

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:26.05.2021

Coram:

THE HONOURABLE DR.JUSTICE G. JAYACHANDRAN

Writ Petition No.12064 of 2021
and
W.M.P.No.12838 of 2021

M.Ganeshkamu

.. Petitioner

/versus/

1.The State of Tamil Nadu,
Represented by its Chief Secretary,
Public (Law officers) Department,
Fort Saint George,
Chennai 600 009.

2.M.Muthumanikkam
S/o Muthiah,
Appointed as the Counsel for the
Government of Tamil Nadu (Criminal Side),
Madurai bench of Madras High Court,
Madurai 625 023.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Quo-Warranto, as to under what authority the 2nd respondent herein holds the temporary post of the counsel for the Government of Tamil Nadu (Criminal side) in the Hon'ble Madurai Bench of Madras High Court and restrain the 2nd respondent herein from continuing in the said post and remove the 2nd respondent from the temporary post of the counsel for the Government of Tamil Nadu (Criminal Side) in the Hon'ble Madurai Bench of Madras High Court, who does not possess the eligibility as per the notification dated 13.05.2021 of the 1st respondent herein.

For Petitioner :Mr.M.Prabakar

For Respondents:Mr.R.Shanmugasundaram,

Advocate General assisted by
Mr.R.Neelakandan, G.A for R1

O R D E R

(The case has been heard through Video Conferencing)

This Writ of Quo Warranto is filed by a practicing Advocate challenging the temporary appointment of the second 2nd

respondent as Government Advocate (Criminal Side).

2. Heard the learned counsel appearing for the petitioner and the learned Advocate General appearing for the 1st respondent/State

3. The grievance of the petitioner is that as per G.O.Ms.No.369, Public (Law officers) Department, Dated 29.04.2017, the Public Department has notified the Rules for appointment of Law Officers in the High Court. Where under the set up in the High Court is only under 8 categories namely, (i) Advocate General; (ii) Additional Advocate General; (iii) Public Prosecutor; (iv) Government Pleader; (v) Additional Government Pleader; (vi) Special Government Pleader; (vii) Additional Public Prosecutor; and (viii) Government Advocate. When there is no category as Government Advocate (Crl.Side), the 2nd respondent, who has less than seven years of Bar experience has been appointed as Government Advocate (Criminal side). Hence, he does not possess the required qualification, he must be removed from the post of Government Advocate (Criminal Side).

4. The learned Advocate General appearing for the State would submit that this appointment is only a temporary appointment. Furthermore, the 2nd respondent is a qualified Advocate enrolled in the year 2011 and he has been appointed as Government Advocate to assist the Advocate General and look after the criminal cases. Hence, he has been designated as Government Advocate (Criminal Side). Being fully qualified to hold the said post, there is no error in the appointment of the 2nd respondent.

5. In reply the learned counsel appearing for the petitioner submitted that when there is no post as Government Advocate (Criminal side), the appointment of the 2nd respondent without qualification has to be clarified.

6. This Court finds that there is no necessity for any clarification in this regard.

7. As far as the notification is concerned, the appointment of the 2nd respondent is to assist the Advocate General and it is prerogative of the Advocate General to assign the work to the Government Advocate and in his wisdom, he has thought fit that the 2nd respondent is competent to handle the criminal cases and hence, he has been identified as Government Advocate (criminal side).

8. From the affidavit filed by the petitioner, it appears that the petitioner has wrongly presumed that the 2nd respondent is appointed as the Additional Public Prosecutor. In fact, the

2nd respondent is temporarily appointed as the Government Advocate(Criminal Side). The post of the Additional Public Prosecutor is a statutory post appointed as per Section 24(2) of the Criminal Procedure Code, which contemplates a different appointment procedure and it can be done only after consulting the concerned High Court. Whereas the post of Government Advocate is creature of executive.

9.As per the notification G.O.Ms.No.369, dated 29.04.2017, the Bar experience required for appointment of the Government Advocate is three years. The 2nd respondent herein is fully qualified to hold the post of the Government Advocate and he has been assigned to look after the criminal cases in High Court so designated as Government Advocate (Criminal side) by the Advocate General. This Court finds no merit in this writ petition. Hence, this Writ Petition is dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

ari/bsm

To:

The State of Tamil Nadu,
Represented by its Chief Secretary,
Public (Law officers) Department,
Fort Saint George, Chennai 600 009.

W.P.No.12064 of 2021

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W.M.P.No.12838 of 2021

JPL(CO)
GN(29/06/2021)

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