

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 22nd OF SEPTEMBER, 2022

WRIT PETITION NO.21013 OF 2022

Between:-

**OMPRAKASH DUBEY S/O SHRI
RAMNARAYAN DUBEY, AGED 62
YEARS, OCCUPATION:
ADVOCATE, R/O PURANA BAZAR,
WARD NO. 12, ASHOKNAGAR
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI R.K. SONI - ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH
THROUGH ITS PRINCIPAL
SECRETARY, LAW AND
LEGISLATIVE AFFAIRS
DEPARTMENT, BHOPAL (MADHYA
PRADESH)**
- 2. COLLECTOR DISTRICT
ASHOKNAGAR (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI A.K. NIRANKARI - GOVERNMENT ADVOCATE)

This petition coming on for hearing this day, the Court passed the following:

ORDER

This petition under Article 226 of the Constitution of India has been filed seeking following reliefs:

1. The order dated 05.08.2022 annexure P-1 (which is communicated to the petitioner on 05.09.2022) is passed in violation of clause 20 of the law manual, may kindly be set aside.
2. That, petitioner may kindly be permitted to continue on the post of special public prosecutor till the appointment of his successor as per section 15 of the scheduled cast and scheduled tribes (prevention of atrocities) act 1989.
3. That, any other relief which this Hon'ble Court deem fit in the facts and circumstances of the case may kindly be granted to the petitioner.

It is submitted by the counsel for the petitioner that the petitioner was working on the post of Special Public Prosecutor and by order dated 5.8.2022, he has been retired from service after attaining the age of 62 years. It is submitted that no successor has been appointed in place of the petitioner and, therefore, in the light of guidelines issued by the State Government governing the re-appointment of Public Prosecutor/Government Pleader and Additional Public Prosecutor/Additional Government Pleader filed as Annexure P/3, it is clear that the term as a Public Prosecutor shall continue till he is re-appointed or his successor takes over. It is submitted that since no successor has been appointed, therefore, the petitioner is entitled to continue to hold the post of Special Public Prosecutor till his successor is

appointed. It is further submitted that a Co-ordinate Bench of this Court by order dated 6.9.2022 passed in the case of **Kailash Chandra Nigam and others vs. State of M.P. and others in W.P.No.19823 of 2022 (Principal Seat)** has issued notices and has also passed an interim order thereby permitting the petitioner therein, to continue as Public Prosecutor till the next date of hearing, if no successor is appointed against the said post. It is further submitted that the Supreme Court in the case of **Raj Deo Sharma (II) vs. State of Bihar** reported in (1999) 7 SCC 604 has also consider the delay in appointment of the Public Prosecutors.

Heard the learned counsel for the petitioner.

Clause 20 of the guidelines reads as under:-

20. Term of office. - A Public Prosecutor/Government Pleader or Additional Public Prosecutor/Additional Government Pleader shall be appointed for a period not exceeding three years, excluding the period of his probation. He may be re-appointed for further period not exceeding three years at a time, provided his name appears in the panel sent by the District Magistrate/Collector in consultation with District and Sessions Judge/District Judge from that year. No person will be appointed or continued as a Public Prosecutor/Government Pleader or Additional Public Prosecutor/Additional Government Pleader after he attains the age of

sixty two years. Notwithstanding the expiry of the period, a Public Prosecutor/Government Pleader or Additional Public Prosecutor/Additional Government Pleader shall continue, to hold office until he is re-appointed or his successor takes over.

Thus, a post of Public Prosecutor/Special Public Prosecutor may fall vacant for the following reasons:

- (i) expiry of term of three years,
- (ii) because of superannuation,
- (iii) because of any unfortunate incident during the currency of the tenure of the Public Prosecutor/Special Public Prosecutor.

As per clause 20 of the guidelines, a Public Prosecutor/Special Public Prosecutor shall be appointed for a period not exceeding three years and he can be re-appointed for a further period not exceeding three years provided his name is in the panel sent by the District Magistrate/Collector in consultation with District and Sessions Judge/District Judge. Therefore, in case if the term of Public Prosecutor/Special Public Prosecutor expires, then he can continue to hold office until he is re-appointed or his successor takes over.

The use of the word “notwithstanding expiry of the period” makes it luminescently clear that this clause is applicable only to a situation where the period of tenure of a Public Prosecutor/Special Public Prosecutor comes to an end. However, this clause cannot be applied to a situation where the Public Prosecutor/Special Public Prosecutor demits his office after attaining the age of superannuation, otherwise in place of

the word “notwithstanding expiry of the period” the word “notwithstanding the vacancy due to superannuation of previous Public Prosecutor” or any other word indicating that the said clause would apply to the aforesaid eventuality should have been mentioned. Therefore, the clause that the person is entitled for re-appointment or his successor takes place is applicable only where a tenure has come to an end and not where the Public Prosecutor/Special Public prosecutor has attained the age of 62 years.

So far as the interim order passed by a Co-ordinate Bench of this Court in the case of **Kailash Chandra Nigam (supra)** is concerned, the same cannot be treated as a precedent. Furthermore, the Co-ordinate Bench has passed the order after relying upon the judgment passed by the Supreme Court in the case of **Raj Deo Sharma (II) vs. State of Bihar reported in 1999 (II) MPWN 191 = (1999) 7 SCC 604.**

It appears that the arguing counsel did not bring it to the notice of the Co-ordinate Bench that the aforesaid judgment passed in the case of **Raj Dev Sharma (II) (supra)** has already been overruled in the case of **P. Ramachandra Rao vs. State of Karnataka** reported in **(2002) 4 SCC 578.**

Under these circumstances, this Court is of the considered opinion that the petitioner after having attained the age of 62 years is not entitled to continue till his successor is appointed.

Accordingly, the petition fails and is hereby **dismissed.**

(G.S. AHLUWALIA)
JUDGE

(alok)