
(1999) 09 RAJ CK 0022

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 386 of 1998, 263, 277, 634 and etc. of 1999

Ram Chandra Joshi and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-09-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 24

General Clauses Act, 1897 — Section 16

Rajasthan Law and Judicial Department Manual, 1952 — Rule 10, 12, 13, 14, 16

Citation : (2000) CriLJ 1660 : (2000) 1 RLW 455 : (2000) 2 WLC 739

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : M. Mridul and L.S. Udawat, R.N. Upadhyaya, D.C. Sharma, K.L. Jasmatia, J.P. Joshi, D.R. Bhandari, Mahesh Bora and G.R. Punia, for the Appellant; Sagar Mal Mehta, General, R.L. Jangid, A.A.G., Chandralekha, Deputy Govt. Advocate N.P. Gupta, M.S. Singhvi and Prakash Tatia, for the Respondent

Judgement

B.S. Chauhan, J.—All these petitions have been filed against the order of removal of Public Prosecutors/Additional Public Prosecutors/Additional Government Advocates working in the High Court of Judicature for Rajasthan at Jodhpur and the District Courts subordinate to it. As common questions of law are involved, all these petitions are heard together and are being disposed of by the common judgment. The facts and circumstances giving rise to these cases have variance to some extent and, thus, in brief, the facts of each case would be considered separately for disposal of the case, but first legal issues are being examined.

2. At this stage it may be mentioned that petitioners had been appointed under the provisions of Section 24 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") read with the provisions of The Rajasthan Law and Judicial Department Manual, 1952 (for short, "the Manual") and tenure of some of them had been extended for a definite or indefinite period.

3. The main arguments made by the learned counsel for the petitioners had been

that once petitioners had been appointed, they cannot be removed without due process of law; Rule 16(1) confers an unfettered and unbridled power upon the Government to remove the duly appointed Public Prosecutors without assigning any reason; any order, not supported by reasons, is liable to be quashed and, therefore, the impugned orders of removal of petitioners are bad and deserve to be quashed.

4. In reply, respondents have taken a categorical stand that appointment of petitioners had not been made in accordance with law; there was no proper consultation of the authorities concerned and under the Rules prescribed in the Manual, the State Government had unlimited/unfettered power to remove; the only requirement is issuance of notice of one month as required under Rule 16(1) of the Manual which has been complied with and, thus, no fault can be found with the impugned orders of removing the petitioners. More so, if their appointment/extension/renewal itself had been de hors the Rules, petitioners are not entitled for any relief whatsoever in writ jurisdiction; Rule 10 of the Manual is a self-contained Code providing for appointment of Additional Government Advocates and as there is no provision contained therein analogous to Rule 16(1), the requirement of notice is also not to be observed in those cases and, thus, if the Government has power to appoint somebody as an Additional Government Advocate, it has power to remove him also by virtue of provisions of Section 16 of the General Clauses Act.

5. The relevant provisions of law applicable in these cases read as under :-

Code of Criminal Procedure, 1973 :

24. Public Prosecutors.- (1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.

...

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion, fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the District.

(5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under Sub-section (4).

Rajasthan Law and Judicial Department Mandal, 1952 :

10. Appointments and conditions of service.- (1) The Government Advocate or Advocates shall be appointed by Government. They shall be liable to perform the duties of the Advocate-General specified in Rule 7 and shall perform such duties

as the Government may assign to them.

(2) The term of appointment of Government Advocate shall be such as the State Government may determine in each case. A Government Advocate may resign the appointment by giving one month's notice in writing.

...

12. Appointment.- All appointments of Public Prosecutors shall be made by Government. Government may call for recommendations for these posts from the District Magistrate at the headquarters of the Sessions Division or other area concerned. The District Magistrate shall then consult the District and Sessions Judge demi-officially and submit the latter's opinion alongwith his own and also a list of pleaders practising in his district direct to Government.

14. Probation and confirmation.- (1) Every Public Prosecutor shall be considered to be on probation for a period of six months from the date of his taking charge. At the end of that period the District Magistrate shall submit a report through the District and Sessions Judge and the Divisional Commissioner to the Government upon his conduct and ability. Should his work prove to have been unsatisfactory, his services may be dispensed with without notice. Should the report be satisfactory, he shall be confirmed. For any sufficient reason, Government may extend the period of probation.

(2) The District Magistrate shall, by the 15th January each year, submit a report to Government through the District and Sessions Judge and the Divisional Commissioner upon the conduct and ability of the Public Prosecutor who has been confirmed under Sub-rule (1). The report shall be marked confidential.

15. Term of Office.- A Public Prosecutor shall be appointed for a period of three years, including the period of his probation, and may be reappointed for further periods not exceeding three years at a time. Ordinarily, no person will be appointed a Public Prosecutor after he attains the age of 60 years or continued in that office after he attains that age. Notwithstanding the expiry of the period, of his term of appointment, a Public Prosecutor shall continue as such until he is reappointed or his successor is appointed.

16. Termination of term.- (1) Government may, at any time and without assigning any reason, dispense with the services of a Public Prosecutor after giving him one month's notice.

(2) A Public Prosecutor may resign his appointment after giving one month's notice.

6. The aforesaid cases fall in two separate categories. Writ Petitions Nos. 386/1998, 263, 277, 634 and 1274 of 1999 are in relation to appointment of Public Prosecutors in the District Courts, while the remaining petitions are in respect of appointments in the High Court. The cases require to be decided categoriwise and first the cases of appointment in District Courts are dealt with.

7. The appointment of Public Prosecutors is contemplated under the provisions of Section 24, Cr.P.C. and the Rules contained in the Manual. The Rules in the Manual may not be having statutory force but so far they are in consonance with the provisions of Section 24, Cr.P.C, there can be no difficulty in their observance or asking for strict adherence to the same. The Public Prosecutor may not be holding a civil post under the State in strict-legal sense but as the public element is involved therein, it is not permissible for the authorities to deviate from provisions providing for their appointment or removal.

8. In *Mukul Dalal and Others Vs. Union of India (UOI) and Others*, , the Apex Court observed as under :-

The office of the Public Prosecutor is a public one.... The primacy given to the Public Prosecutor under the scheme of the Code has a special purpose....

9. When advocates are appointed to the office of Public Prosecutor, "they have certain professional and official obligations and privileges". (Vide *K.C. Sud v. S.C. Gudimani* (1981) Cri LJ 1779 . It has also invariably been held that a Government Advocate holds an office of profit. (Vide *Mahadeo Vs. Shantibhai and Others*, ; *Madhukar G.E. Pankakar Vs. Jaswant Chobbildas Rajani and Others*, ; and *Srimati Kanta Kathuria Vs. Manak Chand Surana*,) .

10. In *Rabindra Kumar Nayak Vs. Collector, Mayurbhanj, Orrisa and Others*, , the Hon"ble Apex Court held that where the permanency is attached to the office and not to the term for which an Advocate holds it, the person may come and go in succession but so long he holds the office, he is disqualified to contest the election. In *Mundrika Prasad Singh Vs. State of Bihar*, , the Court approved the observation made by the Madras High Court in *A. Ramachandran Vs. A. Alagiriswami*, Govt. Pleader High Court, Madras and Another, , wherein it has been observed as under :-

the duties of a Government Pleader...are duties of a public nature.... Besides, even if his only duty is the conduct of cases in which Government have been impleaded, still as explained more than once before the public are interested in the manner in which he discharges his duties...having regard to the various functions and duties to be performed by him in the due exercise of that office, most of which are of an independent and responsible character, the office must be held to be a public office within the scope of a quo warranto proceeding.

11. In *Mundrika Prasad Singh Vs. State of Bihar*, , the Apex Court held as under (Paras 15 and 16) :-

We do recognise its importance in our era of infiltration of politicking even in forbidden areas. A Government Pleader is more than an advocate for a litigant. He holds a public office...we must enter a caveat that Government under our Constitution should not play with law offices on political or other impertinent considerations as it may affect the legality of the action and subvert the rule of law itself.

(Emphasis added)

12. Similarly, in *Hitendra Vishnu Thakur and Others Vs. State of Maharashtra and Others*, , the Hon"ble Supreme Court observed that a "Public Prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independant statutory authority."

13. After considering a catena of decisions, a Division Bench of Allahabad High Court in *Vijay Shankar Mishra Vs. State of U.P. and Others*, , held that duties and functions of the Public Prosecutor are statutory. Even if he does not hold a civil post under the State, he holds a public office of trust under the State. It is an office of responsibility as he has been en clothed with the power to withdraw the prosecution of a case on the directions of the State Government.

14. Therefore, in view of the above, it is crystal clear that engagement of an advocate as Public Prosecutor is not merely a professional engagement.- Even if he does not hold a civil post under the State, he carries the responsibility and privilege of the public office of great public importance and plays an important role in the administration of criminal justice. Neither his appointment nor removal can be made on the sweet will of the Government rather the same are guided by public interest, which has always been a paramount consideration in public administration.

15. The procedure prescribed for appointment requires preparation of panel by the District Magistrate with consultation of" the District and Sessions Judge and the same is to be submitted to the State Government for making appointment of Public Prosecutors. State Government can appoint a person on probation for a period of six months and if his work is found to be satisfactory, he may be confirmed in case it is found unsatisfactory, his services may be dispensed with without notice and in appropriate case, if there is any sufficient reason, the Government is competent to extend the period of probation. His tenure of office is for a period of three years including the period of probation and a Public Prosecutor is at liberty to relinquish the office after giving one month"s notice. Similarly, the Government may also dispense with the services of the Public Prosecutor by passing an order under Clause (1) to Rule 16 of the Manual. The provisions of Section 24, Cr.P.C. and the rules contained in the Manual do not contemplate any extension/renewal of the tenure. There is a specific procedure for appointment. Authorities are not competent to act contrary to the statutory requirements.

16. It has been hitherto uncontroverted legal position that where a statute requires to do certain thing in a certain way, the thing must be done in that way or not at all. Other methods or mode of performance are impliedly and necessarily forbidden. (Vide *Taylor v. Taylor* (1875) 1 Ch D 426 ; AIR 1936 253 (Privy Council); *Deep Chand Vs. The State of Rajasthan*, ; *Patna Improvement Trust Vs. Smt. Lakshmi Devi and Others*, ; *State of Uttar Pradesh Vs. Singhara*

Singh and Others, ; Nika Ram Vs. State of Himachal Pradesh, ; Ramchandra Keshav Adke v. Govind Joti Chavare AIR 1975 SC 215 ; Chettian Veetil Ammad and Another Vs. Taluk Land Board and Others, ; State of Bihar v. J.A.C. Saldanha AIR 1980 SC 327 ; A.K. Roy and Another Vs. State of Punjab and Others, ; State of Mizoram Vs. Biakchhawna, ; J.N. Ganatra Vs. Morvi Municipality, Morvi, .

17. In Harpal Singh Chauhan and others Vs. State of U.P., , the Apex Court considered the provisions of Uttar Pradesh Law Manual and provisions of Section 24, Cr. P. C. and held that any appointment, which has been made without following the procedure of preparation of panel by the District Magistrate with consultation of the Sessions Judge, cannot be enforced being de hors the rules. The Court also considered the provisions of the U.P. Law Manual providing for renewal and reappointment and held that it cannot be claimed as a matter of right and it will depend upon the performance. The Court observed as under (Para 11) :-

The framers of the Code were conscious of the fact that Public Prosecutors and the Additional Public Prosecutors have an important role, while prosecuting on behalf of the State, accused persons, who are alleged to have committed one or the other offences. Because of that, provisions have been made for their selection in the Code. It is for the Sessions Judge to assess the merit and professional conduct of the persons recommended for such appointment and the District Magistrate to express his opinion on the suitability of persons so recommended, from the administrative point of view....Sub-section (5) of Section 24 provides that no person shall be appointed..."unless his name appears in the panel of names of persons prepared by the District Magistrate under Sub-section (4)." The aforesaid Section requires an effective and real consultation between the Sessions Judge and the District Magistrate about the merit and suitability of the persons to be appointed as Public Prosecutor.... That is why that it requires a panel of names of persons to be prepared by the District Magistrate with the consultation of the Sessions Judge. The same is the position so far as the Manual is concerned....The District Judge, who is also the Sessions Judge, is to give his estimate of the quality of the work of counsel from the judicial standpoint and the District Officer i.e. the District Magistrate is to report about the suitability of such person from administrative point of view.

18. Thus, it is abundantly clear that appointment is to be made in consonance with the provisions of Section 24, Cr.P.C. and the relevant rules of the Manual. The expression "panel of names of persons" does not mean suggestion of names of the Sessions Judge and some comments in respect of those names by the District Magistrate without proper consultation and discussion over such names. The statutory mandate is required to be complied with by the District Magistrate and the Sessions Judge in its true spirit. In absence of any provision in the Code or the Rules for extension or renewal, the same cannot be termed as having any legal sanctity.

19. In Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, , the

Apex Court had struck down the order of removal of the Public Prosecutors by the State Government and held that removal of all Public-Prosecutors in the State by one stroke of pen was without application of mind and thus arbitrary and held that such an action of the State was totally unreasonable and the unfettered discretion is inappropriate to a public authority and, thus, the Hon''ble Apex Court held that in such a case it was permissible for the Court to have a judicial review of the orders of removal passed arbitrarily as judicial review is permissible to the limited grounds of illegality, irrationality and procedural impropriety. Otherwise the ratio of the judgment is that appointment of Public Prosecutors etc. in the District Courts are made through open competition and the sole criteria for selection is merit of an advocate if he otherwise fulfils all other eligibility criteria. Opinion of the District Magistrate has to be based on merit and his consultation with the Sessions Judge has to be an effective one. Conduct and character of advocates are also of paramount consideration. Moreso, their performance has to be satisfactory.

20. In *Vijay Shankar Mishra Vs. State of U.P. and Others*, , it was observed as under (Para 79) :-

Law Officers are one of the main wheel of the chariot driven by the Judges to attain the cherished goal of human-being to secure justice against the wrong-doers. The object of the State is to curb the crime, investigate and prosecute the offenders and punish them, with a view to maintain law and order, amenity and harmony, tranquillity and peace... the object of the Code is to appoint the best amongst the lawyers as Public Prosecutors to provide assistance to the Court. The people have the vital interest in the matter.

21. It is also settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order. In *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, , the Apex Court has observed as under (Para 36) :-

Every such action may be informed by reason and if follows that an act uninformed by reason is arbitrary, the rule of law contemplates governance by law and not by humour, whim or caprice of the men to whom the governance is entrusted for the time being. It is the trite law that "be you ever so high, the laws are above you." This is what a man in power must remember always.

22. In *LIC of India and Another Vs. Consumer Education and Research center and Others*, the Apex Court observed that the State or its instrumentality must not take any irrelevant or irrational factor into consideration or appear arbitrary in its decision. "Duty to act fairly" is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty must be received and guided by the public interest. Same view has been reiterated by the Supreme Court in *Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others*, ; and *Union of India (UOI) Vs. Mohan Lal Capoor and Others*, .

23. In *State of West Bengal Vs. Atul Krishna Shaw and Another*, the Supreme Court observed that "giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review."

24. In *S.N. Mukherjee Vs. Union of India*, it has been held that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice, and it was held in the above case that except in cases where the requirement to record reasons is expressly or by necessary implication dispensed with, the authority must record reasons for its decision.

25. In *Krishna Swami Vs. Union of India and another*, the Apex Court observed that the rule of law requires that any action or decision of a statutory or public authority must be founded on the reason stated in the order or borne-out from the record. The Court further observed that "reasons are the links between the material, the foundation for these erection and the actual conclusions. They would also administer how the mind of the maker was activated and actuated and there rational nexus and syntheses with the facts considered and the conclusion reached. Lest it may not be arbitrary, unfair and unjust, violate Article 14 or unfair procedure offending Article 21."

26. Similar view has been taken by the Supreme Court in *Institute of Chartered Accountants of India Vs. L.K. Ratna and Others*; *Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others*. Similar view has been taken by this Court in *Rameshwari Devi Vs. State of Rajasthan and Others*. In *Vasant D. Bhavsar Vs. Bar Council of India and Others*, the Apex Court held that an authority must pass a speaking and reasoned order indicating the material on which its conclusions are based.

27. In the catena of judgments of the Hon"ble Supreme Court, it has categorically been held that an appointment de hors the rules cannot be enforced and in such a case even the principles of natural justice are not attracted nor their continuity in office for long would change the legal position. (Vide *Smt. Ravinder Sharma and Another Vs. State of Punjab and Others*; *Harpal Kaur Chahah (Smt) v. Director, Punjab Instructions; State of M.P. and Others Vs. Shyama Pardhi etc. etc.*, AIR 1998 91 (SC); *Kishorilal Charmakar and Another Vs. Distt. Education Officer and Another*; *Patna University and Another Vs. Dr. Amita Tiwari (Mrs.)*; *M.P. Electricity Board Vs. S.S. Modh and Others*; *Dr. (Mrs.) Meera Massey, Dr. Abha Malhotra and Dr. S.C. Bhadwal and Others Vs. Dr. S.R. Mehrotra and Others*; *Upen Chandra Gogoi Vs. State of Assam and Others*, and *R.K. Trivedi and Others Vs. Union of India (UOI) and Others*).

28. Similar has been the position of appointment of Public Prosecutor in the High Court. The mandate of Section 24 of the Code requires the consultation of High Court. The mandatory provisions of the Statute are certainly not decorative

pieces of the legal system, rather they require the strict adherence in public interest. Maintaining the peace and tranquillity in the society is the primary responsibility of the State. It cannot be maintained unless there is effective system of administration of criminal justice. In this back drop, the framers of the Code thought it proper to take the appointments of Public Prosecutors out of the clutches of politicians and bureaucrats and to have the appointments objectively on merit, the requirement of consultation of the High Court was introduced.

29. Appointments of the Additional Government Advocates are made under Rule 10 of the Manual which is a self-contained Code. In absence of any provision analogous to Rule 16(1) in Rule 10, the State, Government has been given an unfettered power to appoint a Lawyer as an Additional Government Advocate and to remove him. This view gets fully fortified by the judgment of the Hon'ble Supreme Court in State of U.P. and others Vs. U.P. State Law Officers Association and others, wherein the Court has distinguished the judgment in Kumari Shrulekha Vidyarthi and Others Vs. State of U.P. and Others, as the same was confined to the appointment of Public Prosecutors in the District Courts. The Apex Court held that the appointment of a legal practitioner is only a professional engagement terminable at will of either side and is not an appointment to the post under the Government. Accordingly, the Government reserves the power to terminate the appointment of any Government Counsel. The Court further observed that the Government and the Public Bodies engaged the services of the Lawyer purely on contractual basis either for a specified case or for a specified or unspecified period. The Government Lawyers cannot be treated as employees but were professional practitioner engaged to do the specified work. Treating them as employee of the Government is also not permissible under Rule 49 of the Bar Council of India Rules as it waives the prohibition imposed by the said Rules against the acceptance by a lawyer of a full time employment. The Court further observed as under (Para 6) :-

The relationship between Lawyer and his client is one of the trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave him also for the same reasons. He is under no obligation to give reasons for withdrawing his brief from his lawyer. The lawyer, in turn, is not an agent of his client but he is dignified responsible spokesman.... The Government or the Public Body represents public interests and whoever is incharge of running their affairs is no more than a trustee or a custodian of the public interests....This obligation imposes on them the duty to engage the most competent servants, agents, advisors, spokesmen and representatives for conducting their affairs. Hence, in the selection of their lawyers, they are duty bound to make earnest efforts to find the best from amongst those available at the particular time. This is more so because the claims of and against the public bodies are generally monetarily substantial and socially crucial with far reaching consequences...the State Government is under no obligation to consult even its Advocate General much less the Chief Justice or any Judges of the High Court or to take into consideration the view of any Committee that may be constituted for the

purpose. The State Government has a discretion. It may or may not ascertain the views of any of them while making the said appointments. Even where it chooses to consult them, their views are not binding on it. The appointments may, therefore, be made on considerations other than merit and there exists no provision to prevent such appointments. The method of appointment is indeed not calculated to ensure that the meritorious alone will always be appointed or that the appointments made will not be on considerations other than merit. In the absence of guidelines, the appointments may be made purely on personal or political considerations, and be arbitrary. This being so those who come to be appointed by such arbitrary procedure can hardly complain if the termination of their appointments is equally arbitrary. Those who come by the backdoor have to go by the same door. This is more so when the order of appointment itself stipulates that the appointment is terminable at any time without assigning any reason. Such appointments are made, accepted and understood by both sides to be purely professional engagements till they last. The fact that they are made by public bodies cannot vest them with additional sanctity. Every appointment made to a public office, howsoever, made, is not necessarily vested with public sanctity. There is, therefore, no public interest involved in saving all appointments irrespective of their mode. From the inception some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them.

(Emphasis added)

30. The observations made in the aforesaid judgment that State must make an endeavour to appoint the best available Lawyers as Government Advocates and whatever the method adopted, it must be shown that the search for meritorious was undertaken and the appointments were made only on the basis of the merit and not for any other consideration is merely an advisory as the same is not in consonance with the latter part of the judgment. Moreso, the aforesaid judgment was approved and followed in *State of U.P. Vs. U.P. Govt. Counsel (Crl.) Welfare Asscn.*, wherein the Apex Court reiterated 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 services. Therefore, they were not employees of the Government." Being the office of trust and confidence, "the Government has the liberty to relieve a counsel for the reason that they do not have confidence in (him).

31. In *State of U.P. Vs. Ramesh Chandra Sharma and others*, the Hon'ble Supreme Court considered the case of District Government Advocates and after considering the judgments in *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, and *Harpal Singh Chauhan and others Vs. State of U.P.*, held that it was "merely a professional engagement" and the Lawyer, holding such a post, cannot claim to hold a civil post under the State or claim renewal of his term as a matter of right. The Court has further categorically held that in case

Lawyer, who has been appointed in place of the petitioner, has not been impleaded as respondent, the Court cannot grant any relief to the petitioner, for the reason that the new appointee cannot be removed from office without affording him an opportunity of being heard.

32. The instant cases are being examined in this back drop.

(i) S.B.C.W.P. No. 386/1998:-

Petitioner Mr. Ram Chandra Joshi was appointed as Public Prosecutor vide order dated 19-6-1978 (Annexure 1) on probation for six months u/s 24, Cr.P.C. read with relevant Rules contained in Manual, in District Courts, Jodhpur, though appointment was made for a period of three years. He was reappointed on the same terms and under the same law vide order dated 15-7-81 (Annexure 2). He was given a fresh appointment vide order dated 26-10-1988 (Annexure 3) for a period of three years and it appears that on expiry of the tenure, as no fresh appointment was made, petitioner continued. Vide order dated 18-7-91, he was directed to continue till appointment on the said post is made. However, vide order dated 13-5-1994 (Annexure 4) his period was extended till further orders. One Mrs. Vijay Laxmi Joshi, respondent No. 4, was appointed vide order dated 20-1-98 (Annexure 5). Being aggrieved and dissatisfied, petitioner filed a writ petition and this Court, vide order dated 2-2-98, stayed the operation of the said order directing that petitioner would continue to work till further orders. During pendency of the petition, respondent No. 4 Smt. Vijay Laxmi Joshi was also removed, however, in her place Mr. Chhel Singh Rupawat was appointed vide order dated 27-2-99 (Annexure 7). Thus, petitioner filed an application dated 5-5-99 that Smt. Vijay Laxmi Joshi be substituted by Mr. Chhel Singh Rupawat in the arrays of respondents in this petition. Mr. Chhel Singh Rupawat was not having sufficient experience and was not eligible for appointment. Thus, his appointment was de hors the Rules. Moreso, his name had not been included in the Panel prepared as per law his services have been terminated vide order dated 7-7-99. A fresh panel has subsequently been prepared but because of pendency of this petition and interim order in favour of petitioner, the Authority could not make fresh appointment. Neither Smt. Vijay Laxmi Joshi nor Mr. Chhel Singh Rupawat has challenged their removal orders. In view of the peculiar facts and circumstances of the case, the only appropriate direction, which can be issued, is that respondents be given liberty to make fresh appointment from the panel. The petition is disposed of accordingly. Till fresh appointments are made, petitioner be allowed to continue.

(ii) S.B.C.W.P. No. 263/1999

33. Petitioner Mr. Shanker Lal Sinavadia was appointed as a Public Prosecutor vide order dated 17-10-90 under provisions of Section 24, Cr.P.C. read with Rules 12, 13 and 14 of the Manual in the District Courts, Jodhpur. He continued on the strength of the orders passed from time to time, particularly orders dated 9-4-91, 18-4-91, 5-8-93 and 20-1-98. Ultimately, vide order dated 19-9-98, his

services were extended for a period of three years. He was served with a notice dated 4-1 -99 for removal after expiry of one month and the same was withdrawn vide order dated 11-1-99, but again he was served with a notice dated 27-1-99 (Annexure 6) that his services would come to an end w.e.f. 28-2-99. Vide order dated 27-2-99. The private respondent has been appointed in his place. As there is no provision for extension, order dated 19-9-98 cannot be said to be in consonance with law. Petitioner is not entitled for any relief and petition is accordingly dismissed.

(iii) S.B.C.W.P. No. 227/1999:-

34. Petitioner Pokar Ram Bishnoi was appointed as Public Prosecutor vide order dated 17-10-90 (Annexure 1) and again on 8-2-94 (Annexure 2) u/s 24, Cr.P.C. read with Rules 12, 13 and 14 of the Manual in District Courts, Jodhpur. Vide order dated 19-9-98 (Annexure 3), his services were extended for a period of three years. He was served a notice on 4-1-99 (Annexure 4) under Rule 16(1) of the Manual mentioning that his services would come to an end after expiry of one month, however, the said notice was withdrawn vide order dated 11-1 -99 (Annexure 6). He was again served the same notice dated 27-1-99 (Annexure 7). Vide order dated 27-2-99 (Annexure 8) and respondent No. 3 has been appointed on the post in question. Facts are identical to Writ Petition No. 263/1999 and for the reasons recorded therein, petition is dismissed.

(iv) S.B.C.W.P. No. 634/1999 :-

35. Petitioner Mr. Devi Singh Charan was appointed as a Public Prosecutor vide order dated 2-8-97 (Annexure 1) u/s 24, Cr. P. C. read with Rules 12,13 and 14 of the Manual for a period of three years, though on probation of six months in the District Courts at Jalore. Vide order dated 4-9-98 (Annexure 2), his services were extended for a period of three years. Petitioner was served with a notice dated 4-1-99 that his services were no more required and the same would come to an end after expiry of a period of one month. Vide order dated 27-1-99, he was served with another notice that his services would come to an end with effect from 28-2-99 and the same had been terminated appointing respondent No. 4 in his place. Petitioner had been appointed for three years vide order dated 2-8-97. Order dated 4-9-98, extending the service for a further period of three years, is superfluous and being contrary to law is to be ignored. It is to be read that petitioner was appointed for three years, on six months probation, on 2-8-1997 for the reason that a "contract in violation of the mandatory provisions of law can only be read and enforced in terms of the law and in no other way." (Vide Union Territory, Chandigarh Admn. and others Vs. Managing Society, Goswami, GDSDC,) . Petitioner could be removed prior to 1-8-2000, only on valid grounds. The original record produced by the State has no adverse material on the ground of which he was removed after six months. Thus, the impugned order is liable to be quashed. The petition succeeds and is allowed. Order removing the petitioner and appointing respondent No. 4 is hereby quashed. It is clarified that petitioner shall not be entitled for any claim for backwages etc.

There shall be no order as to costs.

(v) S.B.C.W.P. No. 896/1999 :-

36. Petitioner Mr. Vishal Raj Mehta was appointed a Public Prosecutor u/s 24, Cr.P.C. read with Rule 10 of the Manual for a period of six months vide order dated 29-6-90 (Annexure 1) for looking-after Civil and Criminal cases of the State in the High Court. His services seems to have been extended vide orders dated 2-1-91 and 5-8-91 and again vide order dated 14-8-98 for a period of three years. He has been removed vide order dated 3-3-99 (Annexure 3). Hence this petition. Petitioner has not impleaded any person who has replaced him, for his appointment order has been placed on record.

37. It is unfortunate that the State Government is making continuous appointments of Public Prosecutors/Additional Public Prosecutors in the High Court without consulting it. Violation of law for a long time does not sanctify the illegality. Therefore, appointment of the petitioner as Public Prosecutor has been de hors the Rules and cannot be enforced in Court of law. The appointment letter clearly provides that he shall appear in all criminal, civil, revenue and miscellaneous cases. Whatever may be the terms and conditions of his appointment, petitioner is certainly not eligible to appear in criminal cases before the High Court. Thus, his appointment as Additional Government Advocate under Rule 10 of the Manual may be valid. But for the reasons recorded above, his termination order cannot be a subject-matter of judicial review and the petition is accordingly dismissed. Moreso, as petitioner has not impleaded the lawyer, who has been appointed in his place, petitioner cannot be granted any relief as held by the Hon"ble Supreme Court in an identical case in State of U.P. Vs. Ramesh Chandra Sharma and others, .

(vi) S.B.C.W.P. No. 939/1999:-

38. Petitioner Mr. Likhma Ram was appointed as retainer u/s 24, Cr.P.C. read with Rule 10 of the Manual for conducting civil and criminal cases of the State vide order dated 17-8-98 (Annexure 1) for a period of three years in the High Court. His services had been terminated vide order dated 3-3-99 appointing the private respondent in his place. For reasons recorded in Writ Petition No. 896/1999, petitioner is not entitled for any relief. Hence the petition is dismissed.

(vii) S.B.C.W.P. No. 940/199:-

39. Petitioner Mr. Vishnu Kumar Kachhawaha was appointed as retainer u/s 24, Cr.P.C. read with Rule 10 of the Manual for conducting civil/criminal and other miscellaneous cases of the State vide order dated 17-9-98 for a period of three years in the High Court. He was removed vide order dated 3-3-99 (Annexure 2) and replaced by the private respondent. For reasons recorded in Writ Petition No. 896/1999, petitioner is not entitled for any relief. Hence petition is dismissed.

(viii) S.B.C.W.P. No. 1274/1999 :-

40. Petitioner Mr. Kamal Kishore was appointed vide order dated 26-2-1999 (Annexure 1) as retainer on probation for a period of six months u/s 24, Cr.P.C. read with Rules 12, 13 and 14 of the Manual in Parbatsar, district Nagaur. His services have been terminated vide order dated 3-3-99 (Annexure 2) and in his place Mr. Mool Chand Solanki, respondent No. 4, has been appointed vide order dated 3-4-99 (Annexure 3). From the original record, it is apparent that a panel had been prepared in accordance with law. Petitioner had been at No. 1 in the panel while respondent No. 4 was at Serial No. 5. No reasons could be given as why petitioner had been appointed only for a period of six months. The logical conclusion should be drawn that petitioner was appointed for three years though on probation for six months as explained in Writ Petition No. 634/1999. As nothing adverse has been there in the record against the petitioner, he could not have been replaced by respondent No. 4. Thus, petition succeeds and is allowed. Impugned order dated 3-3-99 (Annexure 2) removing the petitioner and appointing the respondent No. 4 is hereby quashed. Respondent State is directed to allow petitioner to complete his three years tenure. However, in the facts and circumstances of the case, petitioner shall not be entitled for any backwages etc. There shall be no order as to costs.

(ix) S.B.C.W.P. No. 1330/1999 :-

41. Petitioner Mr. Jogendrapal Singh Choudhary was appointed as Additional Public Prosecutor vide order dated 26-12-1994 in the High Court and his services seems to have been extended vide order dated 4-8-1995 for a period of three years. Vide order dated 19-9-1998 (Annexure 1), his services were further extended for a period of three years on the post of Deputy Government Advocate cum Public Prosecutor (Annexure 1). He has been removed vide order dated 3-3-1999 (Annexure 2) and in his place respondent No. 2 has been appointed. For reasons recorded in Writ Petition No. 896/1999, petitioner is not entitled for any relief. The petition is dismissed. There shall be no order as to costs.

(x) S.B.C.W.P. No. 1514/1999 :-

42. Petitioner Mr. Pradeep Sankhla was appointed vide order dated 17-9-1998 as a retainer for a period of three years under Section 24, Cr.P.C. read with Rule 10 of the Manual in the High Court. However, he has been removed vide order dated 3-3-1999 (Annexure 2). However, he has not impleaded the person who has been appointed in his place. For reasons recorded in Writ Petition No. 896/1999, petitioner is not entitled for any relief. Petition is dismissed. There shall be no order as to costs.

(xi) S.B. C. W. P. No. 1515/1999 :-

43. Petitioner Mr. Ram Kishan Bishnoi was appointed as Public Prosecutor cum Government Advocate in the High Court vide order dated 5-3-1997 on probation for a period of six months. Again, vide order dated 17-9-1998 (Annexure 2), he was appointed for a period of three years u/s 24, Cr.P.C. read with Rule 10 of the Manual as a retainer. He has been removed vide order dated 3-3-1999 (Annexure

3). He has not impleaded the person appointed in his place as respondent. For reasons recorded in Writ Petition No. 896/1999, petitioner is not entitled for any relief. Petition is dismissed. There shall be no order as to costs.

44. In view of the above, even if the impugned orders of removal of petitioners are though non speaking and not supported by reasons but do not require any interference.

45. As a a result, Writ Petition No. 386/1998 stands disposed of with directions. Writ Petition Nos. 634/1999 and 1274/1999 stand allowed. Writ Petition Nos. 263, 277,896,939, 940, 1330,1514 and 1515 of 1999 are dismissed.