
(2003) 05 AHC CK 0208

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13550 of 2003

Virendra Pal Singh Rana

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-05-2003

Acts Referred:

Constitution of India, 1950 — Article 14
General Clauses Act, 1897 — Section 21

Citation : (2003) 6 AWC 5526 : (2003) 2 UPLBEC 1444

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : Anupam Kumar and T.P. Singh, for the Appellant;

Final Decision : Allowed

Judgement

M. Katju, J.—The judgment will govern all similar petitions listed today before us.

2. This writ petition has been filed against the impugned order dated 22.2.2003 Annexure-1 to the writ petition and consequential order dated 4.3.2003 Annexure-2 to the writ petition by which his appointment as D.G.C. (Criminal) in District Court, Pilibhit has been terminated. The petitioner has also challenged the selection/appointment on the post of D.G.C. (Crl.) vide order dated 2.3.2003 Annexure-16 to the writ petition.

3. Heard Counsel for the parties.

4. It is alleged "in Paragraph 3 of the writ petition that the petitioner was appointed as panel lawyer on 1.7.1976 in District Pilibhit and he worked on that post till 1977 after which he worked as A.D.G.C., till July, 1977. Thereafter he worked as D.G.C. from December, 1979 till October, 1982 whereafter he was promoted as full fledged D.G.C. vide order dated 30.11.1984, Annexure-3 to the writ petition. It is alleged in Paragraph 4 of the writ petition that his term was extended from time to time and his work was satisfactory. True copy of the confidential reports of the District Judge and District Magistrate are Annexures-4

to 12 of the writ petition. True Copy of the renewal orders dated 16.5.1994, 14.5.1998 and the letter dated 23.5.1998 of the District Magistrate are Annexures-13, 14 and 15 of the writ petition.

5. In Paragraph 6 of the writ petition it is stated that the petitioner has been removed by the present State Government because he is Thakur by caste and a notification dated 2.3.2003 has been issued inviting applications for appointment on the post of A.D.G.C./D.G.C. Panel lawyers vide Annexure-16 to the writ petition. It is alleged that the impugned order is mala fide.

6. A counter-affidavit has been filed and we have perused the same.

7. Before dealing with the facts of the case we may refer to certain provisions dealing with appointment, renewal etc., of Government Counsels in District Courts in U.P. These are contained in the L.R. Manual, Paragraphs 7.02 to 7.05 prescribe the manner of initial appointment.

8. Para 7.06 (1) of the L.R. Manual is as follows :

"7.06. Appointment and renewal.-(1) The legal practitioner finally selected by the Government may be appointed District Government Counsel for the year from the date of his taking over charge."

9. Para 7.06 (2) provides that at the end of the aforesaid period the District Officer shall submit a report on his work and conduct to the L.R. after consulting the District Judge.

10. Thereafter Para 7.06 (3) states :

"(3) The appointment of any legal practitioner as a District Government Counsel is only professional engagement terminable at will on either side and is not appointment to a post under the Government. Accordingly, Government reserves the power to terminate the appointment of any District Government Counsel at any time without assigning any cause."

11. Para 7.08 of the L.R. Manual states :

"Renewal of terms.-(1) At least three months before the expiry of the term of District Government Counsel, the District Officer shall after consulting the District Judge and considering his past record of work, conduct and age, report to the Legal Remembrancer, together with the statement of work done by him in form No. 9 whether in his opinion the terms of appointment of such Counsel should be renewed or not. A copy of the opinion of District Judge shall also be sent alongwith the recommendation of the District Officer;

(2) Where recommendation for the extension of the term of a District Government Counsel is made for a specified period only, the reasons, therefor, shall also be stated by the District Officer;

(3) While forwarding his recommendation for renewal of the term of a District Government Counsel-

(i) The District Judge shall give an estimate of the quality of the Counsel's work from the judicial stand point, keeping in view the different aspects of a lawyer in capacity as it is manifested before him in conducting State cases and specially his professional conduct;

(ii) The District Officer shall give his report about the suit ability of the District Government Counsel from the administrative point of view his public reputation in general his character, integrity and professional conduct;

(4) If the Government agrees with the recommendations of the District Officer for the renewal of the term of the Government Counsel, it may pass orders for re-appointing him for a period not exceeding three years;

(5) If the Government decides not to re-appoint a Government Counsel, the Legal Remembrancer may call upon the District Officer to forward fresh recommendations in the manner laid down in Para 7.03;

(6) The procedure prescribed in this para shall be followed on the expiry of every successive period of renewed appointment of a District Government Counsel;

Note.-The renewal beyond 60 years of age shall depend upon continuous good work, sound integrity and physical fitness of the Counsel."

12. Para 7.09 states :

"7.09. Character Roll.-(1) The District Officer and the District Judge shall, before the end of every year and also while leaving the District on transfer place on record his opinion on the capacity of work of the District Government Counsel. The District Judge shall before recording such opinion obtain a report about the work and conduct of the District Government Counsel from the Presiding Officer of the Courts, where they are generally required to practice. Similarly, the District Officer shall before recording such opinion, obtain a report from the Superintendent of Police regarding the Counsel's capacity for prosecution of cases and assistance rendered to the investigating agency. The record, which shall be confidential, shall be maintained by the District Officer. Every adverse entry shall be communicated to the District Government Counsel concerned by the District Officer, with the prior approval of the Government.

(2) The character roll of every District Government Counsel shall also be maintained by the Government in Judicial (Legal Advice) Section. For this purpose, the District Officer shall forward to the Legal Remembrancer a copy of all the confidential records, recorded by him and the District Judge on the work and conduct of the District Government Counsel by the first week of May, every year for being incorporated in the character roll, maintained by the Government.

(3) The District Officer shall forward a copy of all the confidential report, referred to in Para 7.09 (2) in respect of District Government Counsel (Criminal) to Home (Police) Section of Secretariat also for information;

(4) Any shortcoming on the part of the District Government Counsel shall at once

be brought to the notice of the Legal Remembrancer."

13. The aforesaid provisions were considered by the Supreme Court in *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, . In *Shrilekha Vidyarthi's* case (supra), the facts were that a circular dated 6.2.1990 was issued by which appointments of all Government Counsels in all District in U.P., were terminated and the Supreme Court held that this was violative of Article 14 of the Constitution as it was arbitrary. The Supreme Court held that though reasons for terminating the engagement under Para 7.06 (3) need not be communicated, such reasons, must exist (vide Paragraph 13 of the judgment). The decision in *Shrilekha Vidyarthi's* case (supra) was subsequently considered again by the Supreme Court in *State of U.P. Vs. Ramesh Chandra Sharma and others*, in this decision it was held by the Supreme Court that Para 7.13 of the U.P. L.R. Manual merely prescribes the upper age limit of 62 years beyond which no legal practitioner can be appointed as A.G.D.C./D.G.C. It is not a provision conferring right on the appointee to continue upto the age of 62 years. The nature of appointment of an individual is to be determined with reference to Para 7.06 and Para 7.08.

14. Para 7.06 states that a legal practitioner finally selected by the Government can be appointed as D.G.C. for one year. The clear provision in clause (3) of Para 7.06 is that the appointment is only a professional engagement, and hence, it was held in the aforesaid decision that the appointment as D.G.C./A.D.G.C. is a professional engagement on a legal post and not an appointment to a post under the Government Service which entitles the appointee to continue till the age of superannuation.

15. In *Ram Nihor Singh Vs. State of U.P. and others*, a Division Bench of this Court held that the L.R. Manual does not contemplate an embargo of 60 years of age, and the question of extension/renewal of term of a D.G.C./A.D.G.C. has to be considered and decided in accordance with Para 7.08. It was also held in that decision that the opinion of the District Judge cannot be ignored.

16. In *Brajesh Kumar Singh Vs. State of U.P. and another*, another Division Bench of this Court held that refusal to renew the term of a D.G.C. cannot be on-existent and extraneous grounds and such refusal to renew will be arbitrary and is liable to be quashed.

17. We have quoted the relevant provisions of the L.R. Manual and have referred to the relevant rulings and the same can now be applied to the facts of the case before us.

18. In Paragraph 10 of the counter-affidavit it is stated that the District Magistrate vide letter dated 2.11.2002 informed the State Government about the progress of the petitioner in conducting the Sessions Trials in the last ten months. It is also stated that the State Government was informed that in the Sessions Trials conducted by the petitioner, the State could not succeed in any case. It is further alleged that the petitioner has never informed the State

Government in time regarding the progress of the case or orders of acquittal. On the strength of the letter of the S.S.P. dated 31.10.2002, the District Magistrate has informed the Government that the petitioner was in the habit of abusing his position as State Law Officer and was guilty of misbehaviour with the police personnel. True copy of the letter of the District Magistrate dated 2.11.2002 in this connection is Annexure-1 to the counter-affidavit.

19. We have carefully perused the letter of the District Magistrate dated 2.11.2002 and find that it is nowhere mentioned therein that the District Judge was consulted in the matter at all. It may be mentioned that several District Judges of Pilibhit made recommendations in favour of the petitioner e.g., in the letter dated 11.11.1985, Annexure-6 to the writ petition the then District Judge wrote :

"Sri V.P.S. Rana, is hard working, intelligent and fair D.G.C. (Criminal). He takes interest in pairvi, preparation of cases and his legal knowledge is sound. His general, reputation is good. His integrity is certified. His conduct and behaviour in Court and outside Court is exceptionally good. I fully recommended his extension as D.G.C, (Crl.), or his regular full appointment as D.G.C, (Crl.) not only for one year but for three years."

20. Similarly, another District Judge by letter dated 26.4.1989 also wrote in favour of the petitioner vide Annexure-8 to the writ petition. Another District Judge wrote in favour of the petitioner, vide letter dated 28.11.1991 vide Annexure-10 to the writ petition. Another District Judge wrote vide letter dated 30.3.1994 vide Annexure-11 to the writ petition. Yet another District Judge wrote in favour of the petitioner vide letter dated 7.7.1999 vide Annexure-12 to the writ petition. Another recommendation of the District Judge dated 7.1.2003 in faovur of the petitioner is Anncxure-17 to the writ petition.

21. Thus, it appears that as many as six different District Judges at different times wrote letters in favour of the petitioner stating that he has good knowledge of law, protects the interest of the State, is intelligent and well behaved and he cannot be brow beaten or over awed by the Counsel of the other side and is a man of outstanding merit as D.G.C. (Crl.) and his integrity is above board.

22. Apart from the above there are several reports of different District Magistrate/ S.P. on different occasions in favour of the petitioner, vide Anncxure-5, Annexure-7 and Annexure 9 etc.

23. Thus, while there are numerous letters of several District Judges, and District Magistrate/Superintendent of Police in favour of the petitioner, on the other hand the only letter against him is the letter of the District Magistrate, Pilibhit dated 2.11.2002. Even that letter does not mention that the District Magistrate ever consulted the District Judge, as is necessary as held by the Division Bench of this Court in Ram Nihor Singh v. State of U.P. (supra), vide Annexure-15 to the writ petition.

24. The question arises as to what would be the legal position when there is a conflict between the opinion of the District Judge and the opinion of the District Magistrate, as has happened in the present case. Although, the L.R. Manual is silent on this point, in our opinion, in such a situation ordinarily the opinion of the District judge must prevail over the opinion of the District Magistrate. This is because the District Judge is in the best position to know about the performance, conduct, knowledge of law, etc. of the Government Counsel. The District Magistrate can have only a limited knowledge about the same, and that too indirectly. On the other hand, the District Judge would be personally aware of the performance and conduct of the Government Counsel as they often appear before him. and also before his colleagues in the District Court, with whom he is in regular touch.

25. It is mentioned in Para 7.09 of the L.R. Manual that the District Judge has to place on record his opinion about the work of the D.G.C. Before recording that opinion the District Judge has to obtain a report about the work and conduct of the D.G.C. from the Presiding Officers of the Court where they are generally required to practice. Thus, the District Judge is in the best position to know about the work and conduct of a Government Counsel and not the District Magistrate.

26. It may be further be mentioned that the District Magistrate is often under political pressure which is a well known factor now a days and hence he cannot be expected to Act in as independent a manner as the District Judge, because the District Judge is not under the supervision and control of the Government. Hence, in our opinion, ordinarily the District Judge's opinion must prevail over that of the District Magistrate so far as the appointment/extension of the term of the Government Counsel is concerned.

27. In the present case, despite overwhelming material in favour of the petitioner, such as several reports of the District Judges and even District Magistrates, the impugned orders dated 22.2.2003 and 4.3.2003 have been passed. In our opinion, for the reasons given above these orders are arbitrary and illegal and are hereby quashed.

28. It may be mentioned that to be independent and to dispense high quality justice the Judges require highly Competent Government Counsels of integrity and good knowledge of law. These factors can best be known to the District Judge and it is not well known to the District Magistrate. Of course, if some information/material comes before the District Magistrate he can forward it to the District Judge, but after considering it if the District Judge still is of the opinion that the person should be appointed as Government Counsel or his term renewed then the opinion of the District Judge must ordinarily prevail.

29. It has been alleged in Paragraph 12 of the petition that in pursuance of the notification dated 2.3.2003, the petitioner was allowed to continue purely on temporary basis for 15 days vide order dated 5.3.2003 till 20.3.2003 and again by order dated 20.3.2003 for a further period of 15 days till 4.4.2003 vide

Annexures-22 and 23 to the writ petition. The petitioner has alleged that after rendering 19 years, service as D.G.C. (Crl.), he has lost almost all his client age. We, therefore, direct that his continuance as D.G.C. (Crl.) shall be considered forthwith by the Government in accordance with Paragraph 7.08, and ordinarily the opinion of the District Judge must be accepted, unless there is something exceptional.

30. Since, a large number of similar petitioners are listed before us alongwith this writ petition we are laying down broad principles which shall govern all these petitions and other similar matters so that there can be uniformity in such matters :

(1) If the initial selection of the Government Counsel was made in contravention of Para 7.02 to Para 7.05 of the L.R. Manual the appointment will be totally void and illegal and the term office of such Government Counsel shall be terminated forthwith. When the initial appointment is made, it is the opinion of the District Judge which must ordinarily be accepted unless there was some adverse material against the applicant in which case, that material could be placed before the District Judge by the District Magistrate and another opinion obtained from the District Judge.

(2) If the procedure of the L.R. Manual was followed in making the initial appointment, and if a termination order is passed while the term of the incumbent is continuing, such termination will be illegal unless, it was done on the recommendation of the District Judge, or if the initial appointment or extension itself was done without following the procedure in the L.R. Manual. In this connection we may refer to the Supreme Court decision in State of U.P. and others Vs. U.P. State Law Officers Association and others, in which it was observed : "Those who come to be appointed by such arbitrary procedure can hardly complain if the termination of their appointment is equally arbitrary. Those who come by the back door have to go by the same door" (vide Para 19 of the judgment).

(3) if the term of the Government Counsel has expired and the Counsel applies for renewal of such term ordinarily the Government should follow the recommendation of the District Judge. However, no appointment can continue beyond the age of 62 years as held by this Court in Civil Misc. Writ Petition No. 4274 of 2003, Ram Nihore Singh v. Principal Secretary (Law), decided on 14.5.2003.

(4) In certain petitions listed before us the grievance is that the term of appointment/renewal has been reduced from five years to three years by G.O. dated 11.12.2002. A challenge has been made to the reduction of the term from five years to three years, but in our opinion, there is no merit in such challenge because, in our opinion, the term can be curtailed to three years instead of five years. In this connection it may be mentioned that by G.O. dated 22.12.2001 copy of which is Annexure-2 to the Writ Petition No. 19005 of 2003, Suresh Dhar

Dwivedi v. State of U.P., it was provided that an extension of the term can be for five years, or will be deemed to be for five years, (where it was for three years). However, by the impugned G.O. dated 11.12.2002, it has been provided that extension Can be only for three years. In our opinion, there is no illegality in the G.O. dated 11.12.2002 since it has only restored the position prevailing prior to the G.O. dated 22.12.2001. One G.O. can be modified by another GO. vide Section 21 of the General Clauses Act. As held by the Supreme Court in Shrilekha Vidyarthi's case, (supra) and State of U.P. v. Ramesh Chandra Sharma, (supra), appointment as a Government Counsel is only a professional engagement and not an appointment to a post under Government Service which entitles the appointee to continue till the age of superannuation. In our opinion, since a uniform rule is now made by the G.O. dated 11.12.2002, for all Government Counsels we are of the opinion that the said G.O. dated 11.12.2002 is valid and it must be applied uniformly to all the Government Counsels throughout the State in all District Courts and there must not be any pick and chose. Challenge to the GO. dated 11.12.2002 is, therefore, rejected.

(5) In view of our judgment in Writ Petition No. 4274 of 2003, Raw Nihore Singh v. Principal Secretary (Law), decided on 14.5.2003, no Government Counsel shall continue, as such beyond the age of 62 years. If any, Government Counsel is continuing beyond that age his appointment, as Government Counsel will cease forthwith. This rule will apply uniformly throughout the State in all District Courts of the State.

(6) Any extension of a term as a Government Counsel without following the L.R. Manual is illegal and void.

(7) All orders terminating the engagement of Government Counsel or refusing to renew their term against the recommendation of the District Judge, or without considering the recommendation of the District Judge, which is in his their favour are quashed provided the petitioner's appointment/renewal was made in accordance with the L.R. Manual (as interpreted by us). Such, person will continue in office till the expiry of their term, and thereafter they should be considered for renewal of their term in accordance with this judgment. The term of renewal will be treated as three years and not five years, but after the expiry of three years, they should be again considered for renewal, and so on.

(8) As regards the appointment/renewal of the term of D.G.C. (Revenue), it may be mentioned that such appointees work in the Revenue Court and not in the Civil Court. Hence, regarding them ordinarily the opinion of the District Magistrate must prevail as he is expected to have knowledge of revenue matters and of their performance. If the engagement has been terminated against the recommendation of the District Magistrate or ignoring the same the termination will be illegal and be quashed. For renewal also as Counsel in the Revenue Courts ordinarily the opinion of the District Magistrate should be accepted.

31. We may also mention before parting with this case that over the past two or

three decades a practice has arisen that whenever a new Government comes it terminates the appointments of almost all the Government Counsels appointed earlier and in their places persons belonging to or affiliated to the new ruling party or their kith or kin are appointed. This is an unhealthy practice. The Court requires competent and honest Government Counsels for proper assistance. The problem, however, is that many of the persons whose engagements as Government Counsel is terminated by the new Government were themselves earlier appointed on extraneous considerations because they belonged to, or were affiliated to the previous Government or were kith and kin of the Members of the previous Government and not on merit. Thus, it often happens that the persons appointed by the previous Government were themselves incompetent or lacking in integrity or sound knowledge of law, and this Court will not like to interfere in terminating their engagements. However, there are many Government Counsels who were appointed on genuine considerations on their own merit, knowledge of law and integrity and competence. Termination of engagement of such persons is against the interest of society and the State. Competent, honest Government Counsels with sound knowledge of law should be allowed to continue (unless, they cross 62 years) whichever Government comes to power so that there is some stability in such engagements, and they are not treated as leaves of office distributed by the ruling party. In fact, if such engagements are changed frequently the best talent and competence in the bar will not be attracted to it because good lawyers would then prefer to remain in private practice rather than risk losing their private clientele in a job which is of a precarious nature.

32. In *State of U.P. v. U.P. State Law Officers Association* (supra), it was observed by the Supreme Court that the Government or a public body represent public interests, and hence, there is an obligation on them to engage the most competent lawyers.

33. Time, has, therefore, come when this practice must stop so that highly competent lawyers of integrity and sound knowledge of law are appointed as Government Counsels and for this purpose we recommend to the State Government to consult Hon^{ble} the Chief Justice of the High Court and suitably amend the L.R. Manual accordingly. Till that is done, ordinarily the recommendation of the District Judge, in the matter of appointment/renewal of the Government Counsels in the District Court in the State must ordinarily be accepted.

34. With the above observations the petition is allowed. No order as to costs. Let the Registrar General of this Court send a copy of this judgment to the Law Secretary, U.P. and all District Judges in the State.