

Neutral Citation No. - 2023:AHC:177822-DB

**A.F.R.**  
**Reserved**

**Court No. - 32**

**Case :-** WRIT - C No. - 42430 of 2014

**Petitioner :-** Santosh Kumar Dohrey

**Respondent :-** Pramukh Sachiv Nyay Evam Vidhi Paramarshi U.P.  
And 4 Others

**Counsel for Petitioner :-** Akram Parvez Siddiqui, Braj Mohan  
Singh, Harish Chandra Mishra, Narendra Mohan

**Counsel for Respondent :-** C.S.C.

**Hon'ble Salil Kumar Rai, J.**

**Hon'ble Surendra Singh-I, J.**

**Per : Hon'ble Surendra Singh-I, J.**

Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. This writ petition has been filed by the petitioner against the order dated 30.07.2014 passed by respondent no. 4, District Magistrate, Jhansi.

3. By the impugned order, the respondent no. 4 ordered the petitioner that since his engagement for working as Assistant District Government Counsel (Criminal) has expired on 29.07.2014, hence, he should hand over the charge of aforesaid post in the forenoon of 30.07.2014 to District Government Counsel (Criminal).

4. Averment has been made that the petitioner was engaged by the government on the post of Assistant District Government Counsel (Criminal) vide G.O. dated 09.09.2008 issued by the Deputy Secretary, Government of U.P. till the period of 02.09.2009. The petitioner performed the duty of his post efficiently and vide order dated 29.07.2011 passed by Nyay Anubhag-3 (Niyuktiyan), he was further engaged for 3 years or till the age of superannuation of sixty years, whichever is earlier. Before expiry of period of his re-appointment, the petitioner on 17.04.2014 submitted application for renewal in Proforma-9 to respondent no. 4, District

Magistrate, Jhansi. The District Judge, Jhansi, vide letter no. 14/SAO/2014 dated 26.05.2014 forwarded his recommendation to the respondent no. 4, District Magistrate, Jhansi for renewal. On the basis of recommendation of District Judge, Jhansi, the respondent no. 4, District Magistrate, Jhansi vide letter no. 1594/J.A.-29/2014-15 dated 09.06.2014 forwarded his recommendation for renewal to Special Secretary (Legal Remembrancer), Government of U.P. The government has not passed any order on the proposal for renewal of his term because vide order dated 10.07.2014, status quo order was passed by Allahabad High Court, Lucknow Bench.

5. The respondent no. 5, District Government Counsel (Criminal), Jhansi vide letter dated 30.07.2014 sought guidance from the respondent no. 4, District Magistrate, Jhansi for the functioning of petitioner on the ground that his tenure has expired on 29.07.2014 and no renewal was done by the government. An influential leader of the ruling party sent letter dated 30.07.2014 to the respondent no. 4, District Magistrate, Jhansi, asking him to discharge the petitioner from performing his duties as his tenure has expired on 29.07.2014. The respondent no. 4, District Magistrate, Jhansi, has passed the impugned order dated 30.07.2014 under the pressure of aforesaid leader of the ruling party. The petitioner submitted his representation to the respondent no. 4 for withdrawing his impugned order dated 30.07.2014 by which he was relieved from performing his duties on the post of A.D.G.C. (Crl.) but the impugned order was not withdrawn. The respondent no. 4 issued on 12.06.2014 advertisement for inviting application for the post of Assistant District Government Counsel (Criminal).

6. It has been submitted by learned counsel for the petitioner that the respondent no. 4, District Magistrate, Jhansi, has no authority to relieve him from his post of A.D.G.C. (Crl.) since proposal for renewal for his post is pending with the government. Vide order dated 14.08.2014, the Division Bench of Hon'ble High Court suspended the impugned order dated 30.07.2014 passed by respondent no. 4 and permitted the petitioner to continue on his post and be paid salary/perks. It has been next submitted that Hon'ble High Court in Misc. Bench No. 9127 of 2012, Ajay Kumar Sharma

and another Vs. State of U.P. and others, had directed the State Government to maintain status quo regarding the continuance of District Government Counsel (Criminal). Therefore, the impugned order passed by respondent no. 4 being against the afore-mentioned stay order passed by the Hon'ble High Court, is illegal and liable to be quashed.

7. In the counter affidavit dated 09.10.2014 filed by the Additional Chief Standing Counsel for the State-respondents, it has been submitted that the respondent no. 4 had no knowledge about the impugned stay order passed by Hon'ble High Court regarding continuance of D.G.C. (Crl.)/A.D.G.C. (Crl.). The engagement of the petitioner had expired on 29.07.2014 and, therefore, the impugned order dated 30.07.2014 was passed by the respondent no. 4. Since the respondent no. 4 became aware of the stay order passed by the Hon'ble High Court, vide order dated 15.09.2014, the respondent no. 4 withdrew his earlier order dated 30.07.2014 with immediate effect treating the petitioner continuing as Assistant District Government Counsel (Criminal), Jhansi, till receipt of further directions of the State Government. It has been denied that the impugned order was passed by the respondent no. 4 under the influence of letter dated 30.07.2014 issued by Dr. Chandrapal Singh Yadav, National Treasurer of Samajvadi Party.

8. In his rejoinder affidavit dated 08.07.2015, the petitioner has admitted that he was reinstated on his post of A.D.G.C. (Crl.) in compliance of Hon'ble Court's order dated 14.08.2014. It has also been stated that the petitioner is the only scheduled caste A.D.G.C. (Crl.) in District & Sessions Court, Jhansi. The respondent no. 5, D.G.C. (Crl.), Jhansi, Manish Yadav, has enmity with the petitioner. The petitioner was fatally attacked by Sanju Yadav against whom he lodged first information report and trial of the case is pending in Sessions Court. The respondent no. 5 had pressurized the petitioner to not prosecute Sanju Yadav. On his refusal, he became hostile towards him. Vide amendment application dated 21.10.2020, the petitioner has added paragraph no. 17(a) in his petition that the petitioner being the only A.D.G.C. (Crl.) of scheduled caste, his tenure be renewed under the provisions of Uttar Pradesh (Reservation of Scheduled Caste, Scheduled

Tribes and other backward classes) Act, 1994 (hereinafter referred to as 'U.P. Act No. 4 of 1994')

9. It has been submitted by learned counsel for the petitioner that since District Judge, Jhansi, has given positive report regarding his work, conduct and integrity, the respondent no. 4, District Magistrate, Jhansi, has recommended and forwarded the proposal for his renewal but no order has been passed by the government on his representation. The petitioner is entitled for renewal on the post of A.D.G.C. (Crl.). The Court may direct the respondent no. 2 for issuing order of renewal of the petitioner to the above-mentioned post.

10. In support of his arguments, learned counsel for the petitioner has placed reliance on the following judgements :-

**(a) Vijay Shankar Rastogi and others Vs. State of U.P. and others, 2013 (10) ADJ 97 (DB)**

**(b) Shiv Sevak Ram Dwivedi Vs. State of U.P. and others, 2013 (6) ADJ 427 (DB)**

**(c) Rajendra Prasad Sharma Vs. State of U.P. and others, 2014 (6) ADJ 329**

**(d) Mewa Lal Vs. State of U.P., 2002 2 UPLBEC 1012**

In the first three rulings of this Hon'ble High Court, in the given facts and circumstances of the case, the Hon'ble High Court has directed the government to consider the renewal application of the petitioners in the light of the provisions given in Section 24 of Cr.P.C. and Legal Remembrancer's Manual. In the fourth ruling, this High Court has held that the provisions of U.P. Act No. 4 of 1994 is applicable in the matter of professional engagement and renewal of lawyers to the post of District Government Counsel (Criminal) and Assistant District Government Counsel (Criminal).

11. Learned Standing Counsel appearing for the State-respondents has opposed the writ petition and has submitted that the engagement of the petitioner on the post of A.D.G.C. (Crl.) was for a limited period and the stipulated period has expired. The post of Assistant/District Government

Counsel (Criminal) is neither public service nor it is permanent in nature. The petitioner has no legal right for his renewal on the post and the petition may be rejected. He has placed reliance on the following judgements of Hon'ble Apex Court :-

(a) **State of U.P. and another Vs. Johri Mal, (2004) 4 SCC 714**

(b) **State of U.P. and others Vs. Rakesh Kumar Keshari and another, (2011) 5 SCC 341**

(c) **State of U.P. and others Vs. Ajay Kumar Sharma and another, 2015 4 Crimes (SC) 588**

12. The provisions regarding appointment of District Government Counsel (Criminal) and Assistant District Government Counsel (Criminal) has been provided under Section 24 of the Code of Criminal Procedure and Legal Remembrancer Manual (hereinafter referred to as the 'L.R. Manual').

**24. Public Prosecutors :-**

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

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

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

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

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

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

13. The provisions regarding status, qualification, appointment and renewal of District Government Counsel (Criminal) and Assistant District Government Counsel (Criminal) have been elaborated by the three Judge Bench of Hon'ble Apex Court in paragraph nos. 16, 17, 18, 19, 20 and 21 of the judgement in the case of **Johri Mal (supra)** which are as follows :-

16. **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.

17. **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 Sub-District 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:

18. **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.

19. Paras 7.06, 7.07 and 7.08 read thus:

**"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 Remembrancer 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.**

**7.07. Political Activity** - The District Government Counsel shall not participate in political activities so long they work as such; otherwise they shall incur a disqualification to hold the post.

Note: The term political activity includes membership of any political party or local body as also press reporting work.

**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 therefor 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 re-appointing him for a period not exceeding three years.**

(5) If the Government decides not to re-appoint 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."

20. A supplementary provision has been made in Chapter XXI of the said LR Manual for appointment and renewal of the post of public prosecutors. It inter alia contains the guidelines and clarifies that the appointment of DGC (Criminal), the change of designation of the public prosecutors could not effect the basic nature of their professional engagement. It further provides that such professional engagement is terminated on either side without notice and without assigning any reason. Paras 21.07 and 21.08 of the said LR Manual read as under:

"21.07. The appointment of Public Prosecutor or Additional Public Prosecutor shall be made for the period of three years, but the State Government can terminate such appointment at any time without notice and without assigning any reason. The State Government may extend the period of such appointment from time to time and such extension of such term shall not be treated as new appointment.

21.08. The District Magistrate shall after consultation with the Sessions Judge submit a confidential report in respect of the Public Prosecutor and Additional Public Prosecutors giving details about the percentage of success of cases conducted by them and the general reputation which they enjoy. Where the percentage of success is low the reasons given by the Public Prosecutor or Additional Public Prosecutor for the same should also be commented on. After every three years he shall make a special assessment of each such Public Prosecutor or Additional Public Prosecutor and recommend whether the person concerned should be granted extension for a further term of three years or for a shorter term only."

14. The Apex Court has discussed the scope of judicial review against administrative action such as appointment, renewal of District Government Counsel (Criminal) and Assistant District Government Counsel (Criminal) in paragraph nos. 22, 23, 24, 28, 29, 30, 36, 37, 40, 43, 44, 66, 67, 75 and 76 of the judgement in the case of **Johri Mal (supra)** which are as follows :-

22. The power of judicial review is now well-defined in a series of decisions of this Court. It is trite that the court will have no jurisdiction to entertain a writ application in a matter governed by contract qua contract (assuming such professional engagement to be one), as therein public law element would not be involved. (See Life Insurance Corporation Vs. Escorts Ltd. and Ors. [AIR 1986 SC 1370], F.C.I. and Ors. Vs. Jagannath Dutta and Ors., [AIR 1993 SC 1494], State of Gujarat and Ors. Vs. Meghji Pethraj Shah Charitable Trust and Ors., [(1994) 3 SCC 552], Assistant



Excise Commissioner and Ors. Vs. Issac Peter and Ors., (1994) 4 SCC 104], National Highway Authority of India Vs. M/s. Ganga Enterprises & Anr. 2003 (7) SCALE 171).

23. In any event, the modern trend also points to judicial restraint in administrative action as has been held in *Tata Cellular Vs. Union of India* [(1994) 6 SCC 651]. (See also *Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others* [(2000) 5 SCC 287] and *W.B. State Electricity Board Vs. Patel Engineering Co. Ltd. and Others* [(2001) 2 SCC 451]) and *L.I.C. and Anr. vs. Consumer Education and Research Centre and Ors.*, [AIR 1995 SC 1811].

24. The legal right of an individual may be founded upon a contract or a statute or an instrument having the force of law. **For a public law remedy enforceable under Article 226 of the Constitution, the actions of the authority need to fall in the realm of public law -be it a legislative act or the State, an executive act of the State or an instrumentality or a person or authority imbued with public law element. The question is required to be determined in each case having regard to the nature of and extent of authority vested in the State.** However, it may not be possible to generalize the nature of the action which would come either under public law remedy or private law field nor is it desirable to give exhaustive list of such actions.

28. **The scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi judicial or administrative. The power of judicial review is not intended to assume a supervisory role or done the robes of omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the suprema lex to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review court. The limited scope of judicial review succinctly put are :**

(i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies;

(ii) A petition for a judicial review would lie only on certain well-defined grounds.

(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.

(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a Court is limited to seeing that Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.

(v) The Courts cannot be called upon to undertake the Government duties and functions. The Court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the

judgment of the legislative bodies. (See *Ira Munn Vs. State of Illinois*, 1876 (94) US (Supreme Reports) 113).

29. In **Wade's Administrative Law**, 8th edition at pages 33-35, it is stated:

"Review, Legality and discretion- The system of judicial review is radically different from the system of appeals. When hearing an appeal the court is concerned with the merits of a decision: is it correct? **When subjecting some administrative act or order to judicial review, the court is concerned with its legality: is it within the limits of the powers granted? On an appeal the question is 'right or wrong?' On review the question is 'lawful or unlawful?'** Rights of appeal are always statutory. Judicial review, on the other hand, is the exercise of the court's inherent power to determine whether action is lawful or not and to award suitable relief. For this no statutory authority is necessary: the court is simply performing its ordinary functions in order to enforce the law.

Judicial review thus is a fundamental mechanism for keeping public authorities within due bounds and for upholding the rule of law. Instead of substituting its own decision for that of some other body, as happens when on appeal, the court on review is concerned only with the question whether the act or order under attack should be allowed to stand or not.

30. It is well-settled that while exercising the power of judicial review the Court is more concerned with the decision making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the Court is not competent to exercise its power when there are serious disputed questions of facts;.....

36. A writ of or in the nature of mandamus, it is trite, is ordinarily issued where the petitioner establishes a legal right in himself and a corresponding legal duty in the public authorities.

37. **The Legal Remembrancer Manual clearly states that appointment of a public prosecutor or a district counsel would be professional in nature. It is beyond any cavil and rightly conceded at the Bar that the holder of an office of the public prosecutor does not hold a civil post. By holding a post of district counsel or the public prosecutor, neither a status is conferred on the incumbent.**

40. So long as in appointing a counsel the procedures laid down under the Code of Criminal Procedure are followed and a reasonable or fair procedure is adopted, the Court will normally not interfere with the decision. The nature of the office held by a lawyer vis-`-vis the State being in the nature of professional engagements, the courts are normally chary to over-turn any decision unless an exceptional case is made out. The question as to whether the State is satisfied with the performance of its counsel or not is primarily a matter between it and the counsel. The Code of Criminal Procedure does not speak of renewal or extension of tenure. The extension of tenure of public prosecutor or the district counsel should not be compared with the right of renewal under a licence or permit granted under a statute. **The incumbent has no legal enforceable right as**

such. The action of the State in not renewing the tenure can be subjected to judicial scrutiny inter alia on the ground that the same is arbitrary. The courts normally would not delve into the records with a view to ascertain as to what impelled the State not to renew the tenure of a public prosecutor or a district counsel.

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

44. Only when good and competent counsel are appointed by the State, the public interest would be safeguarded. The State while appointing the public prosecutors must bear in mind that for the purpose of upholding the rule of law, good administration of justice is imperative which in turn would have a direct impact on sustenance of democracy. No appointment of public prosecutors or district counsel should, thus, be made either for pursuing a political purpose or for giving some undue advantage to a section of people. Retention of its counsel by the State must be weighed on the scale of public interest.

66. In *State of U.P. vs. Ramesh Chandra Sharma and Others* (1995) 6 SCC 527], Verma, CJ speaking for the Bench opined : "In view of the clear provision in clause (3) of para 7.06 that the "appointment of any legal practitioner as a District Government Counsel is only professional engagement", it is difficult to appreciate the submission for which sustenance is sought from the provisions contained in the same manual. The appointment being for a fixed term and requiring express renewal in the manner provided in the Manual, there is no basis to contend that it is not a professional engagement of a legal practitioner but appointment to post in government service which continues till attaining the age of superannuation. In the earlier decisions of this Court including *Shrilekha Vidyarathi*, the appointment of District Government Counsel under the Manual has been understood only as a professional engagement of a legal practitioner.

67. Another Bench of this Court in *Harpal Singh Chauhan and Others etc. vs. State of U.P.* [(1993) 3 SCC 552] upon a detailed discussion of the relevant provisions of the Legal Remembrancer Manual as also sub-sections (4),(5) and (6) of the Code of Criminal Procedure opined :

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

17. It is true that none of the appellants can claim, as a matter of right, that their terms should have been extended or that they should be appointed against the existing vacancies, but, certainly, they can make a grievance that either they have not received the

fair treatment by the appointing authority or that the procedure prescribed in the Code and in the Manual aforesaid, have not been followed. While exercising the power of judicial review even in respect of appointment of members of the legal profession as District Government Counsel, the Court can examine whether there was any infirmity in the "decision making process". Of course, while doing so, the Court cannot substitute its own judgment over the final decision taken in respect of selection of persons for those posts."

75. In the matter of engagement of a District Government Counsel, however, a concept of public office does not come into play. However, it is true that in the matter of Counsel, the choice is that of the Government and none can claim a right to be appointed. That must necessarily be so because it is a position of great trust and confidence. The provision of Article 14, however, will be attracted to a limited extent as the functionaries named in the Code of Criminal Procedure are public functionaries. They also have a public duty to perform. If the State fails to discharge its public duty or act in defiance, deviation and departure of the principles of law, the court may interfere. The court may also interfere when the legal policy laid down by the Government for the purpose of such appointments is departed from or mandatory provisions of law are not complied with. Judicial review can also be resorted to, if a holder of a public office is sought to be removed for reason de'hors the statute.

76. The appointment in such a post must not be political one. The Manual states that a political activity by the District Government Counsel shall be a disqualification to hold the post.

15. In paragraph no. 85 of the judgement in the case of **Johri Mal (supra)**, the Apex Court has mentioned about the reasons for consultation of District Judge by the District Magistrate before sending recommendation to the government for appointment and renewal of District Government Counsel (Criminal) and Assistant District Government Counsel (Criminal) which is as follows :-

85. The age-old tradition on the part of the State in appointing the District Government Counsel on the basis of the recommendations of the District Collector in consultation with the District Judge is based on certain principles. Whereas the District Judge is supposed to know the merit, competence and capability of the concerned lawyers for discharging their duties; the District Magistrate is supposed to know their conduct outside the court vis-`-vis the victims of offences, public officers, witnesses etc. The District Magistrate is also supposed to know about the conduct of the Government counsel as also their integrity.

16. In the cases of **Rakesh Kumar Keshari (supra)** and **Ajay Kumar Sharma (supra)**, the Apex Court has reiterated the law propounded by it in **Johri Mal (supra)**.

17. In **State of U.P. Vs. Ashok Kumar Nigam, (2013) 3 SCC 372**, the Apex Court held that :

“There is right of consideration but none can claim right to appointment. Para 7.06 states that renewal beyond 60 years shall depend upon continuous good work, sound integrity and physical fitness of the counsel.

(20) While renewing the term of the appointment of the existing incumbents, the State Government is required to consider their past performance and conduct in the light of the recommendation made by District Judges and the District Magistrates.

(21) In the premise aforesaid, the appeal is allowed and the impugned order (of High Court issuing a mandamus for renewal of the terms of respondent nos. 1 and 2 and other similarly situated person) is set-aside. The State Government shall now fill up the existing vacant posts by considering the cases of all eligible persons strictly in accordance with the relevant provisions of the LR Manual read with Section 24 Cr.P.C. and the judgements of this Court in cases of **Johri Mal (supra)** and **Rakesh Kumar Keshari (supra)**. The District Judges and District Magistrates, who are required to be consulted by the state government are expected to make objective assessment of the work, conduct and performance of large candidates and make recommendations, keeping in view larger public interest in contradiction to the interest of the particular political party.”

18. In the light of above-mentioned law propounded by the Apex Court, the matter has to be discussed. The petitioner was professionally engaged to act as A.D.G.C. (Crl.), Jhansi vide G.O. dated 09.09.2008 issued by the Deputy Secretary, Government of U.P. till the period of 02.09.2009. He was re-appointed from 29.07.2011 to 29.07.2014 for a period of 3 years. The petitioner applied on 17.04.2014 for renewal in Proforma No. 9 and his application was forwarded by the District Magistrate, Jhansi on 09.06.2014 with the recommendation of District Judge, Jhansi dated 26.05.2014. In between, he was removed from the post vide impugned order dated 30.07.2014 passed by the District Magistrate, Jhansi. The aforesaid order of the District Magistrate, Jhansi was suspended by the order of Hon'ble High Court dated 14.08.2014. Later on, the District Magistrate, Jhansi vide letter dated 15.09.2014 withdrew the aforesaid order relieving the petitioner from the post of Assistant District Government Counsel (Criminal).

19. From the above discussion of the provisions regarding appointment of the District Government Counsel (Criminal)/ Assistant District Government Counsel (Criminal) as given in L.R. Manual, Section 24 Cr.P.C. and above-

mentioned judgements of the Apex Court, it is conspicuous that appointment to the aforesaid posts by the State Government is a professional engagement of an advocate. It is not a civil post. The appointee does not have any right for renewal or reappointment on the post of D.G.C./A.D.G.C.(Crl.). Such professional engagement can be terminated on either side without notice and without assigning any reason. By holding a post of District Counsel or public prosecutor, no status is conferred on the incumbent. The incumbent has no legal enforceable right as such. The action of State in not renewing the tenure can be subjected to judicial scrutiny *inter-alia* on the ground that the same is arbitrary and violates Article 14 of the Constitution of India. The incumbent cannot claim extension or renewal of term of the post held by him. The application of the petitioner for his renewal on the post of A.D.G.C. (Crl.) is pending before the government. Admittedly, the State Government could not take any decision regarding renewal of the post of petitioner as a Division Bench of this Court vide order dated 10.07.2014 passed in Misc. Bench No. 9127 of 2012, **Ajay Kumar Sharma and Another Vs. State of U.P. Thr. Prin.Secy.Law/Legal Remembrancer,Lko & Ors.**, had directed the State Government to maintain status quo as it existed on that date regarding continuance of existing D.G.C./A.D.G.C. (Crl.).

20. Under the facts and circumstances of the petition and the law laid down by the Apex Court in the aforesaid decisions, there is no ground to issue mandamus to the respondent nos.1 and 2 regarding renewal of the petitioner to the post of A.D.G.C. (Crl.) held by him.

21. Accordingly, the writ petition is dismissed.

**Order Date :- 14.09.2023**

KS