

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15950 of 2021

Dinesh @ Dinesh Kumar @ Dinesh Singh Son of Late Akhileshwar Singh
Resident of Kurthaul Rajputana, P.S.-Parsa Bazar, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. Of Bihar, Patna
2. The Chief Secretary, Government of Bihar, Old Secretariat, Patna-800001.
3. Lalit Kishore, Son of not Known to the Petitioner, Advocate General's Office, Patna High Court, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dinesh Kumar, Advocate

For the Respondent/s : Mr. Pushkar Narain Shahi (AAG6)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 11-02-2022

Petitioner has prayed for following reliefs:-

(i) For the issuance of a writ of Quo Warranto asking the respondent, particularly the respondent no.3 to show, to the satisfaction of this Hon'ble Court as to under what legal/constitutional authority he is holding the office of the Advocate General, Bihar.

(ii) For the issuance of a writ of mandamus holding that the respondent no.3 is illegally occupying the office of the Advocate General, Bihar and his continuance as the Advocate General of the State is in violation of Article 165(3) of the Constitution of India.

(iii) For the issuance of any other appropriate writ/direction/order holding that the respondent no.3 is in illegal occupation of the office of the Advocate General, Bihar."

Petitioner seeks writ of quo warranto for removal of

respondent no.3, who is at present holding the post of Advocate General, Bihar being in violation of Article 165(3) of Constitution of India.

Petitioner submits that in July, 2017, respondent no.3 was appointed as the Advocate General, Bihar after the formation of new ministry, term of which ended on 27.11.2020 and, thereafter, General Elections were held and a new Council of Ministers headed by Chief Minister was sworn in but respondent no.3 was not appointed as the Advocate General by the new regime and no notification was issued by the new government appointing Respondent no. 3 as Advocate General of the State.

Petitioner referred to Article 165(1) which mandates that the Advocate General shall be appointed by the Governor of the State and Article 165(3) contemplates that Advocate General shall hold the office of the Advocate General during the pleasure of Governor.

Petitioner further refers to Article 164 which defines “the pleasure of the Governor”. It is argued that Article 164(1) contemplates that the ministers shall be appointed by the Governor and the ministers shall hold office during the pleasure of the Governor. It is further contended that the pleasure of the

Governor ends with the formation of a new ministry and the Advocate General is to be appointed every time after the formation of a new ministry. It was submitted that tenure of respondent no. 3 ended in November, 2020 when a new ministry was formed in the State of Bihar and accordingly tenure of Advocate General also came to an end.

It was lastly argued that in the India's legal system, there is no constitutional office that is permanent in nature. No one can hold a constitutional office for life. Every constitutional post has fixed tenure. Tenure in the case of Advocate General comes to an end on the date of formation of the new ministry.

On the other hand, it is submitted on behalf of respondent that the petition is misconceived and petitioner has misread and misconstrued Article 165 of the Constitution, which deals with appointment of Advocate General by the Governor of the State. It is submitted that on a bare reading of Article 165, it is apparent that Advocate General shall hold office during pleasure of the Governor of the State, who is to act on aid and advice of Council of Ministers. The Article does not postulates that the term of Advocate General is co-terminus with the term of Chief Minister. The submission of petitioner that whenever the Chief Minister relinquishes the office, the office of Advocate

General will be deemed to have been vacated ipso facto and a new notification has to be issued is not the correct proposition of law.

It was further contended that a Minister appointed by the Governor on the advice of Chief Minister under Article 164 (i) of the Constitution of India though holds office during the pleasure of Governor can continue as Minister for a maximum period of five years as life of State Legislative Assembly is of five years only and thereafter State Legislative Assembly stands dissolved and a fresh election for State Legislature is held in order to constitute new State Assembly, as such provision of Article 164(1) and 165(3) of the Constitution of India are different and distinct and cannot be equated.

In support of his contention, the learned counsel for the respondents has referred to extract of the debate of Constituent Assembly while considering the draft Article 145 (165 of Constitution of India) and has quoted relevant discussion and debate of Constituent Assembly on this subject which reads as under:-

“Mr. Naziruddin Ahmad: Sir, I would like to move my amendment with a slight verbal alteration to which, I understand, Dr. Ambedkar has no objection, Sir, I beg to move:

“That for the existing clause(3) and (4) of article 145, the following be substituted:-

“(3) The Advocate General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.”

Sir, Clause(3) as it at present stands, reads as follows:-

“(3) the Advocate General shall retire from office upon the resignation of the Chief Minister in the State, but he may continue in office until his successor is appointed or he is re-appointed.”

This provision will cause a lot of inconvenience. I submit, that the tenure of the Advocate General should not be made dependent on the vagaries of party politics. It is quite likely that the Advocate General may be engaged in the midst of a prolonged case in which the State may be interested. His removal, all of a sudden, will prejudice the interests of the State. It is therefore, better to make his tenure dependent upon the pleasure of the Governor.

I understand that this amendment is exactly on the same lines as the one suggested by Dr. Ambedkar himself and that it is acceptable to him I hope, therefore, that the House will accept it.”.....

Mr. President : Then I put Amendment No.2210 which includes within itself 2211 also.”

The question is:-

“That for clause(3) and (4) of article 145, the following be substituted:-

(3) The Advocate General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.’

Mr. President: The question is:

“That article 145, as amended, stand part of the Constitution.”

The motion was adopted.

Articles 145, as amended; was added to the Constitution.

It is submitted on behalf of counsel for the respondents that from mere reading of above debate, it is apparent that framers of the Constitution were conscious while noticing the doctrine of pleasure in respect of Advocate General of State that tenure of Advocate General would not be co-terminus with the Chief Minister and the framers therefore consciously introduced (3) of Article 145 corresponding to present Article 165 (3).

Governor or Chief Minister of a State has a fix tenure.

Article 156 (3) provides that a Governor shall hold office for a

term of five years from the date on which he enters upon his office. Chief Minister of a State remains in office for maximum period of five years till the term of elected Legislative Assembly which is fixed for maximum period of five years, but no such tenure is prescribed for the post of Advocate General.

Heard learned counsel for the petitioner and learned counsel for the respondent and perused the material available on record.

Articles 155 and 156 of Constitution of India deals with appointment and tenure of Governor, who holds office during pleasure of President, which reads as follows:-

“155. Appointment of Governor.—The Governor of a State shall be appointed by the President by warrant under his hand and seal.

156. Term of office of Governor.—(1) The Governor shall hold office during the pleasure of the President.

(2) The Governor may, by writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office:

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.”

Article 165 deals with appointment of Advocate General for the State according to which, a person who is eligible and qualified to be appointed as a Judge of High Court can be appointed as Advocate General for the State, which reads as follows:-

“165. Advocate-General for the State.—(1) The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State.

(2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine. Conduct of Government Business.”

A co-joint reading of both provisions makes it explicit that although both Governor and Advocate General hold office during the pleasure of President and Governor but appointment of a Governor is for a fixed tenure of five years, however, in case of Advocate General, there is no fixed tenure and he holds the office during pleasure of Governor, who acts on aid and advice of Council of Ministers, headed by Chief Minister. Advocate General shall continue in office till he enjoys the pleasure of the Governor and there is no provision under Constitution which suggests that his appointment is co-terminus with term of Chief Minister or State Government or Legislative Assembly.

The Supreme Court in case of M. T. Khan Versus Government of Andhra Pradesh since reported in 2004(2) SCC 267 has held in paragraph nos.13 and 14 are as follows:-

“13. It is a well-settled principle of law that

the provisions of the Constitution shall be construed having regard to the expressions used therein. The question of interpretation of a Constitution would raise only in the event the expressions contained therein are vague, indefinite and ambiguous as well as capable of being given more than one meaning. Literal interpretation of the Constitution must be resorted to. If by applying the golden rule of literal interpretation, no difficulty arises in giving effect to the constitutional scheme, the question of application of the principles of interpretation of a statute would not arise only.

14. In *Gurudev datta VKSSS Maryadit v. State of Maharashtra* this Court held: (SCC pp. 552-53, para 26)

“26. Further we wish to clarify that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must *prima facie* be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the lawgiver. The courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not

a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute.”

From the extract of Constituent Assembly Debates it was after such debate that the Hon’ble President of the Constituent Assembly put the amendment to vote in the form in which we now have as Article 165(3) and it was that motion that was adopted. The material from the Constituent Assembly Debates is sufficient extrinsic material and reliable aid in support of the conclusion which is even otherwise decipherable from the plain reading of the Article 165 of the Constitution.

There is no obligation or compulsion upon the Advocate General to submit his resignation on resignation of Chief Minister with Council of Minister or expiry of term/dissolution of Legislative Assembly and he shall remain in the office till he enjoys the pleasure of the Governor.

Advocate General continues to hold the office at pleasure of Governor, and no limitation or restrictions are placed “at pleasure” doctrine and he can be removed by the Governor at whose pleasure he holds office, at any time, without notice and without assigning any cause.

Article 165 (3) of the Constitution of India makes it explicit that Advocate General shall hold office on the pleasure of the Governor. The appointment of Advocate General is made on the doctrine of pleasure, i.e., “pleasure of the Governor”. It is explicit that Advocate General shall hold office on the pleasure of the Governor. Advocate General is a constitutional functionary exercising the power conferred on him by Article 165 of the Constitution. Advocate General holds his office under the Constitution without being subordinate to the government to discharge the function and duty of his office, he is not controlled by the Governor or by the State government because while giving advice to the State government, upon any legal matters, referred to him, or while performing duties of a legal character, assigned by the Governor or while discharging the functions conferred on him, by or under the Constitution, or any other law, for the time being, in force, he is free to exercise his discretion according to law.

For aforesaid reasons, this Court holds that there is no fixed tenure of Advocate General and neither any fresh notification is required to be issued on assumption of office by new Government nor his tenure comes to an end, on such assumption by the new Government.

This Court does not find any merit in this writ petition
and is accordingly, dismissed. No order as to costs.

(S. Kumar, J)

I agree.

(Sanjay Karol, C.J.)

Sanjay/-

AFR/NAFR	AFR
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