

Chief Justice's Court

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 1578 of 2023

Petitioner :- Sunita Sharma And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Sunil Kumar Jaiswal, Vijay Chandra Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Ashutosh Srivastava, J.

1. Heard Shri Vijay Chandra Srivastava, learned counsel representing the writ petitioners and Shri Manish Goyal, learned Additional Advocate General assisted by Shri A.K. Goel, Additional Chief Standing Counsel for State respondents.

2. This writ (PIL) at the instance of two practicing Advocates of this Court has attempted to raise the issue regarding the system prevalent in the State of U.P. in respect of engagement of Advocates by the State Government as Additional Advocate General (AAG), Additional Government Advocate (AGA), Additional Chief Standing Counsel (Addl. CSC), Standing Counsels (SC), Brief Holders Civil and Brief Holder Criminal.

3. It is the case of the petitioners that the State Government has made large number of appointments to the above posts both at Allahabad and Lucknow Bench. Details of number of appointments have been given in para 5 and 6 of the writ petition and a copy of the complete list of the appointments have been filed as Anneuxre-1 to the writ petition. It is contended that such appointments have been made without following any procedure and ignoring the eligibility and competence. The appointment of lady Advocates upto the desired 30% has been completely ignored. Appointments have been given to the Advocates who had close proximity with the Government. The petitioners have desired that the appointment having not been made in a fair and transparent manner is required to be examined under a 5 Member Committee headed by a retired High Court Judge. Accordingly it has been prayed that the respondents be directed to constitute a High Level Committee headed by a retired Judge of this Court, to enquire and examine the competency and eligibility of the appointees. A further prayer in the nature of Mandamus commanding the respondent no. 1 to fix the responsibility with regard to the irregularity and illegality in making the appointment and take appropriate action against the accountable person. A further prayer for commanding the respondents to formulate the norms and procedure for making appointments by inviting applications and conducting interviews of the candidates by a Committee of 4 members headed by a retired Judge of this Court has been prayed for.

4. Shri Manish Goyal, learned Senior Counsel and Additional Advocate General for the State of U.P. submits that the Advocates are coming forward to challenge the appointment of Advocates which does not sound to reason in as much as it is the prerogative of a litigant to choose his lawyer to represent him in a Court of Law and there can be no challenge to this. The State Government is also a litigant and as such is free to choose any and as may lawyers to represent in a Court of law. There can be no quarrel to this proposition. It is contended by Shri Manish Goyal that the present writ (PIL) is nothing but a setup petition by those not given appointment. It is also submitted that the list of the Advocates have been finalized, appointments have been made after due consideration by a Committee with the Advocate General as Chairperson and considering the Law laid down by the Supreme Court. The petitioner have not approached the competent persons of the State and have straight away invoked the PIL jurisdiction of this Court. It is thus prayed that the writ (PIL) warrants dismissal at the threshold.

5. Having heard learned counsel for the parties and having perused the record we find that a writ PIL being PIL No. 527 of 2022 (Rama Shankar Tiwari @ Rama Shankar and others vs. State of U.P. through Principal Secretary Law, Justice, Civil Secretariat, Lucknow and others) has been entertained by a Coordinate Bench of this Court. The said PIL raises identical issues as raised in the present PIL. Coordinate Bench in it's order dated 24.08.2022 has observed as under:

"We, thus, call upon the State Government to file counter affidavit/affidavit to be sworn in by none other than the Principal Secretary, Law/ Legal Remembrancer himself stating therein as to what steps are being taken/proposed to be taken for ensuring that observations and directions of Hon'ble Supreme Court in the case of Brijeshwar Singh Chahal (supra) are implemented in their true spirit. The affidavit to be submitted under this order shall give a complete scheme of selection and appointment of Government Advocates which shall ensure the process to be more transparent, fair and objective.

Transparency, fairness and objectivity are the hallmarks of the present day administration and our Society has to take strides to ensure that administration is more transparent and that it functions more objectively. Accordingly, we require that affidavit to be filed under this order shall touch upon all the aspects of the selection and appointment of the Government Advocates which may include assessment of need, eligibility, equal opportunity, process of selection and all other related and auxiliary aspects.

The Court shares the concern of the petitioners that entire process should be more transparent and objective. While filing the affidavit, the endeavour of the State Government, in our opinion, should be to ensure that the process to be evolved henceforth does not lack transparency and objectivity. The said affidavit shall be filed within a period of six weeks after serving a copy thereof upon the learned counsel for the petitioners who shall file rejoinder affidavit by the next date of listing. "

6. The aforesaid PIL is pending consideration.

7. It is not out of place to bring on record certain observations made by the Apex

Court in *State of U.P. and others vs. U.P. State Law Officers Association and others reported in 1994 AWC 654 (SC)* while dealing with the appointment and termination of State Law Officers engaged to conduct cases in High Court, Law Officers, Lawyers engaged by Government or Public Bodies, appointment and removal of Brief Holders as under:

"19. It would be evident from Chapter V of the said Manual that to appoint the Chief Standing Counsel, the Standing Counsel and the Government Advocate, Additional Government Advocate, Deputy Government Advocate and Assistant Government Advocate, the State Government is under no obligation to consult even its Advocate-General much less the Chief Justice or any of the judges of the High Court or to take into consideration, the views 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 appointment is equally arbitrary. Those who come by the back door 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."

8. In respect of the Brief Holders the Apex Court observed as under:

"21. Coming now to the High Court's order setting aside the government order dated May 26, 1990 by which the Government had abolished the system of Brief Holders, and instead the power was given to the Legal Remembrancer to appoint special counsel for special matters, we are of the view that the High Court has committed a still graver error. As has been pointed out above, Chapter VI of the said Manual deals with the system of appointing a panel of Brief Holders in the High Court. The appointment of the lawyers on the panel of Brief Holders is made by the State Government only in consultation with the Advocate-General who is its own officer and from among the advocates of the High Court who have completed a minimum of five years practice at the Bar. The selection of Brief Holders is not made after open competition. Their appointment is purely at the discretion of the State Government. The Brief Holders are further appointed to handle that work which cannot be attended to by the Government Advocate and Chief Standing Counsel. No salary or any other kind of monthly remuneration is payable to them. They are paid per brief handled by them. They are not barred from private practice or from accepting cases against the Government. It will thus be apparent that their appointment is in supernumerary capacity. It is necessitated because there may be work which cannot be attended to by

the Government Advocate and the Chief Standing Counsel. They are not assured of any regular work much less any regular fee or remuneration. They get briefs only if the Government Advocate and Chief Standing Counsel are overworked and not otherwise. They are like ad hoc counsel engaged for doing a particular work when available. Their only qualification is that they are on the panel of the counsel to be so appointed for handling the surplus work. We are, therefore, at a loss to understand as to how any fault can be found with the Government if the Government has now thought it fit to abolish the said system and to appoint each time special counsel for special cases in their place."

8. The Apex Court thereafter proceeded to hold that the direction given by the High Court to the Government to continue the system of Brief Holders is unjustified and quashed the same. The Apex Court further set aside the order of the High Court quashing the fresh appointments and directing payments to the officers whose appointments were terminated.

9. In view of the above and particularly the fact that a coordinate Bench of this Court is already seized of the issues raised in this petition as noticed herein above, we are not inclined to entertain this writ PIL and the same is ***dismissed***.

Order Date :- 2.8.2023

Deepak/

(Ashutosh Srivastava,J.) (Pritinker Diwaker,C.J.)