

Brijesh Kumar Singh Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Apr-24-2000

Reported in : 2000(3)AWC2083; (2000)2UPLBEC1346

Judge : S.H.A. Raza and; Kamal Kishore, JJ.

Acts : [Constitution of India](#) - Article 229

Appeal No. : Writ Petition No. 547 (M/B) of 2000

Appellant : Brijesh Kumar Singh

Respondent : State of U.P. and Another

Advocate for Def. : C.S.C.

Advocate for Pet/Ap. : B.K. Singh, Adv.

Judgement :

S.H.A. Raza, J.

1. Mr. Brijesh Kumar Singh, Advocate, who practices in the Lucknow Bench of the Allahabad High Court of Judicature at Allahabad, by means of the present writ petition, has prayed for the issuance of a writ in the nature of mandamus commanding the State of U. P. to sanction at least 1,000 posts of Class II. III and IV employees in the Allahabad High Court and to issue a writ to the Allahabad

High Court to appoint at least 1,000 class II, III and IV employees in the High Court for speedy disposal of the pending cases.

2. The aforesaid writ petition is in the nature of Public interest Litigation as Mr. Brijesh Kumar is a conscientious lawyer of this Court, who is vitally interested in the process of dispensation of Justice. We are of the view that he has a right to maintain the writ petition.

3. On 4.2.2000, when the writ petition was entertained, a Division Bench of this Court has passed the following order :

'By means of this writ petition, the petitioner has raised the question of appointment of the staff in the High Court. According to him even Constitutional authorities like Prime Minister and the President of India have expressed their concern over the delay in the disposal of the cases by the Courts. The difficulties which are being faced by the High Courts in clearing off the arrears have not been considered by the State Government by increasing the strength of the staff who are already overworked, as a result of which the obligation of the Courts to dispose of the cases, has been impeded.

Let the State of Uttar Pradesh as well as the High Court file counter-affidavit positively within two weeks. List this petition immediately thereafter.'

4. In spite of the fact that the aforesaid order was passed on 4.2.2000, the State Government has not cared to file the counter-affidavit. The delay in filing the counter-affidavit by the State Government is one of the reasons which cause delay in disposal of the cases by the High Court. Instances are not wanting where the counter-affidavit has not been filed by the State Government even after lapse of several years.

5. Whenever grievance is raised against the various High Courts of this country regarding non-disposal of the cases, in public gathering, where the judiciary is often blamed in not deciding the cases speedily, the Judges who are not expected to speak remain silent spectators and had to digest the unwanted remarks. The non-disposal of the cases speedily by the Courts, depends upon various factors

which have been enumerated in the report submitted by Justice Malimath which indicated that the main reason for non-disposal of the cases does not rest with the Judiciary but elsewhere and in that regard the State Government as well as the Central Government cannot shirk, with its responsibility.

6. In the recent years litigations have increased considerably and even the poorest sections, may be the daily rated class IV employees, being aggrieved against the orders passed against them approach the Court. In proportion of the increase in the litigation, the strength of the Judges and the Staff has not been increased, in consequence of which the Judges as well as the Staff are unable to cope with the problems. If the strength of the Judges, the staff, construction of more Courts buildings and other paraphernalia like Library etc. are not increased, it would be difficult for the Judges and the Staff, who are already overworked, to clear off the mounting arrears.

7. A counter-affidavit has been filed on behalf of the Allahabad High Court wherein it has been indicated that due to tremendous increase in the workload both Judicial and Administrative of the Court, a request was made by the Registrar under the order of Hon'ble the Chief Justice to the State Government through Judiciary Secretary and Legal Remembrancer by means of D.O. No. 18/A/94 (PSR) dated 28.2.1994, for increasing the strength of the staff. Reminder was also sent on 6.12.1994 by the Registrar of the Allahabad High Court for creation of 449 posts for the establishment of the Courts. Out of the aforesaid 449 posts for which the sanction was requested only 10 posts of Assistant Registrar. 6 posts of Translators and 3 posts of Nazir were sanctioned by the Government. Out of these ten posts of Assistant Registrar, only 2 posts were allotted to the Lucknow Bench of the Allahabad High Court. It was further averred in the counter-affidavit that the Section Officers were asked to give their requirement in addition to the strength present working for smooth functioning of the Court. Accordingly, the requirement has been worked out, which has been indicated in Annexure-CA3 to the counter-affidavit. Against the sanctioned strength of 234, the present working strength is 214 at Lucknow Bench of the Allahabad High Court and that the total required strength for the smooth working in the Lucknow Bench is 176, including 71 U.DA-. 71 L.D.A. and 34 R.G.A.

8. It was also indicated that recently three Sections i.e., Public Relation Officer, Registry and Pass have newly been created in which 14 staff members have been deputed.

9. Apart from the above, 1 U.D.A. and 1 L.D.A. are deputed to work with the Deputy Registrar (A) for N.D.P.S. work and 1 R.G.A. to work with Deputy Registrar (J). These three have also been posted out of office strength. 1 U.D.A. out of office strength is also looking after the work of EPBX Exchange and that 5 U.D.As. promoted against the vacancy at Lucknow Bench, have been detained at Allahabad High Court.

10. It was further submitted in the counter-affidavit that according to re-allocation of the strength of Allahabad High Court at Allahabad and at Lucknow Bench vide order of Hon'ble the Chief Justice, dated 14.5.1998. there is actual shortage, out of present strength of 6 U.D.A., 2 L.D.A. and 11 R.G.A., at Lucknow Bench of the Allahabad High Court. It was also mentioned in the counter-affidavit that at present, out of the sanctioned strength, there is shortage of 55 (22 U.D.A., 19 L.D.A. and 14 R.G.A) in the Lucknow Bench of the Allahabad High Court and further an additional strength of 176 (71 U.D.A., 71 L.D.A. and 34 R.G.A.), are required in addition to the present sanctioned strength for the smooth functioning of the Lucknow Bench of Allahabad High Court. The request of the High Court dated 28.2.1994 and 6.12.1994 has still been pending before the State Government. It was pointed out further in the counter-affidavit that after 1991, only posts of 10 Assistant Registrar, 6 Translators and 3 Nazirs have been sanctioned by the Government and the proposal for the remaining 449 additional posts has been pending before the State Government since 1994.

11. A request was made by the Additional Registrar of the Lucknow Bench of Allahabad High Court to the Hon'ble the Chief Justice of the High Court of Judicature at Allahabad, Allahabad for the creation of 231 posts of class III cadre : U.D.A., L.D.A. and R.G.A.

12. In addition to above, due to considerable increase in the litigation, the Private Secretaries and the Personal Assistants attached with the Hon'ble Judges are not sufficient in number to cope with the work in spite of their sincere efforts and the

hard work by working even after office hours till late night. The Private Secretaries and the Personal Assistants are required to attend the residential office of the Hon'ble Judges in the morning and in the evening for taking dictation of the reserved Judgments and in connection with other works entrusted to them by the Hon'ble Judges. It has further been noticed that due to heavy burden of work, they find it difficult to cope with the day to day work. It has become necessary for smooth functioning of the Court and speedy disposal of the work, some more Private Secretaries and Personal Assistants be provided for taking dictation and typing work. The Private Secretaries and the Personal Assistants, all the time have to take dictation either in the Court or in the Chamber and they do not have the spare time to get it typed within a stipulated period. The Registrar General of the Allahabad High Court at Allahabad and the Registrar, Lucknow Bench, Lucknow, may place a suitable proposal before Hon'ble the Chief Justice to increase the strength of Personal Assistants or Stenographers at the High Court establishment. After the approval of Hon'ble the Chief Justice, the Scheme prepared by the Registrar General for the Allahabad High Court and the Registrar, Lucknow Bench, Lucknow, may be sent to the State Government to accord the financial sanction.

13. It has also been noticed that the computers have been installed in the High Court as well as in the Chambers of the Hon'ble Judges and are likely to be installed in the offices also. The Registrar General of the Allahabad High Court and the Registrar of Lucknow Bench may also assess the requirements of the computers data operator, computer operator or other computer staff and may submit a report before Hon'ble the Chief Justice. If Hon'ble the Chief Justice will be satisfied that the demand is genuine, the requirement may be placed before the State Government to accord the financial sanction for the same.

14. Likewise, the Registrar General and the Registrar, Lucknow Bench, Lucknow, may also assess the shortage of Bench Secretaries in the establishment and may place a proposal before Hon'ble the Chief Justice. If Hon'ble the Chief Justice will find it appropriate, the requirement may be placed before the State Government to accord the financial sanction for the same.

15. Article 229 of the [Constitution of India](#) which deals with the officers and servant and the expenses of the High Court, a power has been vested with Hon'ble the Chief Justice to make appointment to any office connected with the Court. Condition of service of the officers and the servant of the High Court shall be as such as may be prescribed by the rules made by Hon'ble the Chief Justice of the High Court or by some other Judge or Officer of the Court authorised by the Hon'ble the Chief Justice to make rule for the purpose but those rules as far as they relate to their salaries, allowances, leave or pension, required approval of the Governor of the State. The administrative expenses of the High Court including all salaries, allowances pension payable to or in respect of the officers or servant of the Court, shall be charged upon the consolidated funds of the State and any fees or any allowances taken by the Court, shall form part of that fund.

16. Thus, it is evident that power to make appointment to the Staff of the High Court is vested with Hon'ble the Chief Justice, who may fix the strength of the staff in accordance with the norms and the rules and when Hon'ble the Chief Justice ask for the sanction of the posts from the State Government. It is incumbent upon the State Government to consider that request. If the strength of the staff in accordance with the rules and the norms is not sanctioned by the State Government, then it would amount, indirectly, an interference into the Judicial functioning of the Courts, because in the absence of the required staff, the work of the dispensation of Justice shall be badly affected.

17. The [Constitution of India](#) is based on doctrine of separation of powers where powers of Executive, Legislature and Judiciary have been indicated. But. It is really unfortunate that when the Hon'ble the Chief Justice of the High Court, according to norms and the rules, ask the State Government to accord financial sanction for the creation of posts, the request is not conceded to. This sort of attitude by the executive cannot be said to be proper.

18. Due to non-availability of the funds and the Staff, the expenditure of which is to be charged upon the consolidated funds of the State, the entire work of dispensation of justice is impeded. It is incumbent upon the State Government to provide adequate staff as demanded by the High Court within reasonable time but

it is really unfortunate that since 1994 the State Government has slept over the matter and has not met with the requirement of the staff of this Court as a result of which the Judicial functioning of this Court has been adversely affected.

19. It is a matter of concern that although by means of the letter dated 6.12.1994, the Registrar of the High Court at Allahabad, under the order of Hon'ble the Chief Justice, urged the State Government to accord financial sanction for entertainment of the following categories of the Court's establishment :

1.Joint Registrar(Bhasha)12.Deputy Registrar(Bhasha) 13.AssistantRegistrar
104.Section Officer 155.Section Officerfor BhashaAnubhag 16.Section
OfficerBenchSecretaries Section 17.SectionOfficer Private Secretaries Section
18.Section Officer Confidential Section 29.BenchSecretaries
3810.PersonalAssistants 7911.Cashler-cum-Accourtants 612.Accountants (in
U.D.As. Grade] 613.Translators(In U.D.As Grade) 614.AdditionalCourt Officer
(Protocol) 315.AdditionalCourt Officer (Establishment) 316.UpperDivision
Assistants 9317.Lower DivisionAssistants 12318.RoutineGrade Clerks
5819.TelephoneMonitor (in U.D.As. Scale) 2 Total 449

20. But no decision was taken by the State Government. The strength of the Secretariat and other departments of the State, in the recent past, have increased considerably in proportion to workload, but the strength of the High Court of Judicature at Allahabad, has not been increased in proportion to workload. Similar is the position in the Lucknow Bench of the Allahabad High Court. The actual strength sanctioned of the U.D.As. in the Lucknow Bench is 114 but the actual working strength at present is 108. Thus, there is shortage of 6 U.D.As. in the Lucknow Bench of Allahabad High Court. As far as the posts of L.D.As. are concerned, the sanctioned strength is 73, out of which only 71 have been working, thus, there is a shortage of 2 L.D.As. The actual strength sanctioned of R.G.As. is 17, but the actual working strength is 6, thus there is a shortage of 11 RG.As. in the Lucknow Bench. Thus, there is shortage of 19 (U.D.A., L.D.A. and R.G.A.) in terms of allocation of strength of the High Court at Allahabad and Lucknow Bench of the Allahabad High Court. Vide order of Hon'ble the Chief Justice, dated 14.5.1998, apart from the above, new sections have been created at Lucknow

Bench and the staff was deputed out of the existing strength as indicated in paras 7. 8 and 10 of the counter-affidavit filed by the High Court. It is, thus, evident that there is shortage of 22 U.D.As., 19 L.D.As., and 14 R.G.As. in the Lucknow Bench of the Allahabad High Court. An additional strength of 176 (71 U.D.A., 71 L.D.A. and 34 R.G.A.) are required in addition to the sanctioned strength for the smooth functioning of the Lucknow Bench of Allahabad High Court, for which a request was made by the Registrar of the Lucknow Bench of the Allahabad High Court, to the Registrar of the Allahabad High Court on 3.2.2000 for the creation of 231 posts of class 111 cadre of U.D.A..L.D.A. and R.G.A. but no action has yet been taken by the State Government.

21. Besides the above, there is shortage of class IV staff as well, that can be assessed by the Allahabad High Court at Allahabad and the Lucknow Bench of the Allahabad High Court. The Registrar General of the High Court. Allahabad and the Registrar of the Lucknow Bench of Allahabad High Court may assess the required strength of class IV employees and submit a proposal to the Hon'ble the Chief Justice, who may forward the same to the State Government for financial sanction. If Hon'ble the Chief Justice will find that there is shortage of strength of class IV employees, he may direct the Registrar General of the Allahabad High Court and the Registrar of the Lucknow Bench, to appoint casual labourers and dally labourers to perform the job.

22. In view of what has been indicated here in above, writ petition succeeds and is allowed. A writ in the nature of mandamus is issued commanding the State Government to accord financial sanction for the creation of 430 posts in the High Court of Judicature at Allahabad as indicated below, with a period of ten weeks from the date of production of a certified copy of this order :

1.Joint Registrar(Bhasha)12.Deputy Registrar (Bhasha) 13.SectionOfficer
154.Section Officer for Bhasha Anubhag 15.SectionOfficer Bench Secretaries
Section 16.SectionOfficer Private Secretaries Section 17.Section Officer
Confidential Section 28.BenchSecretaries 389.PersonalAssistants 7910.Cashler-
cum-Accountants 611.Accountants (in U.D.As. Grade) 612.Additional Court Officer
(Protocol) 313.Upper Division Assistants 9314.Lower Division Assistants

12315.RoutineGrade Clerks5816.Telephone Monitor (in U.D.As. Scale) 2 Total430

23. A writ in the nature of mandamus is also issued commanding the State Government to accord financial sanction for the creation of 231 posts (93 U.D.A., 90 L.D.A. and 48 R.G.A.) in the Lucknow Bench of the High Court of Judicature at Allahabad expeditiously say within a period of ten weeks from the date of production of a certified copy of this order.

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