rule 49
Constitution of India, 1950 — Article 14, 226, 309

Citation : (2001) 4 AWC 2763 : (2002) 1 UPLBEC 345

Hon'ble Judges : S.K. Sen, C.J;R.K. Agrawal, J

Bench : Division Bench

Advocate : Mona Rajvanshi, N.C. Rajvanshi and Manoj Kumar Rajvanshi, for the Appellant; Addl. A.G. and P.M.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

R. K. Agrawal, J.—Sri R.D. Gupta, a practicing advocate of this Court has filed the present petition under Article 226 of the Constitution of India seeking a writ, order or direction in the nature of certiorari quashing the order dated 31.1.2001 passed by the Special Secretary and Additional Legal Remembrancer Government of U. P., Lucknow (filed as Annexure-2 to the writ petition) and a writ of mandamus directing the respondents to permit him to function as standing counsel during the tenure of his engagement which shall expire on 31.3.2003. By the order dated 31.1.2001, the Governor of U. P. had terminated the engagement of the petitioner as standing counsel with immediate effect.

2. Briefly stated, the facts of the case giving rise to the present petition are as follows :

The petitioner was initially appointed as standing counsel, Government of U. P. in this Court in July, 1990 for a term of one year, which was extended from time to time and vide order dated 31.3.2000, it was extended for a period of 3 years upto 31.3.2003. According to the petitioner, he was also included in the panel of standing counsel to deal in trade-tax matters. However, his engagement/

appointment as standing counsel was terminated by the Governor of U. P. vide order dated 31.1.2001.

3. We have heard Sri N.C. Rajvanshi, learned senior counsel assisted by Miss Mona Rajvanshi on behalf of the petitioner and Sri P.M.N. Singh, learned Additional Advocate General, who represents the respondents.

4. Learned counsel for the petitioner submitted that earlier, whenever the appointments/ engagement of standing counsel. Government of U. P. have been terminated, it was always done in public interest whereas in the present case, it has been terminated without assigning any reason. He further submitted that there was no complaint against the petitioner. According to him, in terms of the office memorandum dated 29.7.1968 (a copy of which has been filed as Annexure-5 to the writ petition), there is no age limit prescribed for appointment as a Law Officer and, therefore, the plea taken by the respondents in the counter-affidavit that the Government has taken a policy decision not to continue the engagement of the advocates as standing counsel, who have attained the age of 62 years is not correct. In support of his aforesaid plea, the learned counsel for the petitioner relied upon a decision of the Hon''ble Supreme Court in the case of Dr. L.P. Agrawal v. Union of India and Ors., 1992 (4) SLR 583, and submitted that Since it is a tenure post, the question of superannuating or prematurely retiring the incumbent of the said post does not arise. He further submitted that the office memorandum dated 29.6.1968 is to be considered as a Rule framed by the Governor of U. P. in exercise of powers under Article 309 of the Constitution of India and thus, have a statutory force. According to him no age limit having been prescribed in the said office memorandum, the petitioner's appointment as standing counsel could not have been terminated simply on attaining the age of 62 years.

5. Sri P.M.N. Singh, learned Additional Advocate General on the other hand submitted that the State Government as a policy has taken a decision not to continue the engagement of persons as standing counsel after such persons attained the age of 62 years and since the petitioner had attained the age of 62 years for which there is no dispute, the engagement/appointment has been cancelled w.e.f. 31.1.2001. He further submitted that according to the office memorandum dated 29.6.1968 relied upon by the petitioners, the tenure of any legal practitioner as a Law Officer is only a professional engagement terminable at the sweet will of either side and the Governor has a right to terminate the engagement of any Law Officer at any time without assigning any cause. Thus, according to him the engagement of the petitioner as a Law Officer (standing counsel) was professional engagement and could have been terminated at any time without assigning any cause. He submitted that the decision of the Hon''ble Supreme Court in the case of Dr. L.P. Agrawal would not be applicable in the present case, inasmuch as the service Rules are not being applied, but the engagement has been terminated on account of a policy decision taken by the Government not to continue the engagement as Law Officer beyond the age of

62 years. He relied upon a decision of Hon''ble Supreme Court in the case of Harpal Singh Chauhan and others Vs. State of U.P., , and submitted that the members of the legal profession are required to maintain high ethics and dignity of profession. They are not supposed to solicit work or seek mandamus from courts in the matter of professional engagement. The petitioner cannot claim as a matter of right that he is entitled to continue as standing counsel, Government of U. P. till 31.3.2000. He further relied upon a decision of the Hon''ble Supreme Court in the case of State of U.P. and others Vs. U.P. State Law Officers Association and others, , and submitted that the Law Officers appointed by the Government to look after the work of the Government was only professional service as legal assistant and the services rendered by the counsel is only a service oriented professional service, therefore, they are not the employees of the Government and the Government is entitled to regulate its work by prescribing the conditions subject to which the work of the Government could, be entrusted to and be discharged by the counsel. According to him the Government has liberty to relieve a counsel and thus, the prescription of the age limit of 62 years is well within its competence.

6. Sri P.M.N. Singh has further relied upon a decision of the Hon''ble Supreme Court in the case of State of U.P. Vs. Ramesh Chandra Sharma and others, . He submitted that the Hon''ble Supreme Court in the aforesaid case had considered paragraph 7.06 (3) of U. P. Legal Remembrance Manual which is identical to Clause 6 of the office memorandum dated 29.6.1968 and the Hon''ble Supreme Court had held that the appointment of any legal practitioner as a District Government Counsel is only professional engagement. He also relied upon a Division Bench decision of the Hon''ble Supreme Court in the case of Ram Nath v. State of U. P. and Ors., 1997 ALJ 1674, and submitted that there is no law by which the Court can compel the State not to terminate professional engagement of the petitioner. He also relied upon an unreported decision of this Court dated 18.8.2000 wherein on a difference of opinion between two Hon''ble Judges in Writ Petition No. 419/(M/B) of 1998, Smt. Sarojini Bala Yadav v. State of U. P. and Ors., the learned third Judge has held that the State Government has the power to disengage the public prosecutor/ Additional Public Prosecutor in the High Court without existence of any cause or without any cogent reasons and such disengagement cannot be treated as arbitrary or hit by Article 14 of the Constitution of India.

7. Having heard the learned counsel for the parties, we are of the opinion that the fate of the present petition would depend upon the answer to the following two questions :

(I) What is the nature of appointment of an advocate as Law Officer/standing counsel?

(II) Whether the termination of the petitioner''s appointment as standing counsel on attaining the age of 62 years can be said to be arbitrary or not?

8. So far as the first question regarding the nature of appointment is concerned, we find that it has been settled by the Hon"ble Supreme Court in a series of the decision that the appointment is a merely professional appointment. In the case of State of U. P. v. U. P. State Law Officers Association (supra), the Hon"ble Supreme Court had held that the Law Officers appointed by the Government to look after the work of the Government was only professional service as legal assistant and the service rendered by the counsel is only a service-oriented professional service. The Government is entitled to regulate its work by prescribing the conditions subject to which the work of the Government could be entrusted to and be discharged by the counsel. The Hon"ble Supreme Court in the aforesaid case has considered the appointment of lawyers by the Government and their subsequent removal from three different angle, viz., the nature of the legal profession, the interest of the public and the modes of the appointment and removal. In paragraph 13 to 19 of the reports which are reproduced below :

"13. The appointment of lawyers by the Government and the public bodies to conduct work on their behalf, and their subsequent removal from such appointment have to be examined from three different angles, viz., the nature of the legal profession, the interests of the public and the modes of the appointment and removal.

14. Legal profession is essentially a service-oriented profession. The ancestor of today's lawyer has no more than a spokesman who rendered his services to the needy members of the society by articulating their case before the authorities that be. The services were rendered without regard to the remuneration received or to be received. With the growth of litigation, lawyering became a full time occupation and most of the lawyers came to depend upon it as the sole source of livelihood. The nature of the service rendered by the lawyers was private till the Government and the public bodies started engaging them to conduct cases on their behalf. The Government and the public bodies engaged the services of the lawyers purely on a contractual basis either for a specified case or for a specified or an unspecified period. Although the contract in some cases prohibited the lawyers from accepting private briefs, the nature of the contract did not alter from one of professional engagement to that of employment. The lawyer of the Government or a public body was not its employee but was a professional practitioner engaged to do the specified work. This is so even today, though the lawyers on the full-time rolls of the Government and the public bodies are described as their law officers. It is precisely for this reason that in the case of such law officers, the saving clause of Rule 49 of the Bar Council of India Rules waives the prohibition imposed by the said Rule against the acceptance by a lawyer of a full-time employment.

15. The relationship between the lawyer and his client is one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave him also, for the same reasons. He is under no obligation to give reasons

for withdrawing his brief from his lawyer. The lawyer in turn is not an agent of his client but his dignified, responsible spokesman. He is not bound to tell the Court every fact or urge every proposition of law, which his client wants him to do however, irrelevant it may be. He is essentially an adviser to his client and is rightly called a counsel in some jurisdictions. Once acquainted with the facts of the case, it is the lawyer's discretion to choose the facts and the points of law, which he would advance. Being a responsible officer of the Court and an important adjunct of the administration of justice, the lawyer also owes a duty to the Court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client. This relationship between the lawyer and the private client is equally valid between him and the public bodies.

16. Over the years, the public sector has grown considerably, and with its extension and expansion, the number of lawyers engaged in the public sector has increased noticeably so much so that it can truly be said that today there is a public sector in the legal profession as well. The expansion of the public sector activities has necessitated the maintenance of a permanent panel of lawyers. Some of the lawyers are also in full-time employment of the public institutions as their law officers. The profile of the legal profession has thus undergone a change.

17. The Government or the public body represents public interests, and whoever is in charge of running their affairs, is no more than a trustee or a custodian of the public interests. The protection of the public interests to the maximum extent and in the best possible manner is his primary duty. The public bodies are, therefore, under an obligation to the society to take the best possible steps to safeguard its interest. This obligation imposes on them the duty to engage the most competent servants, agents, advisers, spokesmen and representatives for conducting their affairs. Hence, in the selection of their lawyers, they are duty-bound to make earnest efforts to find the best from among those available at the particular time. This is more so because the claims of and against the public bodies are generally monetarily substantial and socially crucial with far-reaching consequences.

18. The mode of appointment of lawyers for the public bodies, therefore, has to be in conformity with the obligation cast on them to select the most meritorious. An open invitation to the lawyers to compete for the posts is by far the best mode of such selection. But sometimes the best may not compete or a competent candidate may not be available from among the competitors. In such circumstances, the public bodies may resort to other method such as inviting and appointing the best available, although he may not have applied for the post. Whatever the method adopted, it must be shown that the search for the meritorious was undertaken and the appointments were made only on the basis of the merit and not for any other consideration.

19. It would be evident from Chapter V of the said Manual that to appoint the chief standing counsel, the standing counsel and the Government Advocate,

Additional Government Advocate, Deputy Government Advocate and Assistant Government Advocate, the State Government is under no obligation to consult even its Advocate-General muchless the Chief Justice or any of the Judges of the High Court or to take into consideration, the views of any committee that "may" be constituted for the purpose. The State Government has discretion. It may or may not ascertain the views of any of them while making the said appointments. Even where it chooses to consult them, their views are not binding on it. The appointments may, therefore, be made on considerations other than merit and there exists no provision to prevent such appointments. The method of appointments is indeed not calculated to ensure that the meritorious alone will always be appointed or that the appointments made will not be on considerations other than merit."

9. In the case of State of U. P. v. U. P. Government Counsel (Crl) Welfare Association (supra), the Hon"ble Supreme Court has held as follows :

"This Court after considering the gamut of the controversy held that the Law Officers appointed by the Government to look after the work of the Government was only professional service as legal assistants and the service rendered by the counsel is only a service-oriented professional service. Therefore, they are not employees of the Government. The Government is entitled to regulate its work by prescribing the conditions subject to which the work of the Government could be entrusted to and be discharged by the counsel."

10. In the case of Harpal Singh Chauhan v. State of U. P. (supra), the Hon"ble Supreme Court has held as follows :

"The members of the legal profession are required to maintain high standard of legal ethics and dignity of profession. They are not supposed to solicit work or seek mandamus from Courts in matters of professional engagements."

11. In the case of State of U. P. v. Ramesh Chandra Sharma and Ors. (supra), the Hon"ble Supreme Court while considering the provisions of para 7.06 (3) of the U. P. Legal Remembrancer Manual, which is in pari matiria to the office memorandum dated 29.6.1968 has held as follows :

"In view of the clear provision in Clause (3) of para 7.06 that the appointment of any legal practitioner as a District Government counsel is only professional engagement. It is difficult to appreciate the submission for which substance is sought from the provision contained in the same Manual. The appointment being for a fixed term and requiring express renewal in the manner provided in the Manual, there is no basis to contend that it is not a professional engagement of a legal practitioner but appointment to post in Government service which continues till attaining the age of superannuation. In the earlier decisions of this Court including Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, , the appointment of District Government counsel under the Manual has been understood only as a professional engagement of a legal practitioner. This contention is, therefore, rejected."

12. Thus, on the basis of the principles laid down by the Hon''ble Supreme Court in the aforesaid cases. It is held that the appointment of the petitioner as standing counsel, Government of U. P. was purely a professional engagement.

13. So far as the question as to whether his services can be terminated at any time or not is concerned, the Hon''ble Supreme Court in the case of State of U. P. v. U. P. State Law Officers Association (supra) had held that if the appointment can be made purely on personal or political considerations, and be arbitrary those who come to be appointed by such arbitrary procedure can hardly complain if the termination of their appointment is equally arbitrary. Those who come by the backdoor have to go by the same door. This is more so when the order of appointment itself stipulated that the appointment is terminable at any time without assigning any reason. Such appointments are made, accepted and understood by both Sides to be purely professional engagements till they last. The fact that they are made by public bodies cannot vest them with additional sanctity. Every appointment made to a public office, howsoever made, is not necessarily vested with public sanctity. There is, therefore, no public interest involved in saving all appointments irrespective of their mode. From the inception, some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them.

14. A Division Bench of this Court in the case of Ram Nath v. State of U. P. (supra) had held that there is no law by which the Court can compel the State not to terminate the professional engagement of the petitioners. The Division Bench decision of this Court in the case of Ram Nihor Singh v. State of U. P. and Ors., C.M.W.P. No. 5160 of 2001, decided on 18.5.2001, referred to by the petitioner's counsel would not be applicable in the present case. In the case of Ram Nihor Singh, this Court was considering the question as to whether inspite of L.R. Manual permitting consideration for renewal of the term of District Government Counsel/Law Officers upto 62 years under para 7.08, declining to consider the renewal after 60 years was valid or not. This Court in the aforesaid case has held as follows :

"12. In our considered view. L.R. Manual does not contemplate embargo of 60 years of age question of extension/renewal of term of a District Government Counsel has to be considered, decided and extended upto the age of 62 years subject to one fulfilling three conditions provided under note to para 7.08 of L.R. Manual. Otherwise action of the Government will be exposed to challenge and vulnerable on the ground of vice of arbitrariness."

15. A learned single Judge on a difference of opinion between two Hon''ble Judges of this Court in Civil Misc. Writ Petition No. 419 (M/B)/1998, Sarojini Bala Yadav v. State of U. P. and Ors., vide order dated 18.8.2000 had held that the State Government has the power to disengage a Public Prosecutor/ Additional Public Prosecutor in the High Court without existence of any cause or without any cogent reasons and such disengagement cannot be treated as arbitrary or hit by Article 14 of the Constitution. The appointment of standing counsel stands on the

same footing as that of Public Prosecutor/Additional Public Prosecutor. The case of State of U. P. v. U. P. State Law Officers Association, was concerned with the termination of the engagement of the standing counsel also. Thus, the State Government is empowered to disengage/terminate the engagement of standing counsel without existence of any cause or without any cogent reasons. However, in the present case a policy has been laid down by the State Government for terminating the engagements of the standing counsel and other Law Officers on attaining the age of 62 years. It cannot be said to be arbitrary.

16. In view of the foregoing discussions, we do not find any merit in the present petition. The writ petition lacks merit and is dismissed. However, the parties shall bear their own costs.