

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
07.06.2021	16.06.2021

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CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P. (MD) No.9830 of 2021

and W.M.P. (MD) Nos.7554, 7556 & 7557 of 2021

A.Kannan

... Petitioner

-vs-

- 1.The State of Tamilnadu
Rep.by its Chief Secretary
Secretariat
Chennai-600 009
- 2.The Principal Secretary to
Govt. of Tamilnadu
Public (Law Officers) Department
Secretariat
Chennai-600 009
- 3.The Selection Committee for
Appointment of Government Law Officers
Rep.by its Chairman, the Advocate General
O/o.Advocate General
High Court Campus
Chennai-600 104
- 4.The High Court of Madras
Rep.by its Registrar General
High Court Campus
Chennai-600 104
- 5.The Director General of Police
Head of Police Force
No.4, Dr.Radhakrishnan Salai
Mylapore
Chennai-600 004



6.The Secretary to Government of Tamilnadu
Home (Courts-IV) Department
Secretariat, Chennai-600 009

7.The Bar Council of Tamilnadu and Puducherry
Rep.by the Secretary
High Court Campus
Chennai-600 104

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the entire records pertaining to the impugned Government Order in G.O. (Ms) No.590, Public (Law Officers) Department, dated 04.09.2019, which made the amendment appointment of Law Officers of High Court of Madras and its Bench at Madurai (Appointment) Rules, 2017 and quash the same as ilegal, against the Rules 2017 and against the directives made in the verdict of the Hon'ble First Bench of Madras High Court in W.P.No.12951 of 2017, dated 28.04.2018 and consequently, direct the respondents 1 to 3 to appoint the law officers in the High Court of Madras and its Bench at Madurai in consonant with the verdict of the Apex Court in a case reported in **(2016) 3 MLJ 776 (SC)** and by duly adhering the Appointment of Law Officers of High Court of Madras and its Bench at Madurai (Appointment) Rules, 2017 as amended on 2018 and to follow the judgment of the Hon'ble First Bench of Madras High Court in W.P.No.12951 of 2017, dated 28.05.2018 in letter and spirit by inviting applications from all eligible advocates aspiring for the said posts by issuing a notification providing equal opportunity to them by assessing their suitability and professional competency by adopting a selection process by way of a competitive examination with regard to the practice in the High Court such as independent drafting and pleading on their own or in the alternate to follow a transparent selection process in a manner known to law by adhering requirements of Article 14 and 16 of the Constitution of India by uploading all stages of the selection processes in the official website of the second respondent within a time limit fixed by this Court and to direct the fifth respondent to upload the antecedent reports of the law officers appointed in the Police Department's official website and to direct the seventh respondent to upload the details of the law officers, their academic qualification and pendency of disciplinary proceedings in the official website of the Bar Council of Tamilnadu.

For Petitioner : Mr.A.Kannan, Party-in-Person

For Respondents : Mr.R.Shanmugasundaram
Advocate General for R1 to R3, R5 & R6



O R D E R

T.S.SIVAGNANAM, J.

This writ petition filed by a practising Advocate before this Court, styled as a public interest litigation, seeks for issuance of a writ of certiorarified mandamus to quash G.O.Ms.No.590, Public (Law Officers) Department, dated 04.09.2019, by which certain amendments were made to the Law Officers of High Court of Madras and its Bench at Madurai (Appointment) Rules, 2017 (hereinafter, referred to as "the Rule and the amended Rule").

2. According to the petitioner, the impugned amended Rule is against the directions issued by the Honourable First Bench of this Court in ***W.P.No.12951 of 2017, dated 28.04.2018***, in the case of ***V.Vasanthakumar vs. The Chief Secretary, Government of Tamil Nadu*** and therefore, seeks for a direction upon the respondents 1 to 3 to appoint law officers for this Court in consonance with the verdict of the Honourable Supreme Court in the case of ***State of Punjab vs. Brijeshwar Singh Chahal [(2016) 3 MLJ 776 (SC)]*** by inviting applications from all eligible advocates aspiring for the said post, by issuing a notification providing equal opportunity to them, by assessing their suitability and professional competency by adopting a selection process by way of competitive examination with regard to the practice in the High Court, such as, independent drafting and pleading on their own or in the alternate, to follow a transparent selection process in the manner known to law by adhering to the requirements of Articles 14 and 16 of the Constitution of India, by uploading all stages of the selection process in the official website of the second respondent within a time limit fixed by this Court and to direct the fifth respondent to upload the antecedent reports of the law officers appointed in the Police Department's official website and to direct the seventh respondent to upload the details of the law officers, their academic qualification and pendency of disciplinary proceedings in the official website of the Bar Council of Tamil Nadu.

3. We have heard Mr.A.Kannan, appearing in person and Mr.R.Shanmugasundaram, learned Advocate General appearing for the respondents 1 to 3, 5 & 6.

4. Before we proceed to consider the contentions advanced before us, much of which had been pleaded in the affidavit filed in support of the writ petition, we need to take note of certain averments made by the petitioner in the accompanying affidavit, more particularly, in Paragraph No.10 of the affidavit, wherein, the petitioner would state that there is no necessity warranting the State Government to appoint counsels temporarily to represent the Government before the High Court both at the Principal Seat and the



Madurai Bench, which is not permissible under the Rules and that the State Government is doing things, which cannot be directly done and the appointment of the Law Officers with the different nomenclature will also cast more financial burden on the State Government, more particularly, during the pandemic period.

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5. In the typed set of papers filed along with the writ petition, the petitioner has enclosed the copies of the Government Orders in G.O.Ms.No.277, Public (Law Officers) Department, dated 13.05.2021; G.O.Ms.No.292, Public (Law Officers) Department, dated 28.05.2021 and G.O.(Ms) No.216, Home (Courts-IV) Department, dated 31.05.2021. These Government Orders are not impugned in the writ petition. Therefore, we are not required to test the correctness of the said Government Orders and all allegations and aspersions cast upon such temporary appointments have to be necessarily eschewed and are accordingly, eschewed. The Government Orders clearly state that on a request made by the learned Advocate General, the Government of Tamil Nadu had appointed counsels for the Government to appear in civil and criminal cases temporarily until the law officers are selected and appointed in terms of the Rules.

6. The learned Advocate General, who appeared before this Court through video conferencing, has also mentioned that those appointments are to enable the Government to represent before this Court and to ensure that the proceedings before this Court are not in any manner affected on account of absence of law officers for the State. Thus, we will proceed to decide this writ petition with regard to the prayer sought for and examine as to whether the amended Rule is against the directives issued in the case of **V.Vasanthakumar** (supra) and as to whether the consequential directions sought for by the petitioner are sustainable.

7. V.Vasanthakumar, a practising Advocate before this Court, filed a writ petition as a public interest litigation challenging the 2017 Rules published in the Government Gazette, dated 29.04.2017 and also sought for an order of injunction to restrain the State Government from appointing law officers to represent the State before the Constitutional Courts, Subordinate Courts etc., without following a transparent procedure.

8. The Honourable First Bench of this Court, after taking note of various provisions of the 2017 Rules and also noting the submissions of the petitioner and by placing reliance on the decision of the Honourable Supreme Court in the case of **State of Punjab vs. Brijeshwar Singh Chahal [(2016) 3 MLJ 776 (SC)]**, pointed out that there is no specific challenge to the Rule 4, which lays down the eligibility for appointment to the various categories of Government law officers and that the said petitioner has only challenged the method of appointment of law officers stipulated in Rule 5 and in particular, Rule 5(4) thereof. Further, it was



pointed out that the petitioner therein 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 such notice, as unreasonable. After considering the submissions, it was held that Rule 5(4) does not confer unbridled power on the Advocate General and 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. Further, it was pointed out that no appointment should be made either for pursuing a political purpose or for giving some undue advantage to any section.

9. Further, it was pointed out that 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 such appointment. Further, 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 Honourable Supreme Court in the case of **Brijeshwar Singh Chahal** (supra).

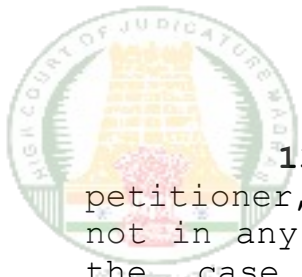
10. Further, it was held that the Court would not sit in appeal to re-assess and / or make a comparative assessment of the merits of the candidates as long as the method of appointment did not suffer from any infirmity. Further, noting that under the 2017 Rules, the Advocate General forwards the names of the eligible candidates, after which a Selection Committee comprising of the Advocate General and three Secretaries of the State Government make the selection and the selection is made by a panel and not by the Advocate General alone. Noting that the Rules do not contain any guidelines with regard to the mode and method of the selection from out of the eligible candidates forwarded by the Advocate General, direction was issued to the State Government 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 the 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 recognized Bar Associations. Thus, in the said decision neither Rule 5(4) nor Rule 7(1) of the 2017 Rules, which were challenged before the Court, were struck down or in other words, their validity was upheld. The direction issued to the State Government was to formulate and / or frame guidelines for the manner and / or criteria of selection of advocates to the post of law officers. The Judgment was delivered by the Honourable First Bench on 28.04.2018. Admittedly, there have



been several appointments post the decision and it is not clear as to whether there was any challenge to any of such appointments made after the decision.

11. Be that as it may, the State Government, by G.O.Ms.No.590, Public (Law Officers) Department, dated 04.09.2019, brought about certain amendments to the 2017 Rules. We shall refer to these Rules as the amended Rules. The petitioner has not questioned the insertion of words "Additional Public Prosecutor" in sub-clause (b) of Rule 4(i) nor there is any challenge to the insertion of sub-clause (h) in Rule 4(i), which prescribes the eligibility for a person to be appointed as an Additional Advocate General. There is no challenge to sub-rule (I) to Rule 4(i), which stipulates the eligibility for appointment as Government Pleader or Public Prosecutor or Special Government Pleader or Additional Public Prosecutor. Likewise, there is no challenge to sub-clause (j) in Rule 4(i), which stipulates the eligibility for appointment as Additional Government Pleader. Essentially, the challenge is to sub-clause (k) in Rule 4(i), which stipulates the eligibility for being appointed as Government Advocates. The amended Rule states that subject to Rule 8, no person shall be eligible for appointment in the High Court as a Government Advocate unless he furnishes a letter given by his senior to the effect that he has assisted him and worked in the High Court for not less than three years. The petitioner appearing in person would submit that the amendment has ignored the directions issued in the case of **V.Vasanthakumar** (supra) and on account of the amendment, a person can be appointed as a Government Advocate merely by furnishing a letter given by his senior to the effect that he had assisted him and worked in the High Court for not less than three years and such a procedure is not a fair procedure. Furthermore, the amendment has diluted the decision in the case of **V.Vasanthakumar** (supra), which is binding upon the State and it would amount to contempt of Courts. Furthermore, the impugned amendment has denied equal opportunity to the meritorious candidates to be considered for appointment as law officers representing the State in the High Court of Madras and its Madurai Bench.

12. Other arguments were advanced by the petitioner with regard to the consequences, which will occur if inexperience advocates are appointed as law officers and that it would affect the administration of justice of this Court. Several other submissions were made by the petitioner by referring to the decision in the case of **Brijeshwar Singh Chahal** (supra) and certain other decisions of this Court, wherein very pointed observations were made with regard to the manner of selection of law officers and importance to have efficient law officers to defend the State and also to give effective assistance to the Court.



13. After elaborately considering the submissions of the petitioner, we are of the considered view that the amended Rule does not in any manner dilute or interfere with the directions issued in the case of **V.Vasanthakumar** (supra). As noted above, in **V.Vasanthakumar**'s case, the Honourable First Bench held that Rule 5 (4) does not confer unbridled power on the Advocate General. Further, the challenge to Rule 7(1) was also not entertained. The directions issued were to frame guidelines stipulating the criteria of selection of advocates to the post of Government law officers. What the State has done is to frame a Rule, which definitely has to be placed in a higher pedestal than the guideline as the Rule has been notified in the Tamil Nadu Government Gazette.

14. As mentioned above, there is no serious challenge to the amended Rule with regard to the eligibility criteria fixed for candidates to be eligible for being appointed as Additional Advocate General, Government Pleader, Public Prosecutor, Special Government Pleader, Additional Public Prosecutor or Additional Government Pleader. The main focus is on the eligibility of an advocate to be considered for appointment as Government Advocate. The petitioner would contend that mere furnishing a letter by a senior stating that his junior has assisted him in the High Court for three years is not proper and it would lead to various other sequences. As pointed out in the case of **V.Vasanthakumar** (supra), task of selection of Government Advocates is in the exclusive arena of the Government and / or its instrumentalities, judicial review of such appointments would be limited only to examining as to whether the process of appointment is vitiated by any irregularity, illegality, perversity or irrationality. These observations were made taking note of the Judgment of the Honourable Supreme Court in the case of **Brijeshwar Singh Chahal** (supra). Admittedly, this writ petition has not been filed challenging any appointment orders issued to the Government law officers. Rather, the challenge is to the amendment to the 2017 Rules, which was notified in the Tamil Nadu Government Gazette on 04.09.2019. Therefore, in our considered view, the second limb of the prayer sought for by the petitioner, namely, the consequential directions sought for by the petitioners are pre-mature.

15. While on this, we take note of the submissions of the learned Advocate General that temporary appointments have been made to enable the Government to be represented before the Court and also to ensure that the Court proceedings are not affected on account of the non-availability or non-appearance of Government counsels. The learned Advocate General would further state that the procedures stipulated under the Rules would be followed while making appointments in terms of the Rules. Therefore, it is too early for the petitioner to presume and assume certain things and that all actions, which may occur at a future point of time, would be not sustainable. Such inference or conclusion cannot be arrived at by



the petitioner especially when the appointment process is yet to begin. Thus, we need to examine as to whether the amended Rule stipulating the eligibility criteria for an advocate to be considered for appointment as Government Advocate is illegal, arbitrary, irrational and discriminatory.

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16. Even during the course of hearing of the writ petition, we have pointed out to the petitioner that it is a matter of pride and prestige for a young member of the Bar to have his name included in the vakalat. Very often, it takes more than three years for a young member of the Bar to be included in the bottom of the list of names of advocates in the vakalat filed by the office of the senior. When we pointed out this, the petitioner contended the advocate concerned should at least file one case in his own name, especially when they had an experience of three years in the Bar. The legal profession is governed by precedents. Equally so, practice of law is guided and cultivated by a learning process under the pupillage of a senior. It is said that race horses are identified from the stable, from which they come. Equally, the lawyers for their life are identified with the senior under whom they are trained. If we are to accept the argument of the petitioner, then we would be undermining the statement, which a senior would make for his junior while certifying that he worked and assisted him in the matters before this Court for a period of three years. To the best of the knowledge of this Court, every senior would always cherish and be proud of the achievements of his / her juniors when they occupy various positions. Therefore, the petitioner should give utmost credence and solemnity to the letter given by the senior certifying that his junior instructed him in the matters before this Court for a period of three years. Thus, we find that there is no irrationality or illegality or arbitrariness nor any discrimination in Rule 4(i)(k) for it to be struck down.

17. As mentioned above, the learned Advocate General has submitted before this Court that the process of selection is yet to begin and every care would be taken to select and appoint the best candidates in a fair and transparent manner, in accordance with law and in consonance with the observations made by the Honourable Supreme Court in the case of **Brijeshwar Singh Chahal** (supra) and by the Honourable First Bench of this Court in the case of **V.Vasanthakumar** (supra).

18. In the light of the above, the prayer sought for by the petitioner to quash G.O.Ms.No.590, Public (Law Officers) Department, dated 04.09.2019, is rejected. With regard to the consequential relief sought for by the petitioner, we taken note of the submissions made by the learned Advocate General that the process of appointment of Government counsels is yet to begin and that the temporary appointments have been made to facilitate the smooth conduct of the proceedings before this Court. These submissions are



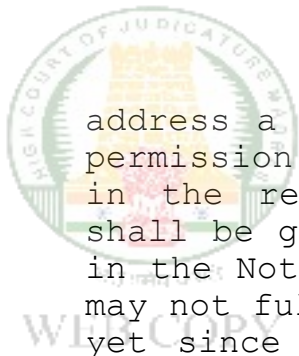
placed on record.

19. The learned Advocate General expressed certain difficulties in issuing the notification inviting applications for various categories of law officers on account of the present pandemic situation. In this regard, the learned Advocate General has drawn our attention to the Rules, which stipulate the method of appointment of law officers etc. and also invited our attention to the directions issued in the case of **V.Vasanthakumar** (supra). It is submitted by the learned Advocate General that the respondent - State would adhere to the Rules, which have been framed and also proceed in accordance with the observations and directions issued in the case of **V.Vasanthakumar** (supra).

20. Further, it is submitted by the learned Advocate General that on account of the pandemic situation and that the Advocates / Bar Associations, both in the Principal Seat and the Madurai Bench, have been closed, the respondents would not be in a position to put up the notice inviting applications from eligible Advocates to be considered for appointment as Government law officers in the Notice Boards of the respective Advocates / Bar Associations. In this regard, the learned Advocate General referred to Paragraph No.18 of the order in the case of **V.Vasanthakumar** (supra).

21. Ever since end of March, 2020, the Court proceedings have been conducted through virtual mode and that information are also disseminated virtually, the learned members of the Bar no longer get hard copies of the daily cause lists and the cause lists are viewed / downloaded from the website. The virtual hearing is also activated by the learned members of the Bar by clicking the active link provided in the cause list portal. Therefore, we find that there may not be much difficulty for the respondent - State to make known to the members of the legal fraternity that applications are being invited for appointment to various categories of law officers in the State. That apart, currently, all recruitment agencies, including Tamil Nadu Public Service Commission, call for applications by publishing notification in the Website of the TNPSC / Government and conduct recruitments online. Therefore, there can be no difficulty in giving wide publicity by issuing paper publication, sending messages and in turn, the respective Advocates / Bar Associations can inform their members about the forthcoming selection. In addition, the State Government can upload the information in the relevant official website and also, if necessary, issue a press release.

22. It appears that on permission being granted by the Registry of this Court, on Saturdays, the learned Advocates are permitted to come in a restricted manner to open the Chambers in order to collect the case bundles. Therefore, if the respondents



address a letter to the Registrar General of this Court requesting permission to enter the premises for the purpose of affixing notices in the respective Advocates / Bar Associations, such permission shall be granted by the Registrar General. Though affixing notices in the Notice Boards of the respective Advocates / Bar Associations may not fully serve the purpose on account of the present lock down, yet since few number of Advocates would be visiting the Chambers Block, they can be put on notice board about the oncoming selection. Before we part, we wish to observe that due care and caution be taken by the respondents in conducting the selection process and appointing counsels to appear for the State Government, so that, effective assistance could be given to the Courts.

23. In the result, while rejecting the prayer sought for by the petitioner to quash G.O.Ms.No.590, Public (Law Officers) Department, dated 04.09.2019, the writ petition stands disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

- 1.The Chief Secretary,
State of Tamilnadu,
Secretariat, Chennai-600 009.
- 2.The Principal Secretary to
Govt. of Tamilnadu,
Public (Law Officers) Department,
Secretariat, Chennai-600 009.



3.The Chairman, the Advocate General,
Selection Committee for
Appointment of Government Law Officers,
O/o.Advocate General,
High Court Campus,
Chennai-600 104.

4.The Registrar General,
High Court of Madras,
High Court Campus,
Chennai-600 104.

5.The Director General of Police,
Head of Police Force,
No.4, Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

6.The Secretary to Government of Tamilnadu,
Home (Courts-IV) Department,
Secretariat, Chennai-600 009.

7.The Secretary,
Bar Council of Tamilnadu and Puducherry,
High Court Campus,
Chennai-600 104.

+1 CC to M/s.SPL GP (SR-19525[F] dated 17/06/2021)

ORDER IN
W.P. (MD) No.9830 of 2021
and
W.M.P. (MD) Nos.7554, 7556 & 7557 of 2021
16.06.2021

DKS (CO)
TR(25.06.2021) 11P 9C