

(1992) 08 AHC CK 0050

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No, 3064 (M/B) of 1992

Syed Moazzam Ali

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision: Aug. 28, 1992

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: K.C.Bhargava, J and R.K.Agarwal, J

Final Decision: Allowed

Judgement

K.C Bhargava, J.

This writ petition has been filed by the petitioner against the order of termination as District Government Counsel (Criminal), Rampur, vide order dated 24th July, 1992 contained in annexure4 to the writ petition.

2. Briefly stated the facts are that the petitioner was appointed as District Government Counsel (Criminal), Rampur on 31st July, 1990. Thereafter this order was withdrawn on 4101990 and he was again appointed as District Government Counsel (Criminal), Rampur. He joined the post on 2221991. The appointments of all the District Government Counsel (Criminal) were extended under the terms of para 7.08 of the L.R. Manual, vide order dated 28111991, contained in annexure3 to the writ petition. By order dated 2471992 the petitioner was directed to be discontinued from the said engagement. The said order is alleged to be mala fide and has been challenged in the present petition.

3. Learned counsel for the petitioner as well as learned Standing Counsel have been heard. In this case the Court had not directed to file counter affidavit but after perusing the record the Court comes to the conclusion that it is not necessary to do so because the writ petition can be disposed of on the basis of the material made available to the Court by the learned Standing Counsel.

4. From the perusal of the report of the District Officer, Rampur dated 471992 it will appear that this report was submitted against him on account of the fact that a bail application in Criminal Misc. Case No. 730 (Bail) of 1991 (Jai Prakash v. State) under Section 302 I.P.C., Police Station Milak, Rampur was allowed by the Sessions Judge. This order of the Sessions Judge is dated 1981991. A perusal of this order makes it clear that the bail application was adjourned four times for nonproduction of the postmortem examination report. The learned Sessions Judge mentioned in his order that the performance of the District Government Counsel (Criminal) was not proper. It will be better to reproduce the words of the Sessions Judge.

◆ This case was adjourned four times and there is no excuse for the absence of the post mortem report. It does not give proper performance on the part of the D.G.C. (Criminal) and he has to be criticised for not preparing the case properly. ◆

A perusal of this report clearly indicates that the doctor who conducted the post mortem examination was also summoned in the Court. It appears that the doctor had also not brought the post mortem examination report probably due to the fact that the same was not summoned from him. The petitioner had also submitted an explanation which is annexure5 to the writ petition in which the petitioner mentioned that on 1981991 the case diary was with the C.O., Milak and it was not brought to him by the pairokar till the bail application was heard, and the pairokar neither appeared in the court nor brought the post mortem examination report. Therefore he was not to be blamed for this. Naturally the blame in this case cannot be put on the shoulders of the petitioner because he was only required to produce the post mortem examination report before the Sessions Judge which could not be produced before the court due to the fault of the pairokar and it was not the fault of the petitioner. This is the only report which was sent by the District Officer to the State Government and on which the State Government took decision to discontinue the petitioner. It may also be useful to mention here that the District and Sessions Judge, Rampur made recommendation on 21st December, 1991 to the District Officer, Rampur wherein this matter was not referred to and the recommendation was made in favour of the petitioner. Moreover, the material available on the record should have been scrutinised by the District Officer before sending a report to the State Government. It appears that in this case the District Officer as well as the State Government have not applied mind to the facts of the case and have wrongly blamed the petitioner.

5. In view of what has been said above, the writ petition succeeds and is allowed. The order dated 24th July, 1992, contained in annexure4, is hereby quashed. No order as to costs.