

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Writ Petition Nos.35785 and 35786 of 2017

COMMON ORDER :

In these Writ Petitions, the petitioners assail G.O.Rt.No.221 dt.25.09.2017 issued by the 1st respondent appointing Sri L. Nagaraju, Advocate, who is 5th respondent in both the Writ Petitions, as Assistant Government Pleader (for short 'A.G.P') for the Court of the Junior Civil Judge, Cheepurupalli, Vizianagaram District, and seek to have it set aside with a direction to the respondents to consider the respective petitioners for appointment to the said post.

CONTENTIONS OF PETITIONERS

2. The petitioners in the Writ Petitions are Advocates practicing at the Court of the Junior Civil Judge, Cheepurupalli since 1996 and 1997 respectively. The petitioner in WP.No.35785 of 2017 also belongs to SC Mala Community and is also the only lady Advocate in the Cheepurupalli Bar Association. They had both applied to the post of A.G.P in the said Court in response to applications invited on 30.12.2013 and both their names were recommended by the Junior Civil Judge, Cheepurupalli and the Principal District and Sessions Judge, Vizianagaram along with three others, and the said list was sent to the Office of the Chief Minister, but the file was returned without assigning any reasons with a request for sending a fresh panel.

3. Again vide proceedings dt.07.06.2016 and 13.06.2016, applications were called for appointment to the post of A.G.P at Cheepurupalli. The Principal District and Sessions Judge recommended five candidates and sent

it to the District Collector, Vizianagaram (2nd respondent). In that list, name of 5th respondent and petitioner in WP.No.35786 of 2017 were included, but not petitioner in WP.No.35785 of 2017.

4. The petitioner in WP.No.35785 of 2017 claims to have made representation to respondent nos.2 to 4 stating that the recommendations made to the said post were not in accordance with norms laid down in G.O.Ms.No.187 Law (L) Department, dt.06.12.2000 containing the A.P. Law Officers' (Appointment and Conditions of Service) Instructions, 2000, and that the impugned G.O.Rt.No.221, dt.25.09.2017, was issued appointing 5th respondent as the A.G.P for the court of the Junior Civil Judge, Cheepurupalli, is illegal, arbitrary and is unsustainable. There was no response to this representation.

5. The petitioners allege that the 5th respondent had held the post of A.G.P in the said Court from 2000 to 2003 and from 2003 to 2007 for two consecutive terms, and has now been appointed by the 1st respondent for a third term. They contend that he is ineligible to be considered for appointment to the said post for a third term, *except in exceptional cases* as per Clause (8) of instructions issued vide G.O.Ms.No.187 dt.16.12.2000 and that there are no such exceptional circumstances warranting his appointment for a third term. They allege that the 3rd respondent had deleted the name of one B. Rajaratnam Naidu, who had also completed two terms as A.G.P., on the same grounds from the panel sent by him in 2016. They, therefore contend that the appointment of 5th respondent as A.G.P. for the 3rd term is not in conformity with G.O.Ms.No.187 dt.06.12.2000 and there are no

exceptional circumstances warranting his being appointed as A.G.P. for third term.

6. They therefore contend that the said G.O.Rt.No.221 dt.25.09.2017 issued by the 1st respondent appointing 5th respondent for the 3rd term as A.G.P. in the Court of Junior Civil Judge, Cheepurupalli is arbitrary, illegal and violative of Articles 14, 19 and 21 of the Constitution of India as well as G.O.Ms.No.187 dt.06.12.2000, and seek consideration of their respective cases for appointment to the said post.

COUNTER AFFIDAVIT OF 1ST RESPONDENT

7. In WP.No.35785 of 2017, counter-affidavit was filed by the 1st respondent justifying G.O.Rt.No.221 dt.25.09.2017 which was adopted by the Government Pleader for Law and Legislative Affairs, appearing for respondent in both cases. Reference is made therein to G.O.Ms.No.187 dt.06.12.2000, and the procedure prescribed therein for appointment Officers and it is contended that the appointment of 5th respondent is in accordance with the said procedure. It is stated that the 5th respondent took charge of the A.G.P. post in the Court of the Junior Civil Judge, Cheepurupalli on 23.11.2017. Reliance is also placed on the judgments of this Court and of the Supreme Court in **Rajendra Singh v. State of U.P.**¹, **Government of Andhra Pradesh v. Pushpinder Kaur**², **State of U.P. v. Johri Mal**³, **State of U.P. v. U.P. State Law Officers' Association**⁴, **State of Punjab and another v. Brijeshwar Singh Chahal and another**⁵, and it is contended that the Government is free to choose the best lawyers, that no lawyer has a

¹ Appeal (Crl.) 1019 of 2007, dt.06.08.2007

² 2003 (6) ALT 30 (D.B.)

³ AIR 2004 SC 3800

⁴ AIR 1994 SC 1654

⁵ (2016) 6 SCC 1

right to be appointed as a Government Counsel, that the Rules framed under G.O.Ms.No.187 dt.06.12.2000 are only Executive instructions and are not statutory and not enforceable. It is therefore contended that the 1st respondent had a power to choose counsel like 5th respondent even if it is for a 3rd term and no *writ of mandamus* can be issued. It is also contended that petitioners have no *locus* to question G.O.Rt.No.221 Law (G) Department dt.25.09.2017.

COUNTER AFFIDAVIT OF 5TH RESPONDENT

8. The 5th respondent filed counter-affidavits in both the Writ Petitions justifying his appointment as A.G.P. in the Court of the Junior Civil Judge, Cheepurupalli. He stated that taking into consideration his merit, he was appointed for a 3rd term, and he gave joining report on 26.10.2017 to the 2nd respondent. He stated that the 2nd respondent issued proceedings Rc.No.2749/2006/F5 dt.21.11.2017 directing him to take over charge from the previous A.G.P. and he took charge from the said person on 23.11.2017. He denied that he was not eligible to be appointed as A.G.P. and contended that he did not lack integrity or efficiency and in exceptional cases the 1st respondent was entitled to appoint him, though it is for a 3rd term.

THE EVENTS PENDING THE WRIT PETITIONS

9. It is pertinent to note that the Writ Petitions were first taken up on 26.10.2017 and the Court issued notice to 5th respondent by R.P.A.D. and noted that G.P. for Home took notice for respondent nos.1, 3 and 4. Thereafter, on 17.11.2017, the Standing Counsel for the High Court representing respondent nos.3 and 4 stated on instructions that 5th respondent submitted joining report as A.G.P. before the 2nd respondent on 26.10.2017.

10. The Court then adjourned the matter for two (02) weeks. When the matter was listed on 13.12.2017, the Counsel for petitioners disputed the fact that 5th respondent submitted joining report as A.G.P. before 2nd respondent on 26.10.2017 and contended that he did not take charge of the post of A.G.P.

11. This Court then called for a report from the Principal District Judge as to whether the 5th respondent had taken charge of the post of A.G.P. and if so, on what date, he has taken charge and / or submitted his joining report.

12. On 28.12.2017, the Principal District and Sessions Judge, Vizianagaram sent his report stating that 5th respondent submitted his joining report in his office on 26.10.2017 and took over charge of the post of the A.G.P.

WPMP.No.49632 of 2017 in WP.No.35786 of 2017

13. The petitioner in WP.No.35786 of 2017 filed WPMP.No.49632 of 2017 in WP.No.35786 of 2017 to suspend the operation of proceeding Rc.No.2749/2006/F5 dt.21.11.2007 issued by the 2nd respondent directing 5th respondent to take charge as A.G.P. in the Court of the Junior Civil Judge, Cheepurupalli.

14. She also filed an affidavit with supporting documents pointing out *inter alia* that the proceedings Rc.No.2749/2006/F5 dt.21.11.2017 issued by the 2nd respondent show that the petitioner had not taken charge as A.G.P. till 17.11.2017 and only thereafter he took charge; but 5th respondent appeared *against* the State Government (which was plaintiff) in O.S.No.87 of 2017 before the same Court and filed written statement on behalf of 3rd

defendant on 17.11.2017. She also pointed out that in O.S.No.784 of 2009 filed by one Meesala Raji Naidu against the District Collector and others, the 5th respondent appeared for the said Meesala Raji Naidu (Plaintiff) against the 2nd respondent, and that even on 10.11.2017 and 22.11.2017, the plaintiff who was 5th respondent's client was cross-examined by the previous A.G.P.

15. The said WPMP is allowed since the facts stated in the said affidavit and the supporting documents filed as annexures thereto are relevant for deciding these cases.

CONSIDERATION BY THE COURT

16. The counsel for petitioners sought to contend that once proceedings dt.25.09.2017 in G.O.Rt.No.221 had been issued appointing the petitioner as A.G.P. in the Court of the Junior Civil Judge, Cheepurupalli, thereafter the 5th respondent committed professional misconduct in appearing against the State Government and the District Collector and in continuing to do so even after he allegedly took charge of the said post on 26.10.2017 when he gave joining report admittedly to the District Collector; and since this indicates lack of integrity on the part of 5th respondent, his appointment cannot be sustained.

17. Initially, the Principal District and Sessions Judge, Vizianagaram and the Junior Civil Judge, Cheepurupalli, Vizianagaram were impleaded as respondent nos.3 and 4 in both the Writ Petitions, but subsequently by a Court Order dt.21.02.2008, they were deleted from the array of parties on the ground that they were not necessary parties, and also on the ground that there were no personal allegations against them.

18. I have noted the contentions of both sides.

19. There is no doubt that engagement of Government Pleaders / Law Officers is the prerogative of the State Government and it is entitled to choose within its discretion meritorious candidates with *integrity* and *ability*. This is what the A.P. Law Officers' (Appointment and Conditions of Services) Instructions, 2000 notified vide G.O.Ms.No.187 dt.06.12.2000 also say. They may be Executive instructions and may not be statutory, but as held in **Pushpinder Kaur** (2 supra) cited by the 1st respondent, they structure the discretion of those who are involved in the process of making appointments of Law Officers to represent the State. This is not seriously disputed by any of the parties.

20. In **Brijeshwar Singh Chahal** (5 supra), the Supreme Court declared:

“ 17.... If a Government Counsel discharges an important public function and if it is the primary duty of those running the affairs of the Government to act fairly, objectively and on a non-discriminatory basis, there is no option for them except to choose the best at the Bar out of those who are willing and at times keen to work as State Counsel. It is also their duty to ensure that the process by which the best are selected is transparent and credible.

... ..

*30. The decision in **Shrilekha** case⁶ is noteworthy for the additional reason that the same held judicial review of State action permissible even when the engagement of the Government Counsel may be contractual in nature.”*

21. After reviewing the case law on the subject the Court laid down the following principles:

“41.1. The Government and so also all public bodies are trustees of the power vested in them.

⁶ (1991) 1 SCC 212

41.2. Discharge of the trust reposed in them in the best possible manner is their primary duty.

41.3. The power to engage, employ or recruit servants, agents, advisors and representatives must like any other power be exercised in a fair, reasonable, non-discriminatory and objective manner.

41.4. The duty to act in a fair, reasonable, non-discriminatory and objective manner is a facet of the Rule of Law in a constitutional democracy like ours.

41.5. An action that is arbitrary has no place in a polity governed by Rule of Law apart from being offensive to the equality clause guaranteed by Article 14 of the Constitution of India.

41.6. Appointment of Government Counsel at the district level and equally so at the High Court level, is not just a professional engagement, but such appointments have a “public element” attached to them.

41.7. Appointment of Government Counsel must like the discharge of any other function by the Government and public bodies, be only in public interest unaffected by any political or other extraneous considerations.

41.8. The Government and public bodies are under an obligation to engage the most competent of the lawyers to represent them in the courts for it is only when those appointed are professionally competent that public interest can be protected in the courts.

41.9. The Government and public bodies are free to choose the method for selecting the best lawyers but any such selection and appointment process must demonstrate that a search for the meritorious was undertaken and that the process was unaffected by any extraneous considerations.

41.10. No lawyer has a right to be appointed as a State/Government Counsel or as Public Prosecutor at any level, nor is there any vested right to claim an extension in the term for which he/she is initially appointed. But all such candidates can offer themselves for appointment, re-appointment or extension in which event their claims can and ought to be considered on their merit, uninfluenced by any political or other extraneous considerations.

41.11. Appointments made in an arbitrary fashion, without any transparent method of selection or for political considerations will be amenable to judicial review and liable to be quashed.

41.12. Judicial review of any such appointments will, however, be limited to examining whether the process is affected by any illegality, irregularity or perversity/irrationality. The Court exercising the power of judicial review will not sit in appeal to reassess the merit of the candidates, so long as the method of appointment adopted by the competent authority does not suffer from any infirmity.

22. Thus the Supreme Court held that there is judicial review, though to a limited extent, in matter of appointments of Government Counsel.

23. From the facts narrated above, it is clear that the 5th respondent was appointed by 1st respondent as AGP for a third term. Only in *exceptional* circumstances could this have been done as per clause 8 of G.O.Ms.No.187 dt.6.12.2000. Nothing exceptional about the 5th respondent warranting the 1st respondent to be appointed for a 3rd term has been mentioned in the counter affidavit filed by 1st respondent.

24. Also the fact that 5th respondent did appear against the State upto 17.11.2017 is not disputed by the Counsel for 5th respondent. He contended that though 5th respondent gave joining report on 26.10.2017, charge was not handed over to him by his predecessor till 21.11.2017 and so there is nothing wrong even if he continued to appear against the State till then.

25. This defence cannot be accepted because once joining report was given on 26.10.2017, he is deemed in law to have taken charge of the said post on the said day itself. It was highly improper for the 5th respondent to continue to appear against the State / 2nd respondent even after G.O.Rt.No.221 dt.25.9.2017 was issued appointing him as AGP in the Court of Junior Civil Judge, Cheepurupalli, that too in the same Court till

17.11.2017 even after he gave joining report to the 2nd respondent on 26.10.2017. This casts a doubt on the integrity of the 5th respondent. In my opinion, on this ground also his appointment as AGP in the Court of Junior Civil Judge, Cheepurupalli, deserves to be set aside.

26. Accordingly, the Writ Petitions are allowed; WPMP.No.49632 of 2017 in WP.No.35786 of 2017 is allowed; G.O.Rt.No.221 dt.25.09.2017 issued by the 1st respondent appointing Sri L. Nagaraju, Advocate, who is 5th respondent in both the Writ Petitions, as Assistant Government Pleader for the Court of the Junior Civil Judge, Cheepurupalli, Vizianagaram District, is set aside; and the respondents are directed to consider all eligible persons for appointment to the said post within 8 weeks. No costs.

27. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 12-04-2018
NDR