Reserved on 23.11.2020

Delivered on 08.12.2020

Court No. - 9

Case :- WRIT - C No. - 11411 of 2020

Petitioner :- Bindu Yadav And Another
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Aditya Bhushan Singhal,Md. Aman Khan
Counsel for Respondent :- C.S.C.

Hon'ble Anjani Kumar Mishra,J.
Hon'ble Prakash Padia,J.

1. Heard learned counsel for the petitioners and learned Standing Counsel for the respondent-State.

2. The writ petition has been filed seeking following reliefs:-

> *""(a) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 18.06.2020 issued by the respondent no. 2 (Annexure No. 2 to the writ petition) as well as the order dated 22.06.2020 issued by respondent no. 3 (Annexure No. 3 to the writ petition) so far as it relates to the petitioners.*
>
> *(b) Issue a writ, order or direction in the nature of mandamus directing the respondent nos. 2 to revisit the decision dated 18.06.2020 and to take a fresh decision on the basis of the recommendation of the District Judge dated 11.05.2020 and District Magistrate, Sonbhadra dated 26.05.2020 so far as it relates to the petitioners."*

3. The facts in brief as contained in the writ petition are that the respondent authorities had invited application for engagement of District Government counsel (Criminal). The petitioners have submitted their applications form and they were engaged as District Government Counsel (Criminal) in District Court Sonbhadra in accordance with the LR manual. The renewals were given to the petitioners from time to

time and the petitioner no. 1 is working on the post of Assistant District Government Counsel (Criminal) since 13.06.2014 and petitioner no. 2 is discharging his duties on the post of Additional District Government Counsel (Criminal) since 1999. After the expiry of the term as DGC (Criminal), petitioners again submitted an application and vide order dated 08.12.2016 passed by respondent no. 2, the petitioners were again appointed on the post of Asst. DGC (Criminal) & Additional DGC (Criminal) for a period of 3 (three) years.

4. Petitioner No. 2 again submitted his application along-with other relevant documents and expressed his willingness for the renewal on the post of Additional DGC (Criminal) on 21.10.2019 and petitioner no. 1 also submitted his application along-with other relevant documents for the renewal on the post of Asst. DGC (Criminal), District Sonbhadra on 22.10.2019. In respect of the aforesaid, recommendation was made by the District Judge, Sonbhadra vide its letter dated 11.05.2020 as well as by respondent no. 3 vide its letter dated 26.05.2020 wherein a favourable report has been submitted regarding the work and conduct of the petitioners.

5. Pursuant to the aforesaid, the impugned order has been passed by the respondent no. 2 whereby the recommendation for the renewal of the term of the petitioners on the post of District Government Counsel (Criminal) & Additional District Govt. Counsel (Criminal) has been rejected and the engagement of the petitioners on the said posts has been terminated by the respondent no. 2 on 18.06.2020. In pursuance to

the order dated 18.06.2020, the respondent no. 3 also passed the consequential order dated 22.06.2020 terminating the engagement of the petitioners with immediate effect.

6. Heard counsel for the parties and perused the record.

7. Apart from various arguments, the basic argument which was advanced by the counsel for the petitioners is that the order impugned does not assign any reason for refusing to renew the term of the petitioners. The State Government cannot act in an unfair and unreasonable manner. Even in the matters of contractual appointment the provisions of the LR Manual should have been followed.

8. In the matter of taking service of lawyers as District Government Counsel, way back in ***AIR 1991 SC 537 Kumari Shrilekha Vidyarthi Vs. State of U.P. and others***, it was laid down that the District Government Counsel cannot be removed en bloc in an arbitrary manner and, as such, the removal can be tested on the anvil of Article 14 of the Constitution even if they happen to be contractual in nature.

9. A Division Bench of this Court in ***Virendra Pal Singh Rana Vs. State of U.P. and others 2003 (52) ALR 302*** observed that competent lawyers of integrity and sound knowledge of law ought to be appointed as District Government Counsel after consulting the District Judge whose opinion would prevail over that of the District Magistrate.

10. In ***State of U.P. and others Vs. Ashok Kumar Nigam (2013) 3 SCC 372***, in the matter of

appointment of District Government Counsel, it was held that the renewal of the term depends upon the age, continuous good work, sound integrity and physical fitness of the counsel and that no counsel has any right to appointment even up to the age of 60 years irrespective of work, conduct and integrity.

11. The latest decision on the point is that of ***State of Punjab and another Vs. Brijeshwar Singh Chahal and others (2016) 6 SCC 1*** wherein it has been laid down that in the expanding horizon of the jurisprudence the executive power is exercisable not only as per rule of law but according to public trust doctrine. Thus, in the manner of appointment of Government Law Officers/Counsel/Pleader it is the duty of the Government to act in a fair, reasonable, objective and in a non discriminative manner and that the action of the State Government in the matter of such contractual appointments can be tested by way of judicial review. It was also observed that the Government and the Government bodies are free to choose the method of selection but the method should be such as to search out the meritorious ones uninfluenced by extraneous considerations.

12. In view of the aforesaid decisions, one thing is clear that no lawyer has any vested right to be reappointed or to get his term renewed as a District Government Counsel (Criminal) as a matter of right even though his integrity and work may be reported to be good and that the opinion of the District Judge will have supremacy.

13. In the case before us, we are not concerned with the matter of appointment of District Government Counsel (Criminal), rather with the renewal of their term for which purpose clause 7.06 to 7.08 of the LR Manual is material which reads as under:

> "***7.06. Engangement and renewal-*** *(1) The legal practitioner finally selected by Government may be appointed District Government Counsel for one year from the date of his taking over charge.*
>
> *(2) At the end of the aforesaid period, the District Officer after consulting the District Judge shall submit a report on his work and conduct to the Legal Remembrancer together with the statement of work done in Form no.9. Should his work or conduct be found to be unsatisfactory the matter shall be reported to the Government for orders. If the report in respect of his work and conduct is satisfactory, he may be furnished with a deed of engagement in Form No.1 for a term not exceeding three years. On his first engagement a copy of Form no.2 shall be supplied to him and he shall complete and return it to the Legal Remembrancer for record.*
>
> *(3) The engangement of any legal practitioner as a District Government Counsel is only professional engagement terminable at will on either side and is not appointment to a post under the Government. Accordingly the Government reserves the power to terminate the appointment of any District Government Counsel at any time without assigning any cause.*
>
> ***7.07. Political Activity-*** *The District Government Counsel shall not participate in political activities so long they work as such; otherwise they shall incur a disqualification to hold the post.*
>
> ***7.08 Renewal of duration***
>
> *1. Collector after consulting with the District*

Judge, shall send the report regarding past work, conduct and income of the District Govt. Counsel and the work done by him in Form 9 at least 3 months prior to expiry his tenure to the Legal Remembrancer with the opinion that whether tenure of such advocate be extended or not? Along with the report of Collector, a copy of the opinion of District Judge shall also be send.

2. In case recommendation for extending tenure of District Govt. Counsel is made for any specified period, then such reasons shall also be mention by the Collector.

3. For the renewal of tenure of District Govt. Counsel, while sending his recommendation

(1) Collector shall consider the various aspect of capacity of a Advocate, from the judicial view, shall mentioned the work of the Advocate, merits, which would visible while operating before him the cases of State.

(2) Collector, shall give the report of the applicability of the govt. counsel from an administrative prospective and shall mentioned in its about the fame in the general public, his conduct, integrity and professional conduct.

4. In case Legal Remembrancer is agree with the certificate given by the Collector and District Judge regarding good hard work and integrity and this recommendation that the tenure of the Govt. Counsel shall be renewed, then for extending his tenure once for more than 3 years, shall got the order from govt. ***but renewal of tenure shall not be the right of any Advocate and govt. shall have liberty to remove any of the Advocate at any time without assigning any reason.***

5. If, in any case Legal Remembrancer is not agree with the recommendation made by the Collector regarding renewal of the tenure of govt. Counsel then he shall submit the case to the Govt. for order. ***In case Govt. decide not to reappoint any Govt. Advocate then Legal Remembrancer shall request the Collector to send the new***

recommendation as per the rule given in Para 7.03."

(emphasis supplied)

14. There is nothing on record placed before the Court by the respondents that could demonstrate that the order was passed after taking into consideration any material on record. The prescribed procedure under para 7.08 of the manual requires the Government to invite the opinion of the District Judge and District Officer three months prior to the expiry of the term of the District Government Counsel (Criminal). As per prescribed procedure the office of the Legal Remembrance was expected to consider the past record of work and conduct of the District Government Counsel, concerned and then to send a report together with the statement of work done by such applicant.

15. Total non-application of mind and the order being supported by no reason whatsoever would render the order passed as ‘arbitrary’. Arbitrariness shall vitiate the administrative order. The rules provide a procedure and even require the State Government to consider the case for renewal of the government counsel whose term is coming to an end. The scheme of para 7.06 of the Manual is that appointment of a government pleader is to be made for a period of one year and at the end of the period, the District Officer in consultation with the District Judge is required to submit a report on the work and conduct to the legal remembrancer together with the work done in Form 9. It is only when his work or conduct is found to be unsatisfactory that it

is so reported to the government for appropriate orders. If the report is satisfactory, the rule requires that he may be furnished with a deed of engagement in form I, for a term not exceeding three years, on his first engagement.

16. In terms of para 7.06 (3), the Government reserves the power to terminate the appointment of any District Government Counsel at any time without assigning any cause. Firstly, one has to examine the entire scheme of para 7.06 (3). It cannot be read in isolation. The right of consideration for renewal for the specified period is a legitimate right vested in an applicant and he can be deprived of such right and be declined renewal where his work is unsatisfactory and is so reported by the specified authorities. It is difficult to comprehend that clause (3) of para 7.06 can be enforced in the manner as suggested. If it is construed, as suggested, that the government has an absolute right to terminate the appointment at any time without specifying any reason, it will be violative of Articles 14 and 16 of the Constitution of India and such rule shall be arbitrary, thus not sustainable in law.

17. In ***Breen Vs. Amalgamated Engg. Union, reported in 1971(1) AllER 1148***, it was held that the giving of reasons is one of the fundamentals of good administration. In ***Alexander Machinery (Dudley) Ltd.Vs. Crabtress,*** reported in ***1974(4) IRC 120 (NIRC)*** it was observed that "failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion

arrived at".

18. In ***S G Jaisinghani v. Union of India*** reported in ***AIR 1967 SC 1427***, Supreme Court held that absence of arbitrary power is the first essential of “Rule of Law” upon which rests our Constitutional system. The Supreme Court ruled that in a system governed by rule of law, any discretion conferred upon the executive authorities must be confined within clearly defined limits. The Supreme Court quoted with approval, the following observations of Douglas J. in United States vs. Wunderlick 1951 342 US 98:96 Law Ed 113:

> *“Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler... Where discretion is absolute, man has always suffered.” (Wunderlich case, SCC Online US SC para 9).*

19. The same view was again taken by the Supreme Court in the case of ***E. P. Royappa v. State of Tamil Nadu and Anr. (1974) 4 SCC 3*** wherein the Supreme Court declared that Article 14 is the genus while Article 16 is a specie and the basic principle which informs both these Articles is equality and inhibition against discrimination. Equality, declared this Court, was antithetic to arbitrariness. The Court described equality and arbitrariness as sworn enemies, one belonging to the rule of law in a republic and the other to the whims and caprice of an absolute monarch. Resultantly if an act is found to be arbitrary, it is implicit that it is unequal both according to political logic and constitutional law, hence violative of Article 14 and if it affects any matter of public employment it is also violative of Article 16. Supreme Court reiterated that

Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and inequality of treatment.

20. The Supreme Court in the case of ***Maneka Gandhi v. Union of India*** reported in ***(1978) 2 SCR 621***, wherein Supreme Court held that the principle of reasonableness both legally and philosophically is an essential element of equality and that non-arbitrariness pervades Article 14 with brooding omnipresence. This implies that wherever there is arbitrariness in State action whether, it be legislative or executive Article 14 would spring into action and strike the same down. This Court held, that the concept of reasonableness and non-arbitrariness pervades the constitutional scheme and is a golden thread, which runs through the entire Constitution.

21. In ***Ramana Shetty v. International Airport Authority*** reported in ***(1979) 3 SCC 489***, Supreme Court relying upon the pronouncements of E.P. Royappa and Maneka Gandhi (supra) once again declared that state action must not be guided by extraneous or irrelevant considerations because that would be denial of equality. The Supreme Court recognized that principles of reasonableness and rationality are legally as well as philosophically essential elements of equality and non-arbitrariness as projected by Article 14, whether it be authority of law or exercise of executive power without the making of a law. The Supreme Court held that State cannot act arbitrarily in the matter of entering into relationships be it contractual or otherwise with a third party and its action must conform to some standard or norm, which is in itself

rational and non-discriminatory.

22. In ***D.S. Nakra v. Union of India*** reported in ***(1983) 1 SCC 305***, the Supreme Court reviewed the earlier pronouncements and while affirming and explaining the same held that it must now be taken to be settled that what Article 14 strikes at is arbitrariness and that any action that is arbitrary must necessarily involve negation of equality.

23. In ***Dwarkadas Marfatia v. Board of Trustees of the port of Bombay (1989) 3 SCC 293***, the Supreme Court again an occasion to examine whether Article 14 had any application to contractual matters. This court declared that every action of the state or an instrumentality of the State must be informed by reason and actions that are not so informed can be questioned under Articles 226 and 32 of the Constitution.

24. Similar view was again taken by the Supreme Court in the case ***Som Raj & Ors. v. State of Haryana & Ors.*** *r*eported in ***(1990) 2 SCC 653, Neelima Misra v. Harinder Kaur Paintal & Ors.*** *r*eported in ***(1990) 2 SCC 746*** and ***Sharma Transport v. Government of A.P & Ors.*** Reported in ***(2002) 2 SCC 188*** have simply followed, reiterated and applied the principles settled by the pronouncements in the earlier mentioned cases.

25. The Supreme Court in case of ***Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota Vs. M/s Shukla and Brothers*** reported at ***2010 AIR SCW 3277*** dealt

with the principles of law while exercising power of judicial review on administrative action. It was held by the Supreme Court in the aforesaid case that the doctrine of audi alteram partem has three basic essentials-

> *i) A person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard.*
>
> *ii) The concerned authority should provide a fair and transparent procedure.*
>
> *iii) The authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order.*

Paragraph 9 of the aforesaid judgment is quoted below-

> *"9. The increasing institution of cases in all Courts in India and its resultant burden upon the Courts has invited attention of all concerned in the justice administration system. Despite heavy quantum of cases in Courts, in our view, it would neither be permissible nor possible to state as a principle of law, that while exercising power of judicial review on administrative action and more particularly judgment of courts in appeal before the higher Court, providing of reasons can never be dispensed with. The doctrine of audi alteram partem has three basic essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the concerned authority should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order. This has been uniformly applied by courts in India and abroad."*

26. In the case of ***S.N. Mukherjee v. Union of India***

reported in ***(1990) 4 SCC 594*** while referring to the practice adopted and insistence placed by the courts in United States, emphasised the importance of recording of reasons for decisions by the administrative authorities and tribunals. It said "administrative process will best be vindicated by clarity in its exercise". To enable the courts to exercise the power of review in consonance with settled principles, the authorities are advised of the considerations underlining the action under review.

27. In paragraph 12 of the aforesaid judgment the scope of judicial review has been dealt with in great detailed. The paragraph 12 is quoted hereinbelow :-

> *"12. In exercise of the power of judicial review, the concept of reasoned orders/actions has been enforced equally by the foreign courts as by the courts in India. The administrative authority and tribunals are obliged to give reasons, absence whereof could render the order liable to judicial chastisement. Thus, it will not be far from an absolute principle of law that the courts should record reasons for their conclusions to enable the appellate or higher courts to exercise their jurisdiction appropriately and in accordance with law. It is the reasoning alone, that can enable a higher or an appellate court to appreciate the controversy in issue in its correct perspective and to hold whether the reasoning recorded by the court whose order is impugned, is sustainable in law and whether it has adopted the correct legal approach. To subserve the purpose of justice delivery system, therefore, it is essential that the courts should record reasons for their conclusions, whether disposing of the case at admission stage or after regular hearing."*

28. Having heard learned counsel for the parties, we

are satisfied that the impugned order does not record any such satisfaction and the entitlement of the petitioners does not appear to have been considered in the light of the provisions of Legal Remembrancer's Manual as also the decisions referred to herein-above.

29. Accordingly, the impugned order dated 18.06.2020 passed by the respondent no.2 is set aside and the consequential communication dated 22.06.2020 issued by the respondent no.3 is also set aside. However, this order would not amount to re-engagement of the petitioner or his continuance. The matter shall be decided afresh keeping in view the observations made herein-above as well as the provisions of Legal Remembrancer's Manual within a period of four months from the date of production of certified copy of this order.

30. Accordingly, present writ petition is allowed.

Order Date :- 08.12.2020
Pramod Tripathi

Justice Anjani Kumar Mishra
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Date: 2020.12.09 14:13:34 +05'30'

Justice Prakash Padia
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Date: 2020.12.09 14:14:25 +05'30'