

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 4860 of 2015

Sheo Shankar Giri, son of Late Basu Deo Giri, resident of Village Darii Giri Ka Mathia, P.O. Sagarwali, P.S. Phiphana District Ballia (Uttar Pradesh) and presently residing at Chairman, Permanent Lok Adalat, Garhwa, Civil Court Garhwa, P.O. and P.S. Garhwa, District Garhwa

... .. **Petitioner**

Versus

1. The State of Jharkhand through its Chief Secretary, project Bhawan, P.O. & P.S. Dhurwa Town & District Ranchi

2. Jharkhand State Legal Services Authority through its Member Secretary, having its office at Nyaya Sadan, Doranda, P.O. and P.S. Doranda, District-Ranchi

... .. **Respondents**

For the Petitioner	: Mr. Indrajit Sinha, Advocate
For the State	: Mr. Ajit Kumar, A.A.G
For the JHALSA	: Ms. Khushboo Kataruka, Advocate

CORAM : HON'BLE MR. JUSTICE VIRENDER SINGH, CHIEF JUSTICE
HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR

C.A.V. on 31.03.2016

Pronounced on: 03/05/2016

Virender Singh, C.J.:

One of the main issues raised in the writ petition is,

“whether appointment of the Chairman, Permanent Lok Adalat under Section 22B of the Legal Services Authorities Act, 1987 must always be made for a term of five years in terms of Permanent Lok Adalat (Other Terms and Conditions of Appointment of Chairman and Other Persons) Rules, 2003 ?”

2. Challenging the Notification No. 08 of 2015 dated 18.09.2015 to the extent the term of the Chairman, Permanent Lok Adalat, the post on which the petitioner was appointed for an initial period of two years, was extended only for a further period of one year as illegal, arbitrary and de hors the provisions of 1987 Act and 2003 Rules, the present writ petition has been filed.

3. The facts of the case pleaded by the petitioner are summarised thus;

The petitioner who served as a judicial officer for more than 26 years with utmost integrity and sincerity, retired as Additional District and Sessions Judge. In response to a notice for

appointment on the post of Chairman, Permanent Lok Adalat, the suitability of the petitioner was assessed by the respondent-Jharkhand State Legal Services Authority and finally, vide Notification No. 05 of 2013 dated 29.08.2013, along with 14 other persons the petitioner was appointed as the Chairman, Permanent Lok Adalat. The petitioner assumed the charge of Chairman of Permanent Lok Adalat, Garhwa on 11.09.2013. The Member Secretary, JHALSA issued letter dated 22.07.2015 to the District Judge-cum-Chairman, District Legal Services Authority of all the districts in which appointment of Chairman, Permanent Lok Adalat was made vide Notification dated 29.08.2013, to forward the number of cases instituted and the number of cases disposed of during the tenure of the respective Chairman, Permanent Lok Adalat with a brief report on their working and their willingness to continue on the said post for rest of 3 years. The petitioner vide letter dated 27.07.2015 gave his willingness for continuing as Chairman, Permanent Lok Adalat for the remaining three years' period. However, vide Notification No. 08 of 2015 dated 18.09.2015 the tenure of appointment of the petitioner along with one Roshan Lall Sharma was extended for a further period of one year whereas, by a separate Notification dated 18.09.2015 the tenure of appointment of 10 other Chairman, Permanent Lok Adalats was extended for rest of three years. The petitioner contends that Notification No. 08 of 2015 dated 18.09.2015 is discriminatory and it is stigmatic in as much as, it gives an impression as if, the petitioner's performance is not upto the mark.

4. Heard the learned counsel for the parties and perused the documents on record.

5. Mr. Indrajit Sinha, the learned counsel for the petitioner submitted that the post of Chairman, Permanent Lok Adalat is a tenure post for which Rule 4 of the Permanent Lok Adalat (Other Terms and Conditions of Appointment of Chairman and Other Persons) Rules, 2003 fixes a term of five years and in no eventuality

except, resorting to Rule 5 the tenure of five years can be curtailed and appointment on the post of Chairman, Permanent Lok Adalat can not be made for a period less than five years. It is contended that by accepting Notification dated 29.08.2013 whereunder, the appointment as Chairman of Permanent Lok Adalat was made for an initial period of two years, the petitioner has not waived his right to continue as Chairman for a term of five years. The procedure for removal of the Chairman or other persons as prescribed under Rule 5 has not been resorted to and thus, the right of the petitioner to hold the post of Chairman for the remaining period of three years cannot be curtailed arbitrarily by granting extension for one year only.

6. Per contra Ms. Khushboo Kataruka, the learned counsel for the respondent-JHALSA submitted that Rule 4 (2) of 2003 Rules merely provides that the Chairman and other persons of Permanent Lok Adalat can hold office upto five years, however, it does not make it mandatory that all appointments must be made for a fixed term of five years. It was contended that appointment for a period less than five years is not barred under 2003 Rules. Referring to a decision taken by the Executive Chairperson, JHALSA in the year, 2004 the learned counsel submitted that the selection process envisaged thereunder was made known to the petitioner and the petitioner having understood the same correctly and after accepting appointment for two years, cannot contend that his appointment as Chairman, Permanent Lok Adalat must be for a term of five years.

7. Rule 4 and 5 of the Permanent Lok Adalat (Other Terms and Conditions of Appointment of Chairman and Other Persons) Rules, 2003 are extracted below:

“4. Terms and Conditions of Service of chairman and other persons of Permanent Lok Adalat – (1)
Before appointment, the Chairman and other person shall have to take an undertaking that he does not and will not have any such financial or other interest as is likely to affect prejudicially his functions as

(2) *The Chairman and other persons shall hold office for a term of five years and shall not be eligible for reappointment.*

(3) *Notwithstanding anything contained in Sub rule (2), Chairman or other persons may -*

(a) *by writing under his hand and addressed to the Central Authority or, as the case may be, the State Authority resign his office at any time;*

(b) *be removed from his office in accordance with the provisions of rule 5*

(4) *When the Chairman is unable to discharge his functions owing to absence, illness or any other cause, the senior-most (in order of appointment) person of Permanent Lok Adalat holding office for the time being shall discharge the functions of the Chairman until the day on which the Chairman resumes the charge of his functions.*

(5) *The Chairman or any other person ceasing to hold office as such shall not hold any appointment in, or be connected with, the management or administration of any organization which has been the subject of the proceeding under the Act during his tenure for a period of five years from the date on which he ceases to hold such office.*

5. Resignation and removal- *The Central Authority or State Authority, as the case may be, may remove from office, Chairman or other person who-*

(a) *has been adjudged an insolvent; or*

(b) *has been convicted of an offence which, in the opinion of the Authority, involves moral turpitude; or*

(c) *has become physically or mentally incapable*

of acting as such Chairman or other person; or
(d) has acquired such financial or other interest
as is likely to affect prejudicially his functions as
Chairman or Other person; or
(e) has or so abused his position as to render his
continuance in office prejudicial to the public
interest:

Provided that the Chairman or any other
person shall not be removed from his office on
the grounds specified in Clauses (d) and (e),
except on inquiry held in accordance with the
procedure prescribed in rule 6.”

8. Rule 4 of 2003 Rules provides that the Chairman and other persons shall hold office for a term of five years. The tenure of Chairman of Permanent Lok Adalat is only for five years is made clear from the negative covenant used in sub-rule 2 which provides that the Chairman and other persons shall not be eligible for reappointment. Undoubtedly, the tenure of the post of Chairman is restricted to a term of five years however, whether all appointments under 2003 Rules shall be made for a term of five years and the persons so appointed on the post of Chairman acquires a vested right to hold the office for a term of five years are the issues for our consideration.

9. With the object of providing free legal aid and to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, Legal Services Authorities Act, 1987 was enacted for constituting statutory Legal Services Authorities at the National, State and District levels. Under section 6 Legal Services Authority for the State is constituted by every State Government. By the Act 37 of 2002, Section 22 was amended and Chapter VIA inserting Section 22A to 22E was brought on the Statute Book. Section 22B provides establishment of Permanent Lok Adalats at such places and for exercising such

jurisdiction in respect of one or more public utility services and for such areas as may be specified in the notification. Section 22C deals with the procedure for taking cognizance of cases by Permanent Lok Adalat. Sub-section 8 of Section 22C provides that if the parties fail to reach at an agreement during the conciliation proceedings, the Permanent Lok Adalat, if the dispute does not relate to any offence, shall decide the dispute. It has further been abundantly made clear in Section 22D that Permanent Lok Adalat may decide a dispute on merits. Section 22E makes every award of the Permanent Lok Adalat under 1987 Act, either on merits or in terms of a settlement, final and binding on all the parties thereto and also on persons claiming under them. Sub-section 2 to Section 22E provides that every award of the Permanent Lok Adalat shall be deemed to be a decree of a civil court and sub-section 4 further provides that the same shall not be called in question in any original suit, application or execution proceeding.

10. When function of the Permanent Lok Adalat under Chapter VIA is examined in the light of the aforesaid provisions, the contention raised on behalf of the petitioner that a certain amount of independence must be attached to the post of Chairman, Permanent Lok Adalat which should reflect in certainty of the tenure for the said post, merits acceptance. No doubt, uniformity and certainty are the requirements of Rule of Law. Uniformity curtails arbitrariness and it brings certainty in the system. Plainly speaking, a proper construction of Rule 4 reflects that appointment of Chairman of Permanent Lok Adalat should be for a term of 5 years. However, the situation would be entirely different where the appointment made is hedged with conditions. In the present case, no advertisement inviting applications for appointment on the post of Chairman was issued. It is not the case pleaded by the petitioner that the notice issued by the respondent-JHALSA indicated a term of 5 years. The writ petition is bereft of foundational facts on these aspects. The tenure of post under Rule 4 which provides a term of 5 years has to

be understood with reference to the expression “shall hold office”. If the appointment of the petitioner vide Notification dated 29.08.2013 was restricted to tenure for 2 years initially, Rule 4 cannot be interpreted so as to permit him to hold the office of Chairman for a term of 5 years.

11. In *“Shanker Raju Vs. Union of India”* reported in *(2011) 2 SCC 132*, Section 8 of the Administrative Tribunals Act, 1985 was considered by the Hon'ble Supreme Court. Prior to amendment in 2007, Section 8 provided that the Chairman, Vice Chairman and other Members shall hold office for a term of five years from the date on which he enters upon his office, but shall be eligible for reappointment for another term of five years. After amendment in Section 8 it read, “the Chairman shall hold office as such for a term of five years from the date on which he enters upon his office.” For our purpose, the relevant expression is “shall hold office for a term of five years”. Referring to the expression “term of office” in Section 8 of the Administrative Tribunals Act, 1985 the Hon'ble Supreme Court observed that the said expression has been used by the legislature consciously. The expression “term” signifies a fixed period or a determined or prescribed duration. The Hon'ble Supreme Court further observed that, “the word term when used in reference to the tenure of office, means ordinarily a fixed and definite time”.

12. Rule 4 of 2003 Rules also uses the expression “for a term of five years”. However, whether the petitioner can claim further extension for remaining three years or not is an issue which must be examined in the facts of the case.

13. Mr. Indrajit Sinha, the learned counsel for the petitioner referred to the judgment in *“Union of India and Another Vs. Shardindu”* reported in *(2007) 6 SCC 276*. In the said case, before expiry of the period of appointment of the Chairperson it was terminated prematurely on the ground that an enquiry was conducted in his parent cadre for which a disciplinary proceeding

was initiated against him. Section 4 of the NCTE Act, 1993 however, provided that the appointment as Chairperson of the National Council for Teachers Education shall be for a fixed period of four years or till the person attained the age of 60 years, whichever is earlier. The Hon'ble Supreme Court held that the appointment of the Chairpersons of N.C.T.E is a tenure post for a period of four years or till the age of 60 years, whichever is earlier and since none of the disqualifications mentioned in Section 5 were incurred by the appointee, his tenure could not have been curtailed. The Hon'ble Supreme Court held as under:

20. "..... In short, when the appointment is made, the service conditions are laid down. The termination of such appointment could only be made in the manner provided in the statute and by no other way. Once the regulations have been framed and detailed procedure laid down therein, then in that case if the services of an incumbent are required to be terminated then that can only be done in the manner provided and none else....."

14. Apparently, the facts in *Shardindu case* (supra) are entirely different from the facts in the present case. Whether the petitioner's initial appointment was illegal or not, was not questioned by him. At the initial stage, it was open to the petitioner not to accept the offer of appointment. It could have so happened that after 2 years he was not granted extension at all. Can the petitioner in such eventuality contend that first resort to Rule 5, initiate a proceeding and then remove me and till the time I am removed, I will continue beyond 2 years' period. The answer comes an emphatic **No**.

15. The respondent-Jharkhand State Legal Services Authority (JHALSA) has filed counter-affidavit asserting that poor disposal rate of cases by Permanent Lok Adalat would not only be a great dis-service and injustice to the litigants, it would frustrate the object of the Permanent Lok Adalat. The procedure adopted for appointment of the Chairman and other members of the Permanent Lok Adalat is the same since constitution of the Permanent Lok Adalat in the State of Jharkhand. The petitioner who had fully

understood the mode, manner and term of his appointment as the Chairman of the Permanent Lok Adalat, Garhwa and who has again accepted the extension of his appointment for a further period of one year vide notification dated 18.09.2015 must be estopped from challenging notifications dated 29.08.2013 and 18.09.2015 on the ground of jurisdiction and the same being contrary to Rule 4 of 2003 Rules.

16. The learned counsel for the respondent-JHALSA submitted that the poor disposal rate of the cases by the petitioner is reflected from the chart extracted in the supplementary counter-affidavit. It is submitted that the writ petition is pre-mature and after the assessment of the petitioner's performance he may be granted further extension. Finally, it has been contended that the Executive Chairperson, Jharkhand State Legal Service Authority has jurisdiction to make appointment for a term less than 5 years and there is no illegality in Notifications dated 29.08.2013 and 18.09.2015.

17. The doctrine of “**waiver**” has received judicial expression to mean abandonment of a right which if subsequently asserted, is resisted by the other party by establishing relinquishment of such a right either express or implied conduct. It has been held that waiver must always be an intentional act with knowledge. The contention raised on behalf of the petitioner that he has a vested right to continue as Chairman of Permanent Lok Adalat for a fixed term of five years and his acceptance of appointment vide notification dated 29.08.2013 which was for a period of two years would not take away his right to continue a Chairman for five years, is misconceived.

18. In “*P. S. Gopinathan Vs. State of Kerala and Ors.*” reported in (2008) 7 SCC 70, the appellant was directly recruited to the post of Munsif and subsequently promoted to the post of Sub-ordinate Judge. In the meantime, lower Sub-ordinate Judiciary in the State of Kerala was integrated and new special Rules came

into force. The Full Court of the High Court decided to treat the appointment of the Appellant as temporary, subject to determination of seniority. In the seniority list of District Judges, the Appellant was placed below the direct recruits who were appointed, after the first appointment of the Appellant. The Hon'ble Supreme Court noticing that the Appellant did not protest to the posting order whereunder, he was treated to be a temporary appointee which was inconsistent with the order of his appointment whereby, he was appointed on permanent basis on the post of District and Sessions Judge, and readily accepted the posting order and joined the service as temporary Additional District Judge, cannot later challenge the said order. The Hon'ble Supreme Court held thus;

36. *“.....The act and action of the appellant in accepting his appointment as temporary one amounts to his assent to the temporary appointment and the appellant throughout till he raised an objection on 28-10-1992 has slept on his right of being appointed permanently on the post of District and Sessions Judge. By his conduct at the time of the issuance of the order by the High Court on 29-2-1992 and thereafter issuance of the second appointment order on 15-7-1992 with full knowledge of his own right and the act of the High Court which infringes it, led the High Court to believe that he has waived or abandoned his right.”*

37. *Lord Campbell in Cairncross V. Lorimer held that: (All ER p. 176 G-H)*

....generally speaking if a party having an interest to prevent an act being done had full notice of its being done, and acquiesces it, so as to induce a reasonable belief that he consents to it and the position of the others is altered by their giving credit to his sincerity, he has no more right to challenge the act to their prejudice than he would have had if it had been done by his previous licence.”

19. In **“E.P. Royappa Vs. State of Tamil Nadu and Another” (1974) 4 SCC 3**, the applicant was posted to act as Chief Secretary to Government and thereafter, he was appointed Deputy Chairman of the State Planning Commission by creating the said post temporarily for a period of one year in the grade of Chief Secretary to Government. The applicant did not join the post and went on

leave. After he returned from leave, again he was posted as Deputy Chairman, State Planning Commission however, again he did not join the post pointing out that the post of Deputy Chairman was created for one year which did not exist after one year. The Government of Tamil Nadu created a temporary post of Officer on Special Duty in the grade of Chief Secretary to Government for a period of one year and the applicant was transferred and appointed as Officer on Special Duty however, again he did not join the post and filed the writ petition contending that he was appointed to a post or transferred to a post which was not validly created. A Constitution Bench of the Hon'ble Supreme Court after holding that the appointment of the applicant to the post of Deputy Chairman was in contravention of Rule 9 held thus;

“..... But the Court cannot grant relief to the petitioner on this ground, because he accepted the appointment without demur as he thought that the post of Deputy Chairman “was of the same rank and carried the same emoluments as the post of Chief Secretary” and actually stated so and, therefore, he cannot now be permitted to challenge the validity of the appointment.”

20. The contention that without resorting to Rule 5 a person appointed as Chairman under Rule 4 cannot be removed is correct however, the stage whether Rule 5 should be resorted to for removal of the petitioner has yet not arrived. The petitioner's contention that curtailment of his tenure would amount to removal is misconceived. The Notification dated 18.09.2015 makes it abundantly clear that further extension of the term of the petitioner as Chairman of the Permanent Lok Adalat would be considered upon assessment of his performance. The petitioner is bound by the terms of appointment.

21. From the counter-affidavit filed on behalf of respondent-JHALSA, it is apparent that the Executive Chairperson, JHALSA applied his mind to the relevant considerations and finally took the conscious decision to grant extension for one year to the petitioner. The petitioner is not the only person who has been

granted extension for one year. The decision taken by the Executive Chairperson-JHALSA is neither arbitrary nor illegal and the petitioner cannot contend that he has been victimized. Subjective satisfaction of the Executive Chairperson-JHALSA cannot be challenged merely by pleading that the performance of the petitioner has been equally good as of the other persons who have been granted extension for further three years vide Notification dated 18.09.2015. It is stated that a report regarding mis-behaviour by the petitioner with the Principal District and Sessions Judge, Garhwa was sent on 31.03.2014. A similar complaint against the petitioner was filed by the Secretary, District Legal Services Authority, Garhwa and the Accountant. It is further stated that the tenure of other 10 Chairpersons of Permanent Lok Adalat has been extended for the remaining 3 years solely on the basis of their merit, performance, progress and other incidental matters. It has been asserted that the respondent-JHALSA has not acted illegally, arbitrarily and the petitioner has not been discriminated and in fact, another person who was appointed Chairman of the Permanent Lok Adalat, Lohardaga vide Notification dated 13.08.2013 has also been granted extension only for one year.

22. In the counter-affidavit, the respondent-JHALSA has clearly stated that ignoring the complaint received against the petitioner, he has been granted one year's extension and thus, Notification dated 18.09.2015 is not a reflection upon the conduct of the petitioner. The said Notification in so far as, it relates to the petitioner is not by way of punishment. There is no inconsistency in both the affidavits filed by JHALSA. Rule 4, in fact, restricts the term of the Chairman and other persons appointed in Permanent Lok Adalat. Had the appointment of the petitioner been an unconditional appointment, it could not have been curtailed mid-way without resorting to procedure under Rule 5. However, as noticed above, initial appointment of the petitioner was only for two years. The petitioner having understood the process adopted by the

respondent-JHALSA and after completing the tenure of two years cannot turn around and contend that Notification dated 29.08.2013 was illegal and without jurisdiction. Not only that, the petitioner has accepted further extension of one year which was notified through Notification dated 18.09.2015 and he is working as Chairman, Permanent Lok Adalat at Garhwa. The petitioner who has unconditionally accepted terms of appointment under Notifications dated 29.08.2013 and 18.09.2015 is estopped from challenging the same. The present writ petition is a wagering attempt by the petitioner.

23. Referring to the decision in *“State of Kerala and others Vs. K. Prasad and Another”* reported in (2007) 7 SCC 140, Mr. Indrajit Sinha the learned counsel for the petitioner next contended that an executive order must strictly be made in consonance with the relevant Rules and any waiver or relaxation of the Rules is not permissible unless, such power exists under the Rules. In the aforesaid case, the extant Rules provided a comprehensive procedure for opening of new schools. The challenge in the said case was to the decision not to sanction upgradation of the school because of paucity of fund. Considering the comprehensiveness of the procedure under Kerala Education Rules 1959, the Hon'ble Supreme Court emphasized the necessity of strict compliance therewith. Reliance placed by the learned counsel for the petitioner on the observation in para 10 of the said judgment, in the facts of the present case, does not lend support to the petitioner for challenging the impugned notification dated 18.09.2015. The instant case is not the one where rules have been relaxed. Para 10 reads as under:

“10. “.....Waiver or even relaxation of any rule, unless such power exists under the rules, is bound to provide scope for discrimination, arbitrariness and favouritism, which is totally opposed to the rule of law and our constitutional values.”

24. No doubt, normally appointments shall be made for full

term of five years however, merely because the petitioner and others were initially appointed for two years and subsequently, the petitioner has been granted extension for one year, the decision taken by the Executive Chairperson-JHALSA is not rendered without jurisdiction. Considering the supervisory power of the Executive Chairperson, Legal Services Authority for regulating and control of Permanent Lok Adalats, appointment of Chairman and other persons of Permanent Lok Adalats for a term less than five years cannot be faulted.

25. As a sequel to the aforesaid discussion, the instant petition being devoid of any merit in it deserves to be dismissed.

Ordered accordingly.

(Virender Singh, C.J.)

(Shree Chandrashekhar, J.)