

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CJ Court

Case: **LPA No. 82 of 2021**

Union Territory of Jammu and Kashmir and others ...Petitioner(s)/Appellant(s)

Through: Sh. D. C. Raina, Advocate General
with Sh. Aseem Sawhney, AAG.

v/s

Sushil Chandel Respondent(s)

Through: Sh. R. D. Singh Bandral, Advocate.

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

ORDER

01. Heard Sh. D. C. Raina, learned Advocate General assisted by Sh. Aseem Sawhney, Additional Advocate General for the appellants and Sh. R. D. Singh Bandral, learned counsel appearing for the respondent.

02. This Letters Patent Appeal is directed against the order dated 29.06.2021 of the learned Single Judge passed in Writ Petition (C) No. 1087/2020 '*Sushil Chandel Vs. Union Territory of Jammu and Kashmir and others*'.

03. The learned Single Judge in the said order after making certain observations on the merits of the petition *vis-a-vis* that "*I am, therefore, of the considered view that the Policy of the engagement of Government Lawyers at all levels deserves fresh look and it is imperative that these engagements are merit based and do not fall foul of Article 14 of the Constitution of India*"

directs the petition to be treated as Public Interest Litigation (PIL) and as such observed to place it before the Chief Justice for listing before the appropriate Bench in terms of Rule 24 (8) of the Writ Proceeding Rules, 1997, but in doing so he has further provided that till the matter is considered by the Bench dealing with the PIL, no fresh appointments shall be made of the Law Officers except the Advocate General.

04. In other words, while recusing to hear the writ petition and directing it to be treated as a Public Interest Petition and laid before the appropriate Bench dealing with the PIL, the Single Judge proceeded to comment on the merits and passing interim order stopping all appointments of Law Officers in the Union Territory except the Advocate General.

05. The submission of Sh. D. C. Raina, learned Advocate General is that the interim order passed by the Single Judge is patently without jurisdiction which could not have been passed once he has declined to hear the writ petition and has directed it to be treated as a Public Interest Litigation.

06. Several other points have also been raised by the Advocate General but that may not require to be dealt with at the present stage.

07. Sh. R. D. Singh Bandral, appearing for the respondent vehemently contends that the appointments of the Law Officers should be transparent and that the criteria laid down under the impugned advertisement is faulty and does not bear any nexus with the object sought to be achieved. Therefore, the advertisement has to be quashed and declared *ultra vires* to SRO 98 of 2016 with direction for framing fair and reasonable Rules in terms of the prevalent law.

08. It may be pertinent to mention here that the Deputy Legal Remembrancer, Department of Law Justice and Parliamentary Affairs, issued an advertisement inviting applications for engagement of Standing Counsel which *inter alia* provide that an Advocate may apply in the prescribed form against the forty (40) vacancies for the districts of Jammu and Srinagar and two each for other districts meaning thereby that the proposed appointments of Standing Counsel are in context with the districts courts and not the High Court. In addition to above, it lays down the eligibility criteria and provides for 30 marks for the Experience, 10 marks for Higher Qualification than the Degree of Law, 50 marks on the basis of legal work done in courts such as instituting suits/filing of defence and 10 marks for the professional achievements, awards etc.

09. SRO 98 of 2016 issued in exercise of powers under Section 124 of the erstwhile Constitution of Jammu and Kashmir read with Section 492 of the Code of Criminal Procedure (Cr.P.C.) Svt. 1989 (1933 A.D.), the Government notified the Rules known as Jammu and Kashmir Law Officers (Appointment and Conditions of Service) Rules 2016.

10. In the writ petition, it was contended that the criteria laid down in the aforesaid advertisement has no relevance, are illegal and *ultra vires* to the above Rules.

11. The learned Single Judge in passing the impugned order accepted that the petitioner had neither himself applied nor does he seek his appointment and engagement as Law Officer, either at the district level or in the High Court. He further observes that the advertisement *prima facie* is not bad yet conditions therein would pose practical difficulties in its application and, therefore,

requires reconsideration. There is no rationale for allocation of marks for the qualification higher than the Degree of Law when the Chief Justice of India and the Judges of Supreme Court and the High Courts can be appointed with the simple qualification of LLB only.

12. It may be pertinent to refer to the certain observations from the judgment of Supreme Court in the case of '*State of Punjab and another vs. Brijeshwar Singh Chahal and another*' (2016) 6 SCC 1 which have been quoted by learned Single Judge himself to point out that the Government and public bodies are free to choose the method of selecting best lawyers but such selection ought to be unaffected by any extraneous considerations and that no lawyer has any vested right to be appointed, reappointed or to seek extension of term and that all such claims should be considered on merits uninfluenced by political or other extraneous consideration. The engagement of any lawyer if done in any arbitrary fashion without adopting the transparent method of selection would be amenable to judicial review but it would be limited to examine whether the process is affected by any illegality, irregularity or perversity but the Court exercising judicial review would not sit in appeal and reassess the merit of the candidates.

13. In view of the above legal position and the facts and circumstances of the case, when no appointment/engagement of lawyers has been made by the Government, the Court exceeded its power of judicial review and to pass a stop-order on the appointments which is apparently without jurisdiction as at one place the Court refers the matter to the Chief Justice for treating it as a Public Interest Litigation and, at the other, makes observations on the merits so as to pass the interim order.

14. Accordingly, we call upon the respondents to file response, if they so desire, and direct this appeal to be listed with WP(C) PIL No. 6/2021 which has been registered in pursuance to the order impugned and, in the meantime, the effect and operation of the interim order stopping fresh appointment of Law Officers except that of Advocate General shall remain stayed but subject to any order that may be passed in the above referred Public Interest Litigation.

15. List on 23rd August 2021 along with WP(C) PIL No. 6/2021.

(PUNEET GUPTA)
JUDGE

(PANKAJ MITHAL)
CHIEF JUSTICE

Jammu
03.08.2021
Sunita

