
(2013) 05 AHC CK 0225

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 58740 of 2012 & Civil
Miscellaneous Writ petition No. 58740 of 2012

Vijay Shankar Rastogi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Citation : (2013) 05 AHC CK 0225

Hon'ble Judges : Sunil Ambwani, J and Bharat Bhushan, J

Final Decision : Allowed

Judgement

Bharat Bhushan, J.—By means of this writ petition, petitioners have prayed for the following reliefs:

(I) Issue an appropriate writ, order or direction in the nature of certiorari calling for the record and quashing the impugned order/letter No. D1948/7Nyaya3121(63)/2001 dated 31.10.2012 issued by the respondent no. 3 so far as it relates to the petitioners shown at serial nos. 18,19 and 20.

(II) Issue an appropriate writ, order or direction in the nature of mandamus commanding the respondents to grant renewal to the petitioner nos. 1 & 2 on the post of Assistant District Government Counsel (Civil), Varanasi and petitioner No. 3 on the post of Assistant District Government Counsel (Criminal), Varanasi;

(III) Issue an appropriate writ, order or direction in the nature of mandamus restraining the respondents from interfering in the peaceful functioning of the petitioners no. 1 & 2 on the post of Assistant District Government Counsel (Civil), Varanasi and petitioner No. 3 on the post of Assistant District Government Counsel (Criminal), Varanasi; and

(IV) Any other, writ, order or direction which this Court may deem fit and proper under the circumstances of the present case.

2. Before advertng to the merits of the case, it will be appropriate to recapitulate

the glaring facts of the present case for its proper adjudication by this court, which are as under:

3. The petitioner no. 1 was appointed as Assistant District Government Counsel (Civil), Varanasi [hereinafter referred as A.D.G.C.(Civil)] by the State Government vide order dated 27.2.1999. Thereafter he was given renewal for a period of three years by the State Government vide G.O. dated 21.8.2000, which was operative till 20.8.2003 on the recommendation of the District Judge and District Magistrate, Varanasi respectively. Subsequently, there were continuous recommendations by the District Judge and the District Magistrate, Varanasi for the renewal of the petitioner as A.D.G.C.(Civil), Varanasi but no decision was taken by the State Government and same was kept pending without any justification. Lastly, petitioner no. 1 again submitted an application for renewal of his term on 22.2.2010 with the statement of work in Form IX duly recommended by the District Judge and the District Magistrate but no decision was taken and petitioner no. 1 continued to discharge his duties as A.D.G.C. (civil), Varanasi.

4. The petitioner no. 1 has relied on the power of attorney executed by the Registrar General of this Court whereby the District Judge, Varanasi was nominated as lawful attorney on behalf of Registrar General of this Court to do and perform or cause to be done, executed and performed all or any of the acts, deeds and things in all the cases pertaining to land of Civil Court, Varanasi including Case No. 928 of 1988. Under clause 3 of the said power of attorney the District Judge, Varanasi was empowered to engage and appoint any solicitor, Advocate or Advocates or counsel to act and plead and otherwise conduct this case. In pursuance of this power of attorney, District Judge, Varanasi appointed/ authorised the petitioner no. 1 to conduct various cases with regard to properties of Civil Court, Varanasi vide different authority. The petitioner no. 1 was also engaged to carry out the work of District Government Counsel (Civil), Varanasi for 15 days vide order dated 14.6.2012 passed by the Addl. District Magistrate, (Varanasi) issued in pursuance of the order dated 13.6.2012 passed by the District Magistrate, Varanasi. The District Magistrate, Varanasi, vide its letter dated 20.6.2012 recommended for continuation of the petitioner no. 1 on the post of District Government Counsel (Civil), Varanasi till regular appointment was made.

5. The petitioner no. 2 was appointed as A.D.G.C. (Civil), Varanasi for one year and thereafter his term was renewed vide G.Os. dated 28.11.1992, 13.5.1996 and 28.5.1999 respectively. The petitioner no. 2 was given the charge of District Government Counsel (Civil), Varanasi on two occasions after the retirement of the District Government Counsel (Civil).

6. The case of the petitioner no. 3 is that he was appointed as A.D.G.C. (criminal), Varanasi initially for one year which was renewed from 24.2.1992 to 16.12.1997. Thereafter, he was again appointed as such for one year vide order dated 28.6.1999 up to 28.6.2000. Subsequently, renewal was granted for three years up to 20.8.2003 vide order dated 21.8.2000 and again renewal was

granted up to 20.8.2000 vide order dated 7.6.2006. In the year 2008 after retirement of District Government Counsel (Criminal), Varanasi, petitioner no. 3 was given charge of District Government Counsel (Criminal) by the then District Magistrate, Varanasi and he also recommended his name for continuation as District Government Counsel (Criminal) vide letter dated 28.4.2008 till regular appointment. It is alleged that petitioner no. 3 thereafter submitted an application for renewal with the statement of work in Form IX but no decision was taken by the respondents and petitioner no. 3 continued to discharge his duties as A.D.G.C. (Crl), Varanasi.

7. Despite several recommendations made in favour of the petitioners, who were working on their respective posts, the State government did not take any decision. Finally, the State Government issued G.O. dated 16.5.2011 directing the District Magistrates to advertise the post of the Assistant District Government Counsel (Civil/Criminal) and panel lawyers, in pursuance thereof an advertisement dated 1.6.2011 was issued inviting applications for the said posts. It is alleged that in the meantime the State Government issued a Government Order dated 13.8.2008 whereby the various provisions of UP Legal Remembrancer's Manual (hereinafter referred as L.R. Manual) were amended to the extent it provided mandatory consultation with the District Judges for appointment on the posts of District Government Counsels.

8. It is stated that the petitioners no. 1 & 2 preferred Writ Petition (MB) No. 5696 of 2011 (Vijay Shankar Rastogi and others Vs State of UP and others) before Lucknow Bench of the Court challenging the Government order dated 16.5.2011 and the advertisement dated 1/6/2011 and further the G.O. dated 13.8.2008. They also challenged their disengagement order dated 4.8.2011 in the said writ petition, during the pendency of the writ petition.

9. The petitioner no. 3 also filed Writ Petition (M/B) No. 6610 of 2011 (Uma Shanker Singh and others Vs State of UP and others) before Lucknow Bench of the Court challenging the aforesaid G.O. dated 16.5.2011 and 13.8.2011 and the advertisement dated 1.6.2011.

10. The Lucknow Bench of the Court allowed the aforesaid Writ Petition (MB) No. 5696 of 2011 (Vijay Shankar Rastogi and others Vs State of UP and others) along with other connected matters vide judgement and order dated 1.6.2012 with the following directions:

"253. (1) In view of above, the writ petitions are allowed and a writ in the nature of certiorari is issued quashing the impugned Government Order dated 13.8.2008 contained in Annexure No.1 to writ petition No.7851(M/B) of 2008 to the extent of the amendment made in the L.R. Manual deleting the consultation process with the District Judge with consequential benefits.

(2) A further writ, order or direction in the nature of certiorari is issued quashing the orders dated 17.4.2011 and 20.4.2011, contained as Annexures 1 and 2 respectively to writ petition No.3922(M/B) of 2011, order dated 28.4.2011,

followed by order dated 30.4.2011 contained as Annexures 26 and 27 respectively in writ petition No.4817(M/B) of 2011, order dated 17.4.2011 and order dated 19.4.2011, contained as Annexures 1 and 2 respectively in writ petition No.4084(M/B) of 2011 and the impugned order dated 18.4.2011, passed in Writ Petition No.3860(M/B) of 2011 contained in Annexure No.1 with costs, Cost is quantified to Rs.2 lacs for each of the petitioners of the aforesaid four writ petitions, out of which, the petitioners shall be entitled to withdraw an amount of Rs.1,50,000/ and the rest Rs.50,000/ shall be transmitted to the Mediation Centre of this Court at Lucknow. Let the cost be deposited within two months from today. In the event of default to deposit the cost, it shall be recovered as arrears of land revenue by the District Magistrate concerned and thereafter be remitted to this Court. Registry to take followup action.

(3) A further writ, order or direction in the nature of mandamus is issued directing the State Government to remove all those District Government Counsels or Addl. District Government Counsels who have been involved in criminal case or against whom an investigation of criminal case is pending after serving a show cause notice within a period of two months.

(4) A further writ, order or direction in the nature of mandamus is issued commanding the State of U.P to readvertise the posts in question keeping in view the observation made in the body of judgment and take a fresh decision strictly in accordance with L.R. Manual expeditiously, say within a period of three months. The petitioners, who were working at the time of filing of the writ petitions shall be permitted to continue to discharge their obligation till their case is reconsidered in accordance with the provisions contained in L.R. Manual after fresh advertisement of the vacancies in the newspaper.

Let a copy of the judgment be sent to Hon"ble the Chief Justice of this Court, the Chief Secretary of the State Government and the Principal Secretary, Law forthwith by the registry.

The writ petitions are allowed accordingly with costs."

11. It is further contended that this Court in Writ Petition (M/B) No. 8246 of 2011 (Bishan Pal Saxena and others Vs State of UP and others) along with other connected matters, wherein also similar controversy with regard to appointment and renewal on the post of Additional District Government Counsel, Assistant District Government Counsel, Panel Lawyers and Sub District Government Counsel were involved, relying on the judgement passed by Division Bench of this Court in Writ Petition No. 7825 (MB) of 2011; (Sadhna Sharma Vs. State of U.P. & Ors) whereby the amendments were declared as ultra vires, unconstitutional, void & illegal and restoring the old provision of obtaining prior opinion of District Judge of the respective districts while making appointment on the post of Additional District Government Counsel, Assistant District Government Counsel, Panel Lawyers and Sub District Government Counsel, disposed of all the connected matter vide order dated 12.1.2012 with the

following orders:

"(1) Let the State of U.P. reconsider the selection and appointment on the post of Additional District Government Counsel, Assistant District Government Counsel, Panel Lawyers and Sub District Government Counsel in the light of the aforesaid two judgments passed by the Division Bench of this Court afresh, expeditiously, say within a period of four months from today.

(2) The persons appointed in pursuance to old provision shall continue for the period of four months or till reconsideration of their cases in the light of the aforesaid two judgement passed by the Division Bench (supra), whichever is earlier.

(3) No fresh appointments shall be done henceforth except in accordance to law settled by aforesaid two judgments (supra). In case some of the petitioners are still holding the post then they shall continue on their respective post till the State Government considers afresh with regard to their renewal of appointment with due opportunity to the serving incumbents in the light of judgements of this Court (supra).

The writ petitions are disposed of accordingly."

12. The judgement and order dated 6.1.2012 and 12.1.2012 passed by Lucknow Bench of this Court was challenged by the State Government in various special appeals before the Hon"ble Supreme Court. The Hon"ble Apex Court in Special Leave Petition (Civil) No. 4042 of 2012 and 4043 of 2012 (State of U.P. and Others vs. Sadhna Sharma) while disposing of the matter has given several directions to resolve the entire dispute connected with renewal/reconsideration of appointment as well as issues related to fresh appointment of Additional District Government Counsel and District Government Counsel. The said directions are reproduced as under:

"(1) In terms of the above referred clauses of the judgement of the High Court, the vacancies which have already been filled in accordance with Section 24 of the Criminal Procedure Code and certain provisions of the L.R. Manual and unamended provisions of the Criminal Procedure Code. To be more specific, i.e., the appointments which have been made in consultation with the High Court and/or the District and Sessions Judge of the respective district and who continue to function in the respective posts shall not be disturbed.

(2)Against the existing vacancies the cases of all the appellants herein, who are in service or are out of service as well as any of the petitioners before the High Courts, whose services were terminated at any point of time including the persons who had filed writ petitions in the High Court during the pendency of the writ petition and/or the present civil appeals shall be considered for renewal/reconsideration in accordance with the judgement of this Court within a period of three months from today.

(3)For implementation of these directions the Secretary, Department of Law and

Justice, State Government, shall be personally responsible and should complete the exercise within the stipulated period to ensure that required number of public prosecutors are present in the Courts for expeditious disposal of cases.

(4)The renewal/reconsideration/appointment shall be done by the concerned authority in the above manner. We would clarify that all the appointments either directly or by way of renewal/reconsideration shall only be made in consultation with the High Court and/or the District and Sessions Judges as the case may be. All the concerned shall duly abide, and without default, with the process of selection and appointments, as aforestated.

All the I.As and appeals are, accordingly disposed of. "

13. The State Government in compliance of the judgement and orders dated 6.1.2012 and 12.1.2012 passed by Lucknow Bench of this Court called for a report from the District Magistrate, Varanasi and consequently the District Magistrate, Varanasi submitted his report dated 26/2852012 to the Special Secretary, Government of UP, Lucknow apprising him the factual position of the petitioners and other persons who had filed writ petitions before the Lucknow Bench of this Court. The Special Secretary, Government of UP, Lucknow directed the District Magistrate, Varanasi vide his letter dated 30.5.2012 with regard to joining of the petitioners with others as a result of which the petitioners joined their respective posts on 6.6.2012 and till date they are continuously working as such.

14. It is also contended that the District Judge, Varnasi sent his recommendation dated 22.6.2012 to the District Magistrate, Varanasi regarding the work, conduct, integrity and knowledge etc of petitioners with others and thereafter the District Magistrate, Varanasi submitted his recommendation dated 27.6.2012 to the Special Secretary, Government of UP, Lucknow to renew the term of petitioners along with others.

15. The Special Secretary, Government of UP, Lucknow through his letter dated 9.7.2012 reappointed/renewed the engagement of 11 Assistant District Government Counsels out of the list of 15 persons, whose renewal was under consideration excluding the petitioners. On the same date i.e. 9.7.2012, another letter was issued by the Special Secretary to submit a report in respect of work, conduct, reputation, success, integrity etc of five persons including the petitioners. In response to this letter recommendations were made by the District Judge and the District Magistrate, Varanasi in respect of the petitioners and one Ravi Shankar Singh, on which, the Deputy Secretary, Government of UP, Lucknow issued two letters of the same date 31.10.2012, one in respect of granting renewal to one Sri Ravi Shanker Singh and Smt Vandana Srivastava both as Assistant District Government Counsel (Criminal), Varanasi. By the other letter the renewal of the term of petitioners along with others was refused giving rise to this writ petition.

16. In reply to the averments made by learned counsel for the petitioners, it is

contended by learned counsel for the State respondents that the petitioners were given officiating charge vide different orders issued by the Government. These orders did not give any right to them to be considered for renewal of their term of appointment. It is further submitted that decision on the renewal of the term of appointment of the petitioners was taken by the respondents after consideration of the percentage of disposal of their work, the details of which was submitted by the petitioner no. 3 on Form IX. The State Government did not find the disposal to be satisfactory. So far as the petitioners no. 1 & 2 are concerned their disposal of work could not be assessed on account of the fact that they did not submit the Form IX along with their application for renewal, The impugned order dated 31.10.2012 was thus rightly passed after considering the claim of the petitioners for renewal and reasons for refusal of renewal have been explained in the impugned letter dated 31.10.2012 which cannot be said to be unjust, illegal and arbitrary.

17. We have heard learned counsel for the petitioners and learned Standing Counsel appearing for the State.

18. The grievance of the petitioners is that the names of persons mentioned at Srl No. 1 to 16 of the impugned letter dated 31.10.2012 relates to the persons whose appointments have been made as per the amended L.R. Manual. Their appointments have been held to be illegal and void by this Court as affirmed by the Hon''ble Apex Court and therefore, they could not have been entitled for renewal and thus their renewal was wrongly and illegally made by the State Government in violation of the directions issued by this Court.

19. It is further contended by learned counsel for the petitioners that the 15 persons whose renewal was under consideration, stand on same footing with petitioners and in respect of whom recommendation was sent by the District Magistrate and the District Judge Varanasi out of whom the term of only ten person was renewed vide letter dated 9.7.2012. The term of one person namely Ravi Shanker Singh shown at Sl No. 1 of the letter dated 31.10.2012 has been extended in a discriminatory manner without disclosing any valid reasons and in violation of the Article 14 of the Constitution of India.

20. In reply to the contention raised by learned counsel for the respondents, it is submitted by learned counsel for the petitioners that it is wrong to say that the petitioners have not submitted Form IX along with their application for consideration of their term of renewal. Petitioner No. 1 has brought on record the application dated 22.2.2010 sent for renewal of his term to the District Magistrate, Varanasi, copy of which was obtained by him under the Right to Information Act, 2005 from the office of Jan Soochana Adhikari/Additional District Magistrate II, Varanasi vide his letter No. 977 dated 16.3.2013, which is annexed as Annexure No. 1 to the rejoinder affidavit, which shows that application dated 22.2.2010 sent for renewal of the term of the petitioner no. 1 duly was accompanied with Form IX and the recommendation letter dated 26.5.2010.

21. The petitioner no. 2 has also brought on record the application dated 12.10.2009 sent for renewal of his term to the District Magistrate, Varanasi, copy of which was obtained by him under the Right to Information Act, 2005 from the office of Jan Soochana Adhikari/Additional District Magistrate II, Varanasi vide his letter No. 978 dated 16.3.2013, which is annexed as Annexure No. 1 to the rejoinder affidavit filed separately on his behalf. Perusal of which shows that application dated 12.10.2009 was sent for renewal of the term of the petitioner no. 2 duly accompanied with the form IX and the recommendation letter dated 5.1.2010.

22. The petitioner no. 3 has also brought on record Form IX for the period 1.1.1997 to 20.10.1997, August 2000 to June, 2003, February, 2003 to 15.7.2006 and December 2009 to December 2010 collectively as well as different certificates issued by the different Presiding Officers of the District Court certifying his work and conduct. He has further submitted that out of 20 persons referred to in the impugned order dated 31.10.2012, the persons mentioned at Sl No. 1 to 16 are those whose appointments were made under the amended provisions of L.R. Manual, which have already been declared to be illegal and void by this Court, as affirmed by the Hon"ble Apex Court and therefore, they could not be made entitled for renewal. Their renewal has been made wrongly and illegally by the State Government.

23. Before examining the merits or otherwise of the rival contentions of the learned counsel for the parties, it will be relevant to quote the provisions regarding the appointment and renewal of the District Government Counsel. Chapter 7 of the Legal Remembrancer's Manual deals with District Government Counsel. The relevant paras of the L.R. Manual are as under:

Para 7.01 of Legal Remembrancer's Manual defines the District Government Counsel to mean legal practitioners appointed by the State Government to conduct in any court such Civil, Criminal or revenue cases, as may be assigned to them either generally, or specially by the Government. The legal practitioner appointed to conduct civil, criminal or revenue cases shall be known as District Government Counsel (Civil), (Criminal) or (Revenue), as the case may be.

Para 7.02 of the Manual lays down the power of the Government to appoint Government Counsel for each district in the State.

Para 7.03 provides that whenever a post of any Government Counsel is likely to fall vacant within the next three months or when a new post is created, the District Magistrate shall notify the vacancies to the members of the Bar, the qualification wherefor would be practice of 10 years in case of District Government Counsel, 7 years in case of Assistant District Government Counsel and 5 years in case of SubDistrict Government Counsel. Clause (3) of Para 7.03 reads thus:

"(3) The names so received shall be considered by the District Officer in consultation with the District Judge. The District Officer shall give due weight to

the claim of the existing incumbents [Additional/Assistant District Government Counsel], if any, and shall submit confidentially in order of preference the names of the legal practitioners for each post to the Legal Remembrancer giving his own opinion particularly about his character, professional conduct and integrity and the opinion of the District Judge on the suitability and merits, of each candidate. While forwarding his recommendations to the Legal Remembrancer the District Officer shall also send to him the bio data submitted by other incumbents with such comments as he and the District Judge may like to make. In making the recommendations, the proficiency of the candidate in civil or criminal or revenue law, as the case may be, as well as in Hindi shall particularly be taken into consideration:

Provided that it will also be open to the District Officer to recommend the name of any person, who may be considered fit, even though he may not have formally supplied his bio data for being considered for appointment. The willingness of such a person to accept the appointment if made shall, however, be obtained before his name is recommended."

Para 7.04 of the said Manual provides that on receipt of the recommendations of the District Officer, the Legal Remembrancer may make further enquiry and submit the recommendations as also for orders of the State Government. The decision of the State Government would be final. Para 7.05 prohibits canvassing by or on the part of a candidate which would entail disqualification."

"7.06. Appointment and renewal

1. The legal practitioner finally selected by the Government may be appointed District Government Counsel for one year from the date of his taking over charge.
2. At the end of the aforesaid period, the District Officer after consulting the District Judge shall submit a report on his work and conduct to the legal Remembrances together with the statement of work done in Form no. 9. Should his work or conduct be found to be unsatisfactory the matter shall be reported to the Government for orders. If the report in respect of his work and conduct is satisfactory, he may be furnished with a deed of engagement in Form no. 1 for a term not exceeding three years. On his first engagement a copy of Form no. 2 shall be supplied to him and he shall complete and return it to the Legal Remembrancer for record.
3. The appointment of any legal practitioner as a District Government Counsel is only professional engagement terminable at will on either side and is not appointment to a post under the Government. Accordingly the Government reserves the power to terminate the appointment of any District Government Counsel at any time without assigning any cause.

7.08. Renewal of term

1. At least three months before the expiry of the term of a District Government Counsel, the District Officer shall after consulting the District Judge and

considering his past record of work, conduct and age, report to the Legal Remembrancer, together with the statement of work done by him in Form no. 9 whether in his opinion the term of appointment of such counsel should be renewed or not. A copy of the opinion of the District Judge should also be sent along with the recommendations of the District Officer.

2. Where recommendation for the extension of the term of a District Government Counsel is made for a specified period only, the reasons thereof shall also be stated by the District Officer.

3. While forwarding his recommendation for renewal of the term of a District Government Counsel

i. The District Judge shall give an estimate of the quality of the Counsel's work from the judicial stand point, keeping in view the different aspects of a lawyer's capacity as it is manifested before him in conducting State cases, and specially his professional conduct;

ii. The District Officer shall give his report about the suitability of the District Government Counsel from the administrative point of view, his public reputation in general, his character, integrity and professional conduct.

4. If the Government agrees with the recommendations of the District Officer for the renewal of the term of the Government Counsel, it may pass orders for reappointing him for a period not exceeding three years.

5. If the Government decides not to reappoint a Government Counsel, the Legal Remembrancer may call upon the District officer to forward fresh recommendations in the manner laid down in para 7.03.

6. The procedure prescribed in this para shall be followed on the expiry of every successive period of renewed appointment of a District Government Counsel.

24. Thus, it is clear that in terms of Para 7.01, the District Government Counsel are legal practitioners appointed by the State Government to conduct in any court, other than the High Court, such civil, criminal or revenue cases on behalf of the State Government as assigned to them either generally or specially. Para 7.02 deals with the power of the government to appoint government counsel in the districts. As per this provision, the government was to ordinarily appoint District Government Counsel (Criminal), District Government Counsel (Civil) and District Government Counsel (Revenue) for each district, for which they have to make an application. Under these rules, the appointments are to be made and renewal to be considered upon the recommendation of the District Officer and the District Judge. The rules even state the factors which are to weigh in the mind of the recommending authority while recommending or declining to recommend renewal of term of the government pleaders. From the aforesaid quoted provisions, it is clear that the government counsel has to be appointed and/or his/her term renewed upon recommendation of the District Judge and the District Officer and in accordance with the procedure prescribed under the above

rules.

25. In the present case, the District Judge, Varanasi submitted his report dated 22.6.2012 to the District Magistrate, Varanasi, who in turn submitted its recommendation dated 27.6.2012 to the Special Secretary, Government of UP, Lucknow to renew the term of petitioners along with others. The Special Secretary, Government of UP, Lucknow through his letter dated 9.7.2012 reappointed/renewed the engagement of 11 Assistant District Government Counsels out of the list of 15 persons whose renewal was under consideration excluding the petitioners. Again on the same date i.e. 9.7.2012, another letter was issued by the Special Secretary to submit report in respect of work, conduct, reputation, success, integrity etc of five persons including the petitioners and further recommendations was made by the District Judge and the District Magistrate, Varanasi in respect of the petitioners and one Ravi Shankar Singh. Thereafter, the Deputy Secretary, Government of UP, Lucknow issued two letters dated 31.10.2012, one in respect of granting renewal to one Sri Ravi Shanker Singh and Smt Vandana Srivastava both as Assistant District Government Counsel (Criminal), Varanasi. However, by means of another letter of the same date i.e. 31.10.2012 the Special Secretary, Government of UP, refused the renewal of the term of petitioners along with others which resulted in cancellation of their engagement with immediate effect. The impugned letter dated 31.10.2012 is quoted below:

26. From the impugned letter quoted above, it is clear that the Government has not considered the matter of renewal of the term of the petitioners on merits. It is nowhere stated that the State Government has taken into account the recommendations of the District Judge and the District Magistrate, Varanasi. Thus, in absence of any reason for not considering the recommendations of the District Judge and the District Magistrate the whole exercise undertaken is rendered legally unsustainable.

27. From the discussions made herein supra, it is clear that the government counsel has a right to be considered for renewal of his term in terms of Para 7.08 of L. R. Manual which specifically provides that at least three months before the expiry of the term of the District Government Counsel, the District Officer shall after consulting the District Judge and considering their past record of work, conduct and age, submit a report to the Legal Remembrancer, together with the statement of work done by them, for consideration of the State Government, as to whether the term be renewed or not. The District Government Counsel cannot be removed nor their functioning interfered unless renewal is considered in accordance with the procedure prescribed by law taking into account the report of the District Judge as well as the comments of the District Magistrate and appropriate orders are passed refusing renewal. From the record it is established that the State Government did not consider the case of the petitioners at any point of time for renewal of their term and had not taken into consideration the recommendations made by the District Judge and the report submitted by the

District Magistrate and hence the order cannot be sustained. The conclusion so arrived at by a non speaking order is thus arbitrary, unreasonable and thus unsustainable in law.

28. In State of UP and others Vs Ashok Kumar Nigam, reported (2013) 3 SCC 372, the Hon''ble Apex Court has held that for renewal of the term of District Government Counsel, the compliance of the procedure is necessary by the competent authority. A decision by the State Government not to renew terms of District Government counsels enbloc without proper application of mind or due consideration of prescribed procedure by an unreasoned order cannot be sustained. It has also been held by Hon''ble Apex Court that right of consideration for renewal is a legitimate right vested in the applicant which can be declined only where specified authorities report about applicant's work to be unsatisfactory. The State Government does not have absolute right to terminate the appointment at any time without specifying any reason. Hon''ble Apex Court has further held that the onus was on the State Government/competent authority to show that it had acted in accordance with the prescribed procedure and its action did not suffer from vice of discrimination and arbitrariness. The arbitrary act of the authorities cannot be said to be beyond the ambit of judicial review.

29. In Kumari Shrilekha Vidyarthi etc.Vs State of U.P. and others reported in AIR 1992 S.C. 537, it has been held as under:

"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 the private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind."

30. The law is very well settled that a thing should be done in the manner, as it is provided by the Act or statute or regulatory procedure, and not otherwise. The renewal of serving government counsel before proceeding to make fresh appointment must be considered in accordance with law as settled by the judgments of this Court and Hon''ble Supreme Court.

31. Hon''ble Apex Court in Km. Srilekha Vidyarthi(supra), where the services of government counsels of entire State were terminated, held that in case of existing appointees, a decision has to be first reached about their nonsuitability for renewal before deciding to take step for fresh appointment. To quote relevant portion from Km. Srilekha Vidyarthi(supra) :

"46.....This was done in spite of the clear provisions in the L.R. Manual laying down detailed procedure for appointment, termination and renewal of tenure and the requirement to first consider the existing incumbent for renewal of his tenure

and to take steps for a fresh appointment in his place only if the existing incumbent is not found suitable in comparison to more suitable persons available for appointment at the time of renewal. In the case of existing appointees, a decision has to be first reached about their nonsuitability for renewal before deciding to take steps for making fresh appointments to replace them. None of these steps were taken and no material has been produced to show that any existing incumbent was found unsuitable for the office on objective assessment before the decision to replace all by fresh appointees was taken. The prescribed procedure laid down in the L.R. Manual which has to regulate exercise of this power was totally ignored. In short, nothing worthwhile has been shown on behalf of the State of U. P. to support the impugned action as reasonable and nonarbitrary. The impugned circular must, therefore, perish on the ground of arbitrariness which is an available ground for judicial review in such a situation.

32. In *State of UP and others Vs Ramesh Chandra Sharma*, 1996 AIR 864, Hon"ble Supreme Court considered the case of renewal of term and held that the application for renewal is required to be considered in strict adherence of the provisions contained in Para 7.08 of the L.R. Manual and application is to be considered on relevant considerations. It cannot be rejected on the whims of the authority or in an arbitrary manner. If the court comes to the conclusion that application for renewal has been rejected on any non existent reasons or extraneous consideration, the order becomes liable to be quashed.

33. In view of the discussions made herein above, the writ petition is allowed. The impugned letter dated 31.10.2012 is hereby set aside. The respondents are directed to consider the claim of the petitioners in accordance with the procedure prescribed for renewal of their term on the same material, as was placed before it, by a reasoned and speaking order within a period of two months from the date of production of certified copy of this order.