
(2013) 07 AHC CK 0202

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11781 of 2013

Shiv Sevak Ram Dwivedi

APPELLANT

Vs

State of U.P and Others

RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Citation : (2013) 6 ADJ 427 : (2013) 5 ALJ 309

Hon'ble Judges : Sunil Ambwani, J;Bachchoo Lal, J

Bench : Division Bench

Advocate : Govind Krishna, Ashok Kumar Mishra and Umesh Narayan Sharma,
for the Appellant;

Final Decision : Allowed

Judgement

1. We have heard Shri Govind Krishna, learned counsel for the petitioner. Learned Standing Counsel appears for the State respondents. Shiv Sevak Ram- the writ petitioner was enrolled as an Advocate with Bar Council of U.P. on 28.10.1983, and started practice in the District Court, Allahabad. With the formation of a new district Kaushambi, carved out from revenue district Allahabad, the petitioner shifted his practice to the District Court at Kaushambi, where he was appointed as District Government Counsel (Civil), by the State Government vide letter of the Special Secretary and Additional Legal Remembrancer Cell dated 12.10.2000. The appointment was made with a condition that his engagement can be terminated by the State Government at any time without information and giving any reasons, and that the petitioner should given an undertaking to that effect to the District Magistrate that he will have no objection to such condition.

2. The petitioner's engagement as District Government Counsel (Civil) was renewed on 12.8.2001, 9.4.2008 and lastly on 28.4.2011 by the State Government, on the recommendations of the District Judge and the District Magistrate, Kaushambi.

3. In this writ petition the petitioner is aggrieved with an order dated 20.2.2013 passed by the State Government informing the District Magistrate, and a communication received by the petitioner from the District Magistrate, Kaushambi, to terminate his engagement as District Government Counsel (Civil), on the advice given by the District Magistrate, Kaushambi to the State Government that the petitioner has not taken effective steps to prosecute the cases for the State Government and has not taken the desired interest in the disposal of cases; he takes parts in the meetings but does not discuss the current cases, nor keeps the District Magistrate and Additional District Magistrate informed with the pending cases, and that the speed of disposal of the cases handled by him is highly unsatisfactory, and consequently it is not desirable for him to continue on the post.

4. The orders of disengagement and its communication to the petitioner, have been challenged on the ground that the reasons given in the order are not factually correct. The petitioner has been effectively prosecuting the cases for the State. The successive District Magistrates have appreciated the efforts made by him in disposal of the cases. It is submitted that the petitioner has not lost any case in which he had appeared for the State Government, on account of his negligence or in taking required interest in prosecuting the case.

5. It is submitted that the District Magistrate has not given the details of the cases in which the petitioner may not have taken interest. The petitioner has been regularly informing the District Magistrate and the Additional District Magistrate with the progress of the cases for and against the State, and that he has participated in the meeting regularly in which the cases filed against the State Government were discussed. The petitioner has annexed the minutes of the meeting dated 27th August, 2012 in which he had participated, and which disclose that the petitioner had informed the District Magistrate, Kaushambi chairing the meeting and all other officers, that inspite of repeated instructions given to the Sub Divisional Officers, the Lekhpals, are not appearing in the Courts. The District Magistrate issued directions to the Sub Divisional Officers to ensure that the Lekhpals appear in the Court to prosecute the cases. There is no adverse comment on the work and conduct of the petitioner in the minutes of the meeting.

6. Shri Govind Krishna, learned counsel for the petitioner submits that the provisions of Para 7.08 of the L.R. Manual relevant for renewal of the term of District Government Counsel, provides that the District Officer shall after consulting, the District Judge and considering his past record of work, conduct and age report to the Legal Remembrancer together with the statement of work done by him in Form No. 9, whether in his opinion term of appointment of such counsel should be renewed or not. He submits that in the present case the District Officer did not consult the District Judge, nor obtained his opinion. He forwarded his subjective opinion on the performance of petitioner's work and conduct without any material to the State Government. The procedure adopted

by the State Government in the matter of renewal of the petitioner is violative of the provisions of Para 7.08 of the U.P. Legal Remembrancer Manual.

7. Shri Govind Krishna has relied upon the judgments of the Supreme Court in Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, ; State of U.P. and Others Vs. Ashok Kumar Nigam, and the judgments of this Court in Vijay Shankar Mishra Vs. State of U.P. and Others, ; Virendra Pal Singh Rana Vs. State of U.P. and Others, and Ghanshyam Kishor Bajpayee and Others Vs. State of U.P. and Others, and judgment of this Court in Vijay Shankar Rastogi and others v. State of U.P. and others, Writ-C No. 58740 of 2012 decided on 9.5.2013 in support of his submissions.

8. Learned Standing Counsel on the other hand has relied upon the recommendation of the District Magistrate, Kaushambi. He states that after the disengagement of the petitioner was challenged, the State Government asked the District Magistrate to provide details of the cases, which were prosecuted/defended by the petitioner and in which the State Government lost on account of petitioner's negligence. In the supplementary counter-affidavit of Dr. Ajay Krishna Vishvesha, Additional L.R., a report of Shri S.N. Yadav, DGC (Civil) dated 20.5.2013, who is the successor of the petitioner is annexed in which there are details of four cases of the year 2009; four cases of the year 2010; two cases of the year 2011 and two cases of the year 2012 pursued by the petitioner, which were decided against the State.

9. In the supplementary rejoinder-affidavit the petitioner has given the details of 31 cases pursued by the petitioner in the Court of Civil Judge (J.D.), Kaushambi and 16 cases in the Court of Civil Judge (SD), Kaushambi in the year 2011 and 2012 in which almost all the cases except four were decided against the State Government. Out of these learned counsel for the petitioner explained the reasons for which these cases were decided against the State Government. Out of two cases referred to in the rejoinder-affidavit in the year 2012, in one of the case the State Government had satisfied the decree of the Civil Court and thus execution was decided against the State.

10. We are not much concerned with the number of cases decided against the State Government or the reasons for which such cases were decided. Such decisions were rendered on its own merits. There are no allegations of any kind of carelessness, negligence or lack of sincerity against the petitioner in pursuing such case and thus the opinion of the District Magistrate that the petitioner was not taking sufficient interest, is not established from the records produced by the State Government.

11. In the present case it is admitted that the District Magistrate, Kaushambi did not take the opinion of the District Judge in whose Court, and Courts subordinate to him the petitioner appeared and performed his duties. The relevant provisions of the L.R. Manual for appointment and renewal of District Government Counsel are as follows:

Para 7.03 provides that whenever a post of any Government Counsel is likely to fall vacant within the next three months or when a new post is created, the District Magistrate shall notify the vacancies to the members of the Bar, the qualification where for would be practice of 10 years in case of District Government Counsel, 7 years in case of Assistant District Government Counsel and 5 years in case of Sub-District Government Counsel. Clause (3) of Para 7.03 reads thus:

(3) The names so received shall be considered by the District Officer in consultation with the District Judge. The District Officer shall give due weight to the claim of the existing incumbents [Additional/Assistant District Government Counsel], if any, and shall submit confidentially in order of preference the names of the legal practitioners for each post to the Legal Remembrance giving his own opinion particularly about his character, professional conduct and integrity and the opinion of the District Judge on the suitability and merits, of each candidate. While forwarding his recommendations to the Legal Remembrance the District Officer shall also send to him the bio data submitted by other incumbents with such comments as he and the District Judge may like to make. In making the recommendations, the proficiency of the candidate in civil or criminal or revenue law, as the case may be, as well as in Hindi shall particularly be taken into consideration:

Provided that it will also be open to the District Officer to recommend the name of any person, who may be considered fit, even though he may not have formally supplied his bio data for being considered for appointment. The willingness of such a person to accept the appointment if made shall, however, be obtained before his name is recommended.

Para 7.04 of the said Manual provides that on receipt of the recommendations of the District Officer, the Legal Remembrancer may make further enquiry and submit the recommendations as also for orders of the State Government. The decision of the State Government would be final. Para 7.05 prohibits canvassing by or on the part of a candidate which would entail disqualification.

7.06. Appointment and renewed-

1. The legal practitioner finally selected by the Government may be appointed District Government Counsel for one year from the date of his taking over charge.
2. At the end of the aforesaid period, the District Officer after consulting the District Judge shall submit a report on his work and conduct to the legal Remembrances together with the statement of work done in Form No. 9. Should his work or conduct be found to be unsatisfactory the matter shall be reported to the Government for orders. If the report in respect of his work and conduct is satisfactory, he may be furnished with a deed of engagement in Form No. 1 for a term not exceeding three years. On his first engagement a copy of Form No. 2 shall be supplied to him and he shall complete and return it to the Legal Remembrancer for record.

3. The appointment of any legal practitioner as a District Government Counsel is only professional engagement terminable at will on either side and is not appointment to a post under the Government. Accordingly the Government reserves the power to terminate the appointment of any District Government Counsel at any time without assisting any cause.

7.08. Renewal of term-

1. At least three months before the expiry of the term of a District Government Counsel, the District Officer shall after consulting the District Judge and considering his past record of work, conduct and age, report to the Legal Remembrance, together with the statement of work done by him in Form No. 9 whether in his opinion the term of appointment of such counsel should be renewed or not. A copy of the opinion of the District Judge should also be sent along with the recommendations of the District Officer.

2. Where recommendation for the extension of the term of a District Government Counsel is made for a specified period only, the reasons thereof shall also be stated by the District Officer.

3. While forwarding his recommendation for renewal of the term of a District Government Counsel-

(i) The District Judge shall give an estimate of the quality of the Counsel's work from the judicial stand point, keeping in view the different aspects of a lawyer's capacity as it is manifested before him in conducting State cases, and specially his professional conduct;

(ii) The District Officer shall give his report about the suitability of the District Government Counsel from the administrative point of view, his public reputation in general, his character, integrity and professional conduct.

4. If the Government agrees with the recommendations of the District Officer for the renewal of the term of the Government Counsel, it may pass orders for re-appointing him for a period not exceeding three years.

5. If the Government decides not to re-appoint a Government Counsel, the Legal Remembrancer may call upon the District officer to forward fresh recommendations in the manner laid down in para 7.03.

6. The procedure prescribed in this para shall be followed on the expiry of every successive period of renewed appointment of a District Government Counsel.

12. In *Vijay Shankar Rastogi and others v. State of U.P. and others* (Supra) the Court held in paragraphs 27 to 32 as follows:

27. From the discussions made herein supra, it is clear that the Government counsel has a right to be considered for renewal of his term in terms of Para 7.08 of L.R. Manual which specifically provides that at least three months before the expiry of the term of the District Government Counsel, the District Officer shall

after consulting the District Judge and considering their past record of work, conduct and age, submit a report to the Legal Remembrancer, together with the statement of work done by them, for consideration of the State Government, as to whether the term be renewed or not. The District Government Counsel cannot be removed nor their functioning interfered unless renewal is considered in accordance with the procedure prescribed by law taking into account the report of the District Judge as well as the comments of the District Magistrate and appropriate orders are passed refusing renewal. From the record it is established that the State Government did not consider the case of the petitioners at any point of time for renewal of their term and had not taken into consideration the recommendations made by the District Judge and the report submitted by the District Magistrate and hence the order cannot be sustained. The conclusion so arrived at by a non speaking order is thus arbitrary, unreasonable and thus unsustainable in law.

28. In *State of U.P. and Others Vs. Ashok Kumar Nigam*, , the Hon''ble Apex Court has held that for renewal of the term of District Government Counsel, the compliance of the procedure is necessary by the competent authority. A decision by the State Government not to renew terms of District Government counsels en-bloc without proper application of mind or due consideration of prescribed procedure by an unreasoned order cannot be sustained. It has also been held by Hon''ble Apex Court that right of consideration for renewal is a legitimate right vested in the applicant which can be declined only where specified authorities report about applicant's work to be unsatisfactory. The State Government does not have absolute right to terminate the appointment at any time without specifying any reason. Hon''ble Apex Court has further held that the onus was on the State Government/competent authority to show that it had acted in accordance with the prescribed procedure and its action did not suffer from vice of discrimination and arbitrariness. The arbitrary act of the authorities cannot be said to be beyond the ambit of judicial review.

29. In *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, , it has been held as under:

It is now too well-settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect, the State cannot claim comparison with the private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind.

30. The law is very well-settled that a thing should be done in the manner, as it is provided by the Act or statute or regulatory procedure, and not otherwise. The renewal of serving Government counsel before proceeding to make fresh appointment must be considered in accordance with law as settled by the

judgments of this Court and Hon''ble Supreme Court.

31. Hon''ble Apex Court in *Km. Srilekha Vidyarthi (supra)*, where the services of Government counsels of entire State were terminated, held that in case of existing appointees, a decision has to be first reached about their non-suitability for renewal before deciding to take step for fresh appointment. To quote relevant portion from *Km. Srilekha Vidyarthi (supra)*:

46. This was done inspite of the clear provisions in the L.R. Manual laying down detailed procedure for appointment, termination and renewal of tenure and the requirement to first consider the existing incumbent for renewal of his tenure and to take steps for a fresh appointment in his place only if the existing incumbent is not found suitable in comparison to more suitable persons available for appointment at the time of renewal. In the case of existing appointees, a decision has to be first reached about their non-suitability for renewal before deciding to take steps for making fresh appointments to replace them. None of these steps were taken and no material has been produced to show that any existing incumbent was found unsuitable for the office on objective assessment before the decision to replace all by fresh appointees was taken. The prescribed procedure laid down in the L.R. Manual which has to regulate exercise of this power was totally ignored. In short, nothing worthwhile has been shown on behalf of the State of U.P. to support the impugned action as reasonable and non-arbitrary. The impugned circular must, therefore, perish on the ground of arbitrariness which is an available ground for judicial review in such a situation.

32. In *State of U.P. Vs. Ramesh Chandra Sharma and others*, , Hon''ble Supreme Court considered the case of renewal of term and held that the application for renewal is required to be considered in strict adherence of the provisions contained in Para 7.08 of the L.R. Manual and application is to be considered on relevant considerations. It cannot be rejected on the whims of the authority or in an arbitrary manner. If the Court comes to the conclusion that application for renewal has been rejected on any non existent reasons or extraneous consideration, the order becomes liable to be quashed.

33. In view of the discussions made herein above, the writ petition is allowed. The impugned letter dated 31.10.2012 is hereby set aside. The respondents are directed to consider " the claim of the petitioners in accordance with the procedure prescribed for renewal of their term on the same material, as was placed before it, by a reasoned and speaking order within a period of two months from the date of production of certified copy of this order.

13. In the present case in the material produced on record, it is admitted that the District Magistrate did not take opinion of the District Judge, Kaushambi, for making any recommendation for renewal of the term of the petitioner.

14. A lawyer works as legal advisor and defender of the person, who engages him. Employed by the State Government to advice, represent and defend its interests in Court of law, he has the same duties to perform and is subject to the

discipline, conduct, and conditions of practice codified by the Bar Council of India in "Standard of Professional Conduct and Etiquette" under Chapter III of the Advocates Act, 1961. As a counsel representing his client, he is bound by the code of ethics as an Advocate enrolled with Bar Council of the State. The need of his client is to be balanced by him with the duties prescribed by Bar Council of India, the duties towards Court as well as interests of society, or in other words the public interest. The true measure of the duty of a lawyer to his clients lies in the sense of his responsibility both towards society and the Court. A State Law Officers is not in private occupation nor is a Government servant, subject to discipline and conduct rules of the State Government, which engages him. He has to maintain a delicate balance of his duties towards his client, keeping in view his duties towards Court and the society. With theses responsibilities, he is not expected to succeed in every case.

15. A State Law Officer, as a penal lawyer engaged by the State Government, or the instrumentalities of the State must advice his client in accordance with law, and defend the interest of his client keeping in view and having regard to the rights of the citizens as guaranteed and duties as prescribed in the Constitution of India and the laws. While protecting the interest of the State he has to assist the Court to arrive at a just, fair and valid resolution of disputes. He is not expected to win or to secure favourable orders for the State in every case. His performance for continuing his engagement or renewal of his term is not to be measured in the number, or percentage of cases won by him for the State. The decision in the cases for or against the State is taken by Judges appointed to decide cases. The considerations for engagement and renewal of his term should be his competence, honesty, integrity and sincerity, having regard to the human values and rule of law. He must bear true faith and allegiance to the Constitution of India to ensure protection of the rights of the citizens of India and help the State to ensure to protect such rights subject to their duties and good governance by the State. Any other consideration for appointment and renewal of his term will be illegal, arbitrary, unfair, unreasonable and against the rule of law, which must be jealously guarded by the State in a democratic society.

16. The petitioner's engagement was with the condition that he can be disengaged without giving any notice or reasons. He had accepted such condition of his appointment.-However, where the disengagement is challenged in the Court of law, the State must satisfy the Court that its action was not arbitrary, unfair and unreasonable, and to prove its action, which affects the rights and reputation of such person. The State is required to produce sufficient material to justify its decision. The State is also required to satisfy the Court that the decision was arrived at after following the statutory procedure prescribed in law. In the present case the State has failed to produce the material on the basis of which the District Magistrate, Kaushambi formed an opinion communicated to the Law Secretary of the State Government that the petitioner has not taken effective and desired interest in prosecuting the cases, the speed of the cases handled by him is highly unsatisfactory and that he does not discuss the current

cases or keeps the officers of the district informed with the pending cases. The Standing Counsel has not produced any material to justify the opinion of the District Magistrate. We also find that in the present case the District Magistrate, Kaushambi did not obtain the opinion of the District Judge in whose Court and the Courts subordinate to him the petitioner was working, or even take care to discuss the matter of renewal of petitioner's term with him. The District Magistrate and the Law Secretary have acted against the provisions of Para 7.08 of L.R. Manual, which has been held to be mandatory for renewal of his term in the decisions of Supreme Court and High Court in the cases quoted as above. In view of the discussions made hereinabove, the writ petition is allowed. The impugned order passed by the State Government dated 20.2.2013 and its communication by the District Magistrate, Kaushambi to the petitioner dated 22.2.2013 are set aside. The respondents are directed to consider the claim of renewal of the petitioner's term in accordance with the procedure prescribed for renewal of their term in the L.R. Manual, on the same material after consulting the District Judge, Kaushambi, by reasoned and speaking order within a period of two months from the date of production of certified copy of this order. There shall be no order as to costs.