
(2003) 04 AHC CK 0186
In the Allahabad High Court
Case No : Writ Petition No. 4791 of 2002

Suraj Narain Srivastava

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-04-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Government of India Act, 1935 — Section 241

Citation : AIR 2003 All 259

Hon'ble Judges : Vishnu Sahai, J; Kamal Kishore, J

Bench : Division Bench

Advocate : Party in person, for the Appellant; S.C. Misra, General and S.A.H. Rizvi, Chief Standing Counsel for Opposite Parties Nos. 1 and 2, Anil Tiwari, for Opposite Party No. 6, G.K. Mehrotra and N.S. Chauhan for Opposite Party No. 7, L.P. Misra, for Opposite Party No. 9, S.N. Bhardwaj, for Opposite No. 14 and Umesh Chandra and Bulbul Godyal for Opposite Party No. 25, for the Respondent

Final Decision : Partly Allowed

Judgement

Vishnu Sahai, J.—This writ petition, under Article 226 of the Constitution of India, has been preferred in person by Suraj Narain Srivastava, an Advocate practising in this Court over a decade, under the caption of public interest litigation.

A large number of averments have been made in it but those to which the petitioner has restricted himself are contained in a part of para 19 of the petition and Ground F of Para 20 thereof. The averment, to which the petitioner has restricted himself in para 19, is that this Court be pleased to direct the opposite parties (originally only two opposite parties, namely, the State of U.P. through its Secretary of Law and Justice, Civil Secretariat, Lucknow (Opposite Party No. 1) and the Legal Remembrancer, Civil Secretariat, Lucknow (Opposite Party No. 2) were impleaded) to produce the entire list of the State Counsel, indicating therein the length of practice at High Court and the date of registration, so that the Hon'ble Court may be pleased to direct the deletion of the names of those State Counsel/Brief Holders who have less than requisite length of practice in the

High Court. The averment in Ground-F of para 20 is that the act of the opposite parties in appointing advocates, who have less than five years of standing in the High Court as Brief Holders and State Counsel, is illegal; being against the provisions of Legal Remembrancer's Manual (hereinafter referred to as "L.R. Manual").

Many prayers have also been made in this petition but the petitioner-in-person has urged that prayers (iv) and (vi) be granted. The said prayers read thus :--

"(iv) to issue a writ, order or direction in the nature of certiorari quashing the appointments of Brief Holder made in violation of para 6.02 of L.R. Manual after seeking the list of them showing details of length of practice of Brief Holders from opposite parties.

(vi) To issue any other order direction deems fit in the circumstances of the case may also kindly be passed in the interest of justice.

2. It is pertinent to mention that this writ petition was filed before us on 16-8-2002 and we directed it to be placed on 19-8-2002, on which date it was adjourned for 13-9-2002. On 13-9-2002, we heard the petitioner-in-person and the learned Advocate General at considerable length and on the request of the latter adjourned the case to 24-9-2002 for further hearing. We also directed that on the said date the learned Advocate General would furnish a list of advocates, who had been appointed as State Counsel (in any category) and who did not fulfil the eligibility requirement, contained in L.R. Manual. On 24-9-2002 the learned Advocate General produced a list of 25 State Counsel (in any category) who had been appointed contrary to the eligibility requirements contained in the L.R. Manual. We directed the said list to be taken on record and marked it as "A" for identification. On the said date we directed that the 25 advocates mentioned in it be impleaded as opposite party Nos. 3 to 27 in the petition. The said impleadment was carried out by the petitioner-in-person on 26-9-2002 and thereafter the newly impleaded respondents were served. Thereafter we heard this petition on a number of dates. On 13-3-2003 we concluded the hearing, adjourned the case for 21-3-2003; and directed the learned Advocate General to make the entire record available to the Court and to submit a list mentioned therein :-- the date on which the opposite parties 3 to 27 had been enrolled to the Bar, appointed as State Counsel, and where it was a case of extension the date of final appointment be mentioned (this was because the list furnished by the learned Advocate General on 24-9-2002 was lacking in these details). On 21-3-2003, along with an affidavit dated 20-3-2003 the said list was filed as Annexure SCA-1. Since the fate of this writ petition depends on the contents of this list we are reproducing it in entirety. It reads thus :--

LIST OF BRIEF HOLDERS

No.

Opp. Party No.

Name

Regn. No. & Date

Date of 1st Appointment

Date of latest Appointment/ Renewal

Term Upto

Remarks

1.

3

Sri Shashank Shekhar Singh s/o Sri Ramendra Pratap Singh

3462/1999. D/- ? 1999

31-1-2001 For one year

Renewal for 3 years by G.O. dt. 24-6-2002

23-6-2005

2.

4

Ms. Vishnu Priya d/o Late Karatha Nath. Advocate

1239/1999, D/- 15-3-99

13-6-2001 For one year

Renewal for 3 years by G. O. dt. 24-6-2002

23-6-2005

3.

5

Sri Shashi Kant Rai s/o Sri Lal Ji Rai

17888/1999. Dt.

1-12-2001 For one year

Renewal for 3 years by GO dt. 24-10-2002

29-11-2005

4.

6.

Sri Shariq Abbas Zaidi s/o Mr. Justice R. H. Zaidi

3057/ 1998. Dt. 7-9-98 Effective from 6-9-97

12-5-1999 For one year

Renewal for 3 years by GO dt. 29-5-2000

29-5-2003

5.

7

Mr. Vivek Saran s/o Mr. Justice V. Saran (Retd.)

227/1996. Dt 13-1-96

19-4-2001 For one year

Renewal for 3 years by GO dt. 1-12-2001

2-12-2004

6.

8

Sri Ajit Rai s/o Late Dr. R. C. Rai

1386/1999DI. 15-3-99

24-6-2002 For one year

Not applicable.

23-6-2003

7.

9

Sri Syed All Murtaza Sri M. S. M. Mehdi

Dt. 13-12-97

26-6-2002 For one year

Not applicable.

23-6-2003

8.

10

Sri Gaurav Kakkar s/o.....

1382/1999. Dt. 22-7-99

24-6-2002 For one year

Not applicable.

23-6-2003

9.

11

Sri Ajay Kumar Mishra S/o Sri Ram Sihgare Misra

7166/2000 Dt. 24-5-2000

3-7-2002 For one year

Not applicable.

2-7-2003

10.

12

Sri Sheei Kumr Ojha s/o Sri K. P. Ojha

1383/2000 Dt/ 26- 11 -2000

3-7-2002 For one year

Not applicable.

2-7-2003

11.

25

Smt. Madhumita Bose d/o Sri R. Mitra

Dt. 31-7-94

19-7-1999 For one year as Brief Holder. Term extended to three years as Brief Holder.

24-6-2002 as Standing Counsel

23-6-2003

As Standing Counsel

12.

17

Sri Ujjwai Singh s/o Sri R. R. Singh

141/1999. Dt. 10-2-99

8-11-2000 For one year

Renewal for 3 years by GO dt. 10-12-2001

9-12-2004

13.

18

Sri Abhinav N. Trivedi s/o Late Justice A. N. Trivedi

15758/2000 Dt. 16-12-2000

24-6-2000 For one year

Not applicable.

23-6-2003

14.

19

Sri Prashant Arora s/o Sri H. C. Arora

4986/1999 Dt. 23-4-99

24-6-2002 For one year

Not applicable.

23-6-2003

15.

20

Sri Jyotindra Verma s/o Mr. Justice P. C. Verma

9075/1999 Dt. 10-1-98

24-6-2002 For one year

Not applicable.

23-6-2003

16.

21

Sri Surendra Kumar s/o Mr. Ram Lal Ram

889/2000 Dt. 23-1-2000

3-7-2002 For one year

Not applicable.

2-7-2003

17.

22

Ms. Aneeta Shukla d/o Sri S. K. Shukla

6920/1999 Dt. 10-5-99

3-7-2002 For one year

Not applicable.

2-7-2003

18.

23

Sri Brijesh Kumar Mishra S/o.....

3406/2000 Dt. 3-3-2000

24-6-2002 For one year

Not applicable.

23-6-2003

19.

24

Sri Vijay Prakash Dwivedi S/o Sri Ram Dwivedi

701/1997 Dt. 7-11-97 Effective from 12-8-96

24-6-2002 For one year

Not applicable.

23-6-2003

STANDING COUNSEL

20.

13

Sri Vijay Shankar Mishra

Dt. 1-5-1994

8-11-2000 For one year

Renewal for 3 years by GO dt. 8-11-2001

7 11-2004

21.

14

Sri Ram Prakash Ram Rajbhar s/o Sri Mannar Ram

Dt. 28-3-93

24-6-2002 For one year

Not applicable.

23-6-2003

22.

15

Sri Rajendra Prasad s/o Late Ram Adhar

Dt. 14-11-1992

24-6-2002 For one year

Not applicable.

23-6-2003

23.

16

Smt. Subhash Rathi

Dt. 25-7-93

1-12-2001 For one year 3- 7-2002 for one year

Not applicable.

22-6-2002 2-7-2003

Removed by GO dt. 22-6-2002

ADDITIONAL PUBLIC PROSECUTOR

24.

26

Sri Ram Kumar Maurya

Dt. 31-7-1994

24-6-2002 as S.C. From 10-12-2002 as Addl. Public Prosecutor

10-12-2002 as A.P.P.

9-12-2003

As Additional Public Prosecutor.

25.

27

Sri Sunii Kumar Chaudhary

Dt. 13-2-94

24-6-2002 as Standing Counsel. .

7-11-2002 as A.P.P.

6-11-2002 6-11-2003

As Additional Public Prosecutor.

Since in the said list against opposite party No. 26 in the column of date of first appointment, was mentioned date 24-6-2002 S.C., we asked Mr. S.A.H. Rizvi, Chief Standing Counsel to clarify through an affidavit what was meant by SC and consequently by an affidavit sworn on the said date (21-3-2003) it was clarified that the word S.C. meant Standing Counsel. On 21-3-2003 we reserved the judgment.

3. We have heard Mr. Suraj Narain Srivastava, the petitioner-in-person for the petitioner. Mr. S.C. Misra, learned Advocate General of the State of U.P. with Mr. S.A.H. Rizvi. Chief Standing Counsel, High Court. Lucknow for opposite parties No. 1 and 2; Mr. Anil Tewari for opposite party No. 6; Mr. G.K. Mehrotra with Mr. N.S. Chauhan for opposite party No. 7; Dr. L.P. Misra for opposite party No. 9; and Mr. Umesh Chandra with Ms. Bulbul Godyal for opposite party No. 25. It is pertinent to mention that although opposite party Nos. 3, 4, 5, 8, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26 and 27 have been duly served but they have not engaged any counsel and Mr. S.N. Bhardwaj, who has filed his vakalatnama on behalf of opposite party No. 14 has not appeared.

4. The petitioner in person strenuously contended that since opposite parties No. 3 to 12 and 17 to 24, who are brief holders in this Court did not fulfil the eligibility requirement contained in Chapter VI, 6.02(2) of the L.R. Manual, of having to their credit five years of practice at the Bar, their appointments were arbitrary, violative of Article 14, and be quashed. He also contended that since opposite party Nos. 13, 14, 15, 16 and 25, who are Standing Counsel on the date of appointment did not fulfil the eligibility requirement of 10 years of practice provided in the L.R. Manual, their appointments should also be quashed for the same reason.

5. The learned Advocate General, Mr. S.C. Misra, strenuously contended that the provisions contained in the L.R. Manual are only guidelines and instructions for the conduct, of the legal affairs of the State, the orders issued thereunder, whereby opposite parties Nos. 3 to 27 have been appointed as State Counsel are purely administrative orders; and even if it is assumed that the said opposite parties have been appointed in contravention of the eligibility requirement

pertaining to minimum years of practice, contained in the L.R. Manual the appointment of opposite parties Nos. 3 to 27 would not stand vitiated in law. As a matter of fact he canvassed a more fundamental submission, namely that since the provisions contained in the L.R. Manual are not statutory rules this writ petition would not lie in respect of their breach.

Mr. Anil Tewari, Mr. G.K. Mehrotra with Mr. N.S. Chauhan, Dr. L.P. Misra and Mr. Umesh Chandra with Ms. Bulbul Godyal, who have put in appearance for opposite parties No. 6, 7, 9 and 25 adopted the submission of the learned Advocate General.

6. In our judgment for adjudicating upon the rival submissions, it would be necessary to set forth some provisions of the L.R. Manual. Para 1.01 of Chapter I read thus :--

1.01. Short title and description -- This Manual may be called the Legal Rembrancer's Manual. It is the authoritative compilation of the Government Orders and instructions for the conduct of legal affairs of the State Government.

Chapter IV of the L.R. Manual deals with the provisions pertaining to Government Advocates, Deputy Government Advocates. Assistant Government Advocates for the High Court at Allahabad and the Lucknow Bench. It would be pertinent to extract paras 4.01 and 4.02 therein.

4.01. Number of Government Advocates -- There shall be one Government Advocate for the High Court at Allahabad and another for its Lucknow Bench; and such number of Additional Government Advocates, Deputy Government Advocates and Assistant Government Advocates at Allahabad and Lucknow as the Government may from time to time, appoint.

4.02. Views of Advocate-General may be taken -- In making such appointments as aforesaid the Government may if considered necessary, take into consideration the views of the Advocate General or the Chief Justice or any other Judges of the High Court or of any Committee that may be constituted for the purpose. All such appointments shall be notified in the Official Gazette.

Note -- General instructions relating to appointment and tenure of the Law Officers of the State as issued under Judicial (A-1) Department Office Memo No. 2556 (i) --XVII-A1-202-51, dated June 29, 1968 are given in Appendix "B".

Chapter V of the L.R. Manual deals with the provisions pertaining to Chief Standing Counsel and Standing Counsel at High Court at Allahabad and the Lucknow Bench. Para - 5.01 and 5.02 therein reads thus :--

5.01. Number of Standing Counsel --There shall be one Chief Standing Counsel for the High Court at Allahabad and another for its Lucknow Bench; and such number of Standing Counsel at Allahabad and Lucknow as the Government may, from time to time, appoint.

5.02. Views of Advocate General may be taken -- In making such appointment as

aforesaid the Government may, if considered necessary, take into consideration the views of the Advocate General or the Chief Justice or any Judges of the High Court or of any Committee that may be constituted for the purpose. All such appointments shall be notified in the Official Gazette.

Note -- General instructions relating to appointment and tenure of the Law Officers of the State as issued under Judicial (A-1) Department Office Memorandum No. 2556 (i)/VII-AI-202-51, dated June 29, 1968, are given in Appendix "B".

It is significant to mention that the eligibility criterion relating to Government Advocate, Deputy Govt. Advocate. Assistant Government Advocate, Chief Standing Counsel and the Standing Counsel are contained in Appendix "B" referred to in paras 4.01 and 5.02 of the L.R. Manual and the Notification dated 18-10-1976 issued under the order of Judicial Secretary, Government of Uttar Pradesh. UP.

The relevant part of Appendix "B" reads thus :--

"APPENDIX B

GENERAL INSTRUCTIONS REGULATING THE APPOINTMENT AND TENURE OF LAW OFFICERS OF THE STATE IN THE HIGH COURT

(PARAS 4.02 AND 5.02)

Copy of Office Memorandum No. 2556(i)/ VII-A-1-202-51, dated June 29, 1968 issued by Judicial A-1 Department.

The Governor of Uttar Pradesh is pleased to Issue the following general instructions regulating the appointment and tenure of Law Officers of the State in the High Court.

(1) Definition

Law Officers of the State in the High Court, namely, Government Advocate, Additional Government Advocate, Deputy Government Advocate and Assistant Government Advocates on the criminal side, and Chief Standing Counsel and Standing Counsel on the Civil side, are legal practitioners appointed by the State Government to conduct in the High Court such Government litigation as may be assigned to them either generally or specially by Government.

(2) Eligibility

No legal practitioner shall be eligible for appointment; as Law Officer unless he has been an Advocate of the High Court for at least five years.

(3) to (5)

(b) Tenure

The appointment of any legal practitioner as a Law Officer is only a professional

engagement terminable at will on either side and accordingly the Governor reserves the right to terminate the engagement of any Law Officer at any time without assigning any cause, and subject to this right Law Officers shall ordinarily be appointed for a term of one year in the first instance, which term may be renewed for a period not exceeding three years at a time."

The provisions contained in Appendix B were superseded by the Notification dated 18-10-1976 (referred to above). The relevant part of the said notification reads thus :--

(2) Eligibility : A Legal Practitioner eligible for appointment as Law Officer must have been in practice as an Advocate for not less than seven years in the case of a Public Prosecutor (Government Advocate, Additional Government Advocate, Deputy Government Advocate or Assistant Government Advocate) and ten years in the case of Chief Standing Counsel or Standing Counsel :

Provided that in the case of outstanding merit the Governor may relax the above requirement as to minimum practice for appointment of a Law Officer on the civil side.

(4) Appointment : The Governor may appoint any qualified Legal Practitioner as a law officer, and before making any such appointment he may, if he thinks fit, take into consideration the views of the Advocate General or of the Chief Justice, or any other Judge of the High Court or of any Committee that the Governor may constitute for the purpose and for an appointment on the criminal side shall also consult the High Court. All appointments shall be notified in the official Gazette."

The provisions relating to brief holders are contained in Para 6.02 of Chapter VI of the L.R. Manual Chapter VI.

Para 6.02 reads thus --

6.02. Appointment of panel of brief holders in the High Court -- (1) The State Government may, in consultation with the Advocate General, appoint such number of Brief Holders from amongst the practising advocates in the High Court, as it may deem necessary from time to time, to conduct such civil and criminal cases in the High Court that may be entrusted to them. Such appointment shall not be deemed to be appointment to any office or post but only professional engagement, which shall be terminable on either side at will.

(2) No Advocate shall be appointed as a Brief Holder unless he is practising in the High Court and has to his credit five years practice at the bar and is otherwise qualified and fit to perform his duties effectively.

(3) Any canvassing on the part of an Advocate may disqualify him for appointment

as a Brief Holder.

Note -- There shall be separate brief holders for civil and criminal work in the

High Court.

7. A perusal of the aforesaid provisions makes it manifest that the minimum eligibility requirement for the appointment of:--Public Prosecutor (Government Advocate) Addl. Public Prosecutor (Addl. Government Advocate) is seven years of practice as an Advocate; and for Chief Standing Counsel and Standing Counsel is often years of practice as an advocate.

However, the Notification dated 18-10-1976 makes it manifest that in case of a Law Officer on the civil side (Chief Standing Counsel or Standing Counsel) the Governor, in case of outstanding merit, may relax the above requirement of minimum practice.

A perusal of Para 6.02 of the L.R. Manual would show that the eligibility requirement for appointment as a Brief Holder in the High Court is five years of practice at the Bar.

8. It is pertinent to mention that affidavits have been filed on behalf of:-- opposite parties No. 1 and 2, namely the State of U.P. through its Secretary for Law and Justice, Civil Secretariat, Lucknow and the Legal Remembrancer, Civil Secretariat, Lucknow respectively; opposite parties No. 6 Shri Sharik Abbas Zaidi, Brief Holder; opposite party No. 7 Sri Vivek Saran, Brief Holder, and opposite party No. 9 Sri Syed Ali Murtaza, Brief Holder.

The burden of song of opposite parties 1 and 2 therein is that the opposite parties 3 to 27 were professionally engaged as advocates by them and since it was a case of professional engagement and not of appointment, it was open to them to engage any counsel, as is the prerogative of a ordinary litigant.

Opposite party No. 6 Mr. Sharik Abbas Zaidi in his affidavit has stated that he was enrolled as an advocate on 6-9-1997 with the Bar Council of U.P. and has annexed along with the affidavit copy of the certificate issued by the Secretary. Bar Council of U.P. He has mentioned therein that he joined vide G.O. dated 12-5-1999 and since then is continuing. His stand-point is that today he has more than five years of practice and consequently his appointment as brief holder is in conformity with the provisions of the L.R. Manual.

Opposite party No. 7 Mr. Vivek Saran has stated in his affidavit that he was enrolled with the Bar Council of U.P. under the Advocates Act. 1961 on 13-1-1996 and has annexed photocopy of the said enrolment along with the affidavit. He has pleaded in the affidavit that he fulfils the eligibility requirement under the L.R. Manual.

Opposite party No. 9 Mr. Syed Ali Murtaza has filed an affidavit mentioning therein that he was enrolled as an Advocate by the State Bar Council on 13-12-1997 and was appointed as Brief Holder on 24-6-2002 (it should be 26-6-2002 as is manifest from the list submitted by learned Advocate General, referred to above). The burden of his song is that his appointment as a brief holder is beyond the realm of exception.

9. A perusal of affidavits filed by opposite parties No. 6, 7 and 9 and the list furnished by the learned Advocate General shows :-- that opposite parties No. 7, 9, 26 and 27 fulfilled the eligibility criterion on the date of their appointments, opposite parties No. 6, 14, 15, 20 and 24 did not fulfil the eligibility criterion of the date of their appointment but fulfil it today; and opposite parties No. 3, 4, 5, 8, 10, 11, 12, 13, 16, 17, 18, 19, 21, 22, 23 and 25, neither on the date of their initial appointment nor today fulfil the eligibility criterion.

In our view, the matter is rendered academic in the case of opposite party No. 16 Smt. Subhash Rathi, who was appointed as Standing Counsel because she has been removed by the G.O. dated 22nd March, 2002.

10. We now come to the core question whether the appointments of opposite parties No. 6, 14, 15, 20 and 24, who did not fulfil the eligibility requirement under the L.R. Manual on the date of appointment but fulfil it today and those of opposite parties No. 3, 4, 5, 8, 10, 11, 12, 13, 17, 18, 19, 21, 22, 23 and 25, who admittedly, even in the contention of learned counsel for opposite parties, did not fulfil the eligibility criterion required by the L.R. Manual either on the date of their appointment or today, can be castigated as being arbitrary and violative of Article 14 of the Constitution of India. Our answer to it is in the affirmative.

A perusal of the provisions in the L.R. Manual, which we have extracted above, make it manifest that the mandatory period of practice :-- for a brief holder is five years; for a Public Prosecutor/Additional Public Prosecutor is seven years; and for a Chief Standing Counsel/Standing Counsel is ten years; though in the case of Chief Standing Counsel/Additional Chief Standing Counsel on considerations of outstanding merit, the Governor has the discretion to relax the requirement often years practice.

We would straightway like to mention here that we perused the original file and the same does not show that the Governor on considerations of outstanding merit was pleased to relax the requirement pertaining to the period of practice, in case of opposite parties No. 13, 14, 15, 16, 25, 26 and 27, who were appointed as Standing Counsel (it is significant to mention, as is manifest from the list submitted by the learned Advocate General that later on i.e. on 10-12-2002 and 7-11-2002 opposite parties No. 26 and 27 were appointed as Additional Public Prosecutors). We may mentioned that the learned Advocate General also does not dispute that the Governor has made such a relaxation. It is also pertinent to mention that neither the Governor nor any other functionary has powers to relax the period of length of practice in case of brief holders and public prosecutor/additional public prosecutor.

11. It is true that the provisions in L.R. Manual, as is manifest from a perusal of Para 1.01 (quoted earlier) are executive Instructions for the conduct of legal affairs of the State Govt. and the orders by which the State Counsel are appointed thereunder are administrative orders but it is well-settled that if an administrative order is in contravention of executive instructions/guidelines it is

rendered arbitrary and violative of Article 14 of the Constitution of India and is liable to be quashed. It is a trite that when arbitrariness sets in Article 14 is invoked.

12. It is well-settled that the administrative power vested in a public body or authority has to be exercised honestly, bona fide and reasonably (see Para 6 of the majority judgment in the case of *S. Pratap Singh Vs. The State of Punjab*, In the said decision, ill Para 6, Their Lordships have quoted from *Reg. v. Governors of Darlington School (1844)* 6 QB 682 the following passage :--

"It may be also possible to prove that an act of the public body, though performed in good faith and without the taint of corruption, was so clearly founded on alien and irrelevant grounds as to be outside the authority conferred upon the body, and therefore inoperative. It is difficult to suggest any act which would be held ultra vires under this head though performed bona fide."

In the same paragraph, Their Lordships have referred to the judgment of Lord Parker in *Vatcher v. Paull* 1915 AC 372, wherein His Lordship spoke of a power exercised for a purpose or with an intention beyond the scope of or not justified by the instrument creating the power, as fraud on a power though no corrupt motive or bargain is imputed. After referring to the above passage from *Vatcher v. Paull*, in *S. Pratap Singh's* case (supra), Their Lordships in para 6, have observed thus :--

"In this sense, if it could be shown that an authority exercising a power has taken into account -- it may even be bona fide and with the best of intentions, as a relevant factor something which it could not properly take into account, in deciding whether or not to exercise the power or the manner or extent to which the power is exercised, the exercise of the power would be bad."

12-A. In the oft-quoted case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , in Paragraph 10, while dealing with administrative power, the Supreme Court observed thus :--

"It is well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them."

In the same paragraph, it went on to say "It may be noted that this rule, though supportable also as an emanation from existence apart from Article 14 does not rest merely on that article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority." In the same paragraph, it proceeded to say "Every action of the executive government must be informed with reason and should be free from arbitrariness i.e. the very essence of the rule of law and its bare minimal requirement."

In Paragraph 12 of the said decision, the Supreme Court observed thus :--

"It must therefore be taken to be the law the act where the government is dealing with the public, whether by way of giving jobs or entering into contracts or Issuing quotas or licences or granting other forms of largesse, the government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard and norms, which is not arbitrary, irrational or irrelevant. The power or discretion of the government in the matter of grant of largesse including award of jobs, contracts, quotas, licences etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the government departs from such standard or norm in any particular case or cases, the action of the government would be liable to be struck down, unless it can be shown by the government that the departure was not arbitrary; but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

12-B. In Ramana's case (supra) as would become apparent from Para 9 it was urged before the Apex Court that since the appellant was a stranger and had not submitted a tender it was not his concern if the tender of respondent No. 4, who did not fulfil the eligibility requirement of being registered as a second class hotelier having at least five years experience, was wrongly accepted, (it is pertinent to mention that an identical submission was canvassed before us by the learned Advocate General, who contended that since the petitioner was not an applicant for appointment as the State Counsel he could not make a grievance that those appointed as State Counsel did not fulfil the eligibility requirements under the L.R. Manual). Repelling the said submission the Supreme Court observed that the grievance of the appellant was that if it was known to him that the non-fulfilment of condition of eligibility would be no bar to a consideration of a tender he would have also submitted a tender, but he was precluded from doing so by reason of condition of eligibility. The Supreme Court held that the grievance of the appellant was well founded and he could maintain the writ petition.

13. It would thus become manifest that considerations of fairness warrant that an administrative order should not be arbitrary or unreasonable and if the authority exercising a power has taken into account as a relevant factor which it could not have taken into account the exercise of power would be bad.

14. That apart, it is no longer res integra that if there is arbitrariness in the action of an executive authority Article 14 of the Constitution of India would be invoked and through the process of judicial review such an administrative order can be struck down. In this connection, we would like to refer to the decisions rendered by the Apex Court in the cases of:-- (i) Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, ; (ii) Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, ; and (iii) Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others,

In Paragraph 25 of M/s. Dwarkadas Marfatia's case (supra), the Supreme Court observed thus :--

"Where there is arbitrariness in State action. Article 14 springs in and judicial review strikes such an action down. Every action of the executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, it should meet the test of Article 14."

In Para 12 of Mahabir Auto Stores's case (supra) the Supreme Court observed ;--

"Every action of the State executive authority must be subject to rule of law and must be informed by reason. So whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable."

In Para 35 of Shrilekha Vidyarthi's case (supra) the Supreme Court has observed thus :--

"It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness, which is the crux of Article 14 of the Constitution and basic to the rule of law, the system, which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect the State cannot claim comparison with a private Individual even in the field of contract. This distinction between the State and private individual in the field of contract has to be borne in the mind."

It would be useful to advert to Paragraph 36 of the said decision, wherein the Apex Court laid down thus :--

".....Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprice of the men, to whom the governance is entrusted for the time being. It is trite that be you ever so high, the laws are above you". This is what men in power must remember, always."

15. In our judgment, the decisions of the Apex Court rendered in the cases of Dwarikadas Marfatia, Mahabir Auto Stores and Shrilekha Vidyarthi (supra) make it crystal clear that whenever there is arbitrariness in a executive action or a Government order is arbitrary, Article 14 would be invoked.

In that view of the matter, as also bearing in mind the larger considerations of fairness and equity, there is no escape from the conclusion that although the provisions contained in L.R. Manual are administrative guidelines the orders of appointment of State Counsel issued thereunder have to be in conformity with the provisions of the L.R. Manual and if they are in violation of the provisions

therein they would be arbitrary orders and liable to be struck down.

16. In the instant case we fail to find any justification on the part of the opposite parties 1 and 2 to appoint persons as State Counsel, who did not fulfil the mandatory length of practice prescribed under the L.R. Manual. We are constrained to observe that the act of the said opposite parties in appointing them manifests that they consider themselves above law. Such an attitude per se shows their disregard for the provisions contained in Article 14 of the Constitution of India.

17. The learned Advocate General strenuously contended that since this is a case of professional engagement and not appointment opposite parties 1 and 2 had as much liberty and discretion to engage any counsel as an ordinary litigant has. He contended that the provisions in the L.R. Manual pertaining to the number of years required before a person can be appointed as a State Counsel, are only broad guidelines and even if appointments are made in breach of them, they would not be vitiated in law. He placed strong reliance on the decision rendered by the Apex Court in the case of State of U.P. and others Vs. U.P. State Law Officers Association and others, , and, in particular, invited our attention to the lines contained in Para 19 which read :--

"The appointments may therefore be made on considerations other than merit and there exist 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 procedures can hardly, complain if the termination of the their appointment is equally arbitrary. Those who come by the back door have to go by the same door. This is moreso 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."

18. We have gone through the said decision and in our judgment, reliance on it is misplaced. In the said decision the Supreme Court was not seized with the question whether the appointments of persons, who did not fulfil the eligibility criterion, under the L.R. Manual, as State Counsel, were sustainable in law. Therein the question with which it was seized was, whether the order dated 23-7-90 by which the State Government removed 26 law officers working for the U.P. State Govt. in the High Court of Allahabad, including Its Lucknow Bench and

the order dated 26-5--90 by which the State Govt. abolished the system of engaging brief holders with immediate effect suffered from any infirmity. The Supreme Court took the view that the said orders suffered from no infirmity.

With regard to the order dated 23-7-90 it thus, observed in Para 20 :-- "As the facts narrated earlier show, out of 26 respondents-law officers, the period of contract of nine of them had expired and they were continued till further orders. The remaining seventeen had continued after the expiry of their initial term without even formal orders of extension. In other words, none of the 26 officers had no right to hold the office on the date of their removal, even under the Initial terms of appointment, which stipulated the contractual period. This is apart from the fact that the terms of the contract also provided that the appointment could be terminated at any time without assigning reason." Regarding the order dated 26-5-90 it becomes clear from Para 21 that the Supreme Court held that appointment of Brief Holders was purely at the discretion of the State Government, which appointed them for handling surplus work (work which could not be attended by the Government Advocates and Chief Standing Counsel) and therefore they could take no exception if in their place the Government thought it fit to appoint special counsel.

19. In our judgment, the decision rendered by the Apex Court in the State of U.P. (supra) cannot be Construed having laid down either expressly or impliedly that it was open to opposite parties No. 1 and 2 to appoint persons as State Counsel, who did not fulfil the eligibility requirement under the L.R. Manual.

20. We do not dispute that, opposite parties No. 1 and 2 had a discretion in appointing lawyers as State Counsel, but we are not prepared to accept the rhetoric appeal of the learned Advocate General that the said discretion was unfettered, unbridled, and untrammelled. In a State governed by rule, of law discretion can never be absolute. Its exercise has always to be in conformity with rules; in contradistinction to being whimsical and should not smack of an attitude of "so let it be written, so let it be done"; an attitude lamentably reflected here by opposite parties No. 1 and 2.

In this connection, we would like to advert to the Para 14 of the decision of the Apex Court reported in S.G. Jaisinghani Vs. Union of India (UOI) and Others, , which reads thus :--

"In this context, it is important to emphasise that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is the antitheses of a decision taken in accordance with the rule of law. (see

Dicey -- "Law of the Constitution" -- Tenth Edn., Introduction CX). "Law has reached its finest moments", stated Douglas, J in *United States v. Wunderlich* (1951) 342 US 98, "when it has freed man from the unlimited discretion of some ruler. Where discretion is absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of *John Wilkes*. (1770) 4 Bur 528 "means sound discretion guided by law. It must be governed by rule, not by humour: it must not be arbitrary, vague and fanciful."

21. For these reasons, we are of the judgment that the discretion of opposite parties No. 1 and 2 in making appointments of Advocates as State Counsel was bridled, trammelled, and fettered by the period of practice prescribed under the L.R. Manual.

22. For the said reasons, we reject the submission of the learned Advocate General, which was also adopted by the learned counsel for opposite parties 6, 7, 9 and 25, that the provisions contained in the L.R. Manual are merely guidelines and Orders of appointment of State Counsel made thereunder, being administrative orders cannot be touched by this Court under Article 226 of the Constitution.

23. We would also like to advert to two other submissions made by the learned Advocate General and learned counsel for opposite parties. The first is that since the provisions contained in the L.R. Manual are merely executive instructions and do not have the force of statutory rules, their violation cannot be challenged under Article 226 of the Constitution. In this connection, reliance was placed on two authorities of the Apex Court, namely those reported in *G.J. Fernandez Vs. State of Mysore and Others*, , (*State of Assam and Another Vs. Ajit Kumar Sharma and Others*, , *The State of Assam v. Ajit Kumar Sarma*.

In our judgment, in view of the ratio laid down in *S. Pratap Singh's case*, *Ramana's case*, *Dwarikadas Marfatia's case*. *Mahabir Auto Store's case* and *Shrilekh'a Vidyathi's case* (supra), it is too late in the day to urge that if an administrative action is arbitrary the same cannot be quashed.

24. The second submission canvassed by the learned Advocate General, as also learned counsel for opposite parties No. 6, 7, 9 and 25 is that the petitioner had no locus standi to file this public interest litigation. They strenuously urged that the petitioner has not indicated in the petition that he was an applicant for the post of State Counsel. In their contention, he was an interloper and a mere busy-body, to whom it was not open to prefer this petition. To lend force to their submission, they invited our attention to the Division Bench decision of this Court, rendered in the case of *Satish Chandra Mishra v. State of U.P.* 1990 (8) LCD 1 (it was cited by the learned Advocate General). The said decision was rendered in a writ petition. Therein a writ of certiorari was prayed for quashing conditions No. 2, 3, 5, 7, 9 and 10 of Para 1 of the appointment of State Law Officers in the High Court, Lucknow Bench in so far as they imposed a ban on

private practice on them and provided for non-payment of any other fee than the fee mentioned in the G.O. dated 30-6-89. A perusal of the said decision would show that the State Law Officers, excepting one State Law Officer who had filed a writ petition at Allahabad, had accepted the conditions. It was urged by the petitioner that the conditions were humiliating and degrading to the legal profession and against the Bar Council rules. The Division Bench took the view that the petitioner was not aggrieved by the conditions and thus had no locus standi to file a petition.

In our view, the said decision was on its peculiar facts and reliance on it is misconceived; not only because the appointment of opposite parties other than 7, 9, 26 and 27 have been made in contravention of the minimum period of practice prescribed by L.R. Manual but also because as we shall currently see that since August 3, 1989, the date on which the said writ petition was dismissed by the Division Bench the concept of locus standi has become more liberal; being broadened by the Apex Court.

25. The learned Advocate General and learned counsel for opposite parties Nos. 6, 7, 9 and 25 invited our attention to paragraphs 80 to 90 of the decisions rendered by the Apex Court in the case of BALCO Employees Union (Regd.) Vs. Union of India and Others, and the decision rendered by the Apex Court in Janata Dal Vs. H.S. Chowdhary and Others, etc. In this decision, they invited our attention to Paragraphs 47 onwards. They contended that the ratio laid down in the said decisions was that a party could only prefer a writ petition under the caption of the Public Interest Litigation if the party which was aggrieved or to whom injury was caused, on account of poverty or illiteracy and some such compelling considerations, was unable to avail of the remedy himself. They contended that since the petitioner did not fall in any of the said categories he had no locus standi to prefer this petition.

26. We have gone through the said decisions; considered the submission by the learned counsel for the opposite parties; and are constrained that we do not find any merit in it. It is true that the ratio laid down in them is that normally only a person aggrieved has locus standi to prefer a writ petition under Article 226 of the Constitution of India and a public interest litigation can only be filed if a party either on account of poverty, illiteracy or some other compelling reasons of the said type, is unable to approach the Court but at the same time, we cannot ignore the following lines contained in Para 66 of the case of Janta Dal (supra).

"Yet no precise and inflexible working definition has been evolved in respect of locus standi of an individual seeking judicial remedy and various activities in the field of PIL. Probably, some reservation and diversity of approach to the philosophy of PIL among some of the judges of this Court as reflected from the various decisions of this Court, is one of the reason for this Court finding it difficult to evolve a consistent jurisprudence in the field of PIL. True, in defining the rule of locus standi no "rigid litmus test" can be applied since the broad contours of PIL are still developing apace seemingly with divergent views on

several aspects of the concept of this newly developed law and discovered jurisdiction to a rapid transformation of judicial activism with a far-reaching change both in the nature and form of the judicial process."

As emphasised by their Lordships no rigid litmus test can be laid down for defining the rule of locus standi because broad contours of PIL are still developing apace.

27. On this question of locus standi of the petitioner, we also feel it apposite to refer to the following passage contained at page 215 in the judgment of Bhagwati, J., in the case of S.P. Gupta Vs. President of India and Others, which reads thus :-- "It is for this reason that in public interest litigation -- litigation undertaken for the purpose of redressing public injury, enforcing public duty, protecting social, collective, "diffused rights and interests or vindicating public interest, any citizen, who is acting bona fide and who has sufficient interest to be accorded standing" and to the following lines contained in Paragraph 10 in the decision of the Apex Court rendered in the case of Padma v. Hiralal Motilal Desarda, reported in AIR 2002 SC 3252, which reads thus :--"While hearing a public interest litigation the constitutional Court acts as the sentinel on the qui vive discharging its obligation as custodian of the constitutional morals, ethics and code of conduct -- well defined by series of judicial pronouncements. The Court is obliged to see while scrutinising the conduct and activities of a public body constituted with the avowed object of serving the society to see that its activities bear no colour except being transparent are guided with the object of public good and are within the four corners of law governing the same. The holder of every public office held a trust for public good and therefore his actions should all be above board."

28. In our view, a perusal of the passages, which we have extracted from the Janata Dal's case, S. P. Gupta's case, and Padma's case (supra) make it manifest that that where an injury is caused to public and there is dereliction of duty by the public authority and where the action of a public authority is not within the four corners; of law it would be open for a citizen to prefer a writ petition under Article 226 of the Constitution of India under the caption of Public Interest Litigation.

It should be remembered that State Counsel are paid from public exchequer wherein money comes through taxes realised from the public. It is because of this, as also because public has a vital stake in the administration of justice that it would be open for a member of public to approach this Court. It should be borne in mind that if persons lacking in the requisite of length prescribed by the L.R. Manual are appointed as State Counsel, the State is likely to loose cases and the casualty would be the administration of justice.

In our view, where an appointee does not fulfil the mandatory requirement of years of practice his appointment becomes arbitrary and violative of Article 14 of the Constitution of India and any person can challenge it through a Public

Interest. Litigation under Article 226 of the Constitution of India.

29. We would be failing in our fairness if before parting with the judgment we do not take note of a submission canvassed by Ms. Bulbul Godiyal, learned counsel for opposite party No. 25. She contended that the United Province Crown Law officers Rules framed in pursuance of the provisions of Clause (b) of Sub-section (1) and Clause (b) of Sub-section (2) of Section 241 of the Government of India Act. 1935 only provide that before a person can be appointed as a Law Officer in the State of U.P., he should have live years of standing. She contended that inasmuch as opposite party No. 25 was enrolled on 31-7-94 and appointed as Standing Counsel on 24-6-2002, she has fulfilled the eligibility criterion. We are constrained to observe that we do not find any merit in it. This rule stands superseded. The appointment of opposite party No. 25, who has been appointed as Standing Counsel, as would become manifest from the list furnished by the learned Advocate General would be governed by the eligibility requirement under the L.R. Manual and we have seen that by virtue of a Notification dated 18-10-1976 (quoted earlier) a person can only be appointed as Chief Standing Counsel/Standing Counsel if he/she has put in ten years of practice. We are not oblivious to the fact that the Governor in case of outstanding merit has the discretion to relax this requirement of length of practice, but as mentioned by us earlier the original file which has been perused by us, does not reflect that such a relaxation has been made by the Governor in favour of opposite party No. 25.

30. It would become manifest from the aforesaid discussion and the list submitted by the learned Advocate General that:-- (a) opposite parties 7 and 9, who were appointed as Brief Holders, had fulfilled the eligibility criterion of five years of practice on the date of their appointment; (b) opposite parties Nos. 26 and 27, namely, Sri Ram Kumar Maurya and Sri Suneel Kumar Chaudhary respectively, who were appointed as Additional Public Prosecutors on 10-12-2002 and 7-11-2002 respectively had fulfilled the eligibility criterion of seven years of practice as Additional Public Prosecutor on the date of their appointment; (c) although opposite party No. 6 Mr. Sharik Abbas Zaidi, opposite party No. 12 Sri Sheel Kumar Ojha. Opposite party No. 20 Sri Jyotendra Verma and opposite party No. 24 Sri Vijai Prakash Dwivedi on the date of their appointment had not put in the minimum five years of practice essential for their being appointed as brief holders but today they have put in more than five years of practice; and (d) that although opposite party No. 14 Sri Ram Prakash Ram Rajbhar and opposite party No. 15 Sri Rajendra Prasad on the date of their appointment as Standing Counsel had not put in the minimum requirement of ten years of practice but today they fulfil the said requirement.

31. For the reasons mentioned in Para 30, in our view no exception can be taken to the appointment of opposite party, No. 7 Mr. Vivek Saran, opposite party No. 9 Mr. Syed Ali Murtaza, opposite party No. 26 Sri Ram Kumar Maurya, and opposite party No. 27 Sri Sunil Kumar Choudhary because the list submitted by the learned Advocate General shows that :-- (i) opposite party No. 7 Mr. Vivek Saran

was enrolled on 13-1-1996 and was appointed as a Brief Holder for the first time on 19-4-2001 and since then is continuing; (ii) opposite party No. 9 Mr. Syed Ali Murtaza was enrolled as an Advocate on 13-12-1997, and was appointed as a Brief Holder on 26-6-2002; (iii) Opposite party No. 26 Mr. Ram Kumar Maurya was enrolled on 31-7-1994 and was appointed Additional Public Prosecutor on 10-12-2002; and (iv) opposite party No. 27 Mr. Suneel Kumar Chaudhary was enrolled as an Advocate on 13-2-1994 and was appointed as Additional Public Prosecutor on 7-1-2002.

32. The question is whether the appointment of opposite party No. 6 Sri Sharik Abbas, Zaidi, opposite party No. 20 Mr. Jyotendra Verma and opposite party No. 24 Mr. Vijai Prakash Dwivedi, as Brief Holders and that of opposite party No. 14 Mr. Ram Prakash Ram Rajbhar and opposite party No. 15. Mr. Rajendra Prasad as Standing Counsel be quashed because on the date of their appointment they did not fulfil the eligibility criterion of requisite practice under the L.R. Manual or should not be interfered with as today they fulfil it. In our view they were arbitrary when they were made but today do not warrant interference. It is not the case of the petitioner nor is it borne out from the record that the said opposite parties had wrongly furnished their length of practice. Hence, they cannot be faulted for their appointments. Today they have fulfilled the period of practice prescribed by the L.R. Manual. In our view it would be too harsh and inequitable to disturb their appointments. A perusal of the list submitted by the learned Advocate General would show that :--

(i) opposite party No. 6 Mr. Shariq Abbas Zaidi was enrolled on 6-9-1997 and is functioning as a Brief Holder from 12-5-1999 with a gap of only fifteen days i.e. between 13-5-1999 to 28-5-1999;

(ii) opposite party No. 20 Mr. Jyotendra Verma was enrolled on 10-1-1998 and is working as a Brief Holder from 24-6-2002;

(iii) opposite party No. 24 Mr. Vijay Prakash Dwivedi was enrolled on 12-8-1996 and is working as a Brief Holder from 24-6-2002;

(iv) opposite party No. 14 Mr. Rani Prakash Ram Rajbhar was enrolled on 28-3-1993 and is working as Standing Counsel from 24-6--2002; and

(v) Opposite party No. 15 Mr. Rajendra Prasad was enrolled on 14-11-1992 and is working as Standing Counsel since 24-6-2002.

We are fortified in our view by the ratio laid down by the Supreme Court in the case of Ram Sarup Vs. State of Haryana and Others, and M.S. Mudhol and Another Vs. S.D. Halegkar and Others,

A perusal of the former decision would show that on the date of initial appointment appellant Ram Sarup could not be appointed to the post of Labour Conciliation Officer because he did not fulfil the essential qualification of five years of experience in the working of the labour laws as Labour inspector, Deputy Chief Inspector for shops or Wage Inspector, but since subsequently he had

completed, the said experience the Supreme Court allowed his appeal and set aside the order of reversion passed against him by the Government and the order passed by the learned single Judge of the High Court, dismissing his petition, and of the Appellate Bench of the High Court, dismissing his appeal.

A perusal of the latter decision shows that although the respondent was M.Ed. II Division and the qualification for the post of Principal for which he was appointed, was M.A. II Division, the Supreme Court did not interfere with the appointment because it was the fault of the Selection Committee in wrongly selecting him: he was not to be blamed; and nine years had elapsed.

33. For the said reasons, we are of the view that the appointments of opposite party No. 6 Mr. Shariq Abbas Zaidi, opposite party No. 7 Mr. Vivek Saran, opposite party No. 9 Mr. Syed Ali Murtaza, opposite party No. 14 Mr. Ram Prakash Ram Rajbhar, opposite party No. 15 Mr. Rajendra Prasad, opposite party No. 20 Mr. Jyotendra Verma, opposite party No. 24 Mr. Vijay Prakash Dwivedi, opposite party No. 26 Mr. Ram Kumar Maurya and opposite party No. 27 Mr. Sunil Kumar Chaudhary be not quashed.

34. We however make no bones in observing that appointments of opposite party No. 3 Mr. Shashank Shekhar Singh (he was enrolled in the year 1999), opposite party No. 4 Ms. Vishnu Priya (she was enrolled on 15-3-1999), opposite party No. 5 Mr. Shashi Kant Rai (he was enrolled in the year 1999), opposite party No. 8 Mr. Ajit Rai (he was enrolled on 15-3-1999), opposite party No. 10 Mr. Gaurav Kakkar (he was enrolled on 22-7-1999), opposite party No. 11 Mr. Ajay Kumar Mishra (he was enrolled on 24-5-2000), opposite party No. 12 Mr. Sheel Kumar Ojha (he was enrolled on 26-11-2000), opposite party No. 17 Mr. Ujjwal Singh (he was enrolled on 10-2-1999), opposite party No. 18 (Mr. Abhinav N. Trivedi (he was enrolled on 16-12-2000), opposite party No. 19 Mr. Prashant Arora (he was enrolled on 23-4-1999), opposite party No. 21 Mr. Surendra Kumar (he was enrolled on 23-1-2000), opposite party No. 22 Ms. Anita Shukla (she was enrolled on 10-5-1999). opposite party No. 23 Mr. Brijesh Kumar Mishra (he was enrolled on 3-3-2000) as Brief Holders and opposite party No. 13 Mr. Vijay Shankar Mishra (he was enrolled on 1-5-1994), and opposite party No. 25 Sm. Madhumita Bose (she was enrolled 31-7-1994) as Standing Counsel cannot be sustained in law because the list furnished by the learned Advocate General, which we have extracted in entirety shows that neither on the date of their appointment nor today they fulfil the requirement of length of practice prescribed under the L.R. Manual. Consequently, their appointments would have to be quashed.

35. In the result, this writ petition is partly allowed and partly dismissed.

A. We sustain the appointments of opposite party No. 6 Mr. Shariq Abbas Zaidi, opposite party No. 7 Mr. Vivek Saran, opposite party No. 9 Mr. Syed Ali Murtaza, opposite party No. 14 Mr. Ram Prakash Ram Rajbhar, opposite party No. 15 Mr. Rajendra Prasad, opposite party No. 20 Mr. Jyotendra Verma. opposite party No.

24 Mr. Vijai Prakash Dwivedi, opposite party No. 26 Ram Kumar Maurya and opposite party No. 27 Mr. Sunil Kumar Chaudhari.

(B) We quash and set aside the appointments of opposite party No. 3 Mr. Shashank Shekhar Singh, opposite party No. 4 Ms. Vishnu Priya, opposite party No. 5 Mr. Shashi Kant Rai, opposite party No. 8 Mr. Ajit Ray, opposite party No. 10 Mr. Gaurav Kakkar, opposite party No. 11 Mr. Ajai Kumar Misra, opposite party No. 12 Mr. Sheel Kumar Ojha, opposite party No. 13 Mr. Vijai Shanker Misra, opposite party No. 17 Mr. Ujjwal Singh, opposite party No. 18 Mr. Abhinav N. Trivedi, opposite party No. 19 Mr. Prashant Arora, opposite party No. 21 Mr. Surendra Kumar, opposite party No. 22 Ms. Anita Shukla, opposite party No. 23 Mr. Brijesh Kumar and opposite party No. 25 Smt. Madhumita Bose.

(C) As mentioned earlier opposite party No. 16 Smt. Subhash Rathi has been removed by G.O. dated 22-6-2002.

Office is directed to send a copy of this judgment to opposite parties Nos. 1 and 2 within one week from today and we hope that in future they would make appointments of State "Counsel" in conformity with the eligibility requirement pertaining to the period Of practice stipulated in the, L.R. Manual and in consonance with the other provisions contained in the L.R. Manual.