

(2002) 11 AHC CK 0143

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 6226 of 1988, 11599 of 1999, 2381 of 1991, 15945 of 1991, 1790 of 1992 and 1790 of 2001

Sita Ram Singh and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-11-2002

Acts Referred:

Constitution of India, 1950 — Article 39
Criminal Procedure Code, 1973 (CrPC) — Section 24, 25

Citation : AIR 2003 All 208

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

Bench : Division Bench

Advocate : Party in person, R.N. Bhalla, Kamla Singh and P.K. Singh, for the Appellant; Ram Vijay Singh, S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.K. Agrawal, J.—Writ Petition No. 6226 of 1988 has been filed by Sarv Sri Sita Ram Singh and Daya Shanker Mishra, practising lawyers of this Court seeking a writ, order or direction in the nature of mandamus commanding the opposite parties to produce the recommendation of the Advocate General for revising the emoluments of State Law Officers and appropriate direction be issued to implement the said recommendation forthwith. They also pray that the opposite parties be directed to pay the back emoluments of all State Law Officers including brief holders at Criminal side u/s 24 of the Code of Criminal Procedure.

2. Writ Petition No. 1159 of 1989 has been filed by Sri Shiva Ji Mishra and 6 other practising advocates of this Court seeking writ of certiorari quashing the standard of payment of there types of Rs. 2500/-, 3300/-, 3700/- and instead should be Rs. 4000/-basic pay scale and allowance as payable to Public Prosecutor of Magistrate Court appointed u/s 25 of the Code of Criminal Procedure. They further seek to quash the period of three years fixed for appointment and to declare the appointment as perpetual according to law till

the date of retirement.

3. Writ Petitions No. 2381 and 15945 of 1991 have been filed by Sri Sita Ram Singh for quashing the Government Order dated 29-12-1990 and for re-determination of the pay-scale as payable to Public Prosecutor u/s 25 of the Code of Criminal Procedure.

4. Writ Petition No. 1790 of 1992 has been filed by Sri Sita Ram Singh seeking a writ of mandamus commanding the opposite parties for payment of arrears of pay from 1-1-1991 on account of the Government Order dated 29-12-1991 having been stayed by this Court. He further seeks a writ of mandamus restraining the opposite parties from giving effect to the termination order dated 30-12-1991 as also quashing the said order and for quashing the Government Order dated 25-9-1991 for engaging special counsel panel.

5. Criminal Misc. Contempt Petition No. 12 of 2001 has been filed by Sri Sita Ram Singh against Sri N.K. Mehrotra and four other persons for alleged fabricating false documents and making a false averment in the counter-affidavit filed in Writ Petition No. 2391 of 1991.

6. Since the issue involved in all these petitions are common, they have been heard together and are being decided by a common order.

7. Briefly stated the facts giving rise to the present petitions are as follows :

During the relevant period the State Government had appointed Chief Standing Counsel, Standing Counsel and brief holders for conducting cases on behalf of the State on Civil side including writ petitions and tax matters. For conducting cases on the Criminal side it appoints Government Advocate, Deputy Government Advocates and Assistant Government Advocates and the brief holders. It also appoints Additional Chief Standing Counsel on Civil side and additional Government Advocate on the Criminal side. The State Government did not pay any retainerhip fee to its counsel on the civil side. However for appearance of the Chief Standing counsel a fee of Rs. 175/-per day for minimum three hours was payable and for the standing counsel it was Rs. 150/- but if the appearance was for less than three hours in a day, 50% of the aforesaid fee was payable. According to the practice prevailing during the relevant period two advocates were posted on behalf of the State Government in each Court. One of them used to claim fee for more than three hours and the other for less than three hours on alternate working days as the maximum working hours for a Court are only five hours per day. These counsel are prohibited from appearing in cases in which State of U. P. or any of the Officers has been arrayed as opposite party/respondent. Likewise, the Government Advocate, Additional Government Advocate, Deputy Government Advocate and Assistant Government Advocate were paid a fixed fee of Rs. 2500/-, 2000/- and Rs. 1500/- per month respectively. The brief holders on the criminal side were paid Rs. 750/- per month whereas the brief holders on the civil side were entitled to the fee payable to the standing counsel for their appearances in the Court. Apart from the

aforesaid fee they were also paid some amount towards fee for drafting counter-affidavit. However, no drafting fee was paid on the criminal side. The structure of fee payable to these counsel appears to have been revised by the State Government in the year 1977. Thereafter no revision took place till the present writ petition was filed.

8. According to the petitioner, Sri Sita Ram Singh he was enrolled as an Advocate in the year 1964 and was appointed as a brief holder on the criminal side in the year 1983. According to him, the fee payable to brief holders and other counsel both on the criminal side and civil side by the State Government is ridiculously low as they are not entitled to appear in the cases in which the State Government or any of its Officers are a party and the main litigation in the State of U.P. is such in which the State Government is a party. Thus, they have to lead their life on the amount of fee paid by the State Government, which on an average is about 800/- per month for a brief holder and Rs. 1500/- for Assistant Government Advocate and Rs. 2500/- for Government Advocate. According to him in view of Section 24 of the Code of Criminal Procedure, these advocates, who have been appointed as counsel on the Criminal side are to be treated as Public Prosecutors and are entitled for the same status i.e. State Law Officer and the emoluments payable to them. He further submitted that the pay of the State employees has been revised from time to time without there being any corresponding revision of fee payable by the State Government to these counsel. Further neither any dearness allowance nor any pension or Provident Fund etc. is being given to them. He further submitted that the Central Government had revised the fee structure for the standing counsel for Union of India and they are being paid Rs. 250/- for drafting applications and counter affidavits and Rs. 750/- for final hearing of writ petitions. Thus, there is a great disparity among the fee, which is being paid by the State Government and Central Government to their counsel. According to him in other States also the State Government pays much more amount than what is being paid in the State of U. P. Earlier. Sita Ram Singh had approached this Court by filing Civil Misc. Writ Petition No. 8283 of 1987 for revision of fee structure payable to State Law Officers appearing in the High Court, which was got dismissed as withdrawn on 28-8-1987. When the fee structure was not revised the petitioner had once again approached this Court. Vide Government order dated 29-12- 1990, the State Government has revised the fee structure of the counsel on Civil and Criminal side. It has been provided that the Chief Standing Counsel/Public Prosecutor would get a retainerhip of Rs. 1500/- per month whereas the Additional Chief Standing Counsel/Additional Public Prosecutor shall get retainerhip of RS. 1250/- per month and the standing counsel and Additional Government Advocate Grade-II shall get retainerhip of Rs. 1000/- per month. Apart from it they are, also entitled for drafting fee and also fee for daily appearance. The brief holders were not given any retainerhip.

9. We have heard Sri Sita Ram Singh, learned Advocate, who had appeared in person before us and Sri Ran Vijay Singh, learned Standing Counsel, appearing for the respondents.

10. Sri Sita Ram Singh vehemently submitted that the Public Prosecutor and Assistant Public Prosecutors are appointed by the State Government under the provisions of Section 24 of the Code of Criminal Procedure. u/s 24 of the Code of Criminal Procedure, the State Government appoints a public prosecutor and one or more public prosecutors for conducting the cases on behalf of the State Government whereas under Sub-section (3) the State Government appoints Public Prosecutor or one or more Additional Public Prosecutors for a district. However, u/s 25 of the Code of Criminal Procedure 1973, the State Government has been empowered to appoint one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates. Thus, the Public Prosecutor and Additional Public Prosecutors so appointed discharge same functions i.e. they conduct the cases on behalf of the State Government whether in the High Court or in the District Court, as the case may be, are entitled for the same scale of fees/emoluments, as are payable to Assistant Public Prosecutors, who conduct prosecution cases in the Courts of Magistrate. He further submitted that the public prosecutor and Additional Public Prosecutors so appointed by the State Government are to be treated as an employee of the State Government and therefore, they should also be given the same benefits like D.A. G.P.F., Pension and gratuity etc. and their term should be such so as to continue till they attain the age of superannuation fixed for the State Government employees, as are applicable to Assistant. Public Prosecutors. Their appointment cannot be made time bound. According to Sri Sita Ram Singh (the petitioner), he and other similarly situated Public Prosecutors/Additional Public Prosecutors working on the Criminal side for and on behalf of the State Government are entitled for the same salary/emoluments and allowances which are payable to the Assistant Public Prosecutors appointed in the Court of Magistrates and Government employees and are entitled to continue till the age of superannuation. Thus, the order terminating his engagement is illegal and liable to be quashed. Sri Sita Ram Singh, Advocate (petitioner) on the question of equal pay for equal work has relied upon a decision of the Hon'ble Supreme Court in the case of Bhagwan Dass and Others Vs. State of Haryana and Others,

11. On the other hand Sri Ram Vijay Singh, learned Standing Counsel, however, submitted that Sri Sita Ram Singh had earlier approached this Court by filing Civil Misc. Writ Petition No. 8283 of 1987, which was got dismissed as withdrawn vide order dated 28-8-1987 without obtaining any permission to file a fresh writ petition. Thus, he cannot seek parity/revision in the pay scale as the second petition on the same set of facts and cause of action is not maintainable. He further submitted that the nature of work performed by Public Prosecutors/Additional Public Prosecutors in the District Court and the High Court and Assistant Public Prosecutors in the Courts of Magistrate are entirely different and cannot be compared with. It cannot be said that they perform the same work. According to him the knowledge, experience, preparation and Court craft while conducting cases in the District Court and in the High Court and in the Courts of Magistrate are different and cannot be equated. Thus, the same emoluments/fee

cannot be claimed. He further submitted that all the petitioners have accepted their engagement/appointment as Additional Public Prosecutors and brief holders to conduct the cases on behalf of the State Government with an open eye and the scale of fee payable was also known to them. Having accepted their appointment, they cannot question the scale of fee as being ridiculously low. He further submitted that it is not correct to say that the Additional Public Prosecutors and brief holders are being paid less amount towards fee. In fact, the status, which they get on being appointed as Government counsel off sets the consideration of fee.

12. So far as the question that they are to be treated as Government employees and are entitled for all benefit and allowances, which are admissible and payable to the State Government employees are concerned, he submitted that the petitioners have been appointed to conduct the cases on behalf of the State Government and they are not being paid any salary instead they are being paid retainership fee. The terms of appointment do not alter their status from an advocate which is a respectable profession to that of a Government employee. Thus, the age of retirement and other retiral benefits like pension, gratuity and other allowances Cannot be claimed.

13. Having heard the learned counsel for the parties, we find that it is not in dispute that the petitioner is a practising Advocate of this Court. He had been appointed by the State Government as a brief holder in the year 1983 for conducting the cases on the Criminal side. At the time of his appointment he was well aware about the scale of fee payable to a brief holder. He accepted the appointment with open eyes. The nature of appointment of an advocate as Law Officer came up for consideration before the Hon''ble Supreme Court in the case of State of U.P. and others Vs. U.P. State Law Officers Association and others, wherein the Apex Court has held that Law Officers appointed by the Government to look after the work of the Government was only professional service and legal assistance and the service rendered by a counsel is 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 to be discharged.

14. This court had followed the decision of the Hon''ble Supreme Court in Writ Petition No. 9681 of 2001, R.D. Gupta v. State of U. P., decided on 29-8-2001.

15. 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 merely a 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 angles viz. The nature of the legal profession, the interest of the public and the modes of the appointment and removal. Paragraphs 13 to 19 of the resorts are reproduced below (para 6 of AIR) :

"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 was no more than a spokes man 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 specific 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. He 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 spokesmen. 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 lawyers also owe 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."

16. In the case of Harpal Singh Chauhan and others Vs. State of U.P., the Hon"ble Supreme Court has held as follows. (para 19) :

"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."

17. Applying the principles laid down by the Hon"ble Supreme Court in the aforesaid cases, to the present ease, we are of the view that by no stretch of imagination the petitioners can be said to be the Government employee"s. Their engagement is only professional and their services can be terminated at any point of time.

18. So far as the question of equal remuneration is concerned, we find that the nature of work and professional service rendered by a Public Prosecutor/ Additional Public Prosecutor in a District Court and the Assistant Public Prosecutor in the Courts of Magistrate is altogether different than what is rendered in a High Court. It may be mentioned here that in respect of the Assistant Public Prosecutors appointed to conduct prosecution in the Courts of Magistrate, the State Government has been empowered to exercise control through police officers whereas there is no such provision in the case of Public Prosecutors and Additional Public Prosecutors appointed u/s 24 of the Code of Criminal Procedure. Moreover, the public prosecutors and Additional Public Prosecutors appointed in the High Court and in the District Court are not prohibited from appearing in Civil Cases. Thus, the nature of their appointment is entirely different. In fact, if they are to be treated at par with Assistant Public Prosecutors, it will be very humiliating as they would be placed by the State Government under supervision through the police officers which is not desirable at all. They cannot be equated. Thus, there is no question for applying the principles of equal pay for equal work as canvassed by Sri Sita Ram Singh relying upon the decision of the Hon"ble Supreme Court in the case of Bhagwan Dass and Others Vs. State of Haryana and Others, .

19. So far as the Government Order dated 29-12-1990 issued by the State Government re-fixed the fee/remuneration payable to the various Law Officer is concerned, we find that it has been fixed on the basis of the recommendation made by the then Advocate General on the basis of the experience he had with the working of the Law Officers in the State. Thus, it cannot be said to be arbitrary. However, we do feel that the scale of fee fixed is quite low as compared to what is being paid by the Central Government to its counsel. For attracting best talent from the bar, the fee payable to counsel should be such so that good advocates may find it difficult to resist the offer to join as Law Officers and

conduct the cases on behalf of the Government, which in the long run shall be to the benefit of the State Government itself.

20. So far as the Criminal Contempt Petition is concerned, it is based upon the allegations of a false affidavit filed. We have perused the affidavit and are of the view that it is not necessary to proceed any further.

21. In view of the foregoing discussions, we do not find any merit in these petitions and they are dismissed.