

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.14568 of 2018
and W.M.P.No.17200 of 2018

V.Vasanthakumar ... Petitioner in person

Vs.

- 1.The Chief Secretary,
Government of Union Territory of Puducherry,
Chief Secretariat, Goubert Avenue,
Puducherry - 605 001.
 - 2.The Secretary,
Law Department,
Government of Union Territory of Puducherry,
Chief Secretariat, Goubert Avenue,
Puducherry - 605 001.
 - 3.The Secretary to Hon'ble Lieutenant Governor,
Government of Union Territory of Puducherry,
Raj Nivas, Puducherry - 605 001.
- .. Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, for a Writ of Mandamus, directing the respondents to frame appropriate Rules for appointment of Law Officers in a transparent and objective manner, representing the Union Territory of Puducherry, before the Constitutional Courts, Subordinate Judiciary, Tribunals, Quasi-Judicial Forums, Local Authorities, Public Bodies and other authorities as mandated by the Hon'ble Apex Court 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 as well by this Hon'ble Court in "V.Vasanthakumar, Advocate Vs Chief Secretary", Government of Tamilnadu as reported in 2018 (3) CTC Page 179, as urged by the petitioner in his representation dated 15.05.2018.

Petitioner in person: Mr.V.Vasanthakumar

For Respondents: Mr.A.Gandhiraj,
Govt. Pleader (Puducherry)

ORDER

(Order of this Court was made by S.MANIKUMAR, J.)

Mr.V.Vasanthakumar, a practicing Lawyer, has sought for a Writ of Mandamus, directing the respondents to frame appropriate rules for appointment of Law Officers, in a transparent and objective manner, representing the Union Territory of Puducherry, before the Constitutional Courts, Subordinate Judiciary, Tribunals, Quasi-Judicial Forums, Local Authorities, Public Bodies and other authorities, as mandated by the Hon'ble Apex Court, 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, as well by this Hon'ble Court in "V.Vasanthakumar, Advocate Vs Chief Secretary", Government of Tamilnadu as reported in 2018 (3) CTC Page 179, as urged by the petitioner in his representation dated 15.05.2018.

2. Attention was also invited to the relevant paragraphs in the judgment of the Hon'ble Supreme Court in State of Punjab & another Vs Brijeshwar Singh Chahal & another reported in (2016) 6 SCC Page 1.

3. Material on record discloses that earlier, petitioner has filed W.P.No.18331 of 2016, for a Writ of Mandamus, directing the respondents herein, to frame appropriate Rules/Guidelines for appointment of Law Officers in a transparent and objective manner, representing the State of Tamilnadu and Union Territory of Puducherry, before the Constitutional Courts, Subordinate Judiciary, Tribunals, Quasi-Judicial Forums, Local Authorities, Public Bodies and other authorities, as mandated by the Hon'ble Apex Court in Civil Appeal No.3194 of 2016, entitled "Pardeep Kumar Rapria Vs. State of Haryana and others, and also in the light of the observations made by this Hon'ble Court in CrI.O.P.(MD) No.15945 of 2014, and urged by the petitioner therein, in his representation dated 14.05.2016.

4. In W.P.No.18331 of 2016, Secretary to Government, Law Department, Puducherry, has submitted that the Union Territory of Puducherry, is an enclave consisting of four regions, namely, Puducherry, Karaikal, Mahe and Yanam. Appointment of Law Officers in the Union Territory of Puducherry, is governed by Government Orders, viz. (i) G.O.No.14/Home(i), dated 18.02.1969, (ii) G.O.No.38, dated 22.05.1981 and (iii) No.326, dated 20.10.1976, and that the terms and conditions of their appointment, are stipulated, in the said Government orders.

4.1. Government of Puducherry has further submitted that, as per the abovesaid Government Orders, to qualify for appointment of Government Pleaders/Additional Government Pleader, Puducherry and Additional Government Pleader-cum-Additional Public Prosecutors, Karaikal and Assistant Government Pleader and Assistant Public Prosecutors for Mahe and Yanam Region, a person,

(a) must be an Advocate practicing in the Union Territory of Puducherry; (b) should be entitled to be admitted as an Advocate under Sub-Section (1) of Section 58-AA of the Advocates Act, 1961 (Central Act XXV of 1981) or entitled to practice before any Court or Revenue Office or before any Authority or person under Sub-Section (2) of the said section; (c) must possess at least seven years standing at the Bar. Provided that the Government may, in suitable and deserving cases, relax the conditions; and (d) should be sound health and active habits and free from any bodily defect or infirmity unfitting him for such appointment;

However, in respect of Mahe and Yanam region, the qualification for appointment of Assistant Government Pleader-cum-Assistant Public Prosecutor, is five years of practice at the Bar and he further submitted that the duties and responsibilities as well as the payment of fees for the appearance of the above said Law Officers are also stipulated in the above said G.Os.

4.2. Government of Puducherry has further submitted that whenever the appointment of Law Officers for the regions of Union Territory of Puducherry, is made by the Government, a letter is addressed by Secretary to Government, Law Department, Puducherry to the Chief Judge, Puducherry, requesting to invite applications from eligible practicing Advocates of the respective regions, who possesses the above said qualifications. Subsequent to the request of Secretary to the Government, Law Department, Puducherry, would forward the panel of willing Advocates of the Bar.

4.3. Government of Puducherry has further submitted that as stated supra, a panel of Advocates, would be placed before the Government, for selecting the Law Officers, and that Law Officers to be appointed by the Administration, to the various Courts, subordinate to the High Court, Madras, required to function and discharging their duties, and to defend the case on behalf of the Administration, without causing any embarrassment and in the interest of Administration, be prepared. Government of Puducherry has submitted that administration, has not received any adverse marks from the Courts, with regard to the appearance of the Law Officers, before various Courts.

4.4. Government of Puducherry has further submitted that, for the past four decades, appointment of Public Prosecutors/Additional Public Prosecutors/Special Public Prosecutors (including special enactments) to the Union Territory of Puducherry, is by calling panel of names, from the Chief Judge, Puducherry and also in accordance with the provisions of the Government Orders (G.Os.) viz. (i) No.14/Home (i), dated 18.02.1969, (ii) No.38, dated 22.05.1981 and (iii) No.326, dated 20.10.1976, subject to Sections 24 and 25 of Criminal Procedure Code.

4.5. Government of Puducherry has further submitted that in the case of appointment of Public Prosecutor/Additional Public Prosecutor for Government of Puducherry before the Hon'ble High Court, eligible and experienced advocates are appointed by the Government, as Public Prosecutor / Additional Public Prosecutor, in consultation with the Hon'ble High Court, Madras, as per Section 24(1) of Criminal Procedure Code.

4.6. Government of Puducherry has further submitted that, in the case of appointment of Government Pleaders, Additional Government Pleaders and Government Advocates, on behalf of the Government of Puducherry, before this Hon'ble High Court, Madras, experienced Advocates, who possess sufficient years of experience and thorough knowledge of law, in various fields, are only appointed by the Administration.

4.7. Government of Puducherry has further submitted that, some of the Advocates appointed as Government Pleaders, to appear on behalf of the Government of Puducherry, before the Hon'ble High Court, Madras, are either designated Advocates or experienced Advocates and some Government Pleaders are also elevated to the post of High Court Judges.

4.8. Government of Puducherry has further submitted that appointment of Law Officers, in High Court, Madras and Central Administrative Tribunal, Madras Bench, is governed by the Administrative set up and system of functioning of Law Officers in High Court, Madras and Central Administrative Tribunal, Madras Bench, in terms of G.O.Ms. No.12/LK-2016, dated 25.05.2016 of the Law Department, Puducherry.

5. From the material on record, it could be deduced that pursuant to the order dated 05.09.2016 in W.P.No.18331 of 2016, Lieutenant-Governor, Puducherry, has prepared the draft Rules, Governing the appointment, conditions of service, and remuneration payable to the Law Officers of the Union Territory of Puducherry.

6. Mr.V.Vasanthakumar, party-in-person, submitted that, W.P.No.18331 of 2016, has been disposed of, stating that the writ petition, is not maintainable.

7. For the relief, sought for in W.P.No.14568 of 2016, Secretary (Law), Law Department, Puducherry, has filed a counter affidavit, contending inter alia that, as per the procedure followed, Government have constituted a Selection Committee consisting of (i) Development Commissioner cum Secretary (Personnel), Puducherry, as Chairman, (ii) Commissioner-cum-Secretary to Government (iii) Secretary (Law) as Member. The said Committee has scrutinized the applications of 61 applicants, (inclusive of the Special Government Pleader and Government Advocates allowed to continue, after the end of their tenure), applications of various Advocates, practicing in the Bar Association, Union Territory of Puducherry and the High Court, Madras, by taking into consideration of their length of service, knowledge of law, integrity, fitness, etc., in an objective and transparent manner. According to Government of Puducherry, the Selection Committee, has also considered the qualifications required for appointment of Law Officers and Government Pleader, Additional Government Pleaders, Additional Public Prosecutors etc. Thereafter, recommendations of the Committee, have been sent to the Hon'ble Chief Justice, High Court of Madras on 17.06.2016, for approval.

8. Mr.A.Gandhi Raj, learned Government Pleader (Puducherry), Secretary(Law), Law Department, Union Territory of Puducherry, submitted that draft Rules already framed, requires modification and that the same are reconsidered, in the light of the decision rendered by the Hon'ble Supreme Court and this Court. Submission of the learned Government Pleader, is placed on record.

9. Heard Mr.V.Vasanthakumar, learned learned counsel for the petitioner and Mr.A.Gandhiraj, learned Government Pleader (Puducherry) for respondents, and perused all the materials available on record.

10. From the detailed counter affidavit filed by Government of Pondicherry, it could be deduced that till the formulation of Rules, for appointment to the post of Law Officers in Union Territory of Puducherry, as per the existing procedure, there was a Selection Committee, consisting of (i) Secretary (Personnel) as Member, (ii) Additional Secretary (Home) as Member and (iii) Secretary (Law) as Member Secretary. Now, the said Committee, has been reconstituted by consisting of Development Commissioner-cum-Secretary (Personnel), Puducherry as Chairman, (ii) Commissioner-cum-Secretary to Government as Member and (iii) Secretary (Law) as Member vide Order No.18018/US-Law/LD/2017, dated 20.12.2017.

11. According to Mr.A.Gandhiraj, learned Government Pleader (Puducherry), the said Selection Committee, has finalised the list of eligible candidates, for appointment to the post of Government Pleader, Additional Government Pleaders, Additional Public Prosecutors, and that the same has been sent to the Hon'ble Chief Justice, High Court of Madras, on 17.06.2017, for approval.

12. Having regard to decision of Union Territory of Puducherry, in reconsidering the draft Rules, based on the judgment of the Hon'ble Supreme Court in State of Punjab & another Vs Brijeshwar Singh Chahal & another" reported in (2016) 6 SCC Page 1, we only direct the respondents, to expedite the process, and frame the procedure/guidelines, as envisaged in the judgment of the Hon'ble Supreme Court. From the material on record, we could further deduce that Selection to the post of Government Pleader, Additional Government Pleaders, Additional Public Prosecutors etc., has already been finalised.

13. In Brijeshwar Singh Chahal case, where there were no prescribed Rules, the Hon'ble Supreme Court, has directed that the panel might be forwarded to the Hon'ble Chief Justice, High Court, Madras, for approval. However, such exercise was to operate till Rules are framed. In this case, draft Rules are being reconsidered; selection has been made; and approval is sought for from My Lord the Hon'ble Chief Justice, High Court, Madras.

14. As recommendations of the Selection Committee, as directed by the Hon'ble Supreme Court in State of Punjab & another v. Brijeshwar Singh Chahal & another case, have been forwarded to My Lord The Hon'ble Chief Justice, High Court, Madras, for approval, Union Territory of Puducherry, is empowered to make appointments, as per the existing procedure, till formulation of the rules, in accordance with law. Indisputed fact is that the petitioner has participated in the selection process. Whether he has been selected or not, in the light of the decision of the Hon'ble Supreme Court and the procedure followed, on contentions of the petitioner, we cannot record any finding that there is any prima facie infraction to the procedure, followed in the matter of to selection of eligible Advocates, in the post of Government Pleaders, Additional Government Pleaders and Government Advocates in Union Territory of Puducherry, and therefore injunction sought for, cannot be granted. Accordingly, W.M.P.No.17200 of 2018, is dismissed.

15. Prayer sought for, in the instant writ petition, is for a direction to the respondents to frame appropriate Rules for appointment of Law Officers in a transparent and objective

manner, representing the Union Territory of Puducherry, before the Constitutional Courts, Subordinate Judiciary, Tribunals, Quasi-Judicial Forums, Local Authorities, Public Bodies and other authorities as mandated by the Hon'ble Apex Court 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 as well by this Hon'ble Court in "V.Vasanthakumar, Advocate Vs Chief Secretary", Government of Tamilnadu as reported in 2018 (3) CTC Page 179, as urged by the petitioner in his representation dated 15.05.2018.

16. Mr.A.Gandhiraj, learned Government Pleader (Puducherry), submitted that the process of finalising the procedure/guidelines/rules, for appointment of Law Officer of Union Territory of Puducherry, would require three more months, from today. Submission is placed on record.

17. In the light of the above discussion and placing on record the submission of the learned Government Pleader (Puducherry), writ petition is disposed of. There shall be no order as to costs.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To

- 1.The Chief Secretary,
Government of Union Territory of Puducherry,
Chief Secretariat, Goubert Avenue,
Puducherry - 605 001.
- 2.The Secretary,
Law Department,
Government of Union Territory of Puducherry,
Chief Secretariat, Goubert Avenue,
Puducherry - 605 001.
- 3.The Secretary to Lieutenant Governor,
Government of Union Territory of Puducherry,
Raj Nivas, Puducherry - 605 001.

+1 cc to Mr.V. Vasantha Kumar, Advocate sr 55943.
+1 CC to Govt. Pleader(Puducherry) sr 56007.

W.P.No.14568 of 2018
and W.M.P.No.17200 of 2018

SP(11/09/2018)