

Shailendra Kumar Ojha and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Nov-14-2003

Reported in : (2004)1UPLBEC415

Judge : B.S. Chauhan and ;R.C. Pandey, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 24; [Constitution of India](#) - Articles 12, 14 and 16

Appeal No. : Civil Misc. Writ Petition No. 48691 of 2003

Appellant : Shailendra Kumar Ojha and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Yogesh Agarwal, Adv.

Judgement :

B.S. Chauhan, J.

1. This writ petition has been filed for quashing the impugned advertisement dated 22nd October, 2003 (Annexure-2) and the preceding Government Order dated 27th September, 2003 (Annexure-3), providing for appointment of D.G.C. (Criminal) and Additional Government Advocate in District Ballia.

2. Facts and circumstances, giving rise to this case are that petitioners No. 1 to 4 were appointed as Assistant District Government Counsel (Criminal), vide order dated 27th July, 1992 and petitioner No. 5 as Additional Government Advocate vide order dated 3rd August, 1992 in District Ballia (Annexures-4 and 5), for a period of one year, i.e., upto 31st July, 1993. Their appointment had been renewed from time to time. Last renewal was made on 30th October, 2000 for a period of three years, i.e., upto 29th October, 2003 by the State Government. Instead of renewing the cases of the petitioners, an advertisement dated 22nd October, 2003 (Annexure-2) has been issued in pursuance of the Government Order dated 27th September, 2003 (Annexure-3) inviting applications for the said post under Para 7.03 of the U.P. Legal Remembrancer Manual (hereinafter called the 'L.R. Manual'). This petition has been filed for quashing the same contending that the petitioners have a right of being considered for renewal under the provisions of the said L.R. Manual.

3. Shri Yogesh Agarwal, learned Counsel for the petitioners has submitted that once, the petitioners had been appointed under the provisions of the L.R. Manual and Section 24 of the Code of Criminal Procedure, the question of non-consideration of their cases for renewal amounts to violation of the statutory provisions and therefore, the said advertisement and the Government Order are liable to be quashed.

4. On the contrary, learned Standing Counsel has submitted that the petitioners, had been appointed in 1992 and continued for more than a decade. In the mean while, many lawyers had fulfilled the eligibility and they are also entitled to be considered for the said post. Therefore, the petitioners cannot claim that vacancies cannot be filled up by considering the cases as fresh and restricting the vacancies to be fill up by renewal, would amount to violation of Articles 14 and 16 of the [Constitution of India](#), qua those Advocates who have attained eligibility after appointments of the petitioners. More so, renewal is also a mode of appointment and if petitioners are interested to continue on the post, they can apply afresh but they cannot claim relief sought in the petition and therefore, the petition is liable to be dismissed.

5. We have considered the rival submissions made by the learned Counsel for the parties and perused the record.

6. The learned Standing Counsel did not ask for time to file counter-affidavit, rather suggested that as the issue involved herein is a pure question of law, i.e., entitlement of the petitioners for renewal of their term, the matter be heard finally. We accepted the suggestion made by the learned Standing Counsel.

7. The relevant provisions for our consideration are Section 24 of the Code of Criminal Procedure and Paras 7.03, 7.06 and 7.08 of the U.P. L.R. Manual. Section 24 of the Cr.P.C. reads as under :--

'24. Public Prosecutors.--(1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case, may be.

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion, fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the District.

(5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the District unless his name appears in the panel of names prepared by the District Magistrate under Sub-section (4).....'

8. Paragraphs 7.03, 7.06 and other paragraphs of the L.R. Manual provides for eligibility and mode of appointment of the Government Advocate. A member having 5 years expiedence as a practicing lawyer may apply giving the particulars, such as age, length of practice at the Bar, proficiency in Hindi and Income-tax paid by him on professional income during last 3 years and the application shall be considered by the District Collector in consultation with the District Judge of the concerned district. The District Judge shall make recommendation/opinion about his suitability, merit, character, profession conduct and integrity. He shall also

make an assessment of the proficiency of the candidate in civil, criminal and revenue law. Once appointment is made, it would be merely a professional engagement and once a person so appointed can continue upto age of 60 years, if his term is renewed from time to time. Even beyond 60 years of age, his tenure can be renewed considering his physical as well as proficiency in the profession etc.

9. Paragraph 7.08 of the L.R, Manual deals with renewal of the term, which reads as under :--

'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, therefore, 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.'

10. The appointment of Public Prosecutors is contemplated under the provisions of Section 24 Cr PC and the Rules contained in the Manual. The Rules in the Manual may not be having statutory force, but so far they are in consonance with the provisions of Section 24 Cr PC, there can be no difficulty in their observance or asking for strict adherence to the same. The Public Prosecutor may not be holding a civil post under the State in strict-legal sense but as the public element is involved therein, it is not permissible for the authorities to deviate from provisions providing for their appointment or removal.

11. In *Mukul Dalal v. Union of India and Ors.*, (1988) 3 SCC 144, the Apex Court observed as under :--

'The office of the Public Prosecutor is a public one..... The primacy given to the Public Prosecutor under the scheme of the Code has a special purpose.....'

12. When Advocates are appointed to the office of Public Prosecutor, 'they have certain professional and official obligations and privileges.' [Vide *K.C. Sud v. S.G. Gudimani*, (1981) 2 Cri LJ 1779]. It has also invariably been held that a Government Advocate holds an office of profit. (Vide *Mahadeo v. Shantibhai*, (1969) 2 SCR 422; *Madhukar G.E. Pankakar v. Jaswant Chobbildas Rajani and Ors.*, AIR 1976 SC 2283 and *Kanta Kathuria v. Manak Chand Surana*, AIR 1970 SC 694].

13. In *Rabindra Kumar Nayak v. Collector, Mayurbhanj, Orissa*, JT (1999) 1 SC 591, the Hon'ble Apex Court held that where the permanency is attached to the office and not to the term for which an Advocate holds it, the person may come and go in succession but so long he holds the office, he is disqualified to contest the election. In *Mundrika Prasad Sinha v. State of Bihar*, AIR 1979 SC 1871, the Court approved the observation made by the Madras High Court in *Ramachandran v. Alagiriswami*, AIR 1961 Mad 450, wherein it has been observed as under :--

'The duties of a Government Pleader..... are duties of a public nature.... Besides, even if his only duty is the conduct of cases in which Government have been impleaded, still as explained more than once before the public are interested in the manner in which he discharges his duties.....having regard to the various functions and duties to be performed by him in the due exercise of that office, most of which are of an independent and responsible character, the office must be held to be a public office within the scope of a quo warranto proceeding.'

14. In *Mundrika Prasad Sinha* (supra), the Apex Court held as under :--

'We do recognize its importance in our era of infiltration of politicking even in forbidden areas. A Government Pleader is more than an Advocate for a litigant. He holds a public office..... we must enter a caveat that Government under our Constitution should not play with law offices on political or other impertinent considerations as it may affect the legality of the action and subvert the rule of law itself.'

15. Similarly, in *Hitendra Vishnu Thakur v. State of Maharashtra*, AIR 1994 SC 2623, the Hon'ble Supreme Court observed that a 'Public Prosecutor is an important Officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent Statutory Authority.'

16. After considering a catena of decisions, a Division Bench of Allahabad High Court in *Vijay Shanker Mishra v. State of U.P. and Ors.*, 1999 Cri LJ 521, held that duties and functions of the Public Prosecutor are statutory. Even if he does not

hold a civil post under the State, he holds a public office of trust under the State. It is an office of responsibility as he has been en clothed with the power to withdraw the prosecution of a case on the directions of the State Government.

17. Therefore, in view of the above, it is crystal clear that engagement of an Advocate as Public Prosecutor is not merely a professional engagement. Even if he does not hold a civil post under the State, he carries the responsibility and privilege of the Public Officer of great public importance and plays an important role in the administration of criminal justice. Neither his appointment nor removal can be made at the sweet will of the Government rather the same are guided by public interest, which has always been a paramount consideration in public administration.

18. In Harpal Singh Chauhan and Ors. v. State of Uttar Pradesh, AIR 1993 SC 2436, the Apex Court considered the provisions of Uttar Pradesh L.R. Manual and provisions of Section 24 Cr.P.C. and held that any appointment, which has been made without following the procedure of preparation of panel by the District Magistrate with consultation of the Sessions Judge, cannot be enforced being dehors the rules. The Court also considered the provisions of the U.P. L.R. Manual providing for renewal and re-appointment and held that it cannot be claimed as a matter of right and it will depend upon the performance.

19. The Court observed as under :--

'The framers of the Code were conscious on the fact that Public Prosecutors and the Additional Public Prosecutors have an important role, while prosecuting on behalf of the State, accused persons, who are alleged to have committed one or the other offences. Because of that, provisions have been made for their selection in the Code. It is for the Sessions Judge to assess the merit and professional conduct of the persons recommended for such appointment and the District Magistrate to express his opinion on the suitability of persons so recommended, from the administrative point of view..... Sub-section (5) of Section 24 provides that no person shall be appointed.... 'unless his name appears in the panel of names of persons prepared by the District Magistrate under Sub-section (4).' The aforesaid section requires an effective and real consultation between the Sessions

Judge and the District Magistrate about the merit and suitability of the persons to be appointed as Public Prosecutor..... That is why that it requires a panel of names of persons to be prepared by the District Magistrate with the consultation of the Sessions Judge. The same is the position so far as the Manual is concerned.... The District Judge, who is also the Sessions Judge, is to give his estimate of the quality and the work of Counsel from the judicial stand-point and the District Officer i.e., the District Magistrate is to report about the suitability of such person from administrative point of view.'

20. Thus, it is abundant clear that appointment is to be made in consonance with the provisions of Section 24 Cr.P.C. and the relevant rules of the Manual. The expression 'panel of names of persons' does not mean suggestion of names by the Sessions Judge and some comments in respect of those names by the District Magistrate without proper consultation and discussion over such names. The statutory mandate is required to be complied with by the District Magistrate and the Sessions Judge in its true spirit. In absence of any provision in the Code or the Rules for extension or renewal, the same cannot be termed as having any legal sanctity.

21. In *Kumari Shrilekha Vidyarthi v. State of U.P.*, AIR 1991 SC 536, the Apex Court had struck down the order of removal of the Public Prosecutors by the State Government and held that removal of all Public Prosecutors, in the State by one stroke of pen was without application of mind and thus, arbitrary and held that such an action of the State was totally unreasonable and the unfettered discretion is inappropriate to a Public Authority and thus, the Hon'ble Apex Court held that in such a case, it was permissible for the Court to have a judicial review of the orders of removal passed arbitrarily as judicial review is permissible to the limited grounds of illegality, irrationality and procedural impropriety. Otherwise the ratio of the judgment is that appointment of Public Prosecutors etc., in the District Courts are made through open competition and the sole criteria for selection is merit of an Advocate, if he otherwise fulfils all other eligibility criteria. Opinion of the District Magistrate has to be based on merit and his consultation with the Sessions Judge has to be an effective one. Conduct and character of Advocates are also of paramount consideration. More so, their performance has to be satisfactory. In

Vijay Shanker Mishra (supra), it was observed, as under :

'Law Officers are one of the main wheel of the chariot driven by the Judges to attain the cherished goal of human-being to secure justice against the wrong-doers. The object of the State is to curb the crime, investigate and prosecute the offenders and punish them, with a view to maintain law and order, amenity and harmony, tranquillity and peace..... the object of the Code is to appoint the best amongst the Lawyers as Public Prosecutors to provide assistance to the Court. The people have the vital interest in the matter.'

22. In *State of U.P. and Ors. v. U.P. State Law Officers Association and Ors.*, AIR 1994 SC 1654, the Apex Court distinguished the judgment in *Kumari Shrilekha Vidyarthi* (supra), as the same was confined to the appointment of Public Prosecutors in the District Courts and held that the appointment of a legal practitioner is only a professional engagement terminable at will of either side and is not an appointment to the post under the Government. Accordingly, the Government reserves the power to terminate the appointment of any Government Counsel. The Court further observed that the Government and the Public Bodies engage the services of the Lawyer, purely on contractual basis either for a specified case or for a specified or unspecified period. The Government Lawyers cannot be treated as employees but were professional practitioner engaged to do the specified work. Treating them as employee of the Government is also not permissible under Rule 49 of the Bar Council of India Rules, as it waives the prohibition imposed by the said Rules against the acceptance by a Lawyer of a full time employment.

23. The Court further observed as under :--

'The relationship between Lawyer and his client is one of the trust and confidence. The client engages a Lawyer for personal reasons and is at liberty to leave him also for the same reasons. He is under no obligation to give reasons for withdrawing his brief from his Lawyers. The Lawyer, in turn, is not an agent of his client but he is dignified responsible spokesman..... the Government or the Public Body represents public interests and whoever is in charge of running their affairs is no more than a trustee or a custodian of the public interests..... This obligation

imposes on them the duty to engage the most competent servants, agents, advisors, spokesmen and representatives for conducting their affairs. Hence, in the selection of their Lawyers, they are duty bound to make earnest efforts to find the best from amongst those available at the particular time. This is more so because the claims of and against the public bodies are generally monetarily substantial and socially crucial with far reaching consequences..... the State Government is under no obligation to consult even its Advocate General much less the Chief Justice or any Judges of the High Court or to take into consideration the view of any Committee that may be constituted for the purpose. The State Government has a discretion. It may or may not ascertain the views of any of them while making the said appointments. Even where it chooses to consult them, their views are not binding on it. The appointments may, therefore, be made on considerations other than merit and there exists no provision to prevent such appointments. The method of appointment is indeed not calculated to ensure that the meritorious alone will always be appointed or that the appointments made will not be on considerations other than merit. In the absence of guidelines, the appointments may be made purely on personal or political considerations and be arbitrary. This being so those who come to be appointed by such arbitrary procedure can hardly complain if the termination of their appointments is equally arbitrary. Those who come by the backdoor have to go by the same door. This is more so, when the order of appointment itself stipulates that the appointment is terminable at any time without assigning any reason. Such appointments are made, accepted and understood by both sides to be purely professional engagements till they last. The fact that they are made by public bodies cannot vest them with additional sanctity. Every appointment made to a public office, howsoever, made, is not necessarily vested with public sanctity. There is, therefore, no public interest involved in saving all (appointments irrespective of their mode. From the inception some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them.'

24. The observations made in the aforesaid judgment that State must make an endeavour to appoint the best available Lawyers as Government Advocates and whatever the method adopted, it must be shown that the search for meritorious

was undertaken and the appointments were made only on the basis of the merit and not for any other consideration, is merely an advisory as the same is not in consonance with the latter part of the judgment. More so, the aforesaid, judgment was approved and followed in *State of U.P. v. U.P. Government Counsel (Crl.) Welfare Association*, AIR 1995 SC 575, wherein the Apex Court reiterated that the 'Law Officers appointed by the Government to look-after the work of the Government was only professional service as legal assistants and the service rendered by the Counsel is only a service oriented professional services. Therefore, they were not employees of the Government.' Being the office of trust and confidence, 'the Government has the liberty to relieve a Counsel for the reason that they do not have confidence in (him).'

25. In *State of U.P. v. Ramesh Chandra Sharma*, AIR 1996 SC 864, the Hon'ble Supreme Court considered the case of District Government Advocates and after considering the judgments in *Shrilekha Vidyarthi* and *Harpal Singh Chauhan* (supra), held that it was 'merely a professional engagement' and the Lawyer, holding such a post, cannot claim to hold a civil post under the State or claim renewal of his term as a matter of right.

26. Thus, from the aforesaid, it becomes crystal clear that engagement of a Government Advocate is purely professional engagement and he does not hold any civil post under the State. Appointment to the post has to be made on the recommendation for the District Collector with due consultation of the District Judge. The consultation with the District Judge is effective one and not an empty formality. His opinion is to prevail even on the opinion of the District Collector, though no person has a right to claim appointment or renewal but in view of the provisions of L.R. Manual, the application for renewal is to be considered and in case the renewal is rejected, only then the vacant post can be filled up by a fresh appointment otherwise the provisions of Para 7.08 of the L.R. Manual would be rendered nugatory. The schedule providing for three months for initiating the process of renewal of the term is directory and not mandatory being purely procedural in nature. [Vide *P.N. Sethi v. State of U.P. and Ors.*, 1992 ACJ 306 (DB); *Ram Nihore Singh v. State of U.P. and Ors.*, (2001) 2 ESC (All) 88 (DB); *Brijesh Kumar Singh v. State of U.P. and Ors.*, (2001) ACJ 101; and *V.P. Rana v.*

State of U.P. and Ors., (2003) 3 ESC (Alld) 1687 (DB)].

27. In Ramesh Chandra Sharma (supra), the Hon'ble Supreme Court considered the case of renewal of term and held that the application for renewal is required to be considered in strict adherence of the provisions contained in Para 7.08 of the L.R. Manual and application is to be considered on relevant considerations. It cannot be rejected on the whims of the authority or in an arbitrary manner. If Court comes to the conclusion that application for renewal has been rejected on any existent or extraneous consideration, the order becomes liable to be quashed.

28. In order to examine the correctness of the order passed while deciding the application for renewal, it becomes mandatory for the authority to pass a speaking and reasoned order.

29. It is also settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order. In Shrilekha Vidyarthi (supra), the Apex Court has observed as under :--

'Every such action may be informed by reason and if follows that an act uninformed by reason is arbitrary, the rule of law, contemplates governance by law and not by humour, whim or caprice of the men to whom the governance is entrusted for the time being. It is the trite law that 'be you ever so high, the laws are above you.' This is what a man in power must remember always.'

30. In Life Insurance Corporation of India v. Consumer Education and Research Centre, (1995) 2 SCC 480, the Apex Court observed that the State or its instrumentality must not take any irrelevant or irrational factor into consideration or appear arbitrary in its decision. 'Duty to act fairly' is part of fair procedure envisaged under Articles 14 and 21. Every activity of the Public Authority or those under public duty must be received and guided by the public interest. Same view has been reiterated by the Supreme Court in Mahesh Chandra v. Regional Manager, U.P. Financial Corporation and others, AIR 1993 SC 935 and Union of India v. M.L. Capoor, AIR 1974 SC 87.

31. In *State of West Bengal v. Atul Krishna Shaw*, 1991 (Suppl) 1 SCC 414, the Supreme Court observed that 'giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review.' In *S.N. Mukherji v. Union of India*, AIR 1990 SC 1984, it has been held that the object underlying the rules of natural justice is to prevent mis-carriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice and it was held in the above case that except in cases, where the requirement to record reasons is expressly or by necessary implication dispensed with, the authority must record reasons for its decision.

32. In *Krishna Swamy v. Union of India*, AIR 1993 SC 1407, the Apex Court observed that the rule of law requires that any action or decision of a statutory or Public Authority must be founded on the reason stated in the order or borne-out from the record. The Court further observed, that 'reasons are the links between the material, the foundation for these erection and the actual conclusions. They would also administer how the mind of the maker was activated and actuated and there rational nexus and syntheses with the facts considered and the conclusion reached. Lest it may not be arbitrary, unfair and unjust, violate Article 14 or unfair procedure offending Article 21.'

33. Similar view has been taken by the Supreme Court in *Institute of Chartered Accountants of India v. L.K. Ratna and Ors.*, (1986) 4 SCC 537; *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and Ors.*, AIR 1983 SC 109. Similar view has been taken by this Court in *Rameshwari Devi Mewara v. State of Rajasthan and Ors.*, AIR 1999 Raj. 47. In *Vasant D. Bhavsar v. Bar Council of India and Ors.*, (1999) 1 SCC 45, the Apex Court held that an authority must pass a speaking and reasoned order indicating the material on which its conclusions are based. Similar view has been reiterated in *MA. Indian Charge Chrome Ltd. and Anr. v. Union of India and Ors.*, 2003 AIR SCW 440; *Secretary, Ministry of Chemicals and Fertilizers Government of India v. CIPLA Ltd. and Ors.*, (2003) 7 SCC 1 and *Union of India and Anr. v. International Trading Co. and Anr.*, (2003) 5 SCC 437.

34. In the catena of judgments of the Hon'ble Supreme Court, it has categorically been held that an appointment de hors the rules cannot be enforced and in such a case even the principles of natural justice are not attracted nor their continuity in office for long would change the legal position. [Vide Smt. Ravindra Sharma and Ors. v. State of Punjab and Ors., (1995) 1 SCC 138; Harpal Kaur Chahal v. Director, Punjab Industries, 1995 (Suppl.) 4 SCC 706; State of Madhya Pradesh v. Shyama Pardhi, 1996 (7) SCC 118; State of Rajasthan v. Hitendra Kumar Bhatt, (1997) 6 SCC 574; Kishori Lal Charamkar and Anr. v. District Education Officer and Anr., (1998) 9 SCC 395; Patna University v. Dr. (Mrs.) Amita Tiwari, AIR 1997 SC 3456; M.P. Electricity Board v. S.S. Modh and Ors., AIR 1997 SC 3464; Dr. Meera Massey v. Dr. S.R. Mehrotra, AIR 1998 SC 1153; Upen Chandra Gogoi v. State of Assam and Ors., 1998 (3) SCC 381 and R.K. Trivedi and Ors. v. Union of India and Ors., (1998) 9 SCC 58].

35. Deprecating the practice of making appointment de-hors the rules by the State or other State instrumentalities in Dr. Arundhati A. Pargaonkar v. State of Maharashtra, AIR 1995 SC 962, the Court rejected the claim of the petitioner therein for regularization on the ground of long continuous service observing as under :--

'Nor the claim of the appellant, that she having worked as Lecturer without break for 9 years' on the date the advertisement was issued, she should be deemed to have been regularised appears to be well founded. Eligibility and continuous working for howsoever long period should not be permitted to over-reach the law. Requirement of rules of selection..... cannot be substituted by humane considerations. Law must take its course.'

36. The Hon'ble Supreme Court in State of U.P. and Ors. v. U.P. State Law Officers Association and Ors., AIR 1994 SC 1654, observed as under :--

'This being so 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 backdoor have to go by the same door. The fact that they are made by public bodies cannot vest them with additional sanctity. Every appointment made to a public office, however, made, is not. There is, therefore, no

public interest involved in saving all appointments irrespective of their mode. From the inception some engagement and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them.'

37. Even if there are no Statutory Rules or Bye-laws of the Society providing a mode for appointment, the Executive Instructions/Policy adopted by the respondent-Society must be there providing for a mode of appointment. Even if no such Executive Instructions/ Policy/Guidelines/Circular etc., is in existence then a fair procedure for appointment has to be adopted in consonance with the provisions of Articles 14 and 16 of the Constitution. [Vide Nagpur Improvement Trust v. Yadaorao Jagannath Kumbhare, (1999) 8 SCC 99].

38. In Ramesh Kumar Sharma and Anr. v. Rajasthan Civil Services Appellate Tribunal and Ors., 2000 AIR SCW 4206, the Hon'ble Supreme Court held that 'expression 'Service Rules' cannot be given a restrictive meaning in the absence of the definition of the said term and therefore, it would include within its sweep the necessary Government Order providing the method recruitment.'

39. A Constitution Bench of the Hon'ble Supreme Court in B.R. Kapoor v. State of Tamil Nadu, (2001) 7 SCC 231 (Jayalalitha case), observed that it is the duty of the Court to examine whether the incumbent possesses qualification for appointment and the manner in which the appointment came to be made or the procedure adopted was fair, just and reasonable and if not, appointment should be struck down.

40. A Constitution Bench of the Hon'ble Supreme Court in Ajit Singh (II) v. State of Punjab and Ors., (1999) 7 SCC 209, held that Articles 14 and 16(1) are basic features of the Constitution. The same view has been reiterated in Ashok Kumar Gupta v. State of U.P. and Ors., (1997) 5 SCC 201 and Indra Sawhney v. Union of India and Ors., (2000) 1 SCC 168. Thus, strict adherence is required thereto.

41. In Kumari Shrilekha Vidyarthi (supra) and A.P. Aggarwal v. Government (NCT) of Delhi and Ors., (2000) 1 SCC 600, the Hon'ble Supreme Court held that every State action, in order to survive must not be susceptible to vice of arbitrariness which is a crux of Article 14 of the Constitution and basis of the Rule of law.

42. Therefore, any appointment made by a Statutory Authority, which may be a State within the meaning of Article 12 of the Constitution, if found to have been made by a person without any competence or without following the procedure prescribed by law and in case, the procedure is not prescribed and the procedure adopted by the Authority is not in consonance with Articles 14 and 16 of the Constitution, the incumbent cannot claim any benefit as in such a case, the contract of service becomes enforceable and in-executable.

43. Thus, it also becomes evident that while considering the application for renewal, the authority is under a legal obligation to apply its mind that factors provided under the L.R. Manual and also to assess the initial appointment of the application has been made in accordance with law and further to pass a reasoned and speaking order so that the party concerned may know the reasons for acceptance or rejection of the application.

44. Instant case, requires to be considered in ;the light of the aforesaid settled legal propositions. There is nothing on the record to show as how the petitioners had been appointed and the learned Standing Counsel insisted to decide the matter on legal issues without calling for the counter-affidavit as it could have taken longer time. We dispose of this writ petition issuing the following directions :--

(1) The respondents shall not consider the applications submitted in pursuance of the advertisement dated 22nd October, 2003 (Annexure-2) for the time being and keep the process of appointment in abeyance so far as the petitioners are concerned; (2) Applications of the petitioners for renewal shall be considered first, as required under Para 7.08 of the L.R. Manual and to be disposed of by a speaking and reasoned order;

(3) While considering the applications for renewal, the findings of fact shall be recorded by the authority concerned as to whether initial appointment of the petitioners had been made in accordance with law and in case, answer is negative, the applications for renewal shall be rejected forthwith.

(4) In case, the applications of the petitioners or any of them is rejected and renewal is not made, the said vacancies shall be filled up by the respondents in accordance with the procedure prescribed under Paras 7.03 and 7.06 of the L.R. Manual.

(5) The process shall be completed expeditiously, preferably within a period of 8 weeks from today.

45. There shall be no order as to costs.

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