

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17551 of 2018

Sanjay Kumar Yadav, Son of Rajendra Yadav, Residence of Village-Bhatwaliya, Post Office- Barhani, Police Station- Siwan (Mufassil), District-Siwan.

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, Department of Law, Government of Bihar, Patna.
2. The Assistant Secretary, Department of Law, Government of Bihar, Patna.
3. The Joint Secretary, Department of Law, Government of Bihar, Patna.
4. The District Magistrate, Siwan.
5. The Superintendent of Police, Siwan.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Y.C. Verma, Sr. Advocate Mr. Shambhu Prasad Yadav
For the Respondent/s	:	Mr. Prashant Pratap -GP-2 Mr. Lala S.N. Rai, A.C. to G.P-2

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 17-12-2018

Heard learned counsel for the petitioner and
learned counsel for the State.

2. In this case, the petitioner is challenging the letter contained in memo no.6870 dated 14.08.2018 (Annexure-4), by which the petitioner has been disengaged from the post of Special Public Prosecutor (Excise Department).

3. The petitioner is a practicing advocate in the District of Siwan. The Government, in exercise of power, under Section 24 of the Criminal Procedure Code had appointed the



petitioner as Special Public Prosecutor (Excise Department), Siwan vide letter no.4899 dated 11.08.2016. In the said letter, it has been mentioned that he was to act as a Special Public Prosecutor for the Excise Department till further orders. In the said letter, the Government has not stipulated any fixed term of his tenure. While he was discharging his functions, he was served a letter vide memo no.856 dated 09.02.2018, issued by the Joint Secretary, Government of Bihar, wherein it has been mentioned that the Department has received the letter of Principal Secretary, Excise Department, vide memo no.256 dated 24.01.2018, having made an allegation that he is not representing the State properly in Excise cases and asked him to file a show-cause through District Magistrate, Siwan. In response to the said show-cause, the petitioner filed his explanation dated 22.02.2018, where he has explained about his conduct with respect to protecting the interest of the State in different cases, especially with respect to C.A.S. 03-07 / 2009, where the accused was granted bail and has explained that though Ramayan Yadav, brother of Chuman Yadav, has tried to contact him on mobile, but the call details do not reflect the period he had talked to Ramayan Yadav during the pendency of the case and he has tried to show that it was a fake call not



having any connection with Case No. 66 of 2017 and further stated that he has also filed an application for cancellation of bail before the District and Sessions Judge. It has also been stated by the petitioner that he was discharging the duty honestly and diligently, the allegation made against the petitioner is uncalled for, without any basis. It has also been stated by the petitioner that the work of a lawyer is to argue the case before the Court concerned cannot always ensure favourable order be passed in favour of the State.

4. The Joint Secretary, Government of Bihar, issued a letter bearing no. 6870 dated 14.08.2018, whereby and whereunder the petitioner has been disengaged representing the State of Bihar with respect to excise matters arising in the District of Siwan. The said letter reflects that the petitioner has been disengaged on “*Katipai*” reasons.

5. Learned counsel for the petitioner submits that the action of the Government in disengaging the petitioner for conducting the criminal cases with respect to excise matters is completely arbitrary, uncalled for and illegal and requires interference by this Court. It has further been submitted that reasons reflect in the order indicative of fact that punishment order has been passed on “*Katipai*” reasons, without explaining



the word “*Katipai*”. It has further been submitted that he cannot be dethrone merely because some allegations made by certain persons. It has further been submitted that the lawyer, who is representing the cases, cannot ensure that the judgment and order will be passed in favour of the State as there is always possibility that the judgment and order may be in favour of the State or against it, so cannot be a basis for disengagement of the petitioner and placed reliance on the judgment passed in C.W.J.C. No.10661 of 2017 (Manzer Hassan Khan vs. The State of Bihar and Ors.), which has been affirmed by the Division Bench.

6. It has further been submitted that in the said judgment it has been opined that the Collector does not have power to recommend for taking action against the lawyer conducting the cases for the State of Bihar for his disengagement; it is only the State Government to disengage or engage a lawyer for conducting the cases for the State Government. It has further been submitted that the engagement of a lawyer for conducting the cases for the State cannot be said merely a contract between the client and the advocate, but there is a public office element in the matter of engagement and disengagement of a lawyer for representing the State.



7. In support of the submission, learned counsel for the petitioner has placed reliance on the decision rendered in the case of *Kumari Shrilekha Vidyarthi vs. State Of U.P. and Ors.* reported in *1991 SCC (1) 212* and putting emphasis that the Hon'ble Supreme has held that the appointment of the Government Counsel by the State is only a professional relationship in between a client and his lawyer with no public office element attaching to it, which may be terminated at any point of time at the sweet will, which cannot be accepted. It has further been stated that in such appointment there is a presence of public office element attaching to the post of District Government Counsel of every category covered by the impugned circular and that itself attract Article-14 of the Constitution and that bring the matter of validity of the impugned circular within the scope of judicial review for consideration by the Constitutional Court.

8. Learned counsel for the petitioner has further submitted that his case is identical to the case of Manzer Hassan Khan (C.W.J.C. No.10661 of 2017) and this Court should interfere in the matter and pass an order for reengaging the petitioner and asking the State to allow him to discharge the duty as Special Public Prosecutor for Excise Department.



9. In contra, learned counsel for the State has pointed out that the case of the petitioner is not identical to the case of Manzer Hassan Khan as that was a case where Manzer Hassan Khan was engaged for three years, it was a fixed tenure appointment, and the Collector had recommended for termination of his engagement and on that basis the State had acted upon, whereas in the present case, there is no such stipulation in the letter of engagement as it is only mentioned in the letter of engagement that he will continue to act as a Special Public Prosecutor for Excise Department till further orders and the State after examining the show-cause filed by the petitioner found that he is not fit to be retained as Special Public Prosecutor for the State of Bihar and accordingly, by innocuous order the petitioner has been disengaged for representing the State Government with respect to cases of Excise Department. It has further been submitted that it is a matter of trust and it is within the domain of the State Government to appoint a person or disengage him.

10. From the record, it appears that the petitioner was engaged not for the fixed term but in the engagement letter it has clearly been mentioned that his engagement as Special Public Prosecutor till further order, hence, his case is



incomparable to the aforesaid case this case cannot be said to be a permanent disengagement in view of the fact that he remained to represent the State in every Court of Siwan for about more than two years and the judgment of *Kumari Shrilekha Vidyarthi (supra)*, which has been placed reliance by the petitioner, does not come forward to rescue the petitioner from disengagement as in the aforesaid case the Court has only said that the appointment of the petitioner as Public Prosecutor carries element of public office and that cannot be whittled down by the assertion that engagement is purely professional between a client and his lawyer. Of course, there is a public office element, but it cannot be denied that he was representing the State as an Advocate in excise matters. However, in the present case, before disengaging the petitioner he was served with a show-cause, which he replied thoroughly and whereafter the Government has taken decision for disengagement.

11. In the case of Manzer Hassan Khan only it has been examined the conduct of the Collector having been held that the Collector does not have power of unilaterally recommend for disengagement of an advocate as Section-24 of the Criminal Procedure Code provides the manner and method for selection of Public Prosecutor and the same procedure



should be followed. However, in the present case, no action has been taken at the level of the Collector, but all the actions, which is apparent from the records attached with the writ petitioner, have been taken by the Government and in the impugned order no any adverse remark has been made against the petitioner either with respect to professional or representation before the Court as an advocate of the State of Bihar.

12. In such view of the matter, this Court is of the view that in the engagement letter the term of engagement i.e. period of engagement is completely silent, as has been mentioned there that he will continue to discharge the function as Special Public Prosecutor till further orders and two years have already spent and he has not denied in his explanation about the call made by Ramayan Yadav, brother of Chuman Yadav, and on that basis the petitioner has been served show-cause. As the impugned letter has not been passed with any stigma, but it is only an innocuous order and in the engagement letter no fixed tenure has been mentioned. If the State has exercised its power for disengaging the petitioner, it cannot be faulted with on account of fact that basically the relationship between the State and its counsel based upon fiduciary relationship i.e. a matter of trust, in such



circumstance, this Court does not find any reason to interfere with order of disengagement.

13. For the foregoing reasons, this Court does not find any merit in this writ petition, accordingly, the same is dismissed.

(Shivaji Pandey, J)

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