

(1993) 12 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14449 of 1993

T. Anil Kumar

APPELLANT

Vs

The State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 10-12-1993

Acts Referred:

Constitution of India, 1950 — Article 233
Criminal Procedure Code, 1973 (CrPC) — Section 438

Citation : (1994) 1 ALT 22

Hon'ble Judges : P.L.N. Sarma, J; P. Ramakrishnam Raju, J

Bench : Division Bench

Advocate : Y. Suryanarayana, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

P.L.N. Sarma, J.—This Writ Petition was originally filed for the issuance of a writ of mandamus declaring the action of the first respondent (State Government) in requesting the second respondent (High Court) to reconsider the recommendations dated 28-4-1993 made by it in favour of the writ petitioner for filling up the posts of the District & Sessions Judges Grade-II by direct recruitment as illegal, arbitrary, null and void and unconstitutional. By way of an amendment ordered in W.P.M.P. No. 22438 of 1993, the petitioner is seeking a declaration that the action of the first respondent in requesting the second respondent for reconsideration of the recommendations dated 28-4-1993 made by it as invalid for the reason that the same is not supported by good and weighty reasons, and further to declare that the rejection of the candidature of the writ petitioner for the appointment as District & Sessions Judge Grade-II by direct recruitment is illegal, unconstitutional, ab initio void and violative of Articles 14, 15 and 21 of the Constitution of India. Consequently, the writ petitioner is seeking a direction to the first respondent to appoint him as District & Sessions Judge Grade-II with effect from the date the other persons were appointed.

2. This writ petition has been filed with the following averments:

Petitioner is an Advocate on the Rolls of the Bar Council of Andhra Pradesh. He was enrolled on 20-1-1977 and his standing at the Bar is more than 16 years. He was also appointed as Government Pleader for the Andhra Pradesh Administrative Tribunal, Hyderabad in G.O.Ms. No. 197, Law Department dated 17-8-1988 and working as such till 12-1-1990 when he, along with others, submitted resignations en masse. Resignations were accepted on 12-1-1990 by the first respondent in G.O.Ms. No. 10, Law Department. While so, there was an advertisement calling for applications for the posts of District & Sessions Judges Grade-II issued in the month of January, 1992. The petitioner submitted his application for the same. The petitioner belongs to backward Class Group-"D". He was interviewed by the Committee of Judges of the High Court on 15-3-1993. According to the petitioner, antecedents were also verified by the High Court and the Committee was aware of his acquittal on merits in Sessions Case No. 34 of 1986. On a consideration of all these factors, Committee of High Court Judges selected the petitioner in the open category and recommended his candidature to the Government, along with others, for appointment as District & Sessions Judge Grade-II. The, said recommendation was also cleared by the Full Court on its administrative side on 28-4-1993, pursuant to which the communication was sent to the first respondent. Thereupon first respondent sent a memo to the petitioner enclosing an attestation form to be filled for submission. Column 12 of the said attestation form requires information as to whether the petitioner has ever been arrested by the Police, convicted by any Court or detained of any offence and the petitioner answered in the said column as "NEVER" in view of his acquittal on merits in the Sessions Case No. 34 of 1986. The petitioner reliably learnt that the first respondent was not intending to accept the recommendations on the ground that the information given in Column-12 of the attestation form amounts to incorrect disclosure of facts and, therefore, the petitioner rendered himself unfit for appointment. Petitioner says that it is none of the duty of the Police Department to see whether the petitioner is fit for appointment or not and it is entirely within the purview of the High Court. High Court having recommended his candidature, first respondent should have appointed him as District & Sessions Judge Grade-II. The communication of the Government dated 17-11-1993 to the High Court seeking reconsideration of its earlier recommendation dated 28-4-1993 in favour of the writ petitioner is wholly unsustainable. The petitioner also stated that there was no evidence of any meeting having been held by the High Court on its administrative side for reconsidering the proposal submitted by the first respondent in its letter dated 17-11-1993 and the meeting is not minuted and it cannot be treated as a meeting at all. It is also stated by the petitioner that having regard to the fact that he obtained anticipatory bail, it cannot be said that he has ever been arrested and the answer given by him for the question in Column-12 of the attestation form is factually correct and what the attestation form requires is a fact and not an answer as per legal technicalities. So far as the discharge of

duties as Government Pleader in the Andhra Pradesh Administrative Tribunal is concerned, the petitioner asserted, that the allegations are vague and no particular instance is given and whatever instances are given, they are not only factually unsustainable and incorrect but also unsustainable in law. Petitioner also gave certain details assailing the allegations made in that regard to establish that they are all false. On the above mentioned allegations, petitioner sought the prayer as amended.

3. On behalf of the second respondent, counter-affidavit as well as additional counter-affidavit have been filed. It is stated in those affidavits that applications have been called for for the posts of District & Sessions Judges Grade-II and the petitioner was one such candidate who applied for the same and he was interviewed on 15-3-1993. During the course of deliberations the Committee of Judges of the High Court had an occasion to consider the information that the petitioner was involved in a Sessions Case and the Committee got the Judgment of the First Additional Metropolitan Sessions Judge in Sessions Case No. 34 of 1986 and found that the petitioner was not liable to be eliminated on the ground of unsuitability and his candidature was also recommended by the Full Court and the same was submitted to the Government. It is stated that the verification of antecedents of the selected candidates by the Government before giving actual appointment order is the next stage of the matter and the High Court has nothing to do with the same. It was further stated that after the verification of the antecedents and on a consideration of the information given in Column-12 of the attestation form by the writ petitioner, first respondent sent a communication seeking the views of the second respondent on the stand of the first respondent that the petitioner is not suitable for appointment on the ground that the information given by the petitioner in Column-12 of the attestation form is not true and correct and he has not conducted himself properly when he served as Government Pleader in the Andhra Pradesh Administrative Tribunal. The Full Court discussed the points raised on behalf of the first respondent and expressed its views as mentioned in the letter dated 6-10-1993. The views have been extracted therein. The High Court agreed that the answer of the writ petitioner in the first part of the Column-12 appears to be not correct. So far as the conduct of the petitioner in the discharge of the duties as Government Pleader in the Andhra Pradesh Administrative Tribunal is concerned, it is stated that it has no comments to make and that at the time of selection, High Court was not aware of those facts and it is for the State Government to take a final decision in view of the facts stated.

4. Entire file with regard to the proceedings of the Full Court meeting dated 4-10-1993 has been placed before us. The communication as drafted to be sent to the Government was also approved by the Hon"ble The Acting Chief Justice.

5. A counter has been filed on behalf of the first respondent. According to the said counter, the petitioner deliberately gave false information about his arrest in the criminal case registered against him in connection with the death of his wife

in column 12 of the attestation form. The answer given by the writ petitioner in column 12 as "NEVER" shows that he is not truthful, fair and frank in furnishing such vital information with reference to arrest. According to the first respondent, obtaining anticipatory bail amounts to arrest and release by executing the necessary bail bonds and, therefore, that information ought to have been given by the petitioner having regard to the fact that the appointment is to a high judicial office of District & Sessions Judge Grade-II. It is also stated in the counter that the writ petitioner was lethargic in discharging his duties as Government Pleader in the Andhra Pradesh Administrative Tribunal and he failed to take prompt action in filing counters on behalf of the Government to get stay orders vacated. He was arrogant and his relationship with the officers was not cordial. He was found to be slack in discharging his duties and attending to his work and that the cases relating to Home Department were entrusted to another Government Pleader in Government Memo No. 5813/L2/89, Law Department, dated 29-7-1989 and he was directed to be cordial with the officers who approach him. In another case, it is stated in the counter, the Government issued a Memo No. 15709/L2/89 dated 3-1-1990 for his failure to appear on behalf of the Government when the review petition against the direction of the Andhra Pradesh Administrative Tribunal in R.P. No. 3864 of 1988 came up for hearing, which resulted in the dismissal of review petition. It is stated that in R.P. No. 2761 of 1988 relating to Medical and Health Department, he failed to appear and thereby he caused a loss of Rs. 30,000/- to the Government and also failed to offer his remarks in this connection as instructed in Government Memo No. 2842/L2/89-1, Law Department dated 2-5-1989. Having regard to the above, the petitioner was found to be not sincere and truthful in giving correct information in the attestation form and he did not acquit himself well as Government Pleader in the Andhra Pradesh Administrative Tribunal and therefore, he could not be considered for appointment as District & Sessions Judge Grade-II. The Government, as appointing authority under Article 233 of the Constitution of India, after due consultation with the High Court, did not consider such a person with such a poor record for the appointment as District & Sessions Judge Grade-II.

6. Reply affidavit has been filed on behalf of the writ petitioner disputing all the allegations.

7. The relevant facts for consideration of the case, which emerge from the record, are as follows:

An advertisement appeared in daily newspaper on 4-1-1992 inviting applications from the eligible candidates for the three posts of District & Sessions Judges Grade-II by direct recruitment. The said advertisement was issued by the first respondent in consultation with the second respondent. Later, in addition to the three vacancies, Government also issued another notification on 5-12-1992 inviting applications for two more posts of District & Sessions Judges Grade-II. In response to the notification dated 4-1-1992, petitioner submitted his application

on 9-1-1992. Interviews were conducted by a Committee of Judges of the High Court and the petitioner was interviewed on 15-3-1993. During the course of the interviews, the Committee of the Judges of the High Court were aware of the involvement of the writ petitioner in a Sessions Case No. 34/86 on the file of the Court of First Additional Metropolitan Sessions Judge, Hyderabad and his acquittal therein. The petitioner's name was included in the panel of selected candidates by the Committee. The recommendations of the Committee were approved by the Full Court on the Administrative side and the name of the petitioner was recommended for being appointed as District & Sessions Judge Grade-II, to the first respondent. Thereupon, first respondent sent a memo to the petitioner enclosing an attestation form to be filled by the petitioner and submitted to the Government. The antecedents of the petitioner were also verified along with other selected and recommended candidates. Column-12 of the attestation form is as follows:

"12. Have you ever been arrested by the Police, convicted by Court or detained of any offence?

(Note: If detained, arrested, convicted, debarred etc., subsequent to the completion and submission of this form the details should be communicated immediately to the Andhra Pradesh Public Service Commission or the authority to whom the attestation form has been sent earlier, as the case may be failing which it will be deemed to be a suppression of factual information)

If the answer is "Yes" the full particulars of the conviction and sentences should be given."

The petitioner, in response to the question contained in Column 12 of the attestation form, filled up as "NEVER". Petitioner on 6-9-1993 submitted additional statement to the first respondent in continuation of his answers given in the attestation form. He explained that he gave the answer as "NEVER" to the question in Column-12 of the attestation form in view of the fact that he was never remanded to custody by or at the instance of the police nor convicted of any offence by any Court nor detained of any offence. Column 12 of the attestation form requires that particulars of convictions and sentences should be given. He stated that he obtained anticipatory bail on 5-12-1984 from the Court of First Additional Metropolitan Sessions Judge, Hyderabad and furnished bail bonds to the police sometime later and he was never detained by the police for any offence and ultimately he was acquitted in the Sessions Case and the effect of acquittal wiped out the involvement of the petitioner in the case. Therefore, he mentioned as "NEVER" for the question in Column 12 of the attestation form. He further stated that furnishing of bail bonds, pursuant to the orders granting anticipatory bail by the First Additional Metropolitan Sessions Judge, Hyderabad, cannot be treated as arrest etc. Subsequently, another representation was also submitted by the petitioner on 19-9-1993 to the Governor on similar lines as in the case of the representation dated 6-9-1993. Obviously, this representation was given coming to know that the first respondent was not inclined to accept

the recommendations of the High Court (second respondent) in his case. A day earlier i.e., on 18-9-93, Secretary to the Government (Political), GAD (SC-F) Department in his D.O. Letter No. 1605/ SC-F/91-37 stated that the recommendations in respect of three person have been accepted after obtaining the antecedents of all the recommended candidates. So far as one Sri B. Chandra Kumar is concerned, the recommendations of the High Court were not acceptable. Likewise, in the case of the writ petitioner, the communication stated that the writ petitioner suppressed the factual information about his previous involvement in a criminal case while furnishing the particulars in the attestation form and the enquiries reveal that the writ petitioner's performance as Government Pleader in the Andhra Pradesh Administrative Tribunal, Hyderabad was not at all satisfactory and that he was found negligent in filing counter-affidavits on behalf of the State Government in several matters and also responsible for the loss of Rs. 30,000/- to the Government in a case relating to R.P. No. 2761 of 1988 of Health, Medical and Family Welfare Department and failed to discharge his duties properly and, therefore, the Government was advised not to consider their names for appointment to the high judicial office like the District & Sessions Judge Grade-II. Accordingly, the communication sought the views of the High Court as regards non-consideration of appointment of Sri B. Chandra Kumar and the writ petitioner as District & Sessions Judges Grade-II. Subsequently, by a communication dated 25-9-1993 first respondent requested the High Court to send the remarks on its communication dated 18-9-1993 as well as the representation submitted by Sri T. Anil Kumar dated 6-9-1993 and others which are not relevant for the purpose of this case. Subsequent to the receipt of the above said communication, a communication dated 1-10-1993 was issued by the Registrar (Admn.) of the High Court of Andhra Pradesh, informing the Judges that there will be an informal meeting of the judges on Monday the 4th day of October, 1993 at 4.35 P.M. in the Chambers of The Hon'ble The Chief Justice and a meeting was held on the said date i.e., 4-10-1993 to consider the communication dated 18-9-1993 requesting the High Court to communicate its views as regards non-consideration, among others, of Sri T. Anil Kumar as District & Sessions Judge, Grade-II. It is stated in the additional counter filed on behalf of the second respondent that the views of the first respondent, as expressed in the communication dated 18-9-1993, were considered and the Full Court expressed on the question of "arrest" that in technical sense it must be deemed that there was arrest of Sri T. Anil Kumar and in that very technical sense, the answer of the petitioner for the question in Column 12 of the attestation form appears to be incorrect. Insofar as the conduct of the writ petitioner as Government Pleader, full Court stated that the High Court has no comments to make and finally stated that insofar as writ petitioner is concerned, it is for the first respondent to take a final decision in view of the facts mentioned in the said communication. The views of the High Court referred to above were communicated to the Government by the Registrar (Admn.) in his D.O. Letter No. 5568/92 B. Spl. dated 6-10-1993. On a consideration of the views of the High Court as expressed in the communication of the Registrar

(Admn.) in his D.O. Letter dated 6-10-1993, first respondent sent a D.O. letter No. 1605/SC-F/91-41 dated 17-11-1993 stating that the Government have decided not to appoint the writ petitioner as District & Sessions Judge Grade-II.

8. In this Writ Petition, we have to consider the rival contentions on the facts and in the circumstances mentioned above.

9. Sri Y. Suryanarayana, learned Senior Counsel appearing on behalf of the writ petitioner contended that the content and purport of Article 233 of the Constitution of India is that there should be a real, full and effective consultation with the High Court in the appointment of District Judges by the Governor and it is a constitutional obligation imposed both on the Governor as well as the High Court. On its part, the High Court, when the Governor referred the matter back to the Court, has a constitutional obligation to express its opinion. The High Court failed to discharge its constitutional obligation to express its opinion when the Government referred the matter back to the High Court for its views and, therefore, the Counsel contends that there is no real, full and effective consultation between the parties. As a consequence, the action taken by the Government in refusing to appoint the petitioner is unconstitutional.

10. Learned Counsel further contends that no meeting of the Full Court was called for to consider the counter proposal of the Government on the administrative side and no minutes of the meeting are forthcoming to establish that such a meeting was held and the subject was deliberated.

11. Learned Counsel for the petitioner also contended, relying upon the Judgment of the Supreme Court in *Supreme Court Advocates on Record Association v. Union of India*¹ J.T. 1993 (5) SC 479 that the consultation between the constitutional authorities will not be real, full and effective, unless the High Court makes its view point known to the other. This expression of opinion must be in writing. In the present case, there is no expression of its opinion by the High Court when the matter was referred back to it by the Governor and there is nothing in writing to indicate its opinion. The communication by the Registrar of the High Court cannot be treated as an opinion of the Full Court in writing and therefore, the High Court on its part failed to discharge the constitutional obligation imposed on it.

12. Learned Counsel further contended on the merits that whatever is stated by the writ petitioner in Column 12 of the attestation form is factually correct, though not technically, and Column 12 is seeking information as a fact as to whether the writ petitioner was ever arrested and not in technical sense, and that the allegations about the negligence and lethargy in the discharge of the duties as Government Pleader by the writ petitioner and the allegation of causing loss to the extent of Rs. 30,000/- to the State are not factually correct and in any event cannot be made ground for refusing to appoint the writ petitioner as District Judge, when once the High Court made its recommendations in the first instance in favour of his appointment, as the High Court alone is competent to

see the fitness and suitability of a candidate for appointment to the post of District Judge.

13. On the other hand, the learned Advocate General contended that when the State Government referred the matter back to the High Court with certain suggestions and sought the views of the High Court thereon, the High Court accepted the view point of the State Government on the aspect of "arrest" and left the matter to the Government on the allegations in respect of discharge of duties by the writ petitioner as a Government Pleader. Therefore, it cannot be said that the obligation imposed by the Constitution was not discharged either by the Government or by the High Court. It is deemed that the High Court, in discharge of the obligation imposed by the Constitution, accepted the view of the State Government on the first point and left the matter to the discretion of the State Government on the second aspect. That is to say that the High Court has not reiterated its original recommendations and deemed to have accepted the views of the State Government. Therefore, the action of the State Government in not appointing the writ petitioner as District Judge is perfectly justified and it is in accordance with Article 233 of the Constitution of India.

14. The learned Advocate General further contended on merits also that the interpretation put upon Section 438 of the Code of Criminal Procedure is supported by the Judgment of the Supreme Court in *Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab*, and, therefore, it should be deemed that the answer given by the writ petitioner as "NEVER" in Column 12 when he was asked to furnish the information with regard to arrest is correct. In any event, when two views are possible and when a view was taken by the State Government and the same was accepted by the High Court, it cannot be said that there is a recommendation in favour of the writ petitioner by the High Court. Therefore, the action of the State Government in not appointing the petitioner as District Judge is fully justified.

15. Learned Advocate General also contended that having regard to the conduct of the writ petitioner when he was a Government Pleader, the refusal to appoint him as District Judge is sustainable. The sufficiency or otherwise of the reason cannot be gone into by this Court exercising the jurisdiction under Article 226 of the Constitution of India so long as it is not irrelevant.

16. It is further contended by the learned Advocate General that the Full Court on the administrative side met on 4-10-1993 pursuant to a notice dated 1-4-1993 calling for the meeting. In the said meeting this subject was fully considered and a decision was arrived at, which decision of the High Court was communicated in writing by the Registrar to the State Government. This is in compliance with the constitutional obligation imposed on the High Court and it is accordingly discharged and no exception can be taken.

17. In any event, it is contended by the learned Advocate General that even in a case where there is a recommendation by the High Court, it is not binding on the

State Government and the Governor is not bound to appoint the writ petitioner. For this proposition, he relied upon the decisions of the Supreme Court in *Chandramouleshwar Prasad Vs. The Patna High Court and Others*, and *Mani Subrat Jain and Others Vs. State of Haryana and Others*, .

18. Article 233 of the Constitution of India has been the subject matter of consideration by the Supreme Court in several cases. It is fairly well settled by the decisions that the appointing authority for the post of District Judges is the Governor. Governor under Article 233 of the Constitution shall act on the advise of Council of Ministers. The power of appointment is conditioned or subject to consultation with the High Court. In other words, appointment to the post of a District Judge must be in consultation of the High Court. The object of consultation is to safeguard the independence of judiciary. Consultation with the High Court must be real, full and effective consultation. The Supreme Court held that "normally, as a matter of rule, the recommendations made by the High Court for the appointment of a District Judge should be accepted by the State Government and the Governor should act on the same". If in any particular case, the State Government finds it difficult to accept the recommendations of the High Court and has good and weighty reasons in support of the same, it should communicate its views to the High Court and seek the views of the High Court thereon. If, in such circumstances, the High Court is convinced that there are good and weighty reasons for the objections on the part of the State Government, it will reconsider the matter and communicate its views to the State Government. Efficient and proper judicial administration being the main object of judicial appointments, there should not be any difficulty in arriving at consensus between the High Court and the State Government and the problem should be approached in a detached manner. The above principles have been laid down by the Supreme Court in *Chandra Mohan v. State of U.P.*, AIR 1966 SC 1987 and *M.M. Gupta and Others Vs. State of Jammu and Kashmir and Others*, .

19. In *State of Kerala Vs. Smt. A. Lakshmikutty and others*, , it was held that when a recommendation was made by the High Court to the State Government for the appointment of District Judges, if it has any objections regarding the appointment in any particular case, it is duty bound to communicate its views to the High Court eliciting the opinion of the High Court thereon and the High Court, on its part, is under a constitutional obligation under Article 233(1) of the Constitution to express its opinion, on a consideration of the facts and circumstances thereof, to the State Government. It is not open to the Government, after recommendations of the High Court were received by it, to take an unilateral decision to reject or refuse to appoint any or all of the persons recommended by the High Court. The above decisions lay down the following insofar as it is relevant for the purpose of the present case. When recommendations are made by the High Court to the State Government in the case of appointment of District Judges under Article 233 of the Constitution, if in any particular case, the Government feels that the recommendations of the High Court are not acceptable, the State Government is bound by constitutional

obligation to record its views and place them before the High Court and elicit the opinion of the High Court on its views. Then alone it can be said that the constitutional obligation on the part of the State Government is discharged. On its part, the High Court, on receipt of the views of the State Government, must express its own views on a consideration of all the facts and circumstances.

20. Keeping the above principles in view, let us consider whether there is real, full and effective consultation between the State Government and the High Court and whether the State Government as well as the High Court discharged their respective constitutional obligations cast upon them by Article 233 of the Constitution of India.

21. Such of those persons, who submitted their applications, pursuant to the notification issued calling for applications for the appointment to the posts of District & Sessions Judges Grade-II by direct recruitment, who were present, were interviewed by a Committee of Judges of the second respondent. The petitioner is one such candidate. He was included by the Committee of Judges in the list of candidates to be recommended to the first respondent for appointment. The selections made by the Committee of Judges were approved by the Full Court and recommended to the State Government, including the name of the petitioner for being appointed as District & Sessions Judges Grade-II. On receipt of the recommendations from the second respondent, first respondent caused enquiries into the antecedents of the recommended candidates. The State Government was of the opinion that the answer given to 1 the question in Column 12 of the attestation form by the writ petitioner is not truthful; that his involvement in a criminal case was wantonly suppressed and that he failed to discharge his duties properly as Government Pleader. Therefore, the Government was advised not to consider the writ petitioner for appointment to the high judicial office of District & Sessions Judge Grade-II and accordingly, sought the views of the High Court as regards the non-consideration of the writ petitioner for appointment as District & Sessions Judge Grade-II. After receipt of the above mentioned communication from the first respondent, the Full Court on the administrative side met on 4-10-1993 and deliberated on the same along with the case of another candidate and ultimately : stated that though the writ petitioner obtained anticipatory bail u/s 438 of the Code of Criminal Procedure, the legal effect of the said order is that in the event of his arrest, he shall be released on bail. Having regard to the fact that the writ petitioner executed bail bonds, in a technical sense, it must be deemed that there was arrest and in that very technical sense, the answer given by the writ : petitioner for the question in Column 12 of the attestation form appears to be incorrect. The Full Court, on the allegations of the improper discharge of the duties by the writ petitioner as Government Pleader in the Andhra Pradesh Administrative Tribunal, stated that the High Court has no comments to make and those facts were not before the selection committee and the selection committee was not aware of the same. Finally, it is stated that "it is for the State Government to take a final decision in view of the facts stated"..... Original draft order submitted for the approval of

the Hon"ble The Chief Justice was also placed before us. Learned Chief Justice approved the same. Accordingly, a communication was sent by the second respondent to the first respondent on 6-10-1993. On receipt of the communication dated 6-10-1993 from the second respondent, first respondent by its communication dated 17-11-1993 intimated the second respondent that the Government has decided not to appoint the writ petitioner as District & Sessions Judge Grade-II.

22. The chronology of events and the facts mentioned above clearly indicate that the first respondent, on receipt of the recommendations of the second respondent, was of the opinion that the Government felt not to consider the writ petitioner for appointment having regard to the two circumstances mentioned in the said communication and placed the same before the second respondent seeking its views. The second respondent in its turn considered the views of the first respondent and accepted the same insofar as answer given by the writ petitioner in Column 12 of the attestation form is concerned. In regard to the other viz., discharge of duties as Government Header in the Andhra Pradesh Administrative Tribunal, second respondent left it to the first respondent. After receipt of the communication, first respondent sent a communication dated 17-11-93 indicating its decision not to appoint the writ petitioner as District & Sessions Judge Grade-II. We are of the view, having regard to the above, that the obligations imposed by Article 233 of the Constitution of India on respondents 1 and 2 have been discharged. There was a real, full and effective consultation between respondents 1 and 2.

23. When the State Government referred the matter to the High Court for reconsideration after expressing their views, the High Court accepted the views of the State Government on the implication of the word "arrest" in Column 12 of the Attestation Form and did not disagree with the views of the State Government on the second aspect viz., the allegation regarding discharge of the functions as Government Pleader by the writ petitioner, and left the matter to the Government. Therefore, it is clear that the High Court did not reiterate its original recommendation. It is true that they have not expressed their opinion as such on the second aspect. But in the circumstances, having regard to all the facts and the correspondence between respondents 1 and 2, we are of the opinion that the High Court accepted the views of the Government and it amounts to withdrawing its original recommendation. In this connection, we are constrained to observe that it would have been better had the Full Court met on the administrative side in a formal meeting and expressed its opinion in discharge of its constitutional obligation by noting the minutes of the meeting. The obligation imposed on the High Court is a constitutional one to satisfy the requirement of real, full and effective consultation.

24. The contention of Sri Y. Suryanarayana, learned Senior Counsel appearing for the writ petitioner is that no meeting of the Full Court was called for to consider the counter proposal of the Government on the administrative side and no

minutes of the meeting is forthcoming to establish that such a meeting was held and the subject was deliberated.

25. The above contention has no substance. We have already narrated the facts and events which are born-out of the record placed before us. We have perused the relevant record produced by respondents 1 and 2 before us. It is clear from the record placed before us that a meeting of the Full Court was called for by a notice dated 1-10-1993, and in fact meeting was held on 4-10-1993 and the decision of the Full Court was communicated by the Registrar (Admn.) by his letter dated 6-10-1993 to the Government, on receipt of which the Government proceeded further in the matter. The above facts are not disputed by the learned Counsel appearing for the petitioner. But what all he contended is that there should be a formal meeting evidenced by the minutes of the meeting. As we have already stated, it would have been better had the Full Court on the Administrative side acted in the manner suggested by the learned Counsel. But that is not to say that the meeting which was held on 4-10-1993 and the communication of the decision of the Full Court by the Registrar (Admn.) with the express approval of the Hon'ble the Acting Chief Justice to the Government is not sufficient compliance with the requirements of consultation within the meaning of Article 233 of the Constitution of India.

26. Learned Counsel on the basis of the decision reported in *Supreme Court Advocates on Record Association v. Union of India* (1 supra) contended that the expression of opinion by the constitutional authorities should be in writing and that there being no record in writing of the opinion of the High Court as such, it is submitted that there is no expression of its views by the High Court when the matter was referred by the State Government to it. We are of the opinion that the said requirement is also satisfied in the present case having regard to the fact that the decision of the Full Court on its administrative side arrived at on 4-10-1993 was communicated by the Registrar (Admn.) in writing to the State Government after obtaining specific approval of the Chief Justice.

27. The argument of Sri Y. Suryanarayana, learned Counsel for the writ petitioner is that the counter proposal of the Government referred to the High Court for consideration contains only the ground of suppression of arrest and not the point relating to the conduct of the petitioner as Government Pleader.

28. This argument is not factually correct. We have perused the entire file. After the recommendation of the High Court reached the Government, the matter was referred to the Law Department also which in its turn referred to the allegations made against the writ petitioner with reference to his work and conduct and discharge of his duties as Government Pleader. The same was referred later by the first respondent to the High Court for its views. Therefore, it is not factually correct to say that the discharge of the duties as Government Pleader by the writ petitioner was not made a ground by the first respondent while referring the matter back to the High Court.

29. With reference to Column 12 of the attestation form, learned Counsel for the writ petitioner contended that his client was never arrested factually and, therefore, the answer given by him in Column 12 as "NEVER" is factually correct and what all the attestation form is seeking is a factual information and not a deemed arrest arrived at by invoking legal fiction. Whatever may be the factual position, the interpretation put upon Section 438 of the Code of Criminal Procedure by the Full Court is legally correct and it is based on the Judgment of the Supreme Court in Gurbaksh Singh v. State of Punjab (2 supra). Therefore, it is not possible for us to say that the view arrived at on 4-10-1993 at the meeting of the Full Court as communicated by the Registrar (Admn.) of the High Court on 6-10-1993 to the Government is legally not sustainable. Having regard to the same, we are not inclined to accept the contention of the learned Counsel for the petitioner.

30. Learned Advocate General also contended that the appointment to be made by the Government to the post of District Judge may be in consultation with the High Court. But that does not mean that the Governor must accept whatever advise is given by the High Court. In support of the said contention, he relied upon the Judgments in Chandramouleshwar v. Patna High Court (3 supra); M.S. Jain v. State of Haryana (4 supra) and in A. Panduranga Rao Vs. State of Andhra Pradesh and Others, .

31. It is not necessary for us to consider this contention having regard to our conclusion that the High Court withdrew its original recommendation and in any event did not reiterate the same.

32. Learned Advocate General also contended that a writ of mandamus cannot be issued by the High Court in the exercise of jurisdiction under Article 226 of the Constitution of India commanding first respondent to appoint persons recommended by the High Court. It is not necessary for us to go into this question also having regard to our conclusion that the original recommendation was withdrawn in the case of the writ petitioner.

33. For the fore-going reasons, the writ petition is dismissed. There shall be no order as to costs.