

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

Writ Appeal No. 1138 of 2024

JUDGMENT: *(per Hon'ble Sri Justice Laxmi Narayana Alishetty)*

Heard Sri Bramhadandi Ramesh, learned senior counsel appearing for Smt. R.Swarnalatha, learned counsel on record for the appellants, and Smt. Adepu Divya, learned Special Government Pleader for the respondent-State.

2. The present Writ Appeal is filed against the common order dated 19.08.2024 passed by the learned single Judge of this Court in Writ Petition Nos. 16935, 17710 and 17764 of 2024.

3. In nut-shell, the facts of the case are that the appellants were appointed as Government Pleaders, Special Government Pleaders, Assistant Government Pleaders and Additional Government Pleaders (hereinafter referred to as 'Law Officers') in various Courts of the District Judiciary on different dates during the years 2021 to 2023 for a period of three (3) years on payment of monthly honorarium. However, the Government

had discontinued the services of the Law Officers vide G.O.Rt.No.354, Law Department, dated 26.06.2024.

4. That as per proviso to Instruction No.9 of the Telangana Law Officers (Appointment and Conditions of Service) Instructions, 2000, issued in G.O.Ms.No.187, Law Department, dated 06.12.2000, the services of Law Officers can be terminated by the Government by one month's notice or one month honorarium in lieu of notice. The Government vide G.O.Rt.No.354 requested the District Collectors concerned to pay one month honorarium to the Law Officers and make necessary incharge arrangements by placing eligible Advocates as incharge of the posts for a period of six (6) months or till regular appointments are made by the Government, whichever is earlier. The District Collectors were also directed to furnish panels consisting of five (5) Advocates in each panel forthwith for making regular appointment of new Law Officers.

5. In view of discontinuation of services of Law Officers, new Law Officers have been appointed on temporary basis to various Courts in the District Judiciary. Aggrieved by the proceedings of

discontinuation, the appellants filed the aforesaid Writ Petitions seeking to set aside G.O.Rt.No.354 and to direct the State to continue the services of the appellants, in terms of their respective orders of appointment, with all consequential benefits including payment of honorarium, etc.

6. Learned single judge dismissed the Writ Petitions vide common order dated 19.08.2024 by observing as under:

“21....Even looking from the angle of change of Government, it needs to be seen that the Law Officers who are basically engaged to represent the Government and take care of the Government’s interest should enjoy the trust and confidence of the Government. The Government being the client is the best person to appoint its counsel.

*22. In case of an Advocate holding a private brief, the client need not give any reason for withdrawing the vakalat. Thus, it would be unreasonable to deprive the Government of such freedom and discretion to appoint counsel of its choice. It is the contention of the learned Advocate General that the Government as a policy decision has decided to disengage services of the Law Officers who were appointed during the previous regime. Though the petitioners allege mala fides against the Government, such allegations are vague, without any material and substance. The appointment/engagement of the petitioners/Law Officers being purely contractual, it cannot be held that there is any illegality in termination of their services in view of proviso to Instruction No.9 of G.O. Ms. No.187. In the opinion of this Court, if the Government does not have freedom to appoint counsel of its choice, it would amount to placing fetters on their decisions and thereby cause interference in the administration (**Johri Mal’s case** – Supra*

2). Moreover, the petitioners do not have any enforceable right to be continued as Law Officers as their disengagement was in accordance with proviso to Instruction No.9 of G.O. Ms. No.187 (Pushpendar Kaur's case - Supra 5 and M. Sukravaradhan Reddy's case - Supra 6)."

7. However, the learned single Judge directed the Government to pay the arrears of salary, if any, and honorarium to the petitioners and to other Law Officers whose services were disengaged by G.O.Rt.No.354.

8. Aggrieved by the said common order of the learned single judge, the appellants preferred the present Writ Appeal.

9. Learned senior counsel appearing for the appellants submitted that learned single judge failed to consider that neither one month notice was issued nor honorarium was paid in lieu of one month's notice by the respondent-State to the Law Officers, which is contrary to Instruction No.9 in G.O.Ms.No.187, Law Department, dated 06.12.2000; that learned single judge, while passing the impugned common order, did not consider the judgment of Hon'ble Supreme Court in *Kumari Shrilekha*

*Vidyarthi v. State of U.P.*¹; that learned single judge erroneously came to a conclusion that the posts of the Law Officers are pleasure posts and the same have been compared with an Advocate holding a private client, which is far away from truth, genuinity and facts. Learned senior counsel further contended that learned single judge ought to have considered that a change of Government, i.e., change of political party which may come into power in the general elections, does not change the character of the continuing body of the State Government and cannot en-masse discontinue the Law Officers; that the learned single Judge failed to see that the order with one stroke terminating 55 Law Officers en-masse is illegal and unconstitutional; and that the learned single judge ought to have considered that the change of government does/should not result in deprivation of the vested rights by reason of the appointments that were made earlier. In support of his contentions, learned counsel relied on the following judgments:

Shrilekha Vidyarthi (Kumari) v. State of U.P., (cited supra)

¹ (1991) 1 SCC 212

Battarvsettu Chenna Kesavarao v. Government of Andhra Pradesh²

State of U.P. v. Johri Mal³

Atyant Pichhara Barg Chhatra Sangh v. Jharkhand State Vaishya Federation⁴

S.N. Mukherjee v. Union of India⁵

10. *Per contra*, learned Special Government Pleader appearing for the respondent-State contended that the Government has discontinued the services of 55 Law Officers working in the District Judiciary of the High Court for the State of Telangana who are serving for first or second term, in exercise of the powers conferred by Instruction No.9 in G.O.Ms.No.187, in public interest and for effective implementation of the policy of the Government; that the Law Officers do not have any legally enforceable or vested right for their continuation. Learned Special Government Pleader further contended that there is no violation of statutory or Constitutional right and the terms of appointment and conditions of services of the Law Officers are purely guided by the executive instructions under G.O.Ms.No.187; that the

² 1995 SCC OnLine AP 742

³ (2004) 4 SCC 714

⁴ (2006) 6 SCC 718

⁵ (1990) 4 SCC 594

order of appointment of the Law Officers clearly stipulates that they are appointed for a term of three years from the date of assumption of charge of the post or till termination of their services, whichever is earlier; and that the Law Officers having accepted such condition incorporated in their appointment orders, now, cannot claim any legitimate expectation to continue their services.

11. Learned Special Government Pleader further submitted that the discretion of the State Government in engagement of its Law Officers for effective adjudication, administration of justice and defending the policy matters, involve important facets of trust, client-attorney privilege, pleasure and confidence of the Government; that there is no mandatory rule to call for explanation from the individual before dispensing with their services, since the same is a termination simplicitor of client and counsel relationship without attaching any stigma on the Law Officers; that engagement of Law Officers can be terminated even before expiry of the term when the client considers that they have no confidence upon them or for any other reasons; that the

appointment of Law Officers is as per the pleasure of the Government; that the Orders issued in G.O.Rt.No.354 are perfectly legal, valid and in accordance with the prevailing rules, instructions and settled legal position. Learned Special Government Pleader finally contended that the Law Officers are not entitled to any relief and further, the appellants failed to raise any valid points to interfere with the order of learned single judge. In support of his contentions, learned Special Government Pleader relied upon the following judgments:

State of Uttar Pradesh v. Rakesh Kumar Keshari⁶

Government of Andhra Pradesh v. Smt. Pushpendar Kaur⁷

State of U.P. v. Johri Mal⁸

12. Apropos the above rival submissions made by learned counsel for both the parties, the only question that falls for consideration is whether termination of services of appellants is illegal and the impugned common order passed by the learned

⁶ (2011) 5 SCC 341

⁷ 2003 SCC OnLine AP 946

⁸ (2004) 4 SCC 714

single Judge in upholding the termination of 55 Law Officers requires interference by this Court.

13. On perusal of the material placed on record, it can be observed that in the impugned common order, the learned single Judge had discussed the judgments of the Hon'ble Supreme Court in *Shrileka Vidyarthi (supra)* and *Battaravsettu Chenna Kesavarao (supra)*, which were relied upon by the appellants. The learned single judge had also discussed the judgments of the Hon'ble Supreme Court in *Rakesh Kumar Keshari (supra)*, *Johri Mal (supra)* and *Pushpendar Kaur (supra)*, which were relied upon by the respondent-State. Upon discussing the abovementioned cases, the learned single judge observed that relationship between the Law Officers and the State is purely professional and contractual and the post of Law Officer is not a civil post. The learned single judge also observed that Law Officers are engaged to represent and protect the interests of the Government in the subordinate Courts and dismissed the writ petitions thereby upholding the termination order vide G.O. Rt. No.354. However, the learned single judge directed the State to pay the arrears of

salary, if any, and the honorarium to the Law Officers who were affected by the immediate discontinuation.

14. It was the contention of the appellants that their services were terminated with immediate effect, vide G.O.Rt.No.354, without being served with one month's notice prior to termination, which is contrary to instructions in G.O. Ms. No.187. In this regard, in the impugned common order, the learned single judge observed that individual appointment orders of the Law Officers reveal that they can be terminated before expiry of their term. The learned single judge observed that even if G.O. Rt. No.354 is set aside, nothing prevents the Government to terminate the services of Law Officers by giving individual notices and thus, even if relief as prayed for by the Law Officers is granted, it would be a mere formality.

15. It is pertinent to refer to instruction Nos.8 and 9 of G.O.Ms.No.187, which are relevant for this case and the same reads as follows:

"Term of Law Officers.

8. *Law Officers shall ordinarily be appointed for a term of three years. The Law Officers so appointed may be considered for a second term, if the Government are satisfied that he has proven efficiency, high rate of success and good performance and for a third term in exceptional cases:*

Provided that Government Pleaders, Assistant Government Pleaders, Public Prosecutors and Additional Public Prosecutors in Subordinate Courts may be considered for appointment for a second term if their performance is very good and in the case of persons belonging to Scheduled Castes and Scheduled Tribes if their performance is satisfactory.

Termination of services.

9. *Notwithstanding anything contained in instruction 8, either the Government or the Law Officer may terminate the engagement with one month's notice:*

Provided that the Government may terminate the engagement by paying one month honorarium in lieu of one month's notice.

16. A perusal of instruction No.9 in G.O.Ms.No.187 indicates that the Government is empowered and entitled to terminate the engagement of Law Officers by issuing one month's notice and also by paying one month honorarium in lieu of one month's notice. Moreover, there is no employer-employee relationship between the State and Law Officers as the same is a contractual relationship. Law Officers are appointed without following any selection procedure and their continuation is subject to pleasure and confidence of the Government. It can also be observed from

para 3 of G.O. Rt. No.354 that the District Collectors concerned were requested to pay one month honorarium to the Law Officers.

17. The learned senior counsel for the appellants placed strong reliance on the decision of Hon'ble Apex Court in *Shrileka Vidyarthi (supra)*. In the said judgment, the Hon'ble Apex Court referred to the U.P. Government Legal Remembrancer's Manual, which was followed to appoint Law Officers in the State of Uttar Pradesh and observed that a specific procedure is to be followed in appointing the Law Officers as per para 7.03 of the U.P. Manual, i.e., the candidates shall make an application to the District Officer, who, in turn, would consider the applications in consultation with the District Judges. This procedure gives due weightage to the opinion of the District Judge on suitability and merit of each candidate. However, in the present case, no material has been placed on record nor agitated that the appellants have been appointed by following any selection process akin to U.P. Manual. Moreover, Law Officers in the present case are governed by the instructions laid down in

G.O.Ms.No.187 and the appellants did not place any material on record to show that U.P. Manual and the abovementioned G.O. are similar to each other. Since the facts and the process adopted by the U.P. Government in selecting the Law Clerks as observed in *Shrileka Vidyarthi's case (cited supra)*, relied upon by the learned counsel for the appellants, are entirely different to that of the present case, the same has no application to the present case.

17.1. Learned senior counsel appearing for appellants also relied upon the judgments of Hon'ble Apex Court in *S.N. Mukherjee's case (supra)* and *Atyant Pichhara's case (supra)*. In *S.N.Mukherjee's case (supra)*, the finding and sentence recorded by the General Court Martial under the Army Act was challenged therein and *Atyant Pichhara's case (cited supra)* involved questions of law with respect to reservation in professional educational institutions for the Extremely Backward Classes in the State of Jharkhand. The issues involved as well as the facts and circumstances of the aforesaid cases are completely different to that of the instant case and therefore, they have no application to the present case.

17.2. Further, the learned senior counsel referred to Para 78 of in *Johri Mal's case (cited supra)*, wherein *Shrileka Vidyarthi's case (cited supra)* was discussed, and the same reads as follows:-

“78. The State, therefore, is not expected to rescind the appointments with the change in the Government. The existing panel of the District Government Counsel may not be disturbed and a fresh panel come into being, only because a new party has taken over change of the Government.”

18. In *Johri Mal's case (cited supra)*, the facts go to show that the decision was taken with regard to appointment of District Government Counsel (DGC) for civil, criminal and revenue courts in terms of the Legal Remembrancer's Manual in the state of Uttar Pradesh. Even otherwise, if the law laid down in *Shrileka Vidyarthi (supra)* is considered, the Hon'ble Apex Court had observed that appointment of District Government Counsel is attached to a public element which itself is sufficient to attract Article 14 of Constitution of India and validity of impugned termination order can be questioned within the scope of judicial review. However, Hon'ble Apex Court in *Johri Mal's case (cited supra)* categorically observed that the court shall not ordinarily interfere with a policy decision of the State under the ambit of

judicial review and appointment of District Government Counsel is not a civil post.

19. The decision of the Hon'ble Supreme Court in *Johri Mal's case (supra)* was followed in *Rakesh Kumar Keshari's case (cited supra)*, wherein it was held that it was not open to the respondents to file writ petition under Article 226 of the Constitution for compelling the appellants to utilize their services as Advocates irrespective of choice of the State and the State has discretion to select its own counsel. Therefore, the ratio laid down in *Rakesh Kumar Keshari's case (cited supra)* squarely applies to the present case.

20. The learned Special Government Pleader relied upon the judgment of Division Bench of High Court of Andhra Pradesh in *Pushpender Kaur's case (cited supra)*. In the said case, the Government Pleader was appointed as per the procedure laid down in G.O. Ms. No. 187, dated 6-12-2000. The procedure followed for appointment in the said case is akin to the present case. Therefore, the ratio laid down in *Pushpender Kaur's case*

(*cited supra*) squarely applies to the present case and outweigh the decision in *Battarvsettu Chenna Kesavarao's case* (*cited supra*).

21. In the impugned order, the learned single judge referred to a Division Bench judgment of combined High Court for the State of Telangana and the State of Andhra Pradesh in *W.P. No.4444 of 2018 (M. Sukravaradhan Reddy v State of Telangana)*, wherein it was observed as under:

““It must be borne in mind that the legal profession is essentially a service-oriented profession. The relationship between the lawyer and his client is one of trust and confidence. The client engages a lawyer for personal reasons, and is at liberty to leave him also, for the same reasons. He is under no obligation to give reasons for withdrawing his brief from his lawyer. The lawyer, in turn, is not an agent of his client but his dignified, responsible spokesman. The relationship between a lawyer and a private client, is equally valid between him and the Government or public bodies which engage the services of lawyers purely on a contractual basis either for a specified case or for a specified or an unspecified period. The nature of the contract is of professional engagement, and not that of employment. The lawyer of the Government or a public body is not its employee, but a professional practitioner engaged to do the specified work. (State of U.P. v. U.P. State Law Officers Association; Government of Andhra Pradesh v. Pushpindar Kaur). Lawyers, on the full-time rolls of the Government or public bodies cannot be compelled to

continue their assignment merely because a particular term is stipulated. A lawyer, whose services have been engaged by the Government, can at any time withdraw from a particular case, and may even refuse to serve in case of any crisis of confidence (Pushpindar Kaur). Conversely the Government or public bodies can, at their choice, disengage the services of their Counsel."

22. In the impugned order, the learned single judge also referred to a Division Bench judgment of Madras High Court in *Thol. Thirumaavalavan v. Principal Secretary, Department of Law, Government of Tamilandu*⁹, wherein it was observed as under:

"25. The relationship between the government and the Law Officer is purely a professional relationship and not that of a master and servant. The Law Officers engaged by the government, during their performance of the duty, are not holding any civil post. They are also not government servants and/or government employees. The appointment of these Law Officers is at the pleasure of the government. The sine qua non is that the Law Officers selected by the government should be duly qualified, competent and worthy to represent it. The determination of their engagement is also at the pleasure of the government. So also, the Law Officer engaged by the government has a right to terminate his services with the government. It cannot be said that their appointment is a tenure appointment."

⁹ 2023 SCC OnLine Mad 7756

23. In view of the aforesaid decisions referred to by the learned single Judge in the impugned order, it is clear that it is for the Government to choose the counsel of its choice and the relationship between the Government and Law Officers is purely contractual and they do not hold any civil posts. It is also clear that these appointments are at the pleasure of the Government which can be terminated without giving any reason.

24. It is needless to note that engagement of services of an advocate by client is based on trust and confidence. It is the prerogative of the client to engage or disengage services of an advocate and if the client loses confidence and trust, he is at liberty to engage services of another advocate of his/her choice. An advocate cannot insist a client to continue his/her services when the client has lost confidence, trust and expressed his unwillingness to continue his/her services. However, an advocate is entitled to the fee for the services rendered to the client before his/her disengagement. In the same lines, when the Government loses confidence upon the Law Officers, it is entitled to terminate the services and appoint a new set of Law Officers and thus, the Law Officers cannot insist the Government to

continue to engage their services. Therefore, learned single judge has rightly observed that Law Officers who are basically engaged to represent the Government and take care of the Government's interest should enjoy the trust and confidence of the Government and thus, it would be unreasonable to deprive the Government of such freedom and discretion to appoint counsel of its choice.

25. In view of the above discussion and legal position, this Court is of the considered opinion that the appellants failed to point out any illegality or irregularity in the impugned order passed by learned single judge and therefore, the Writ Appeal is liable to be dismissed.

26. Accordingly, the Writ Appeal is dismissed.

27. Pending miscellaneous applications, if any, shall stand closed. No costs.

ABHINAND KUMAR SHAVILI, J

LAXMI NARAYANA ALISHETTY, J

Dated:27.11.2024
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