

Johri Mal Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Dec-11-1998

Reported in : 1998(4)AWC592

Judge : M. Katju and ;S.L. Saraf, JJ.

Acts : [Constitution of India](#) - Article 14

Appeal No. : C.M.W.P. No. 34064 of 1998

Appellant : Johri Mal

Respondent : State of U.P. and Another

Advocate for Def. : S.C.

Advocate for Pet/Ap. : W.H. Khan, Adv.

Judgement :

M. Katju, J.

1.Heard learned counsel for the petitioner and learned standing counsel. The petitioner has prayed for quashing of the impugned order dated 18.9.98 (Annexure-8 to the writ petition) and for the renewal of his term as D.G.C. (Criminal) in district Meerut.

2. In this case on 26.10.98 learned standing counsel was granted one month's time to file a counter-affidavit, but no counter-affidavit has been filed so far. Hence we are treating the allegation in this petition to be correct.

3. The petitioner has stated that he was selected and placed in the panel of Panel Lawyer (Criminal) on 6.12.78 and remained in the panel for 5 years and thereafter by order dated 7.1.83 the respondent No. 1 the State of U. P. appointed the petitioner as Additional D.G.C. (Criminal) for one year, A true copy of the order dated 7.1.83 has been annexed as Annexure-1 to the petition. The petitioner's term was regularly renewed from time to time. Subsequently on superannuation of one Kripal Singh D.G.C. (Criminal), Meerut on 1.7.95. by order of respondent No. 2 dated 30.6.95 the petitioner was handed over the charge of D.G.C. (Criminal) through letter dated 3.7.95 and the petitioner started functioning as D.G.C. (Criminal). A true copy of the letter dated 3.7.95 has been annexed as Annexure-2 to the petition. Thereafter the post of D.G.C. (Criminal), Meerut was duly notified and advertised and the applications were invited. A true copy of the notification dated 8.7.96 has been annexed as Annexure-3 to the petition. After following the procedure prescribed in the L.R. Manual and after obtaining the opinion of the District Judge and report of the District Magistrate, the respondent No. 1 selected and appointed the petitioner as D.G.C. (Criminal) vide order dated 17.9.1997 a true copy of which has been annexed as Annexure-4 to the petition.

4. The petitioner has since been functioning as D.G.C. (Criminal). He prayed for renewal for his term which was expiring on 14.9.98. A true copy of the letter dated 14.9.98 is annexed as Annexure-6 to the petition. However, his term has not been extended although the District Judge, Meerut and the District Magistrate, Meerut both made favourable reports and recommended the petitioner's appointment as D.G.C. (Criminal). In paragraph 13 of the petition, it has been alleged that the petitioner has been working satisfactorily and with unblemished record as District Government Counsel and hence his term should be renewed.

5. Since this matter is of some importance, we are dealing with it at some length. There was a time when irrespective of political affiliations, appointments of Government Counsel were made in the High Court and district courts purely on

merit. In this Court itself, appointment as a Government Counsel was usually regarded as a stepping stone to high offices. Almost all the persons who were appointed about 20 to 30 years ago as Government Counsel in the High Court were elevated as Judge of this Court or occupied other high posts like Advocate General, Law Minister, etc. This was because such appointments were made on the basis of competence and not caste, creed, religion or political affiliation. Subsequently, however, the post of Government Counsel has steadily been politicalised and the result has been that very often the Court is not assisted properly and very often Incompetent persons are appointed as Government Counsel because of their political affiliation, caste, or other extraneous consideration. This Court and the district court require proper assistance from the Government Counsel. The interest of the State also suffers by appointing incompetent persons.

6. Since Governments have been changing very frequently in recent years in U. P., what has been happening is that whenever a new Government comes, many of the Government Counsel appointed by the previous Government are sacked and in their places, new persons are appointed not on merit but on the basis of caste, creed or political affiliations, which is subversive of the administration of Justice. The Court requires highly meritorious Government Counsel to dispense justice properly.

7. In our opinion, the time has now come when the post of Government Counsel should be given purely on merit irrespective of political affiliation, caste, creed or religion. The post of Government Counsel is a responsible post, and it cannot be distributed as loaves of office on extraneous considerations.

8. In the present case, the recommendation has been made in the petitioner's favour by the District Judge and it has also been recommended by the District Magistrate. We see no reason why the recommendation of the District Judge should be refused. In our opinion, for the appointment of the post of D.G.C., Addl. D.G.C. or Panel Lawyers, ordinarily the recommendation of the District Judge must be accepted by the Government because the District Judge is the seniormost Judicial Officer in the district and he is expected to know about the lawyers in the

Court. No doubt the District Magistrate has also to be consulted but ordinarily the District Judge's recommendation must carry the greatest weight. If the Government is not agreeable to the recommendation of the District Judge, then strong, cogent reasons must be assigned by the Government in writing irrespective of political affiliation, caste, creed or religion or on any other extraneous consideration.

9. In the present case, the District Judge has recommended in favour of the petitioner and no good or cogent reason has been assigned for rejecting the recommendation of the District Judge. Hence, we direct the petitioner's term as D.G.C. (Criminal) to be renewed forthwith by the State Government.

10. The Supreme Court has observed in Special Reference No. 1 of 1998 that the Chief Justice of India means not the Chief Justice of India alone but in consultation with his four seniormost colleagues. No doubt this judgment was given in the context of appointments of Judges in the Supreme Court and High Courts, but, in our opinion, the Spirit of the Judgment is applicable to the present case also since the intention was to keep the administration of justice away from political considerations. Hence, in our opinion, the District Judge should not make the recommendation alone but in consultation with the two seniormost Judicial Officers in the District Court and also the C.J.M. In the case of recommendations for appointments in the criminal side, and the seniormost Civil Judge for appointments on the civil side, and also the District Magistrate. In other words, the recommendation shall be by a collegium headed by the District Judge and consisting of the above mentioned five members (consisting of four Judicial officers and the District Magistrate). If two members disapprove the name, no recommendation will be made. No name will be recommended if the District Judge disapproves. Thus, in our opinion, will be in accordance with the norms laid down in the L.R. Manual. Such a recommendation will ordinarily be treated as binding on the Government unless for some strong, cogent reasons to be recorded in writing if the Government disagrees. We again make it clear that the recommendation must be made purely on merit and competence ignoring caste, creed, religion or political affiliation.

11. In *Shrilekha Vidyarthi v. State of V. P.*, AIR 1991 SC 537, the Supreme Court held that Article 14 of the Constitution applies to appointments of Government Counsel in district courts. In our opinion, the direction issued above will ensure non-arbitrariness in such appointments.

12. in view of the above, the impugned order dated 18.9.98 is quashed. The petition is allowed. No order as to costs.

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