

STATE OF U.P.

A

v.

RAMESH CHANDRA SHARMA AND ORS.

OCTOBER 16, 1995

[J.S. VERMA AND K. VENKATASWAMI, JJ.]

B

U.P. Legal Remembrancer's Manual : Chapter VII—Paras 7.06, 7.08 and 7.13.

State of Uttar Pradesh—Additional District Government Counsel—Appointment—Nature of—Held only a professional engagement—Not an appointment to the post in Government service.

C

Constitution of India, 1950 : Article 14

State—Arbitrary action—Quashing of—Additional District Government Counsel—Term of appointment—Refusal to renew on non-existent ground held arbitrary and quashed.

D

Code of Criminal Procedure, 1973 : Section 24 (3).

Additional District Government Counsel—Appointment of—Refusal to grant renewal of term—Section 24(3) held inapplicable to such a case.

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Respondents 1 to 3 were appointed as Additional District Government Counsel (Criminal) in the State of U.P. for a fixed term and their term was renewed from time to time. An order dated 1.10.1992 issued by the State Government denying further renewal to them was quashed by the High Court on the ground that it was an arbitrary action of the State Government. The High Court held that the reason given by the State Government for refusing to consider the renewal i.e. there was no recommendation made by the District Authorities for making the renewal as required under the provisions of U.P. Legal Remembrancer Manual was non-existent while in fact the report of the District Officer was favourable to the respondents and the District Judge had really recommended renewal of their term. Against the decision of the High Court, State preferred appeal before this Court.

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On behalf of the respondents it was contended that (i) refusal to

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A renew their term was arbitrary and thus liable to be struck down under Article 14; (ii) they do not seek consequential relief of reappointment after the State Government's action was held arbitrary; and (iii) in view of provisions contained in the Manual and section 24(3) of the Code of Criminal Procedure, 1973 the appointment of an advocate as a District Government Counsel was an employment to a post in government service and not a professional engagement entitling him to automatic renewal upto the superannuation age of 62 years subject to satisfactory confidential report.

Allowing the State's appeal in part, this Court

C HELD : 1. In view of the clear provision in clause (3) of para 7.06 of the (U.P. Legal Rememberancer's Manual the appointment of a legal practioner as a District Government Counsel is only professional engagement. The appointment being for a fixed term and requiring express renewal in the manner provided in the Manual, there is no basis to contend that it is not a professional engagement of a legal practitioner but appointment to post in Government service which continues till attaining the age of superannuation. Para 7.13 of the Manual is a restriction on appointment of a legal practitioner as a District Government Counsel if his age exceeds 62 years and it is not a provision conferring a right on the appointee to continue till he attains the age of 62 years. Section 24(3) of the Code of Criminal Procedure, 1973 has no application to a case of renewal of appointment. [387-F-G, B]

F *Kumari Shrilekha Vidyarthi and Ors. v. State of U.P. and Ors.*, [1991] 1 SCC 212, relied on.

Harpal Singh Chauhan and Ors. v. State of U.P., [1993] 3 SCC 552; distinguished.

G 2. The State action of refusing renewal can be quashed if it is arbitrary. Admittedly, the only ground on which the State Government sought to support its action is found to be non-existent in the record. This leads to the inescapable conclusion that the action of refusing renewal to respondents by order dated 1.10.1992 was arbitrary and on a non-existent ground. This view taken by the High Court cannot, therefore, be faulted. However in the circumstances of the case grant of any further relief to the H respondents is inappropriate. Accordingly, the High Courts' order is

modified and the consequential relief to reconsider the respondents for renewal of their term is set aside. [388-B, D, H, 389-A] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9374 of 1995.

From the Judgment and Order dated 24.12.92 of the Allahabad High Court in W.P. No. 4303 (M/B) of 1992. B

A.K. Srivastava for the Appellant.

S.B. Sanyal, K.D. Sharma and S.K. Mishra for the Respondents. C

The Judgment of the Court was delivered by

J.S. VERMA, J. Leave granted.

Respondents Nos. 1, 2 and 3, namely, Ramesh Chandra Sharma, Ashok Kumar Sharma and Naresh Chandra Sharma respectively, were appointed Additional District Government Counsel (Criminal) at Budaun in the State of Uttar Pradesh on different dates for a fixed term mentioned in the order of appointment. Their term was renewed similarly from time to time. However, a further renewal was denied to them by an order dated 1.10.1992. This was challenged by them by a writ petition in the Allahabad High Court, Lucknow Bench. A Division Bench of the High Court allowed the writ petition of respondents Nos. 1, 2 and 3 and the order dated 1.10.1992 refusing to renew their term of appointment as Additional District Government Counsel (Criminal) for a further period was quashed. It is unnecessary to refer to the claim of respondents Nos. 4 and 5, namely, Yashpal Singh Yadav and Syed Mohd. Anas Naqvi, whose similar claim in that writ petition was dismissed. Respondents Nos. 4 and 5 are merely proforma respondents and no further reference to them is necessary. D E F

This appeal by the State of Uttar Pradesh is against the High Court's judgment allowing the writ petition of respondents Nos. 1, 2 and 3. Learned counsel for the appellant-State of U.P. has assailed the judgment of the High Court on the ground that the refusal to grant renewal of the tenure as Additional District Government Counsel of respondents 1, 2 and 3 was not arbitrary as held by the High Court, but for valid reasons. It was contended by the learned counsel for the appellant that renewal of the G H

A tenure could not be claimed as a matter of right under para 7.08 of the U.P. legal Rememberancer's Manual (for short "the Manual"), on which the claim of these respondents for renewal of their term is based. In reply learned counsel for the respondents contended that the appointment of an advocate as a District Government Counsel under Chapter VII of the Manual is an employment and not a professional engagement of an advocate and, therefore, the advocate is entitled to automatic renewal till he attains the age of 62 years prescribed in the Manual as the age of superannuation unless his record and character roll are not upto the mark. The alternative submission of learned counsel for the respondents is that the refusal of renewal of the term of these respondents, in the facts and circumstances of the case, was arbitrary on account of which it was liable to be struck down under Article 14 of the Constitution. Both sides have placed reliance on the decision of this Court in *Kumari Shrilekha Vidyarthi and Others v. State of U.P. and Others*, [1991] 1 SCC 212. Before we consider the question whether the refusal to grant renewal was arbitrary, it would be appropriate to consider the argument of learned counsel for the respondents about the nature of appointment since it was vehemently urged as the main argument on behalf of the respondents.

E Shri S.B. Sanyal, learned counsel for the respondents, to support the main argument that the appointment of an advocate as a District Government Counsel is an appointment to a post in Government service whereby the appointee is entitled to automatic renewal upto the stage of superannuation subject to satisfactory confidential record, relied on the provisions in the Manual which debar the appointee from participating in political activities and provide for maintenance of character roll in addition to a provision in para 7.13 of the superannuation age. Reference was also made to section 24(3) of the Code of Criminal Procedure which in our opinion has no application to a case of renewal of the appointment. In *Harpal Singh Chauhan and Others v. State of U.P.*, [1993] 3 SCC 552, it was held that section 24 Cr. P.C. does not speak about the extension or renewal of the term of the Public Prosecutor and the procedure prescribed in the Manual to the extent it is not in conflict with the provisions of section 24 shall be deemed to supplement the statutory provisions. It was further held that 'merely because there is a provision for extension or renewal of the term, H the same cannot be claimed as a matter of right'. We are unable to

appreciate how section 24 Cr. P.C. is of any assistance to support the submission when the examination in the present case is not of the validity of an appointment but the validity of refusal to grant renewal of the term governed by para 7.08 of the Manual. Similarly, the provision in para 7.13 prescribing the age of superannuation is of no assistance since it merely prescribes the upper age limit above which no legal practitioner can be appointed as a District Government Counsel. In short, para 7.13 is a restriction on appointment of a legal practitioner as a District Government Counsel if his age exceeds 62 years and it is not a provision conferring a right on the appointee to continue till he attains the age of 62 years.

The nature of appointment and renewal is to be determined with reference particularly to para 7.06 and para 7.08 for which purpose the material part of para 7.06 is as under :

"7.06. Appointment and renewal - (1) The legal practitioner finally selected by the Government may be appointed District Government Counsel for one year from the date of his taking over charge.

(3) The appointment 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."

In view of the clear provision in clause (3) of para 7.06 that the 'appointment of any legal practitioner as a District Government Counsel is only professional engagement', it is difficult to appreciate the submission for which sustenance is sought from the provisions contained in the same Manual. The appointment being for a fixed term and requiring express renewal in the manner provided in the Manual, there is no basis to contend that it is not a professional engagement of a legal practitioner but appointment to post in Government service which continues till attaining the age of superannuation. In the earlier decisions of this Court including *Shrilekha Vidyarthi* (supra), the appointment of District Government Counsel under the Manual has been understood only as a professional engagement of a

A legal practioner. This contention is, therefore, rejected.

The High Court has granted relief to respondents Nos. 1, 2 and 3 on the ground that the action was arbitrary. It cannot be disputed after the decision in *Shrilekha Vidyarthi* and those following it, that the State action of refusing renewal can be quashed if it is arbitrary. The only question, therefore, is whether it is so as found by the High Court. The High Court has reached the conclusion that the only reasons disclosed by the State Government for refusing to consider the case of these respondents for renewal of their term were non-existent or extraneous. In substance, the action was supported by the State Government on the ground that there was no recommendation made by the District authorities for making the renewal as required by para 7.08. This is the only ground on which the action was supported by the State Government. However, the High Court found that the report of the District Office was favourable to these respondents and the District Judge had really recommended renewal of their term. Admittedly, the only ground on which the State Government sought to support its action is found to be non-existent in the record. This leads to the inescapable conclusion that the action of refusing renewal to respondents Nos. 1, 2 and 3 by order dated 1.10.1992 was arbitrary and on a non-existent ground. This view taken by the High Court cannot, therefore, be faulted.

Learned counsel for the respondents submitted that the respondents are keen only to vindicated their honour because of the arbitrary manner in which they have been treated by the State Government and they are not interested in continuing as Additional District Government Counsel (Criminal). It was submitted that the respondents would not seek the consequential relief of consideration for reappointment after it is held that the State Government's action was arbitrary. For this reason it is unnecessary to consider the question of grant of any relief to these respondents. Moreover, in the meantime other persons have been appointed in their place and they have not been impleaded as parties. It would, therefore, be inappropriate to make any order which may have the potential of displacing these persons without heaving them. The possibility of those persons being of superior merit to justify refusal of renewal to these respondents now cannot be ruled out in such a situation. Grant of any further relief to these respondents is, therefore, inappropriate.

Accordingly, we modify the High Courts' order and set aside the consequential relief to reconsider these respondents for renewal of their tenure as Additional District Government Counsel (Criminal). The appeal is partly allowed to this extent. A

T.N.A.

Appeal partly allowed.