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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.15304 of 2022

In the matter of an application under Articles 226 & 227 of the
Constitution of India.

Debadatta Mishra

....

Petitioner

Versus

State of Odisha & Anr.

....

Opposite Parties

For Petitioner

... Mr.S.K.Mishra, Advocate
Mr.J.Pradhan, Advocate

For Opposite Parties

... Mr. S.P.Panda, Additional
Government Advocate

JUDGMENT

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing and Judgment: 08.09.2022

Biswanath Rath, J. This Writ Petition involves the following prayer:-

“It is therefore, prayed that this Hon’ble Court may graciously be pleased to admit this Writ application, issue notice to the Opposite Parties, call for relevant records and after hearing the counsel for parties, impugned intimation under Annexure-8 Series be quashed and the opposite parties be commanded to accord permission to the petitioner

to conduct cases against the Government as per the list furnished under Annexure-7 and all such cases where he was engaged prior to his appointment as the Government Pleader;

And may further be pleased to pass any other order/order(s), direction/directions(s) as would be deemed fit and proper.

And for this act of kindness, the petitioner shall as in duty bound shall ever pray.”

2. Background involving the case is that Petitioner is an Advocate by profession. He was appointed as Government Pleader in Bargarh District vide notification No.10350/L dated 17.10.2016 issued by Opposite Party No.1 appearing at Annexure-1. Petitioner assumed position to act as a Government Pleader with intimation to Collector, Bargarh on 17.10.2016, communication appears to be at Annexure-2 since was conducting 69(sixty nine) number of cases on behalf of defence against the Government, Petitioner sought for permission to conduct the cases by forwarding the list thereof, pursuant to which vide order No.1120 dated 03.12.2016 he was allowed to conduct and defend cases involved therein. Permission order appears at Annexure-3. The cases were appear in Annexure-A appended to Annexure-3. It appears in the meantime Petitioner resigned from his post of Government Pleader. Acceptance of resignation appears at Annexure-4. In the meantime this Petitioner was again appointed as Government Pleader for Bargarh District vide notification No.7524 dated 28.07.2021 and the Petitioner assumed the office of Government Pleader of Bargarh district on dated 02.08.2021. Above notification and joining report are at Annexure-5 and 6 respectively.

3. It is on such development and the Petitioner joining as Government Pleader in the Bargarh district, he again sought for permission vide letter dated 29.09.2021 to conduct the listed 84(eighty four) criminal cases in terms of Rule 14(d) of the Orissa Law Officers' Rules, 1971 (hereinafter called as Rule 1971). Pursuant to seeking such permission Opposite Party No.1 vide letter dated 03.11.2021 dated 04.04.2022 intimated the Collector, Bargarh, Petitioner may not be allowed to conduct 84 number of cases against the Government. Communication and the decision of the Government are appearing at Annexure-8 series.

4. Petitioner raises objection on denying of the permission to conduct these 84 cases on the ground taken in paragraphs-10 to 12 of the Writ Petition. Sole challenge of the Petitioner appears to be looking to the role of the Petitioner under Rule 13 therein to aid and advise the Government in civil matters only, there should not be denying of permission to the Petitioner in conducting the criminal cases, even though listed cases are all against the Government. Petitioner claims there is no establishment of relationship between the Government and the Petitioner as a lawyer so far as criminal cases are concerned.

5. Referring to clause-(c) and (d) of Rule 14 of Rules 1971 reading along with the provisions at Rule 13 Petitioner while claiming with the role of the Petitioner as a Government Pleader in civil side and conducting as defence lawyer in criminal matters are clearly distinguishable and further for the provision of sub-clause(d) of Rule 14, Petitioner claims that the denial of permission is not in consideration of the scope available under clause-(d) of Rule 14 of the Rule 1971. It is in

the premises Mr. Mishra, learned counsel for the Petitioner contended that the denial of permission vide Annexure-8 series to be interfered and setting aside.

6. There has been filing of counter by the Opposite Party No.2 resisting the claim of the Petitioner. Reading through the counter affidavit, Mr. Panda, learned Additional Government Advocate appearing for the State on repeated reading of the provision on restriction at clause-(c) of Rule 14 of 1971 Act, looking to the roll of the Petitioner in the enlisted criminal cases as defence lawyer to act purely against the interest of the Government, claim of the Petitioner has been rightly rejected. Mr. Panda, Learned AGA advancing his submission on sub-clause (c) and (d) of Rule 14 Mr. Panda, learned Additional Government Advocate submitted that the provisions herein cannot be read in isolation. It has to read along with clause-(c) of Rule 14 therein. In the circumstance, Mr. Panda, learned AGA resisted the claim of the Petitioner, in his attempt to justify the decision of the competent authority vide Annexure-8 series.

7. Considering the rival contentions of the Parties, this Court finds undisputed fact remains to be Petitioner performing a role of Advocate in the district of Bargarh and appointed as a Government Pleader by notification No.7524 dated 28.07.2021. Pursuant to which the Petitioner already assumed the office of Government Pleader, Bargarh on 02.08.2021. There is no dispute that the Petitioner was appointed vide Annexure-5 and he has to discharge the role of a Government Pleader and in this process while conducting cases of Government is also required to aid and advise the Governemnt.

8. It is at this stage of the matter, looking to the letter seeking permission involving the cases shown vide Annexure-7, this Court finds all the cases enlisted therein except one case involved criminal cases of same district where the Petitioner is to act as Government Pleader. Petitioner is already appointed as Government Pleader to discharge a role of defence counsel in the same district Court and the listed cases are also pending under the jurisdiction of same district court. All the cases enlisted therein appears to be involved serious allegation pending in different criminal courts under the jurisdiction of learned Sessions Judge, Bargarh except one case finds place at serial No.83 pending in the Court of ADJ, Rourkela definitely outside the district jurisdiction of Bargarh.

9. While keeping in mind the role of the Government Advocate discharge his role as a Government Pleader in the particular district, this Court cannot loss the sight of Petitioner being a Government counsel also having the access over other establishment protecting the interest of the Government may be in the criminal side. As a matter of Judicial discipline, decency and decorum while in charge of protecting the interest of state, it is better such a counsel stay away from conducting as defence counsel so far criminal cases under the jurisdiction of Bargarh district. There may not be any difficulty for the Petitioner conducting the criminal cases as a defence lawyer outside Bargarh District jurisdiction.

10. This Court here takes into account the provisions at Rule 14 and finds clause-(c) and (d) of Rule 14 therein reads as follows:-

“(c) undertake the defence of any person or appear against the Government in any criminal proceeding except in the criminal cases outside his jurisdiction where the Legal Remembrancer may grant him permission to appear against Government on the specific condition that the work

relating to the Government cases in the Courts in the district which may be within his jurisdiction does not suffer;

(d) appear for the defence in cases in which he might have accepted briefs prior to his appointment unless permission is obtained from the Collector.”

Reading through the provision at clause (c) there is completely bar on a Law Officer to undertake defence in present or appears against the Government in any criminal proceeding except in the criminal cases outside his jurisdiction where the legal remembrancer may grant him permission to appear against the Government and taking into account the little relaxation under clause-(d), this Court finds it is for the competent authority, the Collector of the district to consider the grant of permission involved. This Court finds for the role of the Collector under the provision of clause-(c) and (d) of Rule 14 of the 1971 Act, the Collector in exercise of his appropriate mind finds inconvenience in the grant of permission involved herein appears to be justified one. Petitioner's claim on the basis of earlier grant does not create a right in favour of the Petitioner.

11. For the appropriate exercise of mind by the district Collector involving such serious issue and as the decision is well protected in clause-(c) as well as clause-(d) more particularly, this Court finds, there cannot be any illegality in such decision required to be interfered herein.

12. In the circumstance this Court finds Collector's denial vide Annexure-8 series to the Petitioner to perform as a defence counsel involving the criminal cases therein so far it relates to the cases pending under the jurisdiction of Bargarh district appears to be justified but however so far as denial through Annexure-8 series on conducting of the case as a defence counsel involving ST Case No.77 of 2016 appearing at

serial No.83 page-24 of the brief since this is a criminal case trial to be undertaken in the court of Rourkela completely out of jurisdiction to the Bargarh district there may not be any bar.

13. This Court thus interferes in the impugned order only to the extent in ST Case No.77 of 2016 as no permission of Collector of the particular district is necessary for outside cases. It may be open to the Petitioner to act as defence counsel in so far as ST Case No.77 of 2016 while also performing as a Government Pleader in the district of Bargarh.

14. The Writ Petition partly succeeds. No cost.

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BISWANATH RATH, J.

*Orissa High Court, Cuttack.
Dated the 8th day of September, 2022/Swarna, Junior Stenographer*

