

Ram Nihor Singh Vs. State of U.P. and Others

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Court : Allahabad

Decided On : May-18-2001

Reported in : 2001(2)AWC1630; (2001)2UPLBEC1523

Judge : S.K. Sen, C.J. and ;A.K. Yog, J.

Appeal No. : C.M.W.P. No. 5160 of 2001

Appellant : Ram Nihor Singh

Respondent : State of U.P. and Others

Advocate for Def. : Vinod Swaroop, Adv. and ;S.C.

Advocate for Pet/Ap. : Anupam Kumar and ;T.P. Singh, Adv.

Judgement :

A.K. Yog, J.

1. A short counter-affidavit has been filed on behalf of all the respondents. Learned counsels for all the parties agreed that the case may be finally heard and decided at the admission stage as contemplated under Chapter XXII, Rule 2 (Second Proviso) of the Rules of the Court, 1952 (as amended upto date).

2. Heard learned counsels appearing for the petitioner and Sri Vinod Swaroop, Additional Advocate General representing all the respondents.

3. Facts of the case, required for decision of this petition, are not disputed.

4. Ram Nihor Singh, petitioner, is a duly enrolled Advocate on the Rolls of the Bar Council of Uttar Pradesh. He is a regular legal practitioner of the District Court. He was appointed as Assistant District Government Counsel (Civil) in 1978 by the State Government to conduct cases on its behalf, as is evident from the perusal of the District Magistrate's letter dated October 6, 1978 (Annexure-3) to the Writ Petition). Vide Government letter February 3, 1980. addressed to the District Magistrate. Allahabad. Annexure-4 to the writ petition. petitioner was required to take charge as District Government Counsel (Civil) as an interim measure on ad hoc basis in place of Satya Prakash Goyal, Advocate, the then outgoing District Government Counsel (Civil). Annexure-5 to the writ petition is a copy of the registered letter dated July 31, 1991 from U. P. Government to the District Magistrate. Allahabad, which contains list of advocates appointed by the Government as District Government Counsels (Civil) and Assistant District Government Counsel (Civil). The name of the petitioner appears at Serial No. 1 in the list. Letter of the Government, dated December 31, 1991. addressed to the petitioner (Annexure-6 to the Writ Petition) shows that his appointment as District Government Counsel (Civil) was extended by the Government subject to submitting certain certificates. The term was again extended vide Government letter dated September 6. 1996 (Annexure-7 to the Writ Petition) till 4th September, 1999. Government letter dated January 11, 2000 addressed to the District Magistrate. Allahabad filed as Annexure-8 to the Writ Petition shows that term of the petitioner was extended regularised till January 2, 2001, i.e., till 60 years of age of the petitioner.

5. Before aforesaid letter January 11, 2000 (Annexure-8 to the Writ Petition) was issued. It appears, action was taken to consider the case of the petitioner for extension/ renewal as District Government Counsel (Civil) in pursuance to the provisions of Legal Remembrance Manual (for short called 'L. R. Manual'). Photocopy of Chapter VII of L. R. Manual, dealing with 'District Government Counsel--A. Appointment and Conditions of Engagement has been filed as Annexure-11 to the Writ Petition. Relevant provisions of L. R. Manual for the purpose of the present case, namely paras 7.01. 7.03, 7.08 and 7.09 are being

reproduced below :

7.01 Definition.-- (1) The District Government Counsels are legal practitioners appointed by the State Government to conduct in any court, other than the High Court, such civil, criminal or revenue cases on behalf of the State Government, as may be assigned to them either generally, or specially by the Government.

(2) The legal practitioner, appointed to conduct criminal cases shall be known as District Government Counsel (Criminal). Similarly the legal practitioners, appointed to conduct civil and revenue cases, shall be known as District Government Counsel (Civil) and District Government Counsel (Revenue) respectively.

Note.--The expression District Government Counsel in this Chapter refers to District Government Counsel (Civil) in respect of civil work, to District Government Counsel (Criminal) in respect of criminal work and to District Government Counsel (Revenue) in respect of revenue work and includes Additional Assistant/Sub-District Government Counsel, wherever, so required by the context.

7.03 Applications and qualifications.--(1) Whenever the post of any of the Government Counsel in the district is likely to fall vacant within the next three months, or when a new post has been created, the District Officer concerned shall notify the vacancy to the members of the Bar. Members eligible for consideration would be those having at their credit a practice of 10 years in case of District Government Counsel, 7 years in case of Assistant District Government Counsel and 5 years in case of Sub-District Government Counsel. The District Officer shall ask those who want to be considered for appointment to a particular office to give their names to him with particulars such as age, length of practice at the Bar, proficiency in Hindi, Income-tax paid by them on professional income during last 3 years and if not assessed there return submitted by them, if any, details of the work handled by them during the course of the preceding two years duty verified by Court and whether they have practised on criminal, civil and revenue side.

(2) The District Government Counsel and legal practitioners of the neighbouring districts may also send the above particulars for the post of District Government Counsel through their District Officers, who shall forward the same to the District

Officer of the district in which the appointment is to be made, with such remarks as they deem fit.

(3) The names so received shall be considered by the District Officer in consultation with the District Judge. The District Officer shall give due weight to the claim of the existing incumbents (Additional/Assistant District Government Counsel), if any, and shall submit confidentially in order of preference the names of the legal practitioners for each post to the Legal Remembrancer giving his own opinion particularly about his character, professional conduct and integrity and the opinion of the District Judge on the suitability and merits of each candidate. While forwarding his recommendations to the Legal Remembrancer the District Officer shall also send to him the bio-data submitted by other Incumbents with such comments as he and the District Judge may like to make. In making the recommendations, the proficiency of the candidate in civil or criminal or revenue law, as the case may be, as well as in Hindi shall particularly be taken into consideration.

Provided that it will also be open to the District Officer to recommend the name of any person, who may be considered fit, even though he may not have formally supplied his bio-data for being considered for appointment. The willingness of such a person to accept the appointment if made shall, however, be obtained before his name is recommended.

7.08 Renewal of term.-- (1) At least three months before the expiry of the term of a 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 term of appointment of such counsel should be renewed or not. A copy of the opinion of the District Judge should also be sent along with the recommendations 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's 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 suitability 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.

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 and 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 officers 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 reports, 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 reports, 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 shortcomings on the part of the District Government Counsel shall at once be brought to the notice of the Legal Remembrancer.'

6. Perusal of para 7.01 indicates that District Government Counsel/ Government-Legal Practitioner, to be appointed by and on behalf of the State Government to be represented in any Court, other than High Court, shall be appointed by the State Government.

7. 7.03 contemplates procedure for making such appointment of District Government Counsel. It contemplates that within next three months of a post of District Government Counsel is likely to fall vacant or a new post is created. District Officer concerned shall notify the vacancy to the members of the Bar so that eligible legal practitioners at the Bar may furnish their names along with particulars as required under said manual for consideration of the Government. The names so received have to be considered by the District Officer in consultation with the District Judge and para 7.03 (3) the District Officer shall give due weight to the claim of the existing incumbents (Additional/Assistant District Government Counsel), if any, and shall submit confidentially in order of preference the names of the legal practitioners for each post to the Legal Remembrancer giving his own opinion on relevant issues e.g.,professional conduct and integrity and the opinion of the District Judge on the suitability and merits of

each candidate. The District Officer is further required to send the bio-data submitted by other incumbents as he may like to make. Under proviso to the aforesaid provisions District Officer can recommend the name of any person, who may be considered fit, even though he may not have formally supplied his bio-data for being considered for appointment. The willingness of such a person, to accept the appointment if made, shall, however, be obtained before his name is recommended.

8. 7.08 L. R. Manual requires District Officer and the District Judge to have consultation, consider past record of work, conduct and age. submit report containing requisite opinion to the legal remembrancer together with the statement of work done by a particular counsel as Government Counsel and whether in his opinion term of such counsel renewed or not. A copy of the opinion of the District Judge is also required to be sent along with the recommendations of the District Officer. Note appended to para 7.08 provides that renewal beyond 60 years of age shall depend upon continuous good work, sound integrity and physical fitness of the counsel.

9. Ram Nihor Singh has approach this Court by filing present petition and prays for issuing a writ of certiorari quashing impugned orders dated 1st January, 2001 and 15th January, 2001 (Annexure Nos. 1 and 2 to the Writ Petition) passed by the State Government (Special Secretary and Joint Legal Remembrancer, U. P. Government) and consequent order issued by District Magistrate, Allahabad. These impugned orders contain the ground for not extending the term of the petitioner and refusing to renew the same. There is only one ground which is the basis of impugned orders, i.e.. the petitioner shall be attaining the age of 60 years on 2.1.2001 and hence required to be relieved from the post of District Government Counsel (Civil) with immediate effect on attaining the age of superannuation.

10. Learned counsel for the petitioner submitted that the term of the petitioner as District Government Counsel has been brought to an end on one ground only, i.e., he completes age of 60 years on 2.1.2001. According to him, said ground cannot be sustained being misconceived and the impugned order suffers from manifest

error apparent on the face of record. In support of his contention, learned counsel for the petitioner placed reliance upon the note appended in para 7.08 of the L. R. Manual.

11. It is pleaded in the short counter-affidavit, filed on behalf of the respondents, that the last order dated 11.1.2000 (Annexure-8 to the Writ Petition) whereby his term was last renewed clearly mentioned that his term shall be up to the age of 60 years and petitioner has not challenged the said order. This contention of the petitioner is misconceived. Order dated January 11, 2000 (Annexure-8 to the Writ Petition) merely mentions that the teYm of the petitioner was extended and regularised upto 2.1.2001 (upto 60 years of age). The said letter nowhere mentioned that 'term' shall not be renewed or considered for renewal beyond 60 years. The petitioner has no occasion to challenge the said order. He cannot be said to be made aware that his term, as District Government Counsel (Civil), was to be ignored for renewal In spite of L. R. Manual permitting consideration for renewal upto 62 years under para 7.08 (aforequoted). The petitioner, thus, has no occasion to feel aggrieved at that stage.

12. Moreover, perusal of short counter-affidavit shows that respondents have attempted to justify impugned order on the ground that petitioner did not submit relevant information/papers within time. This defence, again, stands belled and has no substance. The fact that candidature of the petitioner was under consideration is borne out from the perusal of the comment of the District Judge, Allahabad contained in his letter addressed to the District Magistrate, Allahabad dated 22nd December, 2000 (Annexure-9 to the Writ Petition). This letter of the concerned District Judge clearly mentions that he was asked to submit his comment/report in the light of the para 7 of L. R. Manual. The plea in the short counter-affidavit (namely, petitioner did not submit his candidature or applied within time) is an afterthought and not borne out from record. It is evident that impugned order has not been passed on the ground as alleged in the short counter-affidavit paragraph Nos. 5 to 9, i.e., petitioner having failed to act in time. It is well settled that validity of 'impugned' order has to be tested on the ground mentioned therein. It cannot be allowed to be supported by carving out a new case or assigning new grounds not mentioned in the impugned order.

13. Learned counsel for the petitioner has annexed several orders of the Government and the District Magistrate, Allahabad to show that term of other counsels representing the State Government have been extended upto 62 years (Annexure-12 to the Writ Petition-particular page 65 and Annexure-13 of the Writ Petition-particular pages 67 to 79). Respondents have miserably failed in bringing on record the criterion or the rationale on which term of District Government Counsel is extended/ renewed upto 62 years. No guidelines have been disclosed to refuse renewal of term beyond 60 years in case candidate under consideration has to his credit 'continuous good work', 'sound integrity' and 'physical fitness' as counsel.

14. Needless to mention that if District Counsel did not satisfy the aforesaid three conditions contained in the note appended in para 7.08 e.g., (i) continuous good work, (ii) sound integrity. (iii) physical fitness, it is open to the Government not to renew or extend the term even when counsel has not completed age of 60 years.

15. In our considered view. L. R. Manual does not contemplate embargo of 60 years of age and question of extension/renewal of term of a 'District Government Counsel' has to be considered, decided and extended upto the age of 62 years subject to one fulfilling threeconditions provided under note to para 7.08 of L. R. Manual. Otherwise action of the Government will be exposed to challenge and vulnerable on the ground of vice of arbitrariness.

16. Learned counsel for the petitioner referred to the case of P.N. Sethi v. State of V. P. and others, 1992 All CJ 306 (DB), copy of which has been annexed as Annexure-14 to the writ petition. In para 8 of the judgment. Hon'ble Brijesh Kumar, J. (as he then was) referring to the aforementioned note appended to para 7.08 observed '..... Thereis no such provisions that the District Government Counsel would attain the age of superannuation on completing 60 years of age. All the difference, that it makes, on attaining the age of 60 years, is that according to note appended in para 7.08 the renewal beyond 60 years of age shall depend upon continuous good work, sound integrity and physical fitness of the counsel Therefore, therebeing nothing on the record to indicate that the petitioner had incurred any disability for being continued, in terms of the note appended to para

7.08. It was nothing but a vain effort on the part of the State to take shelter of note to para 7.08. As we have observed earlier, the impugned order, Annexure-1 was passed under misconception that the age of superannuation of District Government Counsel is 60 years. While referring to the case of Km. Shrilekha Vidyardhi and others v. State of U. P. and others, 1991 SCC (L&S;) 742. The fact deciding case of P. N. Sethi (supra) observed. It has been held in unequivocal terms that every State action as has to conform to reasonableness and it must not be arbitrary The Court further observed, however, that where no plausible reason or principle is indicated the order appears to be ex facie arbitrary, the burden shifts upon the state to justify its action as fair and reasonable. It is further observed that if the State is unable to produce material to justify its action as fair and reasonable, the burden upon the person alleging arbitrariness must be held to be discharged The order was not based on relevant consideration hence it was arbitrary Therefore, the decision of the Government suffers from vice of arbitrariness'.

17. There is nothing on record of the present case as to why the District Officer asked for comment from the concerned District Judge and if the District Judge had sent comments in favour of the petitioner, then when and why the same have been ignored. There is not even a iota of evidence on record on this score. No reasons have been indicated for disagreement with the aforesaid recommendation in the impugned order. The contention of the respondents in the short counter-affidavit (e.g., process was not initiated in time as contemplated under relevant provision of L. R. Manual) is merely an eye wash inasmuch as the earlier orders of the respondents clearly show that respondents never stuck to the time schedule contemplated under L. R. Manual. Further the said plea is not open to the respondents inasmuch as these authorities invited comments and asked for report regarding petitioner for considering renewal of his term beyond 60 years ignoring time schedule. Moreover, the time schedule providing for three months for initiating the process of renewal of term of District Government Counsel is not mandatory but only directory being procedural. Its violation does not render the proceedings void or illegal.

18. We are in full agreement with the ratio decidendi laid down in the Division Bench decision of this Court in the case of P. N. Sethi (supra).

19. In the case of Brijesh Kumar v. State of U. P. and others, 2001 All CJ 101 (DB), paras 6 and 8, this Court held that renewal of term of District Government Counsel, based on nonexistent and extraneous ground cannot be sustained and such 'renewal' being arbitrary is liable to be quashed. Division Bench relied upon the case in AIR 1996 SC 864. The Division Bench further observed that experience in profession of law is an important factor and handling cases on behalf of the State Government for a long period of time and incumbent as District Government Counsel is said to have gained valuable/sufficient experience in the nature of work which he was required as District Government Counsel in the past.

20. In view of the above discussion and the undisputed facts on record, we have no hesitation but to hold that in the reason/ground mentioned in the impugned order is misconceived, incorrect, unsustainable in law and based on misinterpretation/misconception of relevant provision of L. R. Manual.

21. Consequently, the impugned orders dated 1st January, 2001 and 15th January, 2001 (Annexures-1 and 2 to the Writ Petition) having been passed on non-existent ground and the defence taken in the short counter-affidavit not being sustainable and pleaded as an afterthought cannot be sustained and are liable to be set aside.

22. Consequently, Petition succeeds. Impugned orders dated 1st January, 2001 and 15th January, 2001 (Annexures-1 and 2 to the Writ Petition) are hereby quashed.

23. Further, a writ of mandamus is issued commanding the respondents to pass appropriate order in accordance with law within three weeks of the receipt of a certified copy of the judgment. Decision taken by the concerned authorities under this Judgment shall be duly communicated to all the concerned authorities of the District as also to the petitioner within one week of the said decision.

24. Writ petition stands allowed with costs, which we quantify at Rupees 2,500 to be paid within one month of the receipt of certified copy of this order. Learned standing counsel shall communicate this judgment to the concerned respondent authorities for necessary action within one week.

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