

(2003) 12 AP CK 0031

Andhra Pradesh High Court

Case No: Writ Petition No. 25397 of 2003

G. Raja Ram

APPELLANT

Vs

Government of Andhra Pradesh,
Law Dept. and Others

RESPONDENT

Date of Decision: Dec. 4, 2003

Acts Referred:

- Andhra Pradesh Law Officers (Appointment and Conditions of Service) Rules, 2000 - Rule 9
- Civil Procedure Code, 1908 (CPC) - Order 27 Rule 4, 2(7)
- Criminal Procedure Code, 1973 (CrPC) - Section 24, 24(3), 24(4), 24(5)

Citation: (2004) 4 ALT 472 : (2004) 1 ALT(Cri) 428 : (2004) 1 APLJ 140

Hon'ble Judges: V.V.S. Rao, J

Bench: Single Bench

Advocate: Meharchand Noori, for the Appellant; Asst. G.P. for Revenue for Respondent Nos. 1 to 3, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V.V.S. Rao, J.

The petitioner was appointed as Public Prosecutor for a period of three years from the date of assumption of charge in 1996. He assumed charge on 20-8-1996 as Additional Public Prosecutor of the court of Additional District and Sessions Judge, Chittoor. After expiry of the term, District Magistrate and Collector, second respondent continued the petitioner as Additional Public Prosecutor. Again the first respondent vide orders in G.O.Rt.No. 882 Law (Law & J-Courts.A.2) Department dated 29-6-2000 appointed the petitioner as Additional Public Prosecutor for a period of three years from the date of assumption of charge on 6-7-2000. The second term of three years as Public Prosecutor expired on 5-7-2003. The

Government of Andhra Pradesh (GoAP) issued Memo No. 3709/L1/2002 dated 23-5-2002 directing all the District Collectors not to continue any Law Officer who is holding the office for the second term on expiry of the term of office. In pursuance of the said memo, the second respondent issued proceedings in Roc.No. C5/9117/99 dated 24-11-2003 terminating the petitioner as Additional Public Prosecutor and also advised the Public Prosecutor of the court of District and Sessions Judge to be incharge of the post of Additional Public Prosecutor in the court of Additional District and Sessions Judge, Chittoor. The petitioner assails the proceedings of the District Collector as illegal and without jurisdiction.

2. The learned counsel for petitioner Sri Meherchand Noori submits that as per the terms of appointment in G.O.Rt.No. 882 dated 29-6-2000, petitioner is entitled to continue till a successor is appointed and assumes office. Secondly he would urge that the appointing authority being GoAP, it is incompetent for the District Collector to pass impugned order terminating the services of the petitioner. Lastly, he would contend that the impugned proceedings is in contravention of Rule 9 of Andhra Pradesh Law Officers (Appointment and Conditions of Service) Rules, 2000 (hereafter called "the rules").

3. The learned Assistant Government Pleader for Home Ms. Vani Reddy relies on the unreported Division Bench judgment of this Court dated 28-8-2003 in O. Abbai Reddy v. The Government of A.P. (W.P.No. 642 of 2003) in support of her submission that the Government Memo dated 23-5-2002 has been upheld by the Division Bench and therefore the impugned order of the District Collector does not suffer from any vice warranting any interference by this Court in this writ petition.

4. The power of the Government to appoint a Public Prosecutor/Additional Public Prosecutor for every district is traceable to Sub-section (3) of Section 24 of Code of Criminal Procedure, 1973 (Cr.P.C.). Section 24 does not fix the term of office of Additional Public Prosecutor. Though the appointment is required to be made from out of panel of names submitted by the District Magistrate and Collector in consultation with District and Sessions Judge. It is not however denied before me that be it under the statutory rules by the State Government (which are no more in force) or under administrative instructions issued from time to time and a rationale principle, the Government prescribed three year term for a Public Prosecutor/ Additional Public Prosecutor u/s 24(3). In case of delay in appointing successor, the rules/ administrative instructions empowered the District Collector to continue the Public Prosecutor/ Additional Public Prosecutor to discharge the functions till a successor is appointed. Indeed, as is in this case, the Government itself while issuing orders u/s 24(3), provided for such a situation where the Additional Public Prosecutor was directed to continue till a successor is appointed. These facts are not denied.

5. A reading of the impugned order passed by the second respondent would show that initially the petitioner was appointed in August 1996 and he assumed charge on

20-8-1996. Even after expiry of the term, he continued as Additional Public Prosecutor. Again the Government issued G.O.Rt.No. 882 dated 29-6-2000 appointing the petitioner as Additional Public Prosecutor for second term for three years. He assumed charge on 6-7-2000 and his term expired on 5-7-2003. After expiry of the term, the petitioner has no right to continue as Public Prosecutor. But in G.O.Rt.No. 882 dated 29-6-2000, Government ordered that the petitioner shall continue to function as Additional Public Prosecutor till a successor is appointed to assume office. He was only directed to continue to function as Additional Public Prosecutor and no more, the same is an interim measure, in the considered opinion of this Court does not confer any right on the petitioner to seek a Writ of Mandamus from this court.

6. In [Mundrika Prasad Singh Vs. State of Bihar](#), (petitioner in SLP) was appointed as Government Pleader for Patna district to represent Government in all cases. Later nine Assistant Government Pleaders were appointed and one of them was assigned a bunch of land acquisition cases. Petitioner was requested to make over those cases to new Assistant Government Pleader. Petitioner challenged the power of the Government to appoint another lawyer. The High Court declined to interfere in the matter. In S.L.P., the Supreme Court while observing that prospective loss of fee and commercial aspects of the case is gravamen of the petitioner's legal grievance, dismissed SLP. The observations made by the Supreme Court are as under:

We fully appreciate the perspective presented by counsel. But before we come to that, let it be bluntly stated that if Government does an act offending the public office filled by a Government Pleader what becomes the incumbent in the land of Gandhi is a dignified renunciation of office, not a chase for the lost briefs through the "writ" route. Moreover, the legal position is plain. As explained earlier, a bunch of Government Pleaders is perfectly permissible consistently with Section 2(7) and Order 27, Rule 4 Civil Procedure Code. Nor do the Bihar Rules regarding Government Pleaders help. They are purely administrative prescriptions and serve as guidelines and cannot found a legal right, apart from the fact that they do not contradict Government's power to appoint more than one Government Pleader. Allocation of work or control inter se is an internal arrangement and we see no error even in that behaviour. Not to have provided more government counsel when the volume of litigation demanded it, would have clogged the dockets in Court and helped one pleader to corner all the briefs without reference to expeditious or efficient disposals.

7. The next question is whether the District Collector has power to pass the impugned order. As noticed hereinabove, as and when a regularly appointed Public Prosecutor/ Additional Public Prosecutor comes to end, it is the Collector who make temporary arrangements by asking Additional Public Prosecutor to continue till a successor is appointed. However, this could not be done in view of the policy of the Government as adumbrated in the Government memo dated 23-5-2002 not to

continue Public Prosecutors/ Additional Public Prosecutors who completed two terms, District Collector issued the impugned order. There is no infirmity in the same nor should it fall on the ground of Collector's incompetency. In *O. Abbai Reddy v. Government of A.P.* (supra) upholding the Government memo dated 23-5-2002, the Division Bench of this Court as under:

The respondent clarified the position in the instructions wherein there is a categorical stand that after appointment of Public Prosecutor his term would be for a period of six years (which period includes the second term of three years), and that he will cease to be a Public Prosecutor upon completion of six years thereby enabling the District Collector to ask the nearby public Prosecutor to take additional charge of the said post till arrangement is made in accordance with law for appointment of a fresh Public Prosecutor. The person who asked to be incharge of the post by the District Collector may also be a Public Prosecutor. Therefore, there is no force in the submission made by the learned counsel for the petitioner that this arrangement is contrary to the provisions of Sub-sections (4) and (5) of Section 24 Cr.P.C. Learned counsel, in support of his contention, relied on a decision of the Supreme Court in *Rajdeo Sharma (II) v. State of Bihar* [(2000) 7 SCC 604] and states that the Supreme Court laid down guidelines that on expiry of the term it will be permissible to continue services of the same Public Prosecutor till a fresh appointment is made. The Supreme Court was dealing with a situation where there was no arrangement like the one which has been envisaged by the two impugned Memos under challenge. Insofar as the State of Andhra Pradesh is concerned, the two memos do take care of any eventuality in the event of the term of Public Prosecutors coming to an end. In other words, on expiry of the term, the Public Prosecutor who is nearby the area is made in-charge of the said post and such an arrangement is not prohibited in law. The mere fact that the District Collectors have been asked to make this arrangement does not amount to divesting them with the power of the State Government since the person who is asked to take additional charge of the post is also a Public Prosecutor. Insofar as the Memo dated 1st July, 2002 is concerned, it also says that an eligible Advocate may also be placed in charge of the post of Law Officer. Such instruction contained in this Memo, of course, apply to the post other than the posts of Public Prosecutors also, since the term "Law Officer" also includes "Government Pleaders" and "Assistant Government Pleaders". Thus, there is nothing wrong in the respondent having issued instructions, which, of course, are meant for a stop gap arrangement. We, therefore, see no merits in the writ petition. It is accordingly dismissed.

8. Lastly reliance placed on the rules is misconceived. It is brought to my notice that these rules have been superseded and the field is governed by the Rules which do not confer any right on the Law Officer who completes his term to continue as of right as such Law Officer. The District Magistrate who is assigned the duty to see that the Government Civil cases and Criminal cases are properly conducted, is very much within the competency to make arrangements. In so doing, he is bound by the

policy guidelines issued by Government of A.P. which is plenary authority to deal with offenders in all cases.

9. The writ petition for the above reasons fails and is accordingly dismissed. There shall be no order as to costs.