

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2018

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE ABDUL QUDDHOSE

W.P. No.12951 of 2017

V.Vasanthakumar, Advocate

.. Petitioner

-vs-

The Chief Secretary,
Govt. of Tamil Nadu,
Fort St. George, Chennai 600 009.

.. Respondent

Prayer:Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus Calling for the records of G.O(Ms.)No.369 Public (Law Officers) in No.SRO A - 19(b)/2017 notifying the Appointment of Law Officers of High Court of Madras and its Bench at Madurai (Appointment) Rules 2017 in the Tamilnadu Government Gazette Extraordinary No.119 dated 29/4/2017 and quash the same as illegal arbitrary discriminatory and in defiance of long line of judgments of Apex Court and consequently direct the 1st Respondent to frame rules in accordance with the dictum laid down by the Supreme Court in State of Punjab & another Vs Brijeshwar Singh Chahal & another reported in (2016) 6 SCC page 1 within a time frame to be fixed by this Honourable Court.

For Petitioner : Mr.V.Vasanthakumar
Party-in-person

For Respondents : Mr.C.Manishankar
Addl. Adv. General,
assisted by Mr.T.N.Rajagopalan,
Govt. Pleader.

O R D E R

(Made by Ms.Indira Banerjee, Chief Justice)

In this writ petition, in public interest, the petitioner, a practising advocate, has challenged the Appointment of Law Officers of High Court of Madras and its Bench at Madurai

(Appointment) Rules, 2017, hereinafter referred to as '2017 Rules', published in the Government Extraordinary Gazette No.119 dated 29.04.2017.

2.The petitioner has also sought an order of injunction restraining the respondents from appointing law officers to represent the State of Tamil Nadu before the Constitutional Courts, Subordinate Judiciary, Professionals vis-a-vis Judicial Forums, Local Authorities, Public Bodies and other authorities without following a transparent procedure, pending disposal of the writ petition.

3.Some of the relevant provisions of the 2017 Rules are set out hereinbelow for convenience:

2. Definitions:- In these rules unless the context otherwise requires -

(a) "Additional Advocate General" means an Advocate appointed by the Government to conduct such case as may be entrusted to him for and on behalf of the State in the High Court;

(b) "Additional Government Pleader" means an Advocate appointed by the Government to assist the Advocate General, Additional Advocate General, Government Pleader or a Special Government Pleader or to conduct such civil cases as may be entrusted to him for and on behalf of the State in the High Court;

(c) "Additional Public Prosecutor" means an Advocate appointed as an Additional Public Prosecutor under section 24 of the Code of Criminal Procedure, 1973 for the High Court;

.....
(i) "Public Prosecutor" means an Advocate appointed as the Public Prosecutor under section 24 of the Code of Criminal Procedure for the High Court;

(j) "Selection Committee" means the Committee constituted to select the eligible persons for appointment as Law Officers;

(k) "Special Government Pleader" means an Advocate appointed by the Government to assist the Advocate General and to conduct civil cases as entrusted to him for and on behalf of the State in the High Court.

3. Set-Up In the High Court:- (1) Besides the Advocate General there shall be the following categories of Government Law Officers in the High Court, namely:-

- I. Additional Advocate General;
- II. Public Prosecutor;
- III. Additional Public Prosecutor;
- IV. Government Pleader;

- V. Special Government Pleader;
- VI. Additional Government Pleader;
- VII. Government Advocate;

(2) The number of Law Officers in Categories I, III, V, VI and VII of sub-rule (1) shall be such as may be fixed by the Government from time to time.

4. Eligibility of Government Law Officers:- Subject to rule 8, no person shall be eligible for appointment in the High Court , -

(i) (a) as an Additional Advocate General unless he has been in practice as an Advocate for not less than ten years out of which a minimum of not less than seven years in the High Court;

(b) as a Public Prosecutor unless he has been in practice as an Advocate for not less than ten years out of which a minimum of not less than seven years in the High Court;

(c) as a Government Pleader unless he has been in practice as an Advocate for not less than ten years out of which a minimum of not less than seven years in the High Court;

(d) as a Special Government Pleader unless he has been in practice as an Advocate for not less than ten years out of which a minimum of not less than seven years in the High Court;

(e) as an Additional Government Pleader unless he has been in practice as an Advocate for not less than seven years out of which a minimum of not less than five years in the High Court;

(f) as a Government Advocate unless he has been in practice as an Advocate for not less than five years out of which a minimum of not less than three years in the High Court;

(ii) unless he is a Citizen of India;

(iii) unless he has obtained a Law Degree from a University in India Recognised by Bar Council of India after undergoing the Law Course;

(iv) if he is convicted by a Court of Law to be involved in an act of moral turpitude.

5. Method of Appointment of Government Law Officers In the High Court:-

(1) The appointment of an Additional Advocate General, Government Pleader, Additional Public Prosecutor, Special Government Pleader, Additional Government Pleader and Government Advocate shall be made by the Government.

(2) The Public Prosecutor and Additional Public

Prosecutor shall be appointed in consultation with the High Court in accordance with section 24 of the Code of Criminal Procedure, 1973.

(3) There shall be a Selection Committee to select the Law Officers in the High Court from and out of a panel consisting of names for each of the posts. The Committee shall consist of the following members: The Advocate General - Chairman The Secretary (Public) - Member The Secretary (Home) - Member The Secretary (Law) - Member

(4) The Advocate General shall forward the list of Advocates as per the eligibility norms prescribed in rule 4, to Government after preliminary scrutiny for selection of Law Officers and the Government shall place the same to the Selection Committee.

(5) The Selection Committee shall be satisfied about the qualification, experience, integrity, reliability, reputation and antecedents of the candidates.

(6) After ascertaining the antecedents of the candidates recommended by the Selection Committee, the State Government may appoint such person as a Law Officer of the State for the specified Post.

(7) All Law Officers shall be appointed by the Government and such Law Officers shall hold office during the pleasure of the Government.

6. Term of Law Officers:-

(1) All Government Law Officers appointed by the Government, except Government Advocates shall hold office during the pleasure of the Government.

(2) Government Advocate shall hold office for a period of 2 years at a time. He may be considered for a further term of 2 years each, if the Government are satisfied that he has proven efficiency and good performance and for a third term in exceptional cases.

7. Removal of Law Officers:-

(1) A Government Law Officer shall be liable to be removed from the office without assigning any reason by giving one month notice or on payment of one month retainer fee in lieu of such notice.

(2) A Government Law Officer may resign his office by giving one month notice in writing to the Government.

(3) A Government Law Officer shall be removed from office if he suffers from any of the disqualifications mentioned in rule 8. (4) A Government Law Officer shall also be removed from his duty for any act or conduct which is incompatible with his duties as a Law Officer.

8. Disqualifications for Law Officers:-

(1) No person who has completed the age of sixty years

shall be appointed as a Government Law Officer other than as the Advocate General, Additional Advocate General, Public Prosecutor, Government Pleader, Special Government Pleader to do Government work.

(2) A Government Law Officer is debarred from accepting a brief from any private person in any criminal case in any Court.

(3) A Government Law Officer may accept a brief from any private person for a civil case in any Court provided that such acceptance does not interfere with the discharge of his duties as a Law Officer. (4) A Government Law Officer is debarred from accepting a brief on behalf of an Advocate in proceedings taken against him under the provisions of the Advocates Act or Rules framed by the Bar Council of Tamil Nadu or any other State.

(5) A Government Law Officer shall not accept appointment as a Director or Advisor or Retainer in any company public or private without the sanction of the Government.

(6) A Government Law Officer shall not appear for or give Legal Advice to Private Persons or matters in which the interests of the person are likely to be adverse to the Government.

(7) A Government Law Officer shall not give advice in any case to private persons if he is likely to be called upon to advise the Government in the same case.

(8) A Government Law Officer shall not accept a brief from any person, whether a petitioner or respondent in proceedings initiated in an Election Petition in connection with an Election to a Local Authority or the State Legislative Assembly or Parliament.

(9) A person who is a member of the Parliament or the Legislature of the State, a Municipal Corporation, a Municipal Council, a Panchayat or any other Local Authority shall not, as long as he holds that office, be eligible for appointment as a Government Law Officer.

4. The petitioner, appearing in person, submitted that the 2017 Rules were arbitrary, discriminatory and not in accordance with the law enunciated by the Supreme Court in *State of Punjab and Another vs. Brijeshwar Singh Chahal and Another*, reported in (2016) 6 SCC 1. There can be no dispute that the judgment of the Supreme Court in *State of Punjab and Another vs. Brijeshwar Singh Chahal and Another*, supra, is binding all over the country in view of Article 141 of the Constitution of India.

5. As held by the Supreme Court in *Brijeshwar Singh Chahal*, supra, appointment of law officers is not just a professional engagement. It has a public element attached to it. The

Government and its instrumentalities are under an obligation to engage the most competent lawyers and the method of appointment should be free from arbitrariness. The question is whether the 2017 Rules are contrary to the law laid down by the Supreme Court in Brijeshwar Singh Chahal, supra.

6. There is no specific challenge in the writ petition to Rule 4 laying down the eligibility for appointment to the various categories of Government law officers. The petitioner has only challenged the method of appointment of law officers in the High Court stipulated in Rule 5 and in particular, Rule 5 (4) thereof.

7. The petitioner has also impugned Rule 7(1) providing for removal of Government law officers without reason by giving one month's notice or on payment of one month's retainer fee in lieu of such notice, as unreasonable. Considering the tremendous responsibility of Government Law Officers in protecting the interest of the State, a provision for removal upon notice cannot be struck down as arbitrary and unreasonable. Individual cases of arbitrariness, unreasonableness or existence of extraneous factors may be subject to judicial review.

8. The petitioner submitted that Rule 5 stipulating the method of appointment of law officers in the High Court was discriminatory. In the absence of any requirement of publication of notices inviting applications for appointment as law officers, a large section of eligible lawyers are denied equality of the opportunity to offer themselves for selection, empanelment and/or appointment as Government Law Officer.

9. The petitioner submitted that Rule 5(4) of the 2017 Rules enables the Advocate General to pick and choose eligible advocates of his choice and is, thus, discriminatory and absolutely repugnant to the judgment of the Supreme Court in Brijeshwar Singh Chahal, supra and liable to be struck down.

10. The petitioner argued that the conferring of powers on the Advocate General to forward names of eligible advocates to the Government for selection was also repugnant to the spirit of the judgments of the Supreme Court in *Adi Pheroazshah Gandhi vs. H.M.Seervai*, reported in AIR 1971 SC 385 and Brijeshwar Singh Chahal, supra.

11. In *Adi Pheroazshah Gandhi vs. H.M.Seervai*, supra, the question was whether the Advocate General could appeal against an order of a State Bar Council discharging an advocate from allegations of misconduct. The question was answered by the Supreme Court in the negative. The judgment in *Adi Pheroazshah Gandhi vs. H.M.Seervai*, supra, is distinguishable on facts and

has no manner of application in the facts of this case. It is well settled that a judgment is a precedent for the proposition of law which is raised and decided. Words and sentences in a judgment cannot be read out of context and observations made by a Court in specific circumstances do not apply as general precedent.

12. There is a presumption of validity of the 2017 Rules. Of course, the presumption is rebuttable. However, if a rule can be read down to conform to principles of equality envisaged under Articles 14 to 16 of the Constitution of India, this Court should be reluctant to strike down the rules, but instead endeavour to read down the rules harmoniously.

13. In our view, the Rule 5(4) does not confer unbridled powers on the Advocate General. The Advocate General is only to make preliminary scrutiny of the applications received from eligible lawyers and forward the names of all eligible candidates to the Government, after a preliminary enquiry. The rule does not authorise the Advocate General to selectively hold back eligible advocates. After the Advocate General forwards the names of eligible advocates to the Government, the Government is required to place the same before a Selection Committee comprising of the Advocate General, the Secretary (Public), the Secretary (Home) and the Secretary (Law) for selection. Any interested person can find out whether any candidates have been withheld and reasons, if any, for the same by making application under the Right to Information Act. The requirement to notify selection has to be read into the impugned rule.

14. As held in *Brijeshwar Singh Chahal*, supra, the Government is required to evolve a just procedure for selecting most Government ***Law Officers***. However, they are free to choose the method of selection, but such method must demonstrate that search for the meritorious was undertaken and was not affected by any extraneous circumstances.

15. It is undeniable that for a fair, quick and satisfactory adjudication of litigation, the assistance which the Court gets from the Bar is extremely important. Quality of judgment or justice administered by the Courts is directly proportionate to the quality of assistance that the Courts get from Counsel appearing in a case. Poor assistance by Counsel who are not sufficiently equipped in scholarship, experience or commitment would adversely affect the administration of justice by the Court. The State being party to a very large percentage of the

litigation pending in the High Court, should make every endeavour to make legal assistance of a high standard available to the Court. In our view, there should be prescribed guidelines laying down the criteria and norms of selection by giving weightage to Court appearances, advocacy, drafting skills, legal acumen, reported and unreported judgments, behaviour, integrity, reputation and the like. No appointment should be made either for pursuing a political purpose or for giving some undue advantage to any section. When a Government Law Officer resigns or is removed or his/her tenure is not extended, he/she should be replaced by the State by an efficient, honest and competent lawyer, as held by the Supreme Court in *State of U.P. and another v. Johri Mal*, reported in (2004) 4 SCC 714.

16.No lawyer has a right to be appointed as a Government Law Officer, but, every eligible lawyer has a right to be considered for appointment, if he/she offers himself/herself for appointment. The task of selection being in the exclusive arena of the Government and/or its instrumentalities, judicial review of such appointments would be limited only to examining whether the process of appointment is vitiated by any illegality, irregularity, perversity or irrationality, as held by the Supreme Court in *Brijeshwar Singh Chahal*, supra. The Court would not sit in appeal to re-assess and/or make a comparative assessment of the merits of candidates as long as the method of appointment did not suffer from any infirmity. In the facts and circumstances of the case before the Supreme Court in *Brijeshwar Singh Chahal*, supra, where there were no prescribed rules, the Supreme Court directed that the panel might be forwarded to the Chief Justice for approval. However, such direction was to operate only till rules were framed. In this case, rules have been framed.

17.In this case, under the 2017 Rules, the Advocate General forwards the names of eligible candidates, after which a Selection Committee comprising the Advocate General and three Secretaries of the State Government make the selection. Selection is made by a panel and not by the Advocate General alone.

18.The Rules, however, do not contain any guidelines with regard to the mode and method of selection from out of the eligible candidates forwarded by the Advocate General. We direct the State to formulate and/or frame definite guidelines for the manner and/or criteria of selection of advocates to the post of Government Law Officers and in particular, the mode of giving weightage to Court appearances, advocacy, legal acumen, quality of drafting pleadings, reported and unreported judgments, academic background, integrity, behaviour, general reputation,

etc., for all future appointments and as and when Government law officers are selected, applications should be invited from eligible advocates by putting up notices in the recognised Bar Associations.

19. Since the 2017 Rules only deal with appointment of law officers to the High Court, we need not concern ourselves with the appointment of law officers in the Subordinate Courts in this writ petition.

The writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar (CS II)

*Corrected as per the order dated: 06.06.2018
in WP.No.12951/2017

//True copy//

Sub Assistant Registrar

sra

To

The Chief Secretary,
Govt. of Tamil Nadu,
Fort St. George, Chennai 600 009.

To be substituted the order
already despatched on
7.5.2018

+1cc to Government Pleader SR.No.32666

W.P.No.12951 of 2017

SV(CO)
GN(03/05/2018)
sm:13.6.2018

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