

SUPREME COURT OF INDIA

State of U.P.

Vs.

Netra Pal Singh

C.A.Nos.2626-2635 of 1999

(S. B. Sinha and S. H. Kapadia JJ.)

21.04.2004

ORDER

1. Leave granted in S.L.Ps.

2. The State of U.P. is in appeal before us being aggrieved by and dissatisfied with the judgment and order of a Division Bench of the Lucknow Bench of the Allahabad High Court dated 8.2.1999 whereby and whereunder the order of the State Government refusing to renew the term of the District Government Counsel has been set aside.

3. The respondents in these ten appeals as also 24 other persons similarly situated filed writ petitions before the Lucknow Bench of the Allahabad High Court questioning the validity of the orders passed by the appellant, herein refusing to renew their term as District Government Counsel (Criminal).

4. The writ petitioners who were appointed as District Government Counsel on different dates inter alia contended in their respective writ petitions that the State of U.P. acted arbitrarily in not renewing their term as their performance had been found to be satisfactory both by the District Officer as well as the District Judge concerned in relation whereto they had also made recommendations in terms of the provisions of the Legal Rememberancer Manual and in that view of the matter the impugned orders refusing to renew their term being contrary to the provisions thereof were not sustainable.

5. By reason of the impugned judgment dated 8.2.1999, a Division Bench of the High Court although accepted the plea of the Appellant to the effect that the appointment of the District Government Counsel and Additional District Government Counsel in the District Court would not amount to appointment in a civil post by the State Government and is merely a professional engagement but proceeded to consider the individual cases on merits. While dismissing 24 writ petitions, the High Court allowed 10 writ petitions upon entering into the merit of the matter. The High Court held that the performance of the respondents having been found to be satisfactory by the District Officer as well as the District Judge and, furthermore, keeping in view of the fact that their names were recommended, the State Government could not have declined to renew their term. The High Court observed that it

would be fallacious to equate the professional engagement by private persons or a party with the appointment of DGC by the State as it is not so free as an individual or a private person in that behalf having regard to the fact that it is answerable and accountable to the public.

6. The High Court further opined that the impugned action on the part of the State being arbitrary and not bona fide the same cannot be sustained. The High Court was further of the view that although primarily it is for the State to see the overall performance of the District Government Counsel and make its own assessment on the question as to whether the term of an incumbent is to be renewed or not but it is also essential that the parameters which are set by the State to judge the suitability of the persons for the purposes of his retention should be reasonable and not arbitrary.

7. Mr. Ravi Prakash Mehrotra, learned counsel appearing on behalf of the appellant would inter alia submit that having regard to the decision of this Court in *Harpal Singh Chauhan and Others etc. vs. State of U.P.*¹ and *State of U.P. vs. Ramesh Chandra Sharma and Others* [3], the High Court committed an error insofar as it sought to substitute its own views over that of the State. The learned counsel would contend that as the District Government Counsel do not hold a civil post, they cannot be said to have been any legal right in the matter of renewal of their term.

8. Mr. Ashok Kumar Sharma, learned counsel appearing on behalf of the respondents, on the other hand, would support the judgment of the High Court contending that the action on the part of the appellant was arbitrary and, thus, violative of Article 14 of the Constitution of India.

9. This Court while granting leave stayed the operation of the judgment by an order dated 26.04.1999. The said interim order of stay passed by this Court was confirmed by an order dated 31.01.2000. The respondents, therefore, have not been holding the office of the District Government Counsel for a long time. We, therefore, at this stage would not be justified in going into the merit of the matter as for all intent and purport, the writ petitions filed by the respondents herein have become infructuous and, thus, are liable to be dismissed as such. They, however, may, as and when vacancies arise, file applications in terms of the Legal Remembrance Manual for their appointment as Public Prosecutors or Additional Public Prosecutors.

10. The learned counsel appearing on behalf of the parties, however, have made submissions as regard the scope of judicial review in such matter. Scope of judicial review in such matters had been considered by a 3-Judge Bench of this Court in *State of U.P. and Anr. vs. Johri Mal* (Civil Appeal Nos. 963-64 of 2000) disposed of today.

11. Keeping in view of the fact that the legal principles as regard the power of judicial review of the High Court have been laid down by this Court in the case of *Johri Mal* (supra), we are of the opinion that nothing further is required to be said in these appeals. These appeals are, therefore, disposed of accordingly. However, there shall be no order as to costs.

¹1993 Indlaw SC 92