

(2008) 07 AHC CK 0186
In the Allahabad High Court

Surya Nath

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-07-2008

Acts Referred:

Constitution of India, 1950 — Article 165

Citation : (2008) 07 AHC CK 0186

Hon'ble Judges : Sudhir Agarwal, J;Anjani Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Anjani Kumar and Sudhir Agarwal, JJ.—Petitioner Surya Nath who is a practising Advocate of this Court has filed this writ petition in person, seeking a writ of mandamus commanding respondent No. 1 to pay salary of petitioner with effect from 7th July, 2007 on his appointment as Additional Advocate General at High Court of U.P. at Allahabad. He has claimed payment of Rs. 27 Lacs. He has further sought a writ of mandamus commanding respondents to allot work to the petitioner and pay his duty wages which is a right of the petitioner.

2. The petitioner has averred in the writ petition that he was enrolled in U.P. Bar Council in the year 2001 vide enrolment No. U.P. 7184/2001 and is practising as a lawyer in this Court since then. He claims to have been informed on 27th July 2007 that he has been appointed as Additional Advocate General for the State of U.P. and this news was also telecast on Doordarshan Lucknow and broadcast from Lucknow Radio Station. It is said that pursuant to said appointment petitioner's character was certified by President, Bar Association of Tehsil Allahpur, District Ambedkar Nagar pursuant to inquiry in respect to character of the petitioner made from President of said Association. Petitioner thereafter submitted an application on 25th February 2008 before the President of India and Law Department of U.P.; Government for permitting him to take charge of the office and to provide work but nothing has been done so far.

3. No letter or notification or appointment of the petitioner as alleged by him as Additional Advocate General, State of U.P. has been placed on record.

4. During course of argument when this Court inquired from the petitioner, he admitted that he does not possess any letter of appointment but said that news was published in electronic media, i.e., Doordarshan Lucknow and Akashvani Lucknow. Though he has not annexed any document with the writ petition but he has given certain documents to the Court stating that he made representation on 16.1.2008 to Government of India which was forwarded by the Ministry of Law, Government of India to Chief Secretary, Government of U.P., Lucknow vide its letter dated 22.2.2008 pursuant where to the Chief Secretary, U.P. Government sent a letter dated 23.04.2008, informing Government of India, Ministry of Law and Justice, that petitioner's aforesaid representation has been considered and it is not possible for the Government to take any further action for the following reasons:

(a) For participating in Bar Association's election there is no provision for providing financial assistance to the candidate;

(b) The Government cannot issue any direction to the High Court to hear any particular matter.

(c) No person of the name of Haider Abbas was ever-appointed as Legal Remembrance r in the State of U.P.

5. After going through the entire writ petition as well as aforesaid documents made available to this Court by the petitioner, we were satisfied that this is a totally frivolous petition and was liable to be dismissed at threshold. However, as the petitioner very categorically asserted that news with regard to his appointment as Additional Advocate General was publicised by electronic media of the Government, as requested by learned Standing Counsel, we deferred the matter to be heard on 16th April 2008 vide our order dated 15th April 2008. Learned Chief Standing Counsel received instructions from the State Government communicated vide fax letter No. D-911/VII-Nyay-3-08-15 writ/2008 dated 16.4.2008 sent by Acharya Suresh Babu, Up-Sachiv addressed to Chief Standing Counsel informing that the petitioner Surya Nath has not been appointed as Additional Advocate General and no such notification has been issued by State Government. The said letter is taken on record. The learned Chief Standing Counsel thus contended that entire edifice of the petitioner is false, non est and amounts to grossest abuse of process of law and therefore, this writ petition deserves to be dismissed with heavy costs. He also contended that though office of Additional Advocate General as such is not a constitutional office as contemplated under Article 165 of the Constitution of India but except of the constitutional and statutory functions required to be discharged by Advocate General, the Additional Advocate General represents State Government and other instrumentalities of the State on request of the State Government to defend cases filed against State authorities before the High Court as also

sometimes in the Hon''ble Supreme Court. Considering increase in work load due to a large number of cases being filed in the High Court as also appeals being filed in the Hon''ble Supreme Court, practically it is not possible for one person holding office of Advocate General to represent the State in all cases of importance which have also risen in number during last several years. It is for this purpose and for defending cases in the Hon''ble Supreme Court and High Court which are of greater importance and otherwise ought to have been represented by Advocate General, the persons having proven merit have been appointed as Additional Advocate General in the State of U.P. at Allahabad and also separately in Lucknow Bench of this Court and sometimes in the Hon''ble Supreme Court also. The authority of Additional Advocate General in status is almost at par with Advocate General though under administrative control of Advocate General. In the matter of professional fee, though he is not at par with Advocate General but almost comparable to him. In administrative hierarchy, Additional Advocate General enjoys much higher status over Chief Standing Counsel and Government Advocates appointed in this Court at Allahabad and Lucknow Benches both. Appointment of Additional Advocate General, it is said that though not governed by any statutory provisions, but in practice, qualifications which are required to be observed for appointment as Advocate General have been followed for making appointment of Additional Advocate General and their appointments are made by issuing a gazette notification after appointment is made by Hon''ble the Governor. He pointed out that in the State of U.P., as per Legal Remembrancer Manual, at least seven years practice as an Advocate is necessary for appointment of Government Advocates, Additional Government Advocates, Deputy Government Advocates and Assistant Government Advocates. Ten years practice at bar is necessary for appointment of Chief Standing Counsel or Standing Counsel. The petitioner having been enrolled in UP Bar Council in the year 2001 is not eligible even to be appointed as Government Advocate or Additional Government Advocate or Deputy Government Advocate or Assistant Government Advocate, yet he is claiming his appointment as Additional Advocate General which is thoroughly misconceived. Placing reliance on a decision of Division Bench in Suraj Narain Srivastava v. State of U.P. and Ors. Writ Petition No. 4791 (M/B) of 2002 decided on 15th April 2003 he pointed out that this Court has clearly held that persons having standing at Bar lower than the prescribed eligibility qualifications in Legal Remembrancer Manual cannot be appointed as Public Prosecutor, Government Advocates, Additional Government Advocates, Deputy Government Advocates and Assistant Government Advocates and their appointment is wholly illegal. It is thus contended that an Advocate who has practice of less than 7 years could not have been considered for appointment of Additional Government Advocate at all. The entire claim of the petitioner is false and misconceived and this petition appears to have been filed for reasons other than bona fide.

6. We find sufficient force in the submission of learned Chief Standing Counsel. In our view, this petition deserves to be dismissed with exemplary cost.

The petitioner has not shown that he has been appointed as Additional Advocate General and therefore, this writ petition lacks merit. No mandamus as sought by him directing the State Government for payment of salary to the petitioner can be issued. A perusal of the entire writ petition shows that it has been drafted in a most reckless manner without even knowing the method of appointment of Additional Advocate General in the State of U.P. The appointment of Additional Advocate General is made by the Governor on the recommendation of Chief Minister of the State who makes the recommendation in consultation with Advocate General. After the appointment is made and the person concerned takes charge of the office, he is not paid any regular monthly salary but such professional fee as prescribed by various government orders. An Additional Advocate General is normally required to appear in those cases where a request is made by either Legal Remembrancer of the State or Additional Legal Remembrancer posted in the High Court itself; or the Chief Standing Counsel or Government Advocate subject to ratification by Legal Remembrancer or Additional Legal Remembrancer; and, also whenever so instructed by Advocate General. If he appears in a Court on a particular day, in any case, he is paid his professional fee on per day appearance basis subject to condition that only one fee for a day is paid irrespective of number of cases and Courts in which he appears on that date. If Additional Advocate General does not appear on a day in any case, no appearance fee for that day is payable to him. Besides the aforesaid fee, a fixed monthly amount is paid to the Additional Advocate General which is called as retainerhip on monthly basis. Certain other facilities like chauffeur driven car or fixed allowance in lieu thereof, library allowance, telephone charges etc. are also admissible to him. There is no provision for verification of his character from any Bar Association since in his appointment a Bar Association has no role to play. In the State of U.P., in Allahabad High Court, the office of Additional Advocate General is considered to be a very respectful office and bringing such an office to disrepute by filing such frivolous petition is nothing but a condemnable attempt on the part of the petitioner. We, therefore, are of the view that the petitioner being an Advocate of this Court has made a mockery by filing this writ petition and this amounts to gross abuse of process of this Court.

7. This writ petition, therefore, lacks merit and is dismissed with exemplary cost of Rs. 25,000/- (Rupees Twenty Five thousand), which shall be deposited by the petitioner within two months with the Registrar General of this Court failing which, Registrar General shall take steps for recovery of the said amount as arrears of land revenue. After realisation of the said amount the same shall be forwarded equally to Allahabad High Court Legal Services Committee and Allahabad High Court Mediation and Conciliation Centre.