

SUPREME COURT OF INDIA

Samarendra Das, Advocate

Vs.

State of West Bengal

S.L.P.(C) No. 22866 of 2003

(S.H.Kapadia J.)

16.01.2004

JUDGMENT

S.H.Kapadia, J.

1. The question before us is: Whether the post of Assistant Public Prosecutor (hereinafter referred to as "APP") was a Civil Post under the State of West Bengal in terms of Section 15 of the *Administrative Tribunals Act, 1985*.

BACKGROUND FACTS

2. By Notification dated 9th April, 1975, the Governor of West Bengal was pleased to appoint the petitioner to act as an Assistant Public Prosecutor with effect from of his assuming charge in the court of Judicial Magistrate, Malda. The Notification was issued in exercise of the powers conferred by Section 25(1) of the Code of Criminal Procedure, 1973. The petitioner took charge as Assistant Public Prosecutor on 23rd April, 1975. On 29th January, 1977, he was posted in the Court of Chief Judicial Magistrate at Malda as Assistant Public Prosecutor. During this period the petitioner completed two years probation. As per Rule 4(d) of the *Assistant Public Prosecutors (Qualifications, Method of Recruitment and Conditions of Service) Rules, 1974*, on 31st March, 1978 he was appointed as Assistant Public Prosecutor in the Court of Judicial Magistrate at Malda. However, his services were terminated by the Governor of West Bengal with an order No. 21144-J dated 22nd September, 1979 which order was communicated to him by the Administrative Magistrate, Malda with a Memo No. 1680-J dated 25th September, 1979 alongwith a cheque for Rs. 777.70/- as one month's salary in lieu of notice as required under Rule 34B(2) of the West Bengal Service Rules 1971. Suffice it to state that the petitioner being aggrieved and dissatisfied by the impugned orders filed a Writ Petition in the High Court. By judgment and order dated 25th February, 1999, the learned Single Judge allowed the Writ Petition and the impugned order of termination of service was set aside. Being aggrieved, State of West Bengal went in appeal to the Division Bench of the High Court which took the view that the petitioner was not an officer or servant of the court subordinate to the High Court; that the petitioner had worked as Assistant Public Prosecutor and as Assistant Public Prosecutor he

was merely assisting the Court of Judicial Magistrate on behalf of the State of West Bengal. By the impugned judgment, the Division Bench followed the decision of the apex Court in *L. Chandra Kumar vs. Union of India and others*¹ came to the conclusion that it was not open to the petitioner to directly approach the High Court under Article 226 of the Constitution. The Division Bench further took the view that the learned Single Judge had no jurisdiction to entertain, try and hear the Writ Petition filed by the petitioner after coming into force of the *Administrative Tribunals Act, 1985* and, consequently, the Division Bench transferred the matter to the State Administrative Tribunal for disposal. Being aggrieved by the impugned judgment and order passed by the Division Bench dated 14th January, 2003, the petitioner has moved this Court by way of Special Leave Petition under Article 136 of the Constitution.

ISSUE

3. The short point for determination is whether the post of APP was a Civil Post under Section 15 of the *Administrative Tribunals Act, 1985*, (hereinafter referred to for the sake and gravity "the said Act, 1985").

ARGUMENTS

4. The petitioner appeared in person. The main contention before us was that he was an officer or servant of the court subordinate to the High Court. That he was appointed as Assistant Public Prosecutor of the Malda Court vide Notification dated 9th April, 1975 and his duty was to assist the Court on behalf of the State of West Bengal. That his service conditions were under the control of the District Magistrate, Malda; that his appointing authority was a judicial department and his controlling officer was District Officer, Malda. He contended that the Division Bench of the High Court has erred in holding that he was not an officer of the court subordinate to the High Court. He contended that the Division Bench had erred in transferring the Writ Petition to the State Administrative Tribunal. He argued that he was appointed by the Governor of West Bengal under Section 25(1) of the Code of Criminal Procedure, 1973 and, consequently, he was posted as Assistant Public Prosecutor in the Court of Judicial Magistrate, Malda. He contended that the High Court had jurisdiction to consider the matter as he was an officer of the Court subordinate to the High Court. On facts he contended that there was a violation of Article 311(2) of the Constitution and the alleged violation was required to be examined by the High Court exercising jurisdiction under Article 226 of the Constitution of India. It was argued that the petitioner as Assistant Public Prosecutor was an officer of the court of Judicial Magistrate which was court subordinate to the Calcutta High Court and, therefore, the petitioner came within the ambit of the exception in Section 2(c) of Administrative Tribunal Act, 1985. Accordingly, it was argued that the Division Bench of the High Court erred in transferring the writ petition to the State Administrative Tribunal.

FINDINGS

5. For the reasons mentioned hereinafter, we answer the above issue in the affirmative i.e. against the petitioner. We hold that the post of Assistant Public Prosecutor was Civil Post

under the State in terms of Section 15 of the said Act 1985. We hold that the High Court was right in its conclusion that the dispute lay before the administrative Tribunal and, consequently, the High Court was right in transferring the writ petition to the State Administrative Tribunal.

REASONS

6. At the outset, we wish to point out that on 19th March 1974, in exercise of the powers conferred by the proviso to Article 309 of the Constitution, the Governor of West Bengal was pleased to frame the *West Bengal Assistant Public Prosecutors (Qualifications, Method Recruitment and Conditions of Service) Rules, 1974*. The said Rules came into force on and from 1st April, 1974. Rule 3 of the said Rules 1974 deals with method of recruitment. Rule 3 inter alia states that Assistant Public Prosecutor shall be Law Officer on the establishment of Legal Remembrancer and he shall be appointed by the State Government by selection from practicing lawyers of the required standing. Under Rule 4 conditions of service of Assistant Public Prosecutor have been stipulated. Rule 4 states that the Assistant Public Prosecutor shall be whole time Government servant appointed for conducting prosecution in the court of Magistrates. It further states that Assistant Public Prosecutors shall be under the immediate control of the respective Divisional Magistrate subject to the joint control of the District Magistrate. Under Rule 4(d) it has been further stipulated that persons appointed substantively to the permanent posts of Assistant Public Prosecutor shall undergo probation for two years. Under Rule 4(e) it is further stipulated that the Assistant Public Prosecutors shall in the matter of pay, allowances, leave, retirement, pension, gratuity etc. will be governed by the Rules for the time being in force and generally applicable to persons holding appointments under the State Government. A bare reading of Rule 3 and Rule 4 of the *West Bengal Assistant Public Prosecutors (Qualifications, Method of Recruitment and Conditions of Service) Rules, 1974* indicate that the post of Assistant Public Prosecutor is a civil post, and consequently, all service matters concerning such posts shall fall within the jurisdiction, powers and authority of State Administrative Tribunals under Section 15 of the *Administrative Tribunals Act, 1985*. Further, the order of termination passed in the present matter also indicates that the services of the petitioner came to be terminated as Assistant Public Prosecutor, Malda under Rule 6 of *West Bengal Services (Appointment, Probation and Confirmation) Rules, 1979* on payment of one month's salary in lieu of notice. This also indicates that the post of Assistant Public Prosecutor was a Civil Post under the State in terms of Section 15(1) of the *Administrative Tribunals Act, 1985*.

7. Lastly, it may be mentioned that a radical change was introduced in the constitutional law relating to the Services by 42nd Constitution Amendment Act, 1976, which inserted into the Constitution, Article 323A, to take out the adjudication of disputes relating to conditions of service of the public services of the Union and of the States from the Civil Courts and the High Courts and to place it before an administrative Tribunal for the Union or of a State. In order to come under Article 323A (1), the employee must hold his employment under the Union or under a State Government. In the present case, we find that the petitioner held his employment under the State Government of West Bengal. Therefore, the learned Single Judge of the High Court had no jurisdiction to entertain, try and disposed of this matter under

Article 226 of the Constitution. Hence, the Division Bench of the High Court was right in transferring the matter to the State Administrative Tribunal. We do not wish to express any opinion on merits of this case.

8. For the aforesaid facts stated, there is no merit in the Special Leave Petition and the same is consequently dismissed. No order as to costs.

¹1997 AIR (SC) 1127