

**IN THE HIGH COURT OF JUDICATURE FOR MADHYA
PRADESH AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SHEEL NAGU
&
HON'BLE SHRI JUSTICE ARUN KUMAR SHARMA
WRIT APPEAL No. 510 of 2022**

Between:-

**O.B.C. ADVOCATE WELFARE
ASSOCIATION, THROUGH:
SECRETARY RAMBAJAN LODHI
ADVOCATE,**

.....APPELLANT

***(BY SHRI R.S. THAKUR, SHRI VINAYAK PRASAD SHAH
AND SHRI UDAY KUMAR, ADVOCATES)***

AND

- 1. STATE OF M.P. THROUGH
SECRETARY LAW AND
LEGISLATURE DEPARTMENT
MANTRALAYA, VALLABH
BHAWAN, BHOPAL (M.P.) (MADHYA
PRADESH) .**
- 2. PRINCIPAL/UNDER SECRETARY
GENERAL ADMINISTRATION
DEPARTMENT VALLABH
BHAWAN, BHOPAL (M.P.) (MADHYA
PRADESH)**

3. PRINCIPAL SECRETARY
DEPARTMENT OF SOCIAL
JUSTICE AND WELFARE,
MINISTRY OF SOCIAL JUSTICE
AND WELFARE MANTRALAYA,
VALLABH BHAWAN, BHOPAL M.P.
(MADHYA PRADESH)
4. PRINCIPAL SECRETARY O.B.C.
AND MINORITY WELFARE
DEPARTMENT VALLABH
BHAWAN, BHOPAL (M.P.) (MADHYA
PRADESH)
5. PRINCIPAL SECRETARY S.C./ S.T.
WELFARE DEPARTMENT
MANTRALAYA, VALLABH
BHAWAN, BHOPAL M.P. (MADHYA
PRADESH)
6. ADVOCATE GENERAL OFFICE
THROUGH ITS SECRETARY
ADVOCATE GENERAL HIGH
COURT OF M.P. CAMPUS,
JABALPUR (M.P.) (MADHYA
PRADESH)

....RESPONDENT

(BY SHRI VIVEK SHARMA, GOVERNMENT ADVOCATE)

Reserved on : 23.06.2022

Passed on : 19.07.2022

Per : Sheel Nagu, J.:

J U D G M E N T

The instant *intra-Court* appeal filed u/S. 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, assails final order rendered by learned Single Bench while exercising writ jurisdiction under Article 226 of Constitution dismissing the petition in question, by which the petitioner/appellant herein sought the following reliefs:

(7.1) To hold that the impugned order dt.7.11.2020 passed by the respondent no.1 contained in Annexure P/1 is ultra vires to Section 2(b), 2(f) as well as Section 4 of the M.P. Lok Seva (Anusuchit Jati, Anusuchit Janjati Tatha Anya Pichhada Vargon Ke Liye Arakshan) Adhiniyam, 1994 and accordingly be pleased to set-aside and quash the impugned order dt.7.11.2020.

(7.2) To direct the respondent authorities to implement the M.P. Lok Seva (Anusuchit Jati, Anusuchit Janjati Tatha Anya Pichhada Vargon Ke Liye Arakshan) Adhiniyam, 1994 in letter & spirit for appointment of Law Officers in Advocate General Office of Madhya Pradesh, District Courts & Tribunals, in the interest of justice.

(7.3) Hon'ble Court may kindly be pleased to direct the respondent authorities specifically to keep Representative Member belonging to O.B.C./S.C./S.T. community while making appointments of Law Officers in Advocate

General Office of Madhya Pradesh, in the interest of justice.

(7.4) Any other relief which deems fit and proper looking to facts and circumstance of the case may also be awarded in favour of the petitioner with cost of the petition.

2. Learned counsel for the rival parties are heard on the question of admission so also on final disposal.
3. The short question raised in the present appeal is whether the provision of reservation as permissible under Article 16(4) and as mandated by M.P. Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994 (for brevity “Adhiniyam, 1994”) is attracted while engaging Law Officers in the Office of Advocate General.
4. Learned Single Judge after dealing with the textual and contextual connotations of provisions of Adhiniyam, 1994, taking into account the difference between service and profession and also considering various decisions of Apex Court held that reservations contemplated by Article 16(4) of Constitution and provisions of Adhiniyam, 1994 are limited in their application to public employment/services/posts and not while engaging a professional i.e. an Advocate which arrangement is purely contractual in nature.

5. After hearing learned counsel for the rival parties, this Court has no manner of doubt that the view taken by the learned Single Judge is in line with the object and intent behind Article 16(4) and provisions of Adhiniyam, 1994, for the reasons infra:-

(i) When the State Government appoints Advocate General or any other Law Officer in the Office of Advocate General, then the relationship which ripens on such appointments between the State Government and Law Office is purely professional in nature. The said relationship cannot be categorized as public employment.

(ii) The Advocate General and all other Law Officers in the Office of Advocate General are not paid salary as is paid to the employees/officers in public employment.

(iii) The Advocate General or any other Law Officer in the Office of Advocate General does not hold any particular post since there is no civil post involved.

(iv) There is no employer-employee relationship between the State Government and the Advocate General/Law Officer in the Office of Advocate General.

(v) The functions and duties discharged by the Advocate General or any other Law Officer in the Office of Advocate

General are purely professional for which fixed professional charges are paid.

(vi) The Advocate General or any other Law Officer in the Office of Advocate General are not subject to any service regulations, but are governed purely by the Advocates Act, 1961 and professional ethics while discharging their duties.

(vii) The Adhiniyam, 1994 exclusively relates to Public Services and Posts which means civil post under the State, whereas the appointments of the Advocate General or any other Law Officer in the Office of Advocate General are not against any particular civil post or public service.

(viii) The expression "Public Services and Posts" is defined u/S.2(f) of Adhiniyam, 1994 means the services and posts in any office of the establishment. Expression "Establishment" defined u/S.2(b) means any office of the State Government or of a local authority or statutory authority constituted under any Act of the State for the time being in force, or a University or a Company, Corporation or a Cooperative Society having paid of capital of more 51 % held by the State or any institutions receiving grant-in-aid from the State including work charge or contingency paid employees and also establishment concerning casual appointment.

The meaning of expression “Establishment” has been limited to the office of the State Government which means all the civil posts created in any of the departments under the State Government. The Office of Advocate General is not a department under the State Government. The Office of Advocate General is neither created under any statutory authority nor constituted under any Act of the State and also under a University or a Company, Corporation or a Cooperative Society, in which at least 51% of the paid up share capital is held by the State Government. The Office of Advocate General is also not a private institution receiving grant-in-aid. More so, the Advocate General or Law Officer in the Office of Advocate General can never be treated as part of work charge or contingency paid establishment or casual appointment.

(ix) The Advocate General and Law Officers in the office of Advocate General are purely professional engagement by the State of such Advocates as the State thinks proper for protecting its interest as a litigant before a Court, for which professional charges are paid at a fixed rate revisable from time to time at the pleasure of the State Government.

6. In view of the above what comes out loud and clear is that the so called appointment of the Advocate General or Law Officer in the Office of Advocate General is actually an

engagement of a professional by the State Government for which professional fees is paid which may be loosely nomenclatured as honorarium/retainership fee/professional charges/salary etc.

7. Consequently, this Court sees no reason to take a different view than the one taken by learned Single Judge in the impugned order dated 29.04.2022 passed in W.P. No.19492/2020.

8. Accordingly, present writ appeal deserves to be and, therefore, is **dismissed** sans cost.

(SHEEL NAGU)
JUDGE

(ARUN KUMAR SHARMA)
JUDGE