
(2017) 05 SHI CK 0011
In the High Court Of Himachal Pradesh
Case No : 3154 of 2014

Suman Singh Chandel

APPELLANT

Vs

State of H.P. & others

RESPONDENT

Date of Decision : 02-05-2017

Acts Referred:

Citation : (2017) 05 SHI CK 0011

Hon'ble Judges : Chander Bhusan Barowalia

Bench : Single Bench

Advocate : Tim Saran, Virender Kumar Verma, Rajat Chauhan, Prince Chauhan, Vijay Verma

Final Decision : Dismissed

Judgement

1. The present writ petition has been maintained by the petitioner against the respondents praying therein for the following substantive relief:

"i) That a Writ of Certiorari quashing direction dated 23.5.2013 and 6.3.2014 (Annexure P-5 and P-6) and resolution dated 7.3.2014 (Annexure P- 7) vide which the petitioner has been proposed to be removed in pursuance to U.O. letter issued by the office of Chief Minister and respondent No.5 has been proposed to be appointed as Standing Counsel of respondent No.3, may kindly be issued declaring the said directions and resolution unconstitutional, erroneous, unjust, illegal, malafide, arbitrary and colorable exercise of power in bad faith.

ii) That a writ of mandamus directing respondents No.1 to 3 to allow the petitioner to continue as Lawyer/Legal Advisor of respondent No.3 to its satisfaction with all consequential benefits.

iii) That a writ and/or direction be issued to the respondent State not to usurp power in autonomous working of Local self bodies and standard norms should be adopted in engaging efficient counsel to defend the local self bodies being public bodies having stakes of public interest and public money."

2. As per the petitioner, respondent No.3 has been notified as Municipal Council on 25.11.2009 and prior to that it was Notified Area Committee/Nagar Panchayat since 27.10.1970. Since the inception of Notified Area Committee/Nagar Panchayat Ghumarwin, till the year 2009, no permanent Advocate was engaged by the Nagar Panchayat. In the year 2009, Nagar Panchayat, invited applications for appointing lawyer for conducting cases. In pursuance of the aforesaid advertisement notice, petitioner applied for appointment as lawyer, said application was considered, vide resolution No.74/9 dated 9.6.1999. The decision of Nagar Panchayat, was conveyed to the Director Urban Development, Himachal Pradesh and the Director Nagar Panchayat permitted to engage the petitioner as Part Time Lawyer in Nagar Panchayat, Ghumarwin @ Rs.1000/- per month, vide its letter dated 20.6.2000. On 30.6.2000, Nagar Panchayat, Ghumarwin, issued letter of engagement of the petitioner as Legal Advisor/Part Time Lawyer w.e.f. 1.7.2000 till further orders. On 25.11.2009, Nagar Panchayat, Ghumarwin, has been notified as Municipal Council/Nagar Parishad and the petitioner is continuing as duly appointed Lawyer of the Municipal Council, Ghumarwin. Municipal Council, Ghumarwin, vide its letter dated 4.6.2009, had informed the Director Urban Development regarding engagement of the petitioner alongwith performance of the petitioner since 2000 to 2009. It has been specifically mentioned that not even single case has been lost by the Notified Area Committee/Municipal Council, Ghumarwin, since engagement of the petitioner as its lawyer. On 23.5.2013, Director Urban Development had issued a letter to the Executive Officer Municipal Council, Ghumarwin, regarding engagement of Standing Counsel for defending case of Municipal Council, Ghumarwin at Sub Judge Court, Ghumarwin. Respondent No.3 has again been conveyed from the Director Urban Development, vide its letter dated 6.3.2014, referring previous letter dated 23.5.2013, regarding approval of engagement of respondent No.5, as Standing Counsel for Municipal Council, Ghumarwin, to intimate whether Shri Sanjeev Sharma, Advocate has been engaged as Standing Counsel for defending cases of Municipal Council, Ghumarwin or not alongwith reasons for not implementing orders well in time. On the basis of directions of Director of Urban in compliance of the approval of Hon"ble Chief Minister and under pressure of respondent No.4 to engage respondent No.5 as lawyer of Municipal Council Ghumarwin, respondent No.3, on 7.3.2014 has passed resolution No.163/28 to make recommendation for appointment of respondent No.5 to seek direction from the Director Urban Development to remove the petitioner. Respondent No.3/ Municipal Council are democratic institutions managed by the representatives of the people. They function for public purposes and take away a part of the government affairs in local areas. They are political sub-divisions and agencies which exercise a part of State function. Though they function under the supervision of the Government, but as they are intended to carry on local self government the autonomy is a necessary adjunct to their other powers. Respondent No.3 has right to choose a counsel, but not at the instance of and not on the interference of the political persons having no authority to do so. The removal must be on the basis of some valid and sufficient ground and reason.

3. In reply on behalf of respondents No.1 and 2, it has been contended that respondent No.3 vide its letters dated 25.3.2000 & 9.6.2000 accorded permission for engagement of the petitioner as Part Time lawyer in Nagar Panchayat, Ghumarwin, @ Rs.1000/- per month. The petitioner was engaged as standing counsel on Part Time basis till further orders. Part Time engagement as lawyer does not confer the right to continue as Advocate of Municipal Council, Ghumarwin, permanently. It has been contended by the replying respondent that on the basis of approval given by the competent authority which is just, proper and legal, as it is the prerogative of the competent authority to engage or replace the standing counsel, as per their suitability, trust and for the betterment of the institution. Replying respondent simply asked respondent No.3 to appoint respondent No.5, as standing counsel for defending cases of Municipal Council before the learned Civil Judge, Ghumarwin. Further, vide letter dated 6.3.2014, respondent No.3 was asked to intimate whether Shri Sanjeev Sharma, Advocate has been engaged as standing counsel or not alongwith reason for not implementing orders of higher authority. Replying respondent has never asked respondent No.3 to disengage the petitioner from the post of Part Time standing counsel, Municipal Council, Ghumarwin. It is the prerogative of the Government to use its wisdom to engage/change standing counsel from time to time, keeping in view the interest of Government cases pending before the court of law and to bring efficiency to reduce the pendency/future litigation and vested the interest of standing counsel due to their long standing in particular institution. As such, the action of replying respondent is just, proper, legal as per constitution and no malafide intention as well violation of any articles of the Constitution of India while conveying the approval of competent authority regarding appointment of respondent No.5, as standing counsel of Municipal Council, Ghumarwin.

4. In reply on behalf of respondent No.3, it has been contended that the petitioner is trying to enforce his personal rights of being continued to be engaged as a counsel of respondent No.3. The petitioner has no right or locus standi to continue as a counsel of respondent No.3. The appointment of counsel within the realm of respondent No.3 and he is free to appoint and remove the counsel. Respondent No.3 has acted within the four corners of the law and the general house of respondent No.3 has approved the appointment of respondent No.5 and the same was duly approved by respondents No.1 & 2. It has been specifically contended that the appointment of the petitioner as an Advocate of respondent No.3 was a contractual appointment. The petitioner has no right to continue in perpetuity.

5. In reply respondent No.5 contended that the Nagar Panchayat can appoint as many lawyers as it desires and assign the cases to them. There is no question of permanency nor Nagar Panchayat is bound to keep only one standing counsel for conducting the cases of Nagar Panchayat. The replying respondent has been appointed by the competent authority keeping in view the interest of institution. The condition of engagement till further orders in the letter of engagement of the petitioner dated 30.6.2000 was in the knowledge of the petitioner, as he was

engaged till further orders. There was no permanent engagement of the petitioner.

6. Learned counsel appearing on behalf of the petitioner has argued that act of the respondents is against the law and is liable to be set aside, as the same is arbitrary. On the other hand, learned appearing on behalf of respondent No.3 has argued that it is for the client to decide to whom he wanted to engage a counsel and the petitioner cannot insist that he should only be engaged as Advocate by respondent No.3. In rebuttal, learned counsel appearing on behalf of the petitioner has argued that since the petitioner's work and conduct was never found unsatisfactory, the action of respondents may be set aside.

7. I have heard learned counsel for the parties and have also gone through the record of the case minutely.

8. It is admitted case of the parties that the petitioner was duly appointed by the Municipal Council, Ghumarwin, and he was discharging his duties, but the Notified Area Committee/Nagar Panchayat, Ghumarwin, has now appointed respondent No.5, as their counsel. The case of the petitioner is that though State Government enjoys supervisory powers over the local bodies, but they are not the department of Government and so being democratic institution they are particular Sub Division. So, the Government cannot interfere in the provision of Municipal Council Ghumarwin and respondent No.5 cannot be appointed as Advocate for Municipal Council, Ghumarwin. Reply filed by respondent No.3 shows that the relationship between lawyer and his client is one of trust and confidence. As per respondent No.3, the client engages a lawyer for personal reasons and he is at liberty to leave him also for the same reasons and the client is under no obligations to give reasons for withdrawing his brief from the lawyers. As per respondent No.3, after receiving of the letter dated 23.5.2013, from Director, Urban Development, Shri Sanjeev Sharma (respondent No.5) was appointed as Advocate for defending the cases of Municipal Council, Ghumarwin (respondent No.3) and it is also the case of respondent No.3 in terms of resolution dated 9.6.1999 passed by the duly elected member of Municipal Council Ghumarwin, wherein it was unanimously decided in the meeting that the petitioner be engaged as an Advocate of Nagar Parishad, Ghumarwin, on the fees as determined by the State Government. It is further submitted that the appointment as a counsel of respondent No.3 is a contractual appointment and respondent No.3 is a right to change the counsel. As per respondent No.3, the petitioner was appointed as counsel after he made an application and the petitioner was engaged as lawyer on monthly fees of Rs.1000/-, but the petitioner was no right to continue as Advocate of respondent No.3. Respondents No.1 and 2 has categorically stated that it is for the Government to engage suitable person as standing counsel who can watch the interest of institution and the petitioner cannot force that he should be continued as Advocate of respondent No.3. These all facts goes to show that the petitioner who was earlier working as counsel of respondent No.3 and now respondent No.3 has engaged

respondent No.5, as their counsel to represent them. The petitioner cannot force respondent No.3 to keep of enjoying him as their counsel at any point of time without any complaint was found against him. This Court finds that letter dated 20th June, 2000 (Annexure P-2), the petitioner was appointed as legal advisor by respondent No.3, after taking permission from the Government of Himachal Pradesh, Directorate of Urban Development, Shimla, at the rate of Rs.1000/- per month and thereafter he was working. Now the Government of Himachal Pradesh, has given permission to engage Shri Sanjeev Sharma, Advocate, vide letter dated 23.5.2013 (Annexure P-5) and respondent No.3 has been appointed Shri Sanjeev Sharma, Advocate, as their counsel for defending the cases of Municipal Council, Ghumarwin in Civil Courts at Ghumarwin. The resolution to this effect was also passed by the members of respondent No.3 and they had endorsed the appointment of respondent No.5 as their counsel. In these circumstances, this Court finds that the petitioner has no legal right to continue with respondent No.3 as their counsel. The action of respondent No.3 in appointing respondent No.5 as their counsel in place of petitioner also cannot said to be arbitrary capricious against the confines of legitimacy, as they are within their right to appoint their counsel as their choice.

9. Learned counsel appearing on behalf of the petitioner has relied upon the judgment in (1996) 1 Supreme Court Cases 95 titled Housing Board of Haryana vs. Haryana Housing Board Employees Union and others, but this judgment is with regard to taxation and labour dispute. The ratio of this judgment is not applicable to the facts and circumstances of the present case. She has also relied upon the judgment in (1981) 2 Supreme Court Cases 308 titled Union of India and others vs. Shri R.C. Jain and others, is also with respect to the payment of bonus Act and labour laws. This judgment is also totally different in the facts of the present case.

10. The net result of the above discussions made hereinabove is that the petitioner has failed to establish his case with regard to the action of respondents being arbitrary or unconstitutional or in violation of the right accrued to the petitioner. Resultantly, the petition is devoid of any merit and the same is accordingly dismissed. In the peculiar facts and circumstances of the case, parties are left to bear their own costs. Pending application (s) if any also stands disposed of.