

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 804 of 2019**

Order Reserved On : 12/03/2019

Order Passed On : 14/05/2019

- Uttam Kumar Pandey S/o Shri B.P. Pandey Aged About 63 Years Advocate, R/o Sai Vihar Colony, Behind Sai Temple, Tifra, Bilaspur - 495001 Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Law, Naya Mantralaya, Atal Nagar Raipur 492002 Chhattisgarh.
2. The Advocate General Government Of Chhattisgarh, Advocate General Office, Bodri Bilaspur - 495220 Chhattisgarh.
3. Shri Rajneesh Singh Baghel S/o Shri Samarjeet Singh Baghel Dy. Advocate General, Government Of Chhattisgarh, Advocate General Office, Bodri Bilaspur - 495220 Chhattisgarh.

---- Respondent

For Petitioner : Petitioner in person.

For Respondent/State : Shri Rajesh Singh, Deputy Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**C A V Order**

1. The petitioner, himself a lawyer, would seek quashment of the appointment of Respondent No.3 Shri Rajneesh Singh Baghel, on the post of Deputy Advocate General by issuance of writ of quo

warranto.

2. Challenge to the appointment of respondent No.3 is based on the ground that at the time when respondent No.3 was elected and working as Joint Secretary of the High Court Bar Association, he displaced and removed the name plates of the advocates, which they have put over the tables/chairs in the common hall of the Advocate Chambers. When respondent No.3 was committing this wrongful action, the petitioner protested upon which the said respondent used his muscle power and beat the petitioner with the help of other advocates, at the same time using filthy abuses and criminally intimidating him. On petitioner's report, Crime No.250/2012 was registered by the concerned police for offence under Sections 294, 506, 323/34 of the IPC and the trial is pending against him before the Judicial Magistrate First Class, Belha. On respondent No.3 being appointed as Deputy Advocate General vide State Government's order dated 2.1.2019, the petitioner submitted a representation to the Advocate General and the Secretary, Law and Legislative Affairs Department on 4.1.2019, however, no action has been taken. Hence this writ petition.
3. It is argued that respondent No.3 lacks institutional integrity attached to the office of Deputy Advocate General and

appointment has been made without effective consultation with the Advocate General. Referring to the law laid down by the Supreme Court in the matters of **Centre for PIL & Anr. Vs. Union of India & Anr.**¹, **N. Kannadasan Vs. Ajoy Khose and Others**², **State of Punjab Vs. Salil Sabhlok and Others**³, **Commissioner of Police, New Delhi and Another Vs. Mehar Singh**⁴ and Division Bench judgment of the Rajasthan High Court in the matter of **Sunil Samdaria Vs. State of Rajasthan and Others** {Civil Writ Petition No.2624/2014, decided on 23.4.2015}. It is argued that owing to pendency of criminal case against respondent No.3, he is not suitable for the post of Deputy Advocate General, therefore, his appointment deserves to be quashed.

4. The present writ petition has not been preferred in the form of Public Interest Litigation, but the same has been submitted as if any of the petitioner's statutory or constitutional right has been violated. The petitioner may be personally aggrieved viz a viz the offence which the respondent No.3 has committed in that alleged incident happened in the Bar Room at the time when respondent No.3 was holding the post of Joint Secretary, but the same is not

1 JT 2011 (2) SC 613

2 (2009) 7 SCC 1

3 (2013) 5 SCC 1

4 (2013) 7 SCC 685

referable to eligibility of respondent No.3 and the same would not make respondent No.3 being ineligible for appointment on the post of Deputy Advocate General because no such norms have been laid down by the State Government for choosing a lawyer for appointment as Deputy Advocate General. The petitioner has not brought to the notice of this Court any such eligibility norms, non-fulfillment of which would attract issuance of writ of quo warranto.

5. In the present writ petition, the petitioner would seek issuance of writ of quo warranto but the eligibility norms or essential qualification for a lawyer for holding the post of Deputy Advocate General, if at all, laid down by the State Government, has not been brought to the notice of this Court. Therefore, writ of quo warranto would not lie against the appointment of respondent No.3. {See : **Salil Sabhlok** (Supra), Para-70}.
6. It is settled law that for issuance of writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules. In view of this settled legal position, it was necessary for the petitioner to place on record the statutory rules or even circulars providing statutory norms for appointment as Deputy Advocate General.

7. I am quite conscious of the legal position that the power of judicial review, even when it is very restricting, cannot be denied to be exercised without adverting to the relevant fact and that the doctrine of error of law apparent on the face of record would take within its umbrage the case where the statutory authority in exercise of his discretionary jurisdiction did not take into consideration the relevant fact or based its decision on a wholly irrelevant factors not germane for passing the order. Therefore, since in the matter of **Salil Sabhlok** (Supra), the Supreme Court has eventually held that even when the writ of quo warranto would not lie, writ of declaration can be issued by moulding the relief in appropriate cases, I proceed to consider the petitioner's submission viz a viz pendency of criminal case against respondent No.3. To buttress this part of submission, the petitioner has referred to the Division Bench Judgment of the Rajasthan High Court in the matter of **Sunil Samdaria** (referred to above).
8. In the matter of **Sunil Samdaria**, referred to above, the Rajasthan High Court quashed the appointment of Additional Advocate General on the ground that the lawyer concerned did not possess impeccable integrity. However, this part of the ratio has to be read in the context of obtaining factual matrix in the said case. There, the lawyer was found to have committed an offence of

cheating and having committed rape on a person of woman, who has alleged deceit and fraud. He obtained ex-parte decree of divorce without her (wife's) knowledge but continued to cohabit with her by fraud falsely inducing her to believe to be a legally wedded wife whereas he had full knowledge of having himself obtained an ex-parte decree of divorce against her. He was thus proceeded for three separate criminal trials attracting offences under Sections 193, 196, 198, 420, 429, 120-B of the IPC in one case; Sections 498-A and 406 of the IPC in another case and under Section 376 of the IPC in the third case.

9. If the facts available in the case at hand viz a viz respondent No.3 is placed juxtapose the case of **Sunil Samdaria**, referred to above, it is noticed that offences allegedly committed by respondent No.3 is only under Sections 294, 506 and 323/34 of the IPC. The incident happened when he was Joint Secretary of the High Court Bar Association. It is not a case of cheating, fraud or rape. If on account of fight between the group of lawyers, a lawyer is held to be ineligible to hold any post in the set up of Advocate General Office, it may lead to misuse to settle personal scores, because Additional Advocate General or Deputy Advocate General may not be having any criminal case at the time of appointment but any lawyer can foist a criminal case upon him and seek his removal on

this ground. Quashing appointment on this ground therefore does not appear to be proper. Except one criminal case for an incident which had happened in the Bar Room, no other fact or proceeding in respect of integrity of respondent No.3 has been brought to the notice of this Court.

10. For all the above stated reasons, I do not find any substance in the present writ petition, which fails and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve