

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2017

CORAM

THE HON'BLE MR.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.Nos.18331, 16202, 19345, 18432 of 2016
and W.P. (MD) No.9643 of 2016

W.P.No.18331 of 2016

V.Vasanthakumar

.. Petitioner

Vs.

- 1 Union of India
Rep.by its Secretary
Ministry of Home
North Block, New Delhi-110 001.
- 2 Union of India
Rep.by its Secretary
Ministry of Law & Justice
Legislative Department
4th Floor, A Wing Shastri Bhawan
New Delhi-110 001.
- 3 The Secretary
Department of Justice
22 Mansingh Road
Jaisalmer House, New Delhi-110 001.
- 4 The Chief Secretary
Government of Tamil Nadu
Fort St.George
Chennai-600 009.
- 5 The Secretary
Law Department
Government of Tamilnadu
Fort St.George
Chennai-600 009.

6 The Chief Secretary
Government of Union Territory of Puducherry
Chief Secretariat
Goubert Avenue
Puducherry-605 001.

7 The Secretary
Law Department
Government of Union Territory of Puducherry
Chief Secretariat
Goubert Avenue, Puducherry-605 001. .. Respondents

W.P.No.16202 of 2016

Vaira Sekar .. Petitioner
Vs.

1 The Secretary to Government
Public Department
Fort St. George
Chennai-600 009

2 The Secretary to Government
Law Department
Fort ST. George
Chennai-600 009

3 The Registrar General
High Court Madras
Chennai-600 104 .. Respondents

W.P.No.19345 of 2016

A.Albert Royan .. Petitioner
Vs.

1 The Chief Secretary
Secretariat
Fort St. George
Chennai-600 009

2 The Law Secretary
Secretariat
Fort St. George
Chennai-600 009

3 The Registrar General
High Court of Madras, Chennai-600 104. .. Respondents

W.P.No.18432 of 2016

Dr.G.Krishnamurthy

.. Petitioner in
person

Vs.

- 1 The State Government of Tamil Nadu
Rep. by The Chief Secretary,
Fort St.George
Chennai-600 009.
 - 2 The Secretary to Government
Law Department
Fort St.George
Chennai-600 009.
 - 3 The Registrar General
High Court of Judicature
Chennai-600 104.
 - 4 Comptroller and Auditor General of India,
Pocket-9 Deen Dayal
Upadhyaya Marg
New Delhi-110 124.
- .. Respondents

W.P.(MD) No.9643 of 2016

R.Velumani

.. Petitioner

Vs.

1. The Chief Secretary,
Government of Tamil Nadu,
Secretariat,
St. George Fort,
Chennai.
2. The Secretary to Government,
Public (Courts) Department,
Secretariat,
St. George Fort,
Chennai.

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3. The Secretary to Government,
Law Department,
Secretariat,
St. George Fort,
Chennai.

.. Respondents

PRAYER: W.P.No.18331 of 2016 filed under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the Respondents to frame appropriate Rules/Guidelines for appointment of Law officers in a transparent and objective manner representing the State of Tamilnadu and Union Territory Puducherry before the Constitutional Courts Subordinate Judiciary Tribunals Quasi-Judicial Forums Local Authorities Public Bodies and other authorities as mandated by the Honble Apex Court in Civil Appeal No.3194 of 2016 entitled Pardeep Kumar Rapria Vs State of Haryana and others and also in light of the observations made by this Honble Court in Crl.OP(MD) No.15945 of 2014 as urged by the petitioner in his representation dated 14.05.2016.

PRAYER: W.P.No.16202 of 2016 filed under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the respondents 1 & 2 to consider the petitioner's representation dated 28.03.2016 and constitute a Selection Committee for appointing Government Counsel in the light of the Judgment dated 30.03.2016 of the Honourable Supreme Court made in C.A.No. 3194 of 2016.

PRAYER : W.P.No.19345 of 2016 filed under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the respondents to frame a rule for appointing the Advocates in the Government side in the Honourable Lower Courts throughout the state of Tamil Nadu.

PRAYER : W.P.No.18432 of 2016 filed under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the 1st and 2nd respondent to follow the due procedure and selection process for appointment of state law officers in conformity with the ratio of State of Punjab and another Vs. Brijeshwar Singh Chahal and another (AIR 2016 SC 1629).

PRAYER : W.P.(MD) No.9643 of 2016 filed under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the respondents to constitute a selection committee to assess the merit and suitability of the candidates for appointment of Law Officers in the High Court and District level Courts of Tamil Nadu in the light of order passed by the Apex Court in Brijeshwar Singh Chahal case reported in (2016) 3 MLJ 776 (SC) and by considering the petitioner's representation dated 20.05.2016 within the period that may be stipulated by

this Hon'ble Court.

For Petitioners : Mr.V.Vasanthakumar
Party in person in
W.P.No.18331/2016

Mr.K.Elangoo
in W.P.No.16202/2016

Mr.J.Sathiaraj
in W.P.No.19345/2016

Dr.G.Krishnamurthy
Party in person in
W.P.No.18432/2016
M/s.Ajmal Associates
in WP(MD) No.9643/2016

For Respondents : Mr.R.Muthukumarasamy
Advocate General
assisted by
Mr.T.N.Rajagopalan
Spl. Government Pleader
for State of Tamil Nadu
M/S.V.Ayyadurai

Mr.D.Reena Iswaria
Addl. G.P. (Pondy) for
Puducherry Government
Mr.Venkatasamy babu, Senior
Panel Counsel for Government
of India
Mr.V.Vijayashankar
Mr.B.Vijay for R3

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COMMON ORDER

(Order of the Court was made by the Acting Chief Justice)

These writ petitions have been filed by the petitioners seeking issuance of writ of mandamus directing the respondents to frame rules/guidelines for appointment of Law Officers in a transparent manner as per the decision of the Apex Court in the case of State of Punjab and another v. Brijeshwar Singh Chahal and another, reported in (2016) 3 MLJ (SC).

2. The common case of the petitioners is that there is no rule or regulation either in the State of Tamil Nadu or in Union Territory of Puducherry governing the appointment of Law Officers representing the respective Governments and also there

is no transparent procedure adopted till date by both the States in appointing the Law Officers. There was also no proper, transparent, fair procedure or selection committee to appoint the Law Officers during the period May, 2011 to May, 2016. It is the case of the petitioners that in the Subordinate judiciary, the Law Officers are appointed as per the whims and fancies of the ruling political party that too without any minimum practice. In this regard, several representations were made to the respondent authorities seeking to device a policy/enactment/orders to ensure that the appointment of Law Officers are done in consultation with the judiciary to ensure efficiency, credibility and speedy dispensation of justice for the common man in public interest.

3. The State Government has filed the counter-affidavit stating that all the writ petitions are totally baseless and bereft of truth. The Law Officers at the High Court level were appointed only after verification of their credentials. The State Government is continuously monitoring the performance of the Law Officers. The Law Officers are appointed only on consideration of professional values and not on any political affiliation or support as alleged by the petitioners. The Public Prosecutor and Additional Public Prosecutor are appointed after obtaining the concurrence of the High Court. The Government has not shown any undue favour to any person while appointing them as Law Officers. Hence, prays for dismissal of the writ petitions.

4. The contention of the petitioners is that the Law Officers appointment is made only on the basis of political affiliation and without reference to the merit and ability and the same is prejudicial to the interest of the State Government. The State Government has failed to follow the guidelines issued by the Hon'ble Supreme Court in the case of State of Punjab and another v. Brijeshwar Singh Chahal and another, reported in (2016) 3 MLJ 776 (SC). The further contention of the petitioners is that the Law Officers functioning presently are selected at the exclusive discretion of the State legal wing office bears of ruling AI ADMK political party. It is alleged that the performance of the Law Officers before the High Court and other Subordinate Courts is very poor, giving a wrong signal to the advocate fraternity. Since the Law Officers were appointed on political basis, they did not perform their duties exhibiting their legal knowledge.

5. The learned Advocate General submitted that the State Government is acting as a client and engages its own Advocates to defend the interest of the Government. As a client it has got confidence on the Law Officers to defend the policy decision of the Government. The Advocates are engaged on adhoc basis and their performances are reviewed by the Advocate General and other Senior Law Officers. He further submitted that no undue

favour has been shown in the appointment of Law Officers and proper mechanism to assess the performance of the Law Officers is maintained. The Law Officers were appointed only after considering their period of bar experience, merit and ability as Advocate.

6. Heard the learned counsel for the petitioners, petitioners in person and the learned Advocate General appearing for the State.

7. In the case of State of Punjab and another v. Brijeshwar Singh Chahal and another, reported in (2016) 3 MLJ (SC), regarding appointment of Law Officers, certain directions were issued. The said case arises out of the judgment of the Punjab and Haryana High Court, wherein some of the persons, who have not been considered for appointment as Law Officers have filed writ petitions and interim orders came to be passed by the High Court, against which the aggrieved parties moved the Apex Court and the Apex Court, in turn, to maintain fairness of the system, issued direction on this subject. In the penultimate paragraph 48, the Apex Court held as under:-

"48. We further clarify that although we are primarily concerned with the procedure regarding selection and appointment of law officers in the States of Punjab and Haryana and although we have confined our directions to the said two States only yet other States would do well to reform their system of selection and appointment to make the same more transparent, fair and objective if necessary by amending the relevant LR Manuals/Rules and Regulations on the subject."

8. Based on the above said finding, the petitioners have filed these writ petitions, styled as Public Interest Litigation, saying that there is no transparency in the appointments of Law Officers in the Madras High Court and Subordinate judiciary and seek to constitute Selection Committee for the appointment of Law Officers.

9. At the outset, it should be noted that the persons who moved the Punjab and Haryana High Court and the Apex Court are aggrieved parties. The Apex Court while rendering decision specifically clarified that the direction issued therein is only confined to the State of Punjab and Haryana, other States would do well to reform their system.

10. Insofar as appointment of Law Officers in the Madras High Court and Subordinate judiciary is concerned, it is the concern of the State Government to appoint the Law Officers who

have got reputation in the field, of course based on their efficiency. It is the say of the learned Advocate General that the State of Tamil Nadu is continuously monitoring the performance of the Law Officers in consultation with the Advocate General of Tamil Nadu.

11. In this regard, it is pertinent to note that the State Government has issued G.O.Ms.No.1033 Public (LLO) Department, dated 01.11.2010 for the accountability of the Law Officers, wherein the Advocate General/Additional Advocate General are requested to hold periodical review meeting once in three months with the concerned Law Officers about the pendency of cases and departments allotted to them respectively. The petitioners have not pointed out any violation or illegality in the appointments.

12. The State Government has adopted a specific procedure as per discretionary power vested in the Government relating to appointment of Law Officers. The Apex Court observed that States would do well to reform their system of selection and appointment to make the same more transparent, fair and objective if necessary by amending the relevant LR Manuals/Rules and Regulations on the subject. Therefore, it is for the State Government to consider the directions issued by the Apex Court to reform their system. No public interest is involved in this aspect except the State Government to take care of the situation. Issuance of any direction as prayed for by the petitioners will be an inroad into the functions of the State Government.

13. The present writ petitions filed under PIL are totally not maintainable and filed only on conjectures or surmises.

14. We, thus, dispose of all these writ petitions. No costs.

Sd/-
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Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

bbr/sasi

To:

- 1 The Secretary, Union Of India,
Ministry of Home
North Block, New Delhi-110 001.

- 2 The Secretary
Ministry of Law & Justice
Legislative Department, 4th Floor, A Wing Shastri Bhawan,
New Delhi-110 001.
 - 3 The Secretary
Department of Justice
22 Mansingh Road, Jaisalmer House, New Delhi-110 001.
 - 4 The Chief Secretary
Government of Tamil Nadu
Fort St.George,Chennai-600 009.
 - 5 The Secretary
Law Department, Government of Tamilnadu
Fort St.George, Chennai-600 009.
 - 6 The Chief Secretary
Government of Union Territory of Puducherry
Chief Secretariat, Goubert Avenue, Puducherry-605 001.
 - 7 The Secretary
Law Department, Government of Union Territory of Puducherry,
Chief Secretariat ,Goubert Avenue, Puducherry-605 001.
 - 8.The Secretary to Government Public Department,Fort
George,Chennai-9
 - 9.Comptroller and Auditor General of India,
Pocket-9 Deen Dayal
Upadhyaya Marg
New Delhi-110 124.
 - 10.The Registrar General,High Court,Madras-104
- +1cc to Mr.V.Vijayshankar,Advocate sr.16753
+1cc to Mr.K.Elango,Advocate sr.16487
+1cc to Government Pleader sr.16619(Puducherry)
+1cc to Government Pleader sr.16614
+1cc to M/s.Ajmal Associates sr.16430
+1cc to Mr.V.Vasanthakumar,Advocate sr.16495
- +1cc to Mr.Venkatasamy Baby ,SPC for Government of India sr.16372
- W.P.Nos.18331, 16202, 19345,
18432 of 2016 & W.P. (MD) No.9643 of 2016
- rj (co)
ss(4/4/2017)