

(2018) 11 UK CK 0220
Uttarakhand High Court
Case No: Special Appeal No. 959 Of 2018

Mahendra Singh Bisht
& Others

APPELLANT

Vs

District Magistrate,
Tehri Garhwal &
Others

RESPONDENT

Date of Decision: Nov. 26, 2018

Hon'ble Judges: Ramesh Ranganathan, CJ; Lok Pal Singh, J

Bench: Division Bench

Advocate: M.S. Chauhan, Paresh Tripathi

Final Decision: Dismissed

Judgement

Ramesh Ranganathan, C.J.

1. This special appeal is preferred against the judgment passed by the learned Single Judge in Writ Petition (M/S) No.1739 of 2017 dated 13.11.2018.
2. The appellants-writ petitioners, five in number, were all appointed as Assistant Prosecution Officers for the District Court, Tehri Garhwal for a period of one year from 15.06.2016 till 15.06.2017. During the currency of their term, an MLA from Tehri Garhwal (who is arrayed as the fourth respondent eo-nomine in the writ petition), addressed a letter dated 30.04.2017 to the Chief Minister informing him that, since the petitioners were appointed as Assistant Prosecution Officers illegally by the previous Government, their services should be terminated. This letter was followed by another letter dated 20.05.2017 wherein the fourth respondent requested the Chief Minister to take up the regular process of selection of Assistant Prosecution Officers.

3. The fact, however, remains that the appellants-writ petitioners were continued for the entire duration of their one year term from 15.06.2016 till

15.06.2017, despite the letters addressed by the fourth respondent. They were, in fact, continued as Assistant Prosecution Officers even when they

invoked the jurisdiction of this Court, by filing the present writ petition, on 19.07.2017 (more than a month after expiry of their term on 15.06.2017).

4. Pursuant to an interim order passed by this Court, the appellants-writ petitioners were continued in service till the writ petition came to be,

eventually, dismissed by the judgment under appeal dated 13.11.2018. In the meanwhile, an advertisement was issued by the Government on

12.07.2017 inviting fresh applications for appointment of Assistant Prosecution Officers for a one-year duration; the District Judge, Tehri Garhwal

recommended fifteen names (in the ratio of 1:3) for appointment to the five posts of Assistant Prosecution Officers on 27.02.2018; and the District

Magistrate forwarded the very same fifteen names to the Government on 15.03.2018.

5. Mr. Paresh Tripathi, learned Chief Standing Counsel appearing on behalf of the State of Uttarakhand, would submit that, after the writ petition was

dismissed by judgment dated 13.11.2018, the Government issued orders appointing five Assistant Prosecution Officers on 20.11.2018, and

consequential proceedings were issued by the District Magistrate, Tehri Garhwal on 22.11.2018.

6. In the order under appeal, the learned Single Judge has noted that the appellants-writ petitioners were not able to show as to what provision of law

had been violated by the Government in taking recourse to the procedure it had presently taken i.e. in not renewing the term of the appellants-writ

petitioners, and commencing a fresh appointment procedure; until and unless the procedure adopted by the Government is said to be unfair, or violative

of the law, no interference was justified; and reliance placed on behalf of the appellants-writ petitioners, on the judgment of the Supreme Court in

State of Punjab & another vs. Brijeshwar Singh Chahal, reported in (2016) 6 SCC 1 was misplaced, as this Court has earlier, in State of Uttarakhand

& another vs. Lalit Singh Bisht, opined that the directions given by the Apex Court in Brijeshwar Singh Chahal were not to the State of Uttarakhand

but only to the State of Punjab & Haryana.

7. Before us Mr. M.S. Chauhan, learned counsel for the appellants-writ petitioners, would allege malafides against the fourth respondent, and would

contend that, though he had no role in the process of selection of Assistant Prosecution Officers, it was because of his interference that the term of

the appellants-writ petitioners were not extended; in several cases, Assistant Prosecution Officers have been continued for several years; and it is

only because of the illegal intervention of the fourth respondent, were the services of the appellants-writ petitioners sought to be dispensed with. He

would submit that, in the light of the law declared by the Supreme Court in *Brijeshwar Singh Chahal*, this Court should issue similar directions to the

Government.

8. While it is disconcerting to note that law makers (in this case a Member of the Legislative Assembly-respondent no.4) should interfere with the

process of selection of Assistant Prosecution Officers, though the LR Manual does not prescribe any role for him in this regard, it would not be

appropriate for us to say anything more for two reasons. Firstly, despite the appellants-writ petitioners having arrayed him as the fourth respondent eo-

nomine, no notice was issued by the Court to him and, as a result, any observations, which we may make in our order, would be behind his back and

without giving him an opportunity of explaining his conduct. The second reason which weighs with us is that, despite the letter addressed by the fourth

respondent on 30.04.2017, the respondents had continued the appellants-writ petitioners, as Assistant Prosecution Officers, on their own accord not

only till they completed their one-year tenure on 15.06.2017, but even thereafter till 15.07.2017, when they invoked the jurisdiction of this Court by way

of the present writ petition.

9. The very fact that an advertisement was issued on 12.07.2017, inviting applications afresh for appointment of Assistant Prosecution Officers for a

fresh term of one year, discloses the intention of the respondents to call for a fresh panel of lawyers strictly in accordance with the conditions

prescribed in the LR Manual for appointment of Assistant Prosecution Officers, for a fresh term of one year. This advertisement dated 12.07.2017

was issued before the appellants-writ petitioners had invoked the jurisdiction of this Court on 15.07.2017. It does appear that the reason for the appellants-writ petitioners, having invoked the jurisdiction of this Court, is the advertisement dated 12.07.2017, since the writ petition was filed three days thereafter on 15.07.2017.

10. While we find considerable force in the submission of Mr. M.S. Chauhan, learned counsel for the appellants-writ petitioners, that the Government should undertake the process of selection and appointment of Assistant Prosecution Officers on a regular basis, instead of appointing them periodically for a one-year duration, that does not confer any right on the appellants-writ petitioners to contend that, till selections are made for appointment of Assistant Prosecution Officers on a regular basis, they alone should be continued to discharge the functions of Assistant Prosecution Officers, though their one-year term expired on 15.06.2017 itself. It is only because of the interim protection extended to the appellants-writ petitioners by this Court, were they permitted to continue for more than a year thereafter till the writ petition was dismissed by judgment dated 13.11.2018.

11. In *Brijeshwar Singh Chahal* the Supreme Court, while dealing with the term of appointment of law officers in the State of Punjab, observed thus:-

“... The third stage of the process of selection and appointment shall in the absence of any statutory provisions regulating such appointments involve consultation with the District & Sessions Judge if the appointment is at the district level and the High Court if the appointment is for cases conducted before the High Court. It would, in our opinion, be appropriate and in keeping with the demands of transparency, objectivity and fairness if after assessment and finalisation of the selection process a panel is sent to the Chief Justice of the High Court concerned for his views on the subject. The Chief Justice could constitute a Committee of Judges to review the names recommended for appointment and offer his views in regard to professional competence and suitability of candidates for such appointments. Appointments made after such a consultative process would inspire confidence and prevent any arbitrariness. The same procedure could be followed where candidates are granted extension in their terms of

appointment in which case the Committee appointed by the government and that constituted by the Chief Justice could also look into the performance of the candidates during the period they have worked as State counsel

12. While the Supreme Court placed emphasis on the need for transparency, objectivity and fairness in the process of selection and preparation of a panel of advocates for appointments at the District Level and the High Court, the aforesaid observations make it clear that the consultative process suggested by the Supreme Court is for the District & Sessions Judge to be consulted in the case of appointments made at the District Level and the Chief Justice of the High Court to be consulted for appointments in the High Court. The LR Manual prescribes a fair and transparent mode of appointment of law officers and requires a panel of names to be recommended by the District Judge which, after verification of antecedents, is required to be forwarded by the District Magistrate to the Government which is, in turn, obligated to appoint only one of the three empanelled candidates as an Assistant Prosecution Officer/Panel Lawyer. In the present case, the said procedure has been adhered to. In any event, the subsequent notification, selection and appointment of Assistant Prosecution Officers and Panel Lawyers have not been subjected to challenge in the writ petition.

13. While we are, no doubt, concerned with what appears to be an attempt to interfere with the selection process by the fourth respondent, we refrain from saying anything more, as at present. That does not mean that the appellants-writ petitioners are entitled for grant of the relief sought for in the writ petition, as the order under appeal does not suffer from any error, much less a patent illegality warranting interference in an intra-court appeal.

14. The appeal fails and is, accordingly, dismissed.