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**(2010) 08 MP CK 0046**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 9073 of 2009**

Smt. Anita Khare

APPELLANT

Vs

State of M. P. and Others

RESPONDENT

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**Date of Decision : 05-08-2010**

**Acts Referred:**

Constitution of India, 1950 — Article 13, 166, 226, 309  
Criminal Procedure Code, 1973 (CrPC) — Section 24

**Citation :** (2011) CriLJ 43 : (2010) ILR (MP) 57 : (2011) 1 MPHT 117 : (2011) 2 RCR(Criminal) 32

**Hon'ble Judges :** Sanjay Yadav, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Sanjay Yadav, J.—Shri S.P. Sinha, learned Counsel with Shri Ashok Sinha, learned Counsel for the Petitioner.

2. Shri Harish Agnihotri, learned Govt. Advocate for the Respondent No. 1 and 2.

3. Shri T. K. Modh, learned Counsel for the Respondent Nos. 3 and 4.

4. With the consent of the learned Counsel for the parties, petition is heard finally.

5. Extension as Govt. pleader/Additional Govt., Pleader of Respondents No. 3 and 4, respectively vide order dated 5-8-2009 for a period of three years purportedly in exercise of powers u/s 24 of the Code of Criminal Procedure 1973, (hereinafter referred as Code) read with Rule 18 of the Legal Remembrancer Manual is being questioned in the present writ petition filed u/s 226 of the Constitution of India.

6. Respondents No. 3 and 4 were appointed as Govt. Pleader/Additional Govt. Pleader u/s 24 of the Code by virtue of order dated 29-12-2005 for a period of three years. That on expiry of said period of three years the term has been extended for a further period of three years by impugned order, on the basis of

the proposal by the District Magistrate (Annexure P/4) and the recommendation of the District and Sessions Judge, Balaghat, (Annexure P/5).

7. The extension has given rise to grievance to the Petitioner for reasons that though eligible, the Petitioner has not been considered. Ancillary, it is also claimed that the Respondent Nos. 1 to 3 ought to have taken into consideration the women reservation.

8. It is contended that, the extension is de-hors the provision contained u/s 24 of the Code, which the Petitioner submits, does not provide for extension as the mode of appointment.

9. The Respondents No. 1 to 3 have justified there action of extending the term of Respondent Nos. 3 and 4 for a period of three years. It is urged that, the same is in consonance with the provisions as contained in the Legal Remembrancer Manual. It is accordingly urged that, mere being no illegality in extending the term of the Respondent Nos. 3 and 4, the Petitioner is not entitled for any relief.

10. Considered the submissions and perused the pleading as well as the provisions as contained u/s 24 and in the legal Remembrancer Manual.

Section 24 of the Code provides for:

24. (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 Prosecutor 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.

(2) The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district or local area.

(3) For every district the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district:

Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

(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 Prosecutor 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).

(6) Notwithstanding anything contained in Sub-section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall

appoint a Public Prosecutor or an Additional Prosecutor only from among the persons constituting, such Cadre:

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by, the District Magistrate under Sub-section (4).

(7) A person shall be eligible to be appointed as a public Prosecutor under Sub-section (1) or Sub-section (2) or Sub-section (3) or Sub-section (6), only if he has been in practice as an advocate for not less than seven years.

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.

(9) For the purposes of Sub-section (7) and Sub-section (8), the period during which a person has been in practice; is a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate.)

Similarly Rule 15 of the Legal Remembrancer Manual provides for

15. Appointment- All appointment of Public Prosecutors and Additional 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 of other area concerned. The District Magistrate shall then consult the District and Sessions Judge demi-officially and submit the latter's opinion along with his own and also a list of pleaders practicing in his district to Government.

Rule 17 stipulates that--

17.- Probation and confirmation (1) Every Government Pleader or Additional Government Pleader shall be considered to be on probation for a period of one year 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 to Government upon his conduct and ability. Should his work prove to have been unsatisfactory, his services may be dispensed without notice, should the report be satisfactory he shall be confirmed. For any sufficient reason Government may extend the period of probation.

However, 18 provides for that--

18. Term of Office - A Government Pleader or Additional Government Pleader shall be appointed for a period of three years, excluding 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 as Government Pleader or an Additional Government Pleader after he attains that age. Notwithstanding the expiry of the period, a Government Pleader or Additional Government Pleader shall continue as such, until he is reappointed or his successor is appointed.

11. Thus though Section 24 of the Code does not make any provision regarding extension of term of office of the Govt. Pleader/ Additional Govt. Pleader, the same is provided under Rule 18 of the Manual. However as held in Harpal Singh Chauhan and others Vs. State of U.P., Cri LJ 3140, that the provisions of Section 24 of the Code will prevail over the Rules, it was observed by their Lordships;

16. As already mentioned above, Section 24 of the Code does not speak about the extension or renewal of the term of the Public Prosecutor or Additional Public Prosecutor. But after the expiry of the term of the appointment of persons concerned, it requires the same statutory exercise, in which either new persons are appointed or those who have been working as Public Prosecutor or Additional Public Prosecutor, are again appointed by the State Government, for a fresh term. The procedure prescribed in the Manual to the extent - it is not in conflict with the provisions of Section 24, shall be deemed to be supplementing the statutory provisions. But merely because there is a provision for extension or renewal of the term, the same cannot be claimed as a matter of right.

12. It was further held that since there is no provision for extension of term of Govt. Pleader/Additional Govt. Pleader u/s 24 of the Code, the procedure prescribed therein are mandatory in nature:

11. The Code prescribes the procedure for appointment of Public prosecutor and Additional Public Prosecutor, for the High Court and the District Courts by the State Government. The framers of the Code, were conscious of the fact, that the Public Prosecutor and the Additional Public Prosecutor have an important role, while prosecuting, on behalf of the State, accused persons, who are alleged to have committed one or the other offence. 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 appointments 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 by the State Government as the Public Prosecutor or as an Additional Public Prosecutor "unless his name appears in the panel of names 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 person to be appointed as Public Prosecutor or as an Additional Public Prosecutor. That is why it requires, a panel of names of persons, to be prepared by the District Magistrate in consultation with the Sessions Judge. The same is the position so far the Manual is concerned. It enumerates in detail, how for purpose of initial appointment, extension or renewal, the District Judge who is also the Sessions Judge, is to give his estimate

of the quality of the work of the 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.

"14. Apart from the mandate of Sub-section (4) of Section 24 is that "the District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons". Sub-section (5) of Section 24 prescribes a statutory bar that 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)". When Sub-section (4) and Sub-section (5) of Section 24 of the Code, speak about preparation of a panel, out of which appointments against the posts of Prosecutor or Additional Public Prosecutor have to be made, then the Sessions Judge and the District Magistrate are required to consult and discuss the names of the persons fit to be included in the panel and to include such names in the panel. The expressions "panel of names of persons", do not mean that some names are to be suggested by the Sessions Judge and some comments are to be made, in respect of those names by the District Magistrate, without proper consultation and discussion over such names. The statutory mandate ought to have been complied with by the District Magistrate and the Sessions Judge in its true spirit. In the facts of the present case, no such panel appears to have been prepared by the District Magistrate in terms of Sub-section (4) of Section 24. As Section 24 of the Code does not speak about extension or renewal of the term of the person so appointed, the same procedure, as provided under Sub-section (4) of Section 24 of the Code, has to be followed. In the present case the District Magistrate, instead of having an effective and real consultation with the District and Sessions Judge, simply made some vague and general comments against the Appellants, which cannot be held to be the compliance of the requirement of Sub-section (4) of Section 24.

In the State of U.P. and Another Vs. Johri Mal, it was observed by their Lordships--

39. The appointment of public prosecutors, on the other hand, are governed by the Code of Criminal Procedure and/or the executive instructions framed by the State governing the terms of their appointment. Proviso appended to Article 309 of the Constitution of India is not applicable in their case. Their appointment is a tenure appointment. Public prosecutors, furthermore, retain the character of legal practitioners for all intent and purport. They, of course, discharge public functions and certain statutory powers are also conferred upon them. Their duties and functions are onerous but the same would not mean that their conditions of appointment are governed by any statute or statutory rule.

40. So long as in appointing a counsel the procedures laid down under the Code of Criminal Procedure are followed and a reasonable or fair procedure is adopted, the Court will normally not interfere with the decision. The nature of the office held by a lawyer vis-a-vis the State being in the nature of professional

engagements, the Courts are normally chary to over turn any decision unless an exceptional case is made out. The question as to whether the State is satisfied with the performance of its counsel or not is primarily a matter between and the counsel. The Code of Criminal Procedure does not speak of renewal or extension of tenure. The extension of tenure of public prosecutor or the district counsel should not be compared with the right of renewal under a licence or permit granted under a statute. The incumbent has no legal enforceable right as such.

42. It may be true that the Legal Remembrancer Manual provides for renewal but it contains executive instructions which even do not meet the requirements of Clause (3) of Article 166 of the Constitution. Legal Remembrancer Manual is not a law within the meaning of Article 13 of the Constitution of India. See Union of India (UOI) Vs. Naveen Jindal and Another,

43. The State, however, while appointing a counsel must take into account the following fundamental principles which are required to be observed that good and competent lawyers are required to be appointed for (i) good administration of justice; (ii) to fulfil its duty to uphold the rule of law; (iii) its accountability to the public; and (iv) expenditure from the tax payers' money.

13. In the case at hand, the Respondents have failed to show that the procedure provided u/s 24 of the Code has been adhered before extending the term of Respondent Nos. 3 and 4. The extension is on the basis of the recommendation by the District Magistrate having approved by the District and Sessions Judge, Balaghat. Apparently, no panel is drawn as mandated under Sub-section (5) of Section 24. There thus is no effective consultation as contemplated u/s 24 of the Code. Therefore, the appointment of Respondent Nos. 3 and 4 as Govt. Pleader/ Additional Govt. Pleader cannot be given the stamp of approval and accordingly, it is hereby quashed.

14. It is directed that, the appointment of Govt. Pleader/Additional Govt. Pleader be made strictly in accordance with the procedure laid down u/s 24, from the date of communication of this order.

15. During the interregnum period the Respondent Nos. 3 and 4 shall continue to discharge as Govt. Pleader/Additional Govt. Pleader; however, the same will not create any preemptive right in their favour for appointment as Govt. Pleader/ Additional Govt. Pleader.

16. In result the petition is allowed, to the extent above. However no costs.