

IN THE HIGH COURT OF JAMMU AND KASHMIR  
AT JAMMU

(THROUGH VIRTUAL MODE)

Reserved on: 28.05.2021  
Pronounced on: 29.06.2021

WP(C) No.1087/2020

SUSHIL CHANDEL

...PETITIONER(S)

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

Vs.

UNION TERRITORY OF J&K & ORS.

....RESPONDENT(S)

Through: Mr. Aseem Sawhney, AAG.

CORAM:HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1) The petitioner is a practicing Advocate of this Court and is aggrieved of advertisement notice dated 11<sup>th</sup> of March, 2020, issued by the Department of Law, Justice and Parliamentary Affairs, inviting applications for engagement as Standing Counsel for various districts of the Union Territory of Jammu and Kashmir. The petitioner also feels aggrieved of the selection criteria indicated in the impugned advertisement notice. The petitioner, therefore, prays for a direction to the respondents to issue a fresh notification for engagement of Standing Counsels in various districts of Union Territory of Jammu and Kashmir after framing selection criteria, which is fair, just and reasonable after framing selection criteria which is fair, just and rational.

2) The entire writ petition is predicated on the plea that the respondents have issued the impugned advertisement notification as per the Jammu and Kashmir Law Officers (Appointment and Conditions of Service), Rules 2016 [“Rules of 2016” for short], promulgated vide SRO 98 dated 24<sup>th</sup> of March, 2016, and that SRO 98, which was issued by the Government of Jammu and Kashmir in exercise of powers conferred by Section 124 of the Constitution of Jammu and Kashmir read with Section 492 of J&K Cr. P. C, stands abrogated and has ceased to be in existence after the promulgation of J&K Reorganization Act, 2019 and resultant repeal of the Constitution of Jammu and Kashmir and the State Criminal Procedure Code.

3) The other grievance of the petitioner, however, is directed against the selection criteria enumerated in the advertisement notice itself. Petitioner submits that allocation of 02 marks for PG Diploma, 03 marks for Post Graduation and 05 marks for Ph. D. in Law under the head “*Education Qualification*” is without any rationale and, therefore, *per se* arbitrary. The petitioner also finds fault with the weightage of 50 marks earmarked for “**Number of institutions in last two years of civil suits or defending civil suits**”, on the ground that the allocation is highly excessive and without laying down any yardstick for assessment and allocation of these 50 marks.

4) The petitioner claims that, on going through the criteria laid down in the impugned advertisement notice, he made a representation

to the respondents on 16<sup>th</sup> of March, 2020, but the same was not heeded to by the respondents and the process was continued.

5) On being put on notice, the respondents have filed their objections through Mr. Aseem Sawhney, learned Additional Advocate General. In the objections, it is submitted that with a view to regulating the selection and appointment of Government Law Officers, the erstwhile Government of Jammu and Kashmir notified Rules of 2016. It is submitted that the Rules of 2016 were framed by the Government while the litigation on the issue was pending before the Supreme Court in the case of **State of Punjab & anr. v. Brijeshwar Singh Chahal and anr. (2016) 6 SCC 1**. The plea of the petitioner that the Rules of 2016 have ceased to be in operation after the promulgation of J&K Reorganization Act, 2019, is also refuted by the respondents by relying upon the Jammu and Kashmir Reorganization (Removal of Difficulties) Order, 2019 read with Section 6 of the General Clauses Act, 1897. It is urged that the Rules of 2016 are clearly saved and, therefore, would validly regulate the appointment and conditions of service of Law Officers in the Union Territory of Jammu and Kashmir

6) The selection criteria adopted has been defended by the respondents by submitting that the Government is well within its right to devise any selection criteria for selection and appointment of Law officers and the same cannot be interfered with unless it is totally arbitrary, irrational and is found to have no nexus with the object sought to be achieved. Allocation of 50 marks i.e. 02 marks for each

institution of civil suit or defending civil suit in last two years, it is submitted, cannot be termed as arbitrary or irrational because its definite object to be achieved is the selection of competent Law Officers to plead for or defend the Government in District Courts. Similarly, it is pleaded that 10 marks for qualification in addition to LLB with the break-up of 02 marks for relevant PG Diploma, 03 marks for Post Graduation in Law and 05 marks for Ph. D in law, only recognizes merit and gives slight edge to the candidates possessing higher qualification and, therefore, the same too cannot be termed as arbitrary.

7) It may not be out of place to mention here that during the pendency of this writ petition, representation of the petitioner, raising the same grievance as has been projected in this writ petition, was considered by the respondent No.1 in compliance to the interim order dated 01.07.2020 passed in this petition and the same was rejected vide Government order No.2318-JK(LD) of 2020 dated 10.08.2020. The representation of the petitioner has been rejected on the grounds which have been reiterated by the respondents in their reply affidavit.

8) Having heard learned counsel for the parties and perused record, I am of the view that although the issues raised by the petitioner in this petition pertain to the engagement of Standing Counsel for various districts of Union Territory of Jammu and Kashmir and the sustainability of the Rules of 2016 promulgated vide SRO 98 of 2016 yet during the course of arguments it has come to my notice that not

only the Rules of 2016 are deficient in complying with the Statutory provisions of Section 24 of the Code of Civil Procedure, 1973 but they are also not in conformity with the law laid down by the Hon'ble Supreme Court in the case of **State of Punjab & anr. v. Brijeshwar Singh Chahal and anr. (2016) 6 SCC 1.**

9) It is true that the Hon'ble Supreme Court while disposing of the aforesaid matter, restricted its observations to the selection and appointment of State Law Officers in the twin States of Punjab and Haryana but at the same time observed in para 51.6 thus”

“We further clarify that although we are primarily concerned with the procedure regarding selection and appointment of law officers in the States of Punjab and Haryana and although we have confined our directions to the said two States only yet other States would do well to reform their system of selection and appointment to make the same more transparent, fair and objective if necessary by amending the relevant LR Manuals/Rules and Regulations on the subject.”

10) It may be pertinent to note that in the **Brijeshwar Singh Chahal's** case, the Hon'ble Supreme Court was confronted with the appointment of State Law Officers in the state of Punjab and Haryana and in the backdrop of controversy involved, following questions were framed for determination:

- (1) Whether the States of Punjab and Haryana have made any realistic assessment of their requirement before making appointments of Law Officers?
- (2) Whether the States of Punjab and Haryana have formulated any scheme, policy, norms or standards for appointing Law Officers?

- (3) Whether appointment of Law Officers by the State Governments need to be made on a fair, reasonable, non-discriminatory and objective basis? and
- (4) If answers to question Nos.1, 2 and 3 are found in the negative, what is the way forward?

11) The Hon'ble Supreme Court answered the first two questions in negative but answered the question No.3 in affirmative. However, before doing so, the Hon'ble Supreme Court in para 41 summed up the proposition in the following manner:

- 41.1 The Government and so also all public bodies are trustees of the power vested in them.
- 41.2 Discharge of the trust reposed in them in the best possible manner is their primary duty.
- 41.3 The power to engage, employ or recruit servants, agents, advisors and representatives must like any other power be exercised in a fair, reasonable, non-discriminatory and objective manner.
- 41.4 The duty to act in a fair, reasonable, non-discriminatory and objective manner is a facet of the Rule of Law in a constitutional democracy like ours.
- 41.5 An action that is arbitrary has no place in a polity governed by Rule of Law apart from being offensive to the equality clause guaranteed by Article 14 of the Constitution of India.
- 41.6 Appointment of Government counsel at the district level and equally so at the High Court level, is not just a professional engagement, but such appointments have a "public element" attached to them.
- 41.7 Appointment of Government Counsel must like the discharge of any other function by the Government and public bodies, be only in public interest unaffected by any political or other extraneous considerations.
- 41.8 The government and public bodies are under an obligation to engage the most competent of the

lawyers to represent them in the Courts for it is only when those appointed are professionally competent that public interest can be protected in the Courts.

41.9 The Government and public bodies are free to choose the method for selecting the best lawyers but any such selection and appointment process must demonstrate that a search for the meritorious was undertaken and that the process was unaffected by any extraneous considerations.

41.10 No lawyer has a right to be appointed as a State/Government counsel or as Public Prosecutor at any level, nor is there any vested right to claim an extension in the term for which he/she is initially appointed. But all such candidates can offer themselves for appointment, re-appointment or extension in which event their claims can and ought to be considered on their merit, uninfluenced by any political or other extraneous considerations.

41.11 Appointments made in an arbitrary fashion, without any transparent method of selection or for political considerations will be amenable to judicial review and liable to be quashed.

41.12 Judicial review of any such appointments will, however, be limited to examining whether the process is affected by any illegality, irregularity or perversity/irrationality. The Court exercising the power of judicial review will not sit in appeal to reassess the merit of the candidates, so long as the method of appointment adopted by the competent authority does not suffer from any infirmity.

12) The Hon'ble Supreme Court, while dilating on issue No.4, also suggested the way forward which is contained in the judgment from para 43 onwards.

13) I am not going into the details of the observations and the way forward suggested by the Hon'ble Supreme Court but suffice it to say that what is laid down by the Hon'ble Supreme Court in the aforesaid judgment is required to be followed by all State and Union Territory

Governments governed by rule of law. It is true that the then State of Jammu and Kashmir with a view to regulate the appointment of Law Officers in the State and in anticipation of the judgment in **Brijeshwar Singh Chahal's** (supra), framed Statutory rules known by the name of the Jammu and Kashmir Law Officers (Appointment and Conditions of Service) Rules, 2016, which, the respondents say, have been saved and are in operation even after the promulgation of the Jammu and Kashmir Reorganization Act, 2019.

14) Be that as it may, the fact remains that the Rules of 2016 so framed by the then State of Jammu and Kashmir and deemed to have been in operation in the Union Territory of Jammu and Kashmir as well, only provide for eligibility requirements for being appointed as Advocate General, Additional Advocate Generals, Deputy Advocate Generals and Government Advocates in the High Court, Advocates on Record and Additional Advocate Generals in the Supreme Court of India, Public Prosecutors, Standing Counsels in the High Court and the subordinate Courts and Special Counsel (collectively known as "Law Officers" in the Rules) but the Rules of 2016 aforesaid do not lay down any criteria or procedure of selection nor these Rules adhere to the directives and the guidelines laid down by the Hon'ble Supreme Court in **Brijeshwar Singh Chahal's** case. In the absence of fair, just and transparent procedure of selection prescribed, the respondents have been indulging in pick and choose method and most of the engagements are motivated by political and other considerations.



15) As a matter of fact, the judgment in **Brijeshwar Singh Chahal's** case (supra) was rendered by the Hon'ble Supreme Court on 30<sup>th</sup> of March, 2016, and the Rules of 2016 were promulgated by the then State of Jammu and Kashmir vide SRO 98 on 24<sup>th</sup> of March, 2016. Obviously, the then authorities, who were involved in the framing of the Rules, did not have the advantage of the judgment rendered by the Supreme Court in **Brijeshwar Singh Chahal's** case. It also appears that the aforesaid judgment was either not brought to the notice of the concerned authorities of the Union Territory of Jammu and Kashmir or the authorities conveniently escaped from complying with it by taking benefit of the observations made by the Supreme Court in paragraph 51.6 reproduced hereinabove. It is, therefore, high time that the issue is examined by this Court at length and the respondents are directed to come up with a scheme for engagement of Government Law Officers, whether statutory or otherwise, which is in consonance with Article 14 of the Constitution of India and in conformity with the law succinctly laid down on the subject by the Supreme Court in **Brijeshwar Singh Chahal's** case.

16) I have also noticed that in making the appointment of Public Prosecutors in District Courts as well as in High Court, the statutory provisions of Section 24 of the Code of Civil Procedure are not complied with. I am not aware whether the respondents have appointed Public Prosecutors/Additional Public Prosecutors for prosecuting its criminal cases in the High Court or not. It is also not made known to me whether Additional Advocate Generals, Deputy Advocate Generals

or Government Advocates have been *ex-officio* appointed as Public Prosecutors/Additional Public Prosecutors as well. If the answer to this question is in affirmative, whether respondents in compliance of Section 24 have consulted the High Court or not. These are some of the issues which need determination by an authoritative pronouncement by a larger Bench.

17) It may be noted that the petitioner in this petition has neither himself applied nor does he seek his appointment/engagement as a Law Officer, either at the district level or in the High Court. He appears to have come to the Court virtually in a representative capacity raising issues of seminal importance affecting his legal fraternity and the administration of justice.

18) In so far as challenge to the impugned selection criteria is concerned, it is pointed out that the impugned selection criteria laid down in the advertisement notice itself though within the discretion of the respondents and, prima facie, not found bad yet would pose practical difficulties in its application. There are no specific guidelines for assessing a candidate's working experience. 50 points earmarked for institutions are capable of being misused in the absence of proper yardstick. It is also not clear as to whether filing of civil suit/proceedings must be by the candidate as an independent counsel or it could be in his capacity of a junior to a senior advocate. An advocate having independent practice may have less number of institutions as compared to a candidate working with some noted senior advocate.

Similarly, allocation of 10 marks to qualification higher than LL.B is apparently irrational and does not seem to have any nexus with the job, the candidates are being selected for. When the Chief Justice of India and the Judges of Supreme Court and High Courts can be appointed with the qualification of LL.B only, then why can't a candidate with the same qualification will not make a competent Law Officer.

19) Be that as it may, some of the issues which have been raised in this petition, particularly with regard to sustainability of SRO 98 of 2016 and also those which cropped up during hearing of the matter, are, in my opinion, issues of great public importance. The quality of assistance rendered to the court has direct impact on the quality of justice delivered. It is, therefore, of essence that the advocates who represent State/UT in civil as well as criminal matters are of sterling quality. Poor assistance from either side particularly from Government side, which is the biggest litigant in courts, affects administration of justice. I am, therefore, of the considered view that the policy of 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. In the aforesaid backdrop, I am of the view that this petition deserves to be treated as 'PIL' suo moto.

20) It is so ordered.

21) Let this matter be placed before the Lord Chief Justice for its enlisting before the appropriate Bench in terms of Rule 24 (8) of the Writ Proceeding Rules, 1997.

22) In the meanwhile, it is provided that till the matter is considered by the PIL Bench, there shall be no fresh appointment of Law Officers (as defined in SRO 98 of 2016) except Advocate General.

(Sanjeev Kumar)  
Judge

Jammu  
29.06.2021  
"Bhat Altaf, PS"

Whether the order is speaking: Yes/No  
Whether the order is reportable: Yes/No

