

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17452 of 2015

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1. Vijay Krishna Prakash Son of Radha Krishna Prakash, Resident of Mohalla - Medni Wal Mahajan Toli, P.s. - town Hajipur, District - Vaishali, Secretary Younger Lawyers Association, Civil Court, Hajipur, Vaishali.
2. Manish Kumar, Son of Sri Braj Kumar Dubey, Resident of Village - Purwa, P.O. - Chandralaya, P.S. - Sadar Hajipur, District - Vaishali, at present Advocate, Civil Court, Hajipur.

.... Petitioner/s

Versus

1. The State of Bihar, through Secretary, Law Department, Government of Bihar, Patna.
2. The District Magistrate, Vaishali, Hajipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Singh
Mr. Rana Pratap Singh
Mr. Ranvijay Narain Singh

For the Respondent/s : Mr. SATYADEO KUMAR- SC5

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT
Date: 26-04-2016

The petitioner no. 1 is the Secretary of Younger Lawyers Association, Hajipur (Vaishali) whereas petitioner no.2 is an Advocate practicing at Civil Court, Hajipur (Vaishali). They have challenged the appointment/engagement of various advocates (not respondents) by the State Government as Additional Public Prosecutor (APP) in the district of Hajipur(Vaishali) from the panel prepared on 30.03.2013. The appointments were made by the respondent State Government on 04.09.2015.

It is stated that on the basis of a communication received from the Department of Law, Govt. of Bihar, the respondent District Magistrate in consultation with the District and Sessions Judge, Vaishali, prepared and forwarded a penal of lawyers for consideration of their cases for



appointment/engagement as APP. Such recommendation was made in accord with section 24 of the Cr. P.C. The copy of the recommendation along with the panel of lawyers dated 30.03.2013 is enclosed as Annexure-1. The State Government, it is claimed, sat over the matter for more than two years and on 04.09.2015, approved the names of 18 persons for appointment/engagement as APP vide Annexure-2. The substratum of challenge to their engagement/appointment as APPs is on the ground that the respondents having delayed the matter for more than two years in selecting/appointing persons recommended/empanelled have defeated the rights of several advocates practicing at Civil Court, Hajipur, Vaishali who had attained seven years experience at bar during the interregnum. This is violation of the fundamental right of those advocates guaranteed under Article 14 of the Constitution of India for being considered for empanelment and thereby the opportunity of being considered. It is also submitted that any panel prepared by the respondent shall lose its efficacy/life upon expiry of a period of one year from the date it was drawn. The respondent, therefore, ought to have obtained a new recommendation of the panel of lawyers as provided under the Cr. P.C. It is also in violation of the provisions of section 24 of the Cr. P.C.

A counter affidavit has been filed on behalf of respondent no.1 supporting the order of engagement/appointment of the empanelled lawyers as APP. It is stated that on 30.03.2013 a recommendation was received in accord with the section 24 of Cr. P.C. for engagement/appointment of APP. A meeting was thereafter convened at the government level under the Chairmanship of the Hon'ble Law Minister which was attended by the learned Advocate General and Secretary Law-cum-Legal Remembrancer wherein it was decided that 50% of the posts of Addl. Public Prosecutor shall be appointed/filled up from the Bar

and the rest 50% posts shall be filled up from the prosecution cadre of the government. The said Committee, on scrutiny, recommended the names of 18 empanelled advocates for engagement/appointment on the post of APP and accordingly a notification was issued on 04.09.2015 (Annexure-2). It is further stated that all except one who has been engaged/appointed as APP from the Bar had more than 17 years of standing at the Bar.

I have heard the parties and perused the materials on record.

Mr. Rajesh Kumar Singh, the counsel in support of the application has submitted that normal life of a panel is one year. The same rule should be applied in the case of engagement/appointment of APP. He relies in this regard on an unreported order passed by a bench of this Court in CWJC No. 430 of 2012. On scrutiny, it is found that the said case dealt with the appointment on the post of Class IV at Aurangabad Collectorate for which, under the circulatory provision of the government, a panel is to be drawn up which has the normal life of one year. If any rule-provision provides that the life of the panel shall be one year then, of course, the Court has to insist on compliance thereof. The petitioners have not shown any rule provision either under Cr. P.C. or the P.P. Manual which provides the life of a panel or the recommendation. In absence thereof, it is difficult for this Court to accept the contention of Mr. Singh that the respondents acted grossly/arbitrarily or contrary to the provision of the rule in considering the panel or recommendation made two years ago for engagement/appointment as APP to conduct cases on behalf of the State Government. The next contention of Mr. Singh is that delayed consideration of the recommendation/ panel made under section 24 of the Cr. P.C. has taken away a valuable right of the advocates practicing at Civil Court who achieved standing at the Bar for more than seven years between the period when the

recommendation was made or panel was drawn and the engagements/appointments were made therefrom. The appointment of APP would not constitute a service. They are not government employees. They have only been retained for a specific period to conduct the cases of the State Government in Court. In doing so, the respondent State, in the opinion of the Court, has not violated the right of equality enjoined/enshrined under Article 14 of the Constitution of India. Even in service matters, a cut off date is provided for applying to get employment in the State and actual appointments are made several months thereafter. Can it be said that the respondents have breached the rights of those who attained eligibility in the interregnum? The answer would be in negative. The submission of Mr. Singh although sounds attractive but not sustainable in law. The writ application should also fail as no individual grievance is being raised. It is not the case that the petitioner could not apply or submit the bio-data because of less number of years at the Bar when the consultation was on for engagement/appointment as APP. If the APP is considered as members of the service of the State then the writ application in the representative capacity would not be maintainable.

In the light of what has been discussed above, this Court does not find any merit in this writ application which is accordingly dismissed.

(Kishore Kumar Mandal, J)

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