
(1969) 12 AHC CK 0007

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3640 of 1969

Suresh Prakash Agarwal, Advocate

APPELLANT

Vs

State of UP and Others

RESPONDENT

Date of Decision : 16-12-1969

Acts Referred:

Constitution of India, 1950 — Article 16(1)
Legal Remembrancers Manual — Para 156

Citation : (1970) 40 AWR 157

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : Gyan Chandra Dwivedi, for the Appellant; S.C. for opp. parties., for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, J.—The Petitioner is aggrieved at the termination of his services as a Panel Lawyer of the State. The Petitioner is practising at the bar since January, 1964. In response to an invitation issued by the District Magistrate of Pilibhit, the Petitioner applied in April, 1969, for being appointed to the post of Panel Lawyer in the district of Pilibhit. After considering the various applications and the recommendations of the District Magistrate and the District Judge, Pilibhit, the State Government on 10-7-1969, appointed the Petitioner as a Panel Lawyer for a period of one year from the date of his taking over charge. The Petitioner took over charge on 16-7-1969. On or about 7-10-1969, the Petitioner was informed by the District Magistrate that the Government had terminated the Petitioner's appointment.

2. The Petitioner states that his work in the short period of 2 1/2 months was highly satisfactory. His work was not considered unsatisfactory either by the District Magistrate, or the District Judge, or even by the Government. The action of the Government in terminating the Petitioner's services abruptly has been alleged to be malafide and based on irrelevant considerations. It has also been

stated that Para. 156 of the Legal Remembrancer's Manual prescribes the conditions upon which alone the services of a Panel Lawyer can be terminated. That paragraph has also been violated.

3. The impugned order has been challenged on three principal grounds:

- (1) That the order violates the equality clause of Article 16 of the Constitution;
- (2) That Para. 156 of the Legal Remembrancer's Manual has statutory force. The impugned order violates Clause (8) of Para. 156;
- (3) That the impugned order violates Article 311(2) of the Constitution.

4. Article 16(1) of the Constitution says that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. This Article applies to an office under the State. Para. 2 of the Legal Remembrancer's Manual gives a list of the Law Officers of the Government. Serial No. 1 mentions the Advocate General. Serial No. 10 mentions Panel Lawyers. The other entries relate to Government Advocates, Standing Counsel, Prosecuting Inspectors, etc. Para. 156 of the Manual, which relates to Panel Lawyers (as amended by correction slip No. 1-A/54), says that a panel lawyer can be appointed after inviting applications from practising lawyers and considering the recommendations of the District Magistrates and the District Judges as well as the Legal Remembrancer. The Government selects a Candidate after considering these recommendations. The selected candidate is then appointed as a Panel lawyer. The appointment can be for a period of three year or less. The term of a Panel lawyer may be renewed for a further period of three years if his work has been found to be satisfactory. A Panel lawyer receives fees at the rate of Rs. 16/- per day. Clause (8) of Para. 156 states that the Government may remove the name of any Panel lawyer from the list if his work is reported or considered to be unsatisfactory, without assigning any reason therefor. This will show that the appointment can be terminated for good cause only, though the order may not assign any reason. This provision would show that the appointment of a Panel Lawyer is not like the engagement of a practising lawyer by a litigant for conducting a particular case of his in a court. This is an appointment, which is to last for a certain period of time on payment of a regular fee per day, irrespective of the quantum of work done on a particular day.

5. In *Smt. Kanta Kathuria v. Manak Chand Surana* C.A. No. 1869 of 1968, decided on 16-10-1969, the Supreme Court considered the question whether the office of a Special Government Advocate is an office of profit. The Supreme Court relied upon its earlier decision in *Mahadeo v. Shantibhai and Ors.* C.A. No. 1832 of 1967, decided on 15-10-1968. In that case, a Panel Lawyer engaged by the Railway Administration was held to occupy an office of profit. It was found that the duty of a panel lawyer was to watch cases coming up for bearing in court and ask for adjournments. The panel lawyer was paid Rs. 5/- for each such adjournment. The Supreme Court observed that the appointment carried duties and obligations which were continuing ones. It was held that such an

appointment would be to an office and since it carried a remuneration, it would be an office of profit. In my opinion, these decisions apply to the facts of the present case on all fours. The Manual states that the panel lawyer is one of the Law Officers of the Government. The office has certain duties mentioned in para. 156. It has a fixed tenure, which is not to exceed three years at one time. The Panel lawyer is paid at a fixed rate. All these things would suggest that the position of a panel lawyer is that of an office under the State, within meaning of Article 16(1) of the Constitution.

6. The equality postulated by Article 16(1) is for employment or appointment. It is settled that it covers all conditions of service even after the initial appointment--See *The General Manager, Southern Railway Vs. Rangachari*, . The aspect relating to termination of an appointment would hence be within the purview of Article 16(1) of the Constitution.

7. There was a controversy at the bar whether para. 156 of the Manual has statutory force. The learned Standing Counsel urged that it is merely an administrative instruction of the Government. Assuming this is so, it is clear that the Government has laid down certain rules for its own guidance in the matter of appointment of panel lawyers and termination of their appointment. If in a particular case, the Government acts contrary to its own rules, then it will be incumbent upon the Government to show that the order of termination was based on some good reason and was not arbitrary, else it will be discriminatory.

8. In the present case, the Petitioner has alleged that Clause (8) of Para. 158 of the Manual, which provides that a Panel lawyer can be removed if his work is reported or considered unsatisfactory, was not satisfied, because there was no such report, or finding or conclusion. The order of termination was, therefore, passed in violation of Clause (8). On the last occasion, I adjourned the hearing of the case to enable the Standing Counsel to file an affidavit stating the reasons which impelled the Government to terminate the Petitioner's appointment abruptly, before the expiry of the tenure of one year fixed by the initial order of appointment. No affidavit has been filed. The Government has not indicated the reasons, which impelled it to terminate the Petitioner's appointment. The Petitioner's allegation that the order has been passed on irrelevant considerations and arbitrarily, stands un-rebutted and can be accepted.

9. When the Government lays down rules for guiding its decisions and if it acts contrary to these rules without any reason and arbitrarily, then, in my opinion, the guarantee of equality mentioned in Article 16(1) is breached. The impugned order, therefore, deserves to be set aside on this ground.

10. The Learned Standing Counsel urged that relief Under Article 226 of the Constitution is not available to a person who has entered into a relationship of master and servant with the Government unless there is a breach of Article 311(2). The only other category of persons, which, according to the learned Standing Counsel, can come to the High Court Under Article 226 of the

Constitution, are industrial workmen or where some statutory body terminates the services in violation of statutory rules. The learned Standing Counsel has referred to Executive Committee of the UP State Warehousing Corporation v. Chandra Kiran Tyagi Civil Appeal No. 552 of 1967 decided by the Supreme Court on 8-9-1969. In my opinion, this decision does not preclude a person who has entered into relationship of master and servant, from coming to this Court with a complaint of the violation of Fundamental rights. Article 226 of the Constitution enjoins upon this Court to issue appropriate directions, orders or writs for the enforcement of any of the rights conferred by Part III of the Constitution. This being an express requirement of the Constitution, relief Under Article 226 cannot be refused merely because the relationship between the parties is that of master and servant.

11. As the petition is entitled to succeed on this point, it is unnecessary to go into the other two submissions raised on behalf of the Petitioners.

12. The petition is allowed. The impugned order terminating the Petitioner's appointment as a Panel Lawyer is quashed. There will, however, be no order as to costs.