

A STATE OF U.P.

v.

U.P. GOVT. COUNSEL (CRL.) WELFARE ASSOCIATION

OCTOBER 18, 1994

B [K. RAMASWAMY AND S.C. SEN, JJ.]

*Uttar Pradesh Government Litigation (Engagement of Counsel) Ordinance, 1991.*

C *Stay of operation of ordinance by High Court—Interim suspension of stay order by Supreme Court—Interim order made absolute.*

D Consequent to the decision of a Division Bench of the Allahabad High Court holding that Government has no power to dispense with the services of the Standing Counsel appearing in the High Court for the State of U.P., the Government promulgated the Uttar Pradesh Government Litigation (Engagement of Counsel) Ordinance, 1991 regulating the assignment of work and payment of fees to the Govt. Counsel. The operation of the said ordinance was stayed by the High Court against which State of U.P. has preferred this appeal. In the meanwhile the Judgment of the Division Bench of the High Court was set aside by this Court. Further, by its order dated E 8th February' 91 this Court suspended the operation of order of the Division Bench of the High Court and made the interim suspension absolute.

Allowing the appeal, this Court

F HELD : In the circumstances of the case, the order dated 8th February' 91 is made final. However, the Court does not propose to express any opinion on merits of the Ordinance since it is a matter to be gone into by the High Court. [447-G]

G *State of Uttar Pradesh v. U.P. State Law Officers Association, [1994] 2 S.C.C. 204, referred to.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 670 of 1991.

H From the Judgment and Order dated 17.1.91 of the Allahabad High Court in W. No. Nil of 1991.

D.V. Sehgal and A.K. Srivastava for the Appellant.

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R. Venkataramani (NP) for the Respondent.

The following Order of the Court was delivered :

In this appeal, the only question is whether the High Court was justified in staying the operation of the Uttar Pradesh Government Litigation (Engagement of Counsel) Ordinance, 1991 (U.P. Ordinance No. 2 of 1991). It would appear that consequent to the decision of the Division Bench of the Allahabad High Court allowing C.M.W.P. 20182/90 dated 12.11.90 declaring that the government had no power to dispense with the services of Standing Counsel appearing for the Government of Uttar Pradesh in the High Court at Allahabad as well as Lucknow Benches, the Governor issued the aforesaid Ordinance regulating the assignment of work of the Government Counsel and the payment of their fee for the work done by the counsel. The judgment of the Division Bench, which is the foundation for the Ordinance was questioned by the government in this Court in *State of Uttar Pradesh v. U.P. State Law Officers Association*, [1994] 2 SCC 204. This Court after considering the gamut of the controversy held that the Law Officers appointed by the government to look after the work of the government was only professional service as legal assistants and the service rendered by the counsel is only a service oriented professional service. Therefore, they are not employees of the government. The government is entitled to regulate its work by prescribing the conditions subject to which the work of the government could be entrusted to and be discharged by the counsel. It is one of trust and confidence. So long as the trust and confidence remain and maintained by the counsel, the government would engaged the counsel. The Government have the liberty to relieve a counsel for the reason that they do not have confidence in the counsel. Since this Court had set aside the judgment of the Division Bench, obviously the respondent has lost interest in the matter and, therefore, none is appearing in the matter. This Court suspended the operation of the order of the Division Bench dated January 17, 1991 by order February 8, 1991 and made the interim suspension absolute. Under these circumstances, this appeal is allowed. The order dated February 8, 1991 is made final. We do not propose to express any opinion on merits of the Ordinance since it is a matter to be gone into by the High Court. The appeal is accordingly allowed. No costs.

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T.N.A.

Appeal allowed.