

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1518 of 2021

1. Arpana Kumari, Wife of Sri Sachhidanand Yadav, Resident of New Jakkanpur, Police Station Gardanibagh, District-Patna.
2. Indra Kumari @ Indra Gupta, Daughter of Sri Nand Kishore Prasad, Resident of Ashiyana Ahsan Cottage, Mithapur, Police Station Gardanibagh, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
3. The Law Secretary, Law Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Singh, Advocate
Mr. Ratneshwar Prasad, Advocate
For the Respondent/s : Mr. Lalit Kishore (Ag)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 10-03-2021

The present writ petition has been filed for quashing the letter dated 01.10.2020 and the press communication dated 24.09.2020 issued by the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna (Respondent No. 2) and the Law Secretary, Law Department, Government of Bihar, Patna (Respondent No. 3) respectively, whereby and whereunder the panel of Advocates, who were conducting the cases of land ceiling, consolidation



and boundary disputes, has been cancelled and it has been directed to constitute a panel of Advocates for conducting the cases on behalf of the State Government and send the names of the Advocates with their experience and bio-data so that Law Department may make a panel of the Government Pleaders for the Revenue Department for conducting its cases.

2. The brief facts of the case are that the petitioners were appointed as Assistant Government Pleaders along with 19 other Advocates, apart from two Special Government Pleaders for conducting the cases of land ceiling, consolidation and boundary dispute matters vide memo dated 22.02.2012, issued by the Respondent No. 3, for a period of three years and it was stipulated therein that the said panel Advocates would be entitled to the pre-fixed fees. The petitioners are stated to have started contesting the cases on behalf of the State Government.

3. The learned counsel for the petitioners has



submitted that though the aforesaid panel and the term of the Advocates had lapsed on 22.02.2015 but the same had been extended with effect from 23.05.2015 to 22.07.2015 and again, it was extended from time to time up to 31.03.2020. It is also pointed out that in the month of February, 2015, the respondent no. 2 had advertised the post of Special Government Pleaders as well as Additional Government Pleaders for the Revenue Department and applications were invited by email, in response whereof, more than 2000 Advocates had applied. It is submitted that the last date for filing application was extended up to 15.04.2015, whereupon 1000 more applications were received by the Respondents. Nonetheless, without proceeding further with the aforesaid advertisement of the year 2015, another advertisement was published in the month of May, 2018 and thereafter, many Advocates had filled application forms, in pursuance whereof, a panel was prepared but the same was cancelled inasmuch as the reservation rules had not been followed.



4. The learned counsel for the petitioner has further submitted that since the petitioners have been working since time immemorable, they cannot be removed in an arbitrary manner. The learned counsel for the petitioners has also referred to a letter of the Respondent No. 3 dated 14.08.2019 whereby and whereunder the tenure of the petitioners was extended with effect from 01.04.2018 to 31.03.2019. It is submitted that the petitioners would suffer hardship, in case their tenure is not extended.

5. I have heard the learned counsel for the petitioners and perused the materials available on record from which it is apparent that the petitioners were initially appointed as Assistant Government Pleaders vide memo dated 22.02.2012 for a period of three years, however, on account of non-fructification of the process initiated by the respondents for appointment of a panel of Advocates, comprising of Special / Additional Government Pleaders, vide an advertisement issued in the month of February, 2015 and then, again



issued in the month of May, 2018, the petitioners continued to work as Assistant Government Pleaders and their tenure was extended from time to time, however, no right has been vested in them to continue in perpetuity. In fact, it appears from the record that the respondents have again issued an advertisement dated 02.01.2021 for appointment of Special Government Pleaders and Assistant Government Pleaders for the Revenue and Land Reforms Department. This Court also finds that the petitioners, in the capacity of Assistant Government Pleaders, are not holding a civil post within the meaning of Article 311 of the Constitution of India inasmuch as no relationship of employer and employee exists between the petitioners and the State Government, hence, termination / non-renewal of the appointment of the petitioners as Assistant Government Pleaders cannot be termed to be violative of Article 311 of the Constitution of India. Another aspect of the matter is that the appointment of the petitioners as Assistant Government Pleaders was wholly



contractual and tenure based, hence, no right is vested in them to insist for continuation of their tenure as Assistant Government Pleaders in perpetuity.

6. In this regard, this Court would like to refer to a judgment rendered by the Hon'ble Apex Court in the case of ***State of U.P. vs. U.P. State Law Officer' Association***, reported in ***(1994) 2 SCC 204***, paragraphs no. 14 to 19 and 23 whereof are reproduced hereinbelow:-

14. Legal profession is essentially a service-oriented profession. The ancestor of today's lawyer was no more than a spokesman who rendered his services to the needy members of the society by articulating their case before the authorities that be. The services were rendered without regard to the remuneration received or to be received. With the growth of litigation, lawyering became a full-time occupation and most of the lawyers came to depend upon it as the sole source of livelihood. The nature of the service rendered by the lawyers was private till the Government and the



public bodies started engaging them to conduct cases on their behalf. The Government and the public bodies engaged the services of the lawyers purely on a contractual basis either for a specified case or for a specified or an unspecified period. Although the contract in some cases prohibited the lawyers from accepting private briefs, the nature of the contract did not alter from one of professional engagement to that of employment. The lawyer of the Government or a public body was not its employee but was a professional practitioner engaged to do the specified work. This is so even today, though the lawyers on the full-time rolls of the Government and the public bodies are described as their law officers. It is precisely for this reason that in the case of such law officers, the saving clause of Rule 49 of the Bar Council of India Rules waives the prohibition imposed by the said rule against the acceptance by a lawyer of a full-time employment.

15. The relationship between the lawyer and his client is one of trust and confidence. The client engages a



lawyer for personal reasons and is at liberty to leave him also, for the same reasons. He is under no obligation to give reasons for withdrawing his brief from his lawyer. The lawyer in turn is not an agent of his client but his dignified, responsible spokesman. He is not bound to tell the court every fact or urge every proposition of law which his client wants him to do, however irrelevant it may be. He is essentially an adviser to his client and is rightly called a counsel in some jurisdictions. Once acquainted with the facts of the case, it is the lawyer's discretion to choose the facts and the points of law which he would advance. Being a responsible officer of the court and an important adjunct of the administration of justice, the lawyer also owes a duty to the court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client. This relationship between the lawyer and the private client is equally valid between him and the public bodies.

16. Over the years, the public sector



has grown considerably, and with its extension and expansion, the number of lawyers engaged in the public sector has increased noticeably so much so that it can truly be said that today there is a public sector in the legal profession as well. The expansion of the public sector activities has necessitated the maintenance of a permanent panel of lawyers. Some of the lawyers are also in full-time employment of the public institutions as their law officers. The profile of the legal profession has thus undergone a change.

17. The Government or the public body represents public interests, and whoever is in charge of running their affairs, is no more than a trustee or a custodian of the public interests. The protection of the public interests to the maximum extent and in the best possible manner is his primary duty. The public bodies are, therefore, under an obligation to the society to take the best possible steps to safeguard its interests. This obligation imposes on them the duty to engage the most competent servants, agents, advisers,



spokesmen and representatives for conducting their affairs. Hence, in the selection of their lawyers, they are duty-bound to make earnest efforts to find the best from among those available at the particular time. This is more so because the claims of and against the public bodies are generally monetarily substantial and socially crucial with far-reaching consequences.

18. The mode of appointment of lawyers for the public bodies, therefore, has to be in conformity with the obligation cast on them to select the most meritorious. An open invitation to the lawyers to compete for the posts is by far the best mode of such selection. But sometimes the best may not compete or a competent candidate may not be available from among the competitors. In such circumstances, the public bodies may resort to other methods such as inviting and appointing the best available, although he may not have applied for the post. Whatever the method adopted, it must be shown that the search for the meritorious was



undertaken and the appointments were made only on the basis of the merit and not for any other consideration.

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.

23. In the result, we set aside the judgment of the High Court and declare that both the orders dated July 23, 1990 and May 26, 1990 are valid and proper. We further hold that the termination of the appointment of the respondents-law officers was valid and proper. We also hold that the direction given by the High Court to the Government to continue the system of Brief Holders is unjustified and the same stands quashed. We also set aside the order of the High Court quashing the fresh appointments and directing payments to the officers whose appointments were terminated. The appeals are allowed accordingly. However, in the circumstances of the case, there shall be no order as to costs.

7. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I do not find any merit in the present



writ petition, hence, the same stands dismissed, however, with liberty to the petitioners to participate in the exercise being undertaken by the respondents in pursuance to the advertisement dated 02.11.2021, as aforesaid.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18.05.2021
Transmission Date	NA

