



[2024:RJ-JD:44044-DB]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 5313/2024

Shri Ishwar Prasad son of Shri Ganpat Lal Ji, aged about 61 years, resident of Inside Sojati Gate, Opp. Bata Shoe Company, near Dr. Majid Clinic, Jodhpur (Rajasthan) Pin 342001.

----Petitioner

Versus

1. The State of Rajasthan, through the Chief Secretary, Chief Secretary Office Secretariat, Main Building, Bhagwandas Road, Jaipur (Rajasthan) 302005
2. The Principal Secretary, the Department of Law and Justice Room No. 1006, ground floor, main building, Secretariat, Bhagwandas Road, Jaipur (Rajasthan) 302005

----Respondents

For Petitioner(s) : Mr. Ishwar Prasad
(Petitioner, present in-person)

For Respondent(s) : Mr. M.S. Singhvi, Sr. Advocate
assisted by Mr. K.S. Lodha, Advocate

HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR**HON'BLE MS. JUSTICE REKHA BORANA****JUDGMENT****Reserved on : 16/10/2024****Pronounced on : 03/12/2024***Per, Shree Chandrashekhara J.*

In this writ petition, the petitioner seeks to challenge appointment of the Additional Advocate Generals and Law Officers made through the circulars dated 12th February 2024 and 12th March 2024 which in his opinion have been issued ignoring the judgment in "*State of Punjab & Anr. v. Brijeshwar Singh Chahal & Anr.*"¹.

1 (2016) 6 SCC 1



2. The petitioner has labeled the circulars under challenge as arbitrary and illegal on the ground that the orders are issued for engagement of the Additional Advocate Generals and Law Officers without following the mandate and procedure laid down under the Rajasthan Law and Legal Affairs Department Manual, 1999 (in short, 'Rajasthan Manual') and the Rajasthan State Litigation Policy, 2018. The petitioner lays a challenge to the circulars dated 12th February 2024 and 12th March 2024 also on the ground that appointment of the Additional Advocate Generals and Law Officers was made without wide publicity through advertisement in the local newspapers and inviting applications for such posts and mere recommendation of the Advocate General would not suffice. The petitioner criticizes the action of the respondent-State in invalidating the provisions under Chapter 14 of the Rajasthan State Litigation Policy and section 4 of the Rajasthan Scheduled Castes, Scheduled Tribes, Backward Classes, Special Backward Classes and Economically Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in the Services under the State) Act, 2008 and not providing reservation to this class of persons while making appointments of the Law Officers. The petitioner claims that he is a renowned social worker and whistle blower who as its national president is leading "Lashkar-E-Hind" that has thousands of members all over the country. According to the petitioner, *Lashkar-E-Hind* is a non-government organization with aims and objects of fighting crime, corruption and terrorism and is registered with the office of the Assistant Charity Commissioner, Thane under the Maharashtra



Cooperative Societies Act, 1860 and the Bombay Public Trust Act, 1950. The petitioner states that he has filed this writ petition in his individual capacity and on behalf of *Lashkar-E-Hind*. He further claims that he made a thorough research and has reasonable knowledge of law and he is a public-spirited retired person who has filed many petitions in the High Court and Supreme Court and succeeded in his efforts to further the public interest. He further states that he has filed this writ petition *pro bono* to achieve the constitutional mandate under Article 14 of the Constitution of India inasmuch as the respondent-State has violated the Rajasthan State Litigation Policy in making appointment of the Law Officers.

3. The petitioner has made the following prayers in this writ petition:-

"a. Be pleased to admit the petition and to issue appropriate Court's writ;

b. Be pleased to declare that the Circulars / orders dated 12.02.2024 and dated 12.03.2024, issued by the Respondent state for the appointment of law officers (Addl. Advocate General and state counsel) for the state to represent in High Court and Supreme Court are arbitrary and without the established procedure of law as laid down in Chapter 14 of the Rajasthan Litigation Policy, 2018, and the same is violation of Article 14 of the constitution of India;

c. Be pleased to Issue a writ of QUO-WARRANTO or in the nature thereof or any other writ or order to quash and set aside the Circulars dated 12.02.2024 and the circulars dated 12.03.2024, issued by the Respondent no. 2 for the appointment of the Law officers (Addl. Advocate General and State Counsel) for the state;

d. Be pleased to issue directions against the state Respondent to keep seats reserved for the members of the Schedule Castes Schedule Tribes, Backward Classes special Backward Classes and Economically Backward Classes as per the ratio given under





section 4 of the Rajasthan Schedule Castes Schedule Tribes, Backward Classes special Backward Classes and Economically Backward Classes (Reservation of seats in education institutions and of appointments and posts in the services under the state) Act., 2008;

e. Be pleased to pass directions against the State Respondent to appoint state empower committee to examine the accountability and performance of the Law officers including Addl Advocate General as mentioned in Chapter VII of the Rajasthan Litigation policy, 2018;

f. The Hon'ble Court be pleased to pass any other suitable order in the nature of its Writ as the Hon'ble Court may deem proper under the circumstances of the case;

g. Any other appropriate relief by way of any Writ or an order in the nature of writ as appropriate to do real and complete justice in the matter as involved on the grounds as revealed above;

h. Cost of petition.

11. INTERIM ORDER IF, PRAYED FOR - Be pleased to pass interim restraining order through an appropriate interim writ or order against the Respondent state that till final decision and disposes off this petition to stay the operation of Circulars/orders dated 12.02.2024 and dated 12.03.2024 (Annexure 1 and 2) on account of it being violative of Article 14 of the constitution of India and without following the established procedure of Law/ Litigation policy of the state and be pleased to issue further interim restraining writ or order to restrain state Respondent from issuing any further Circular/order for the appointment of further law officers (Addl. Advocate Genral and State Counsel) for the state to represent in the High Court and Supreme Court;"

4. A preliminary objection to the writ petition is taken by the State-respondents on the ground that appointment of the Additional Advocate Generals and Law Officers is not in the nature of employment under the State. There is no master and servant relationship and the Additional Advocate Generals, Government Advocates and Government Counsels are not paid salary by the State government. Their engagements are purely professional and



contractual in nature and this has been the practice since decades that the State government makes appointment of the Additional Advocate Generals and Law Officers in consultation with the Advocate General. Such appointments were made after the Assembly elections in December 2013 and November 2018 following the same procedure but the petitioner never raised a question to those appointments and his conduct demonstrates that he has approached the Court with oblique motive for blackmail or popularity. It is further pleaded that the Rajasthan Schedule Castes/Schedule Tribes Reservation of Seats and Appointment in Service Act cannot be applied in the matrix of appointment of the Additional Advocate Generals and Law Officers. On behalf of the State-respondents, it is pleaded that the petitioner deliberately and conveniently concealed the true and material facts and did not bring the correct legal position on record while basing the writ petition primarily on "*Brijeshwar Singh Chahal*"¹ inasmuch as the Hon'ble Supreme Court in the later years has made significant departures from the said decision in "*State of U.P. & Ors. v. Ajay Kumar Sharma*"² and other cases.

5. In the counter affidavit, the State-respondents have taken preliminary objections on the following grounds :-

"II. That the present writ petition filed by the petitioner is gross abuse of the process of law. It is submitted that the petitioner has miserably failed to disclose his status and locus standi to maintain present Public Interest Litigation. A bare perusal of the entire writ petition will make it clear that the same is absolutely misconceived and baseless and thereby not maintainable. It is further submitted that the petitioner has miserably failed to show as to how the appointment of the Law Officers by impugned order

² (2016) 15 SCC 289





is in any manner illegal or arbitrary. The petitioner is guilty of making reckless submissions which are sweeping in nature. In view of the aforesaid, the present writ petition deserves to be dismissed with exemplary costs.

III. That the writ petition filed by the petitioner is an example of gross abuse of the process of the court for yet another reason that the petitioner who claims to be 61 years of age has miserably failed to show as to what prompted him to challenge the appointment of Additional Advocate Generals and other law officers by the State of Rajasthan made vide orders dated 12.2.2024 and 12.3.2024. The appointments of learned Advocate General, Additional Advocate Generals and other law officers are made with the new government taking over after the general elections. In the present case, on declaration of result of general election on 3.12.2024, the Advocate General resigned on 4.12.2024 with immediate effect and consequently the office of the learned Advocate General became vacant. The Additional Advocate Generals also submitted their resignations immediately thereafter. However, the resignations of the Additional Advocate Generals were not accepted till the new Additional Advocate Generals were appointed as that would have affected the litigation against the government pending before the Hon'ble High Court at Jodhpur as well as Jaipur.

Looking to the large number of applications received by the State Government from the aspirants for being appointed as Additional Advocate Generals, the State Government had to undertake consideration and therefore, it took some time. In the meanwhile, in the writ petition No. 16553/2015 and connected matters, the Hon'ble High Court at Jaipur Bench expressed its concern for non-appointment of Learned Advocate General and Additional Advocate Generals vide orders dated 22.1.2024, 24.1.2024, 1.2.2024 and 5.2.2024. Copies of orders dated 22.1.2024, 24.1.2024, 1.2.2024 and 5.2.2024 are submitted herewith and marked as Annexure-R/1 collectively. It is submitted that all the appointments of Additional Advocate Generals and other law officers have been made after approval of Hon'ble Chief Minister and in consultation with the learned Advocate General of the State. These appointments are in consonance with the Rules of Business. Taking into consideration the observations of the Hon'ble Court, the State Government



undertook to expedite the process of appointment on these posts and accordingly learned Advocate General was appointed on 3.2.2024. Thereafter seven Additional Advocate Generals were appointed on 12.2.2024 Jaipur and Jodhpur (5 at Jaipur and 2 at Jodhpur) and 6 Number of Additional Advocate Generals were appointed on 12.3.2024 (2 at Jaipur, 3 at Jodhpur and 1 at New Delhi).

It may be stated that since the Additional Advocate Generals are appointed to assist the Learned Advocate General to share his responsibilities, essentially the Additional Advocate Generals are being appointed after due consultation with the learned Advocate General. In the present case, after due consultation with the learned Advocate General, Additional Advocate Generals were appointed vide impugned orders dated 12.2.2024 and 12.3.2024. These engagements are purely professional engagements where the confidence of learned Advocate General and the State Government plays a major role. It is not an employment under the State.

In fact this practice has been in vogue since decades. The appointment of the learned Advocate General and Additional Advocate Generals were made in 2018-19 after the result of assembly elections were declared. Such appointments were also made in the month of December 2013-January 2014 after declaration of the assembly elections in December 2013. The petitioner did not find any time to challenge the appointments made either in 2018-19 or 2013-14 and even prior to that, then what prompted the petitioner to file the present writ petition to challenge the appointments made in the year 2024, the reason is not forthcoming. This clearly goes to show that the writ petition has been filed with oblique motive either for blackmailing or gaining popularity. The conduct of the petitioner therefore, warrants dismissal of the writ petition with exemplary costs.

IV. That the conduct of the petitioner warrants dismissal of the writ petition on yet another count. It is because the petitioner while filing the writ petition has relied upon a judgment of Hon'ble Supreme Court in the case of State of Punjab Vs. Brijeshwar Chahal reported in 2016 (6) SCC 1. The petitioner has deliberately and conveniently concealed the fact that the said judgment arose out of the appointments made to the post of Assistant Advocate General and Deputy Advocate General in



regular cadre and prayer was sought for absorption. On the contrary, in a three judges bench of Hon'ble Supreme Court in the case of State of U.P. Vs. Johri Mal reported in 2004 (4) SCC 714 made observations, which will be referred to hereinafter. In fact, the Hon'ble Supreme Court in the case of State of U.P. Vs. Ajay Kumar Sharma reported in 2016 (15) SCC 289 observed as under:-

"14. Sitting in a Division Bench of two, we at present can do no better than apply the rules of precedent as have been left for us to follow. The law pertaining to the appointment of Additional District Government Counsel, Assistant District Government Counsel, Panel lawyers and Sub District Government Counsel was directly in issue before the Three-Judge Bench in State of U.P. Vs. Johri Mal 2004 (4) SCC 714 where the law has been comprehensively clarified. No purpose is served by discussing Kumari Shrulekha Vidyarthi or any judgements rendered thereafter."

Despite this the petitioner has the courage of stating, in Para 3(iii) to 3(vi) of the writ petition, that he had made thorough research, he is having reasonable knowledge of law and has filed the petitions before the Hon'ble High Court and Hon'ble Apex Court. So far as engagement of Additional Advocate Generals in the State of Rajasthan is concerned, a Division Bench of this Hon'ble Court in the case of Om Prakash Joshi Vs. State of Rajasthan (D.B. Civil Writ Petition No.4548/1998 decided on 6.7.2001) reported in 2001 (3) WLC 199 observed as under:-

36. Mere leveling of allegations is not sufficient. The petitioners will have to prove the same by cogent and convincing evidence/ documents. In the absence of which, the same simply deserves to be ignored. As already noticed, so far the posts of Advocate General and Additional Advocate General are concerned, they are the constitutional posts and appointments on these posts are made in accordance with the provisions contained in the Constitution of India. These posts are not the posts under the government service and it is nowhere laid-down that such posts should be advertised. So far as the posts of Government Advocate and Public Prosecutors are concerned, these posts are filled up in accordance with the Rajasthan Judicial Manual read with Section 24 of the Code of Criminal Procedure. As rightly





pointed out by Mr. Mehta, learned Advocate General for the State of Rajasthan that the State Government has liberty to appoint Advocates of its choice and confidence in the interest of State litigation....."

In view of the above-mentioned Division Bench judgment, plea taken by the petitioner is thoroughly misconceived and baseless.

V. *That there is yet another fact to show that the petitioner is guilty of abusing the process of law. The petitioner has invoked the provisions contained in Rajasthan Scheduled Caste/ Scheduled Tribes, Special Backward Class, Economic Backward Class (Reservation of Seats in Educational Institutions and appointment and Post in Services under the State) Act, 2008 (referred to hereinafter as "the Act of 2008"). The said Act has no applicability for the purpose of appointment of learned Advocate General, Additional Advocate Generals, Government advocates and Government counsels. It is because these are essentially professional engagement and there is no master and servant relationship between the State and the Learned Advocate General, Additional Advocate Generals, Government advocates and Government counsels. All these four categories of law officers are not paid salary by the State but are paid retainership fees, daily appearance fees, drafting fees etc. Under such circumstances, invocation of the provisions of the Act of 2008 clearly suggests that the present petition has been filed by the petitioner without any research and in a totally reckless and casual manner. The writ petition filed by the petitioner therefore, deserves to be dismissed with exemplary costs.*

VI. *That the present petition deserves to be dismissed on yet another count. It is submitted that the petitioner is guilty of concealment and misstatement of facts reference to which shall be made hereinafter. It is therefore, submitted that the conduct of the petitioner renders the present petition liable to be dismissed with costs."*

6. Mr. Ishwar Prasad, the petitioner appearing in-person contended that appointment of the Additional Advocate Generals and Law Officers was not routed through the State Level Empowered Committee as laid down under Chapter 14 of the



Rajasthan State Litigation Policy and thus has been made in utter disregard to the fairness mandate under Article 14 of the Constitution of India. *Per contra*, Mr. M.S. Singhvi, the learned senior counsel appearing for the State-respondents submitted that "*Brijeshwar Singh Chahal*"¹ is not a binding precedent in view of the decision in "*State of U.P. & Anr. v. Johri Mal*"³ rendered by a Three-Judge Bench of the Hon'ble Supreme Court and the said decision has no application in the facts of this case. Distinguishing the judgment in "*Brijeshwar Singh Chahal*"¹, Mr. M.S. Singhvi the learned senior counsel referred to the stand taken by the State-respondents in paragraph no.4.8 which reads as under :-

"4.8 That the averments contained in para No.4(viii) of the writ petition are not admitted. The petitioner has referred to the judgment of Hon'ble Supreme Court in the case of Brijeshwar Singh Chahal (Supra) to contend that the appointment of law officers in the State has been made without following a transparent merit based impartial procedure. The petitioner has further alleged violation of Litigation Policy, 2018. It is humbly submitted that the judgment in the case of Brijeshwar Singh Chahal has no application in the present case in view of the detailed submissions which have been made hereinabove and the same are reiterated. As stated above, engagement of law officers by the State is not an appointment to civil post. But it's an engagement by the State of the professionals to represent the State before the Hon'ble High Court and other courts. Such law officers have to be of the choice of the State. However, to ensure that the law officers appointed are meritorious, effective consultations have been made with the learned Advocate General while engaging the law officers. Be that as it may, it is for the State Government to decide as to who is best suited to represent it. The law officers hold fiduciary relationship with the State obviously because they have to defend various actions of the State in the Court of law. These actions also include policy decisions of the State. As far as, the appointment of law officers

3 2004 (4)SCC 714





other than Additional Advocate Generals are concerned, it is submitted that though the procedures have been provided in the Policy of 2018, however, the said procedure is in the nature of administrative guidelines and does not override the powers of the State governed by Rules of Business in making appointments. Generally, State Government follows the procedure prescribed in Chapter 14.4 of the Policy of 2018 for making appointment of law officers other than Additional Advocate Generals, however, that is not mandatory. In the present case, in view of the urgency for making appointments, appointments were made in consultation with the learned Advocate General of the State.

As far as judgment in the case of Brijeshwar Singh Chahal (Supra) is concerned, the same have no application in the present case. It is humbly submitted that in the present case, all the appointments have been made with the approval of the Hon'ble Chief Minister and same is perfectly valid and in accordance with law."

7. In "Brijeshwar Singh Chahal"¹ the absorption of Assistant Advocate General and Senior Deputy Advocate General who were appointed on contract basis was questioned on the ground that the State government did not formulate any criterion or followed any norm for their absorption in a non-discriminatory manner. There was a report of the Comptroller and Auditor General for the State of Haryana which found fault with the entire process of appointment of the Law Officers. The Hon'ble Supreme Court observed that the Law Officers were appointed on *ad-hoc* basis and without assessing the workloads in the Courts for deciding the number of Law Officers needed for handling the Court cases. The data produced before the Hon'ble Supreme Court disclosed that a number of the Law Officers were not assigned any work and were paid idle salary of Rs.2.22 crores for six months. For example, 140 Law Officers out of a total number of 179 were not allotted



any work and thus about 87% Law Officers were without work for whole of the month in January 2012. In paragraph no.9 of the reported judgment, the Hon'ble Supreme Court observed that for a fair and objective system of appointment there ought to be a fair and realistic assessment of the requirement. Quite evidently, the decision in "*Brijeshwar Singh Chahal*"¹ was prompted by the fact that heavily remunerated quite a number of appointments were made which were found unnecessary and unrealistic and there was no credible process of appointment of the Law Officers in the States of Punjab and Haryana in terms of its fairness and objectivity. Whereas, no such data has been produced by the petitioner in the present Public Interest Litigation.

8. The petitioner relied heavily on the decision in "*Kumari Shrilekha Vidyarthi & Ors. v. State of U.P. & Ors.*"⁴ to contend that the Government Law Officers hold public office and even in the contractual matters the requirement of Article 14 must be imposed where the State's action is in question. But long before that, the Hon'ble Supreme Court had expressed some reservations in "*Johri Mal*"³ to the decision in "*Kumari Shrilekha Vidyarthi*"⁴ insofar as it was held that the appointment of District Government counsel was not contractual in nature and the Government Law Officers including the Public Prosecutors were the holders of public offices. "*Johri Mal*"³ held that performance of the District Government counsel is a matter for the State's satisfaction and the Court cannot examine the reason why their term was not renewed. It was further held that the appointment of District

4 (1991) 1 SCC 212





Government counsel would be in the nature of a professional engagement and not an appointment to a civil post. "Johri Mal"³ was followed by "Ajay Kumar Sharma"² wherein the Hon'ble Supreme Court observed that the Court can do no better than to apply and follow the rules of precedent as was left by "Johri Mal"³. In "Sundeep Kumar Bafna v. State of Maharashtra & Anr."⁵ the Hon'ble Supreme Court observed that a decision or judgment can also be *per incuriam* if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench. The Hon'ble Supreme Court taking note of the situation often encountered in the High Courts where two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar held that the inviolable recourse should be to apply the earliest view as the succeeding ones would fall in the category of *per incuriam*.

9. The Rajasthan State Litigation Policy aims to prepare a comprehensive scheme and mechanism for managing the litigation in the Courts. It was in the wake of rising concern about pendency of the cases and delays in disposal of the cases that the State Litigation Policy was modeled in such a manner to reflect the State's resolve to bring about qualitative and quantitative improvements in the litigation in Courts by or against the Government. Keeping that object in the forefront, it is provided under Clause 3.2 that the State Litigation Policy should be followed by the government departments. Clause 3.3 makes the object of the State Litigation Policy further clear and says that the

5 (2014) 16 SCC 623





Policy shall serve as the authoritative guide for the purpose of norms and procedures for conducting the litigation at all stages and before all Forums. Clause 14.2 mentions that the Additional Advocate Generals are appointed to help and share the responsibility of the Advocate General and their appointment should be made on the advice and after an effective consultation with the Advocate General. Clause 14.3 provides that the Law Officers shall be selected by the State Level Empowered Committee and, under Clause 14.4, the minimum experience at Bar in the High Court/Supreme Court has been provided for the Additional Advocate General, Government Counsel, Additional Government Counsel, etc.

10. The Rajasthan Manual is a compilation of the administrative instructions issued by the State Government and those administrative instructions in the Rajasthan Manual are not enforceable in a Court of law. The message from the Chief Minister of Rajasthan on the occasion of publication of the Rajasthan Manual, a copy of which is appended with the Rajasthan Manual at page 60 of the paper book, clearly recites that the Manual contains important orders, circulars, instructions, etc. In its Chapter-I, the Rajasthan Manual gives a broader meaning to the expression "Government Advocate" under Clause 2 to mean a person appointed by the Government and includes an Additional Advocate General, Deputy Government Advocate and Assistant Government Advocate appointed by the Government. The Rajasthan Manual refers to the Government Law Officers under Clause 4 and provides that the Government Law Officers would





constitute Advocate General, one or more Additional Advocate General, Senior Standing Counsel in the Supreme Court, Advocate-on-Record in the Supreme Court, Government Advocates, Public Prosecutors as also Additional Public Prosecutors and Special Public Prosecutors engaged on retainership basis. The Governor of the State makes appointment of the Advocate General for the State under Article 165(1) of the Constitution of India of a person who is qualified to be appointed as a Judge of the High Court. Pertinently, the Governor of the State is not answerable to any Court for his order appointing a person as an Advocate General under Article 165. The duties of the Advocate General are enumerated in Clause 8 of the Rajasthan Manual and provides that the Advocate General shall be Public Prosecutor appointed under section 24 of the Code of Criminal Procedure 1973 for all cases before the High Court. The duties assigned to the Advocate General to represent the Government travels to all the Courts and covers all subjects. The Government makes appointment of the Law Officers for the High Court to share the workload of and to perform the duties of the Advocate General. Similarly, an advocate for representing the State of Rajasthan in the Hon'ble Supreme Court is appointed by the Governor of Rajasthan and the terms of appointment of such Advocate shall also be at the discretion of the State Government. The Additional Advocate Generals and Government Advocates perform the duties of Advocate General as specified in Clause 8 except those specified in column 14 and sub rule (2) thereof and perform such other duties as the Government may assign to them. Clause 14(5) clearly indicates that the State





Government may appoint as many Additional Advocate General, Deputy Advocate General or Assistant Government Advocate as may be deemed necessary and on such terms and conditions as may be determined by the Government and they may be removed by State Government at any time.

11. In "*Regional Transport Authority, Jodhpur v. Sitaram*"⁶ a Division Bench of this Court held that the appointment of Additional Advocate General or Associate Advocate General is contemplated and governed under Article 165 of the Constitution of India. In "*Om Prakash Joshi, Advocate v. State of Rajasthan & Ors.*"⁷ this Court declined the prayer seeking appointment of Advocate General, Additional Advocate General, Government Advocates, Panel Lawyers, etc. through advertisement. This Court held that the State Government has every right to engage the Panel Lawyers/Government Advocates, Additional Advocate Generals, etc. of its own choice and confidence and to entrust them any case as deem proper by it. This Court further held that the writ Court shall not be justified in interfering in the matter of engagement of the lawyers by the State Government and the State Government may make appointment exercising the discretionary power vested in it. This is a requirement of the rule of law that we follow the decisions in "*Regional Transport Authority*"⁶ and "*Om Prakash Joshi*"⁷. The binding character of the judgments pronounced by a Court of competent jurisdiction is itself an essential part of the rule of law which is the basis of the administration of justice on which the Constitution lays so much

6 1992 SCC OnLine Raj 36

7 2001 SCC OnLine Raj 101



emphasis. This rule of law is based on public policy and is necessary for continuity, certainty and productivity in the administration of justice. The decisions of a Court of law give a reasonable expectation to the people that similar decision shall be taken by the Courts in identical facts and, therefore, in a judicial system the Courts of coordinate jurisdiction must have consistent opinions in respect of an identical set of facts or on questions of law. In "*Hari Singh v. State of Haryana*"⁸ the Hon'ble Supreme Court observed that if the Courts start expressing different opinions on the identical set of facts or questions of law while exercising the same jurisdiction then instead of achieving harmony in the judicial system it will lead to judicial anarchy. In "*Mahadeolal Kanodia v. The Administrator-General of West Bengal*"⁹ the Hon'ble Supreme Court stressing the need for instilling certainty in the judicial system observed that if the Judges of coordinate jurisdiction in a High Court start over-ruling one another's decisions the certainty in the system shall disappear.

12. Disclosing the source of information, the petitioner claims that he has personal knowledge of the facts pleaded in this writ petition and other information were collected through research and media reports published in print and electronic media and from the website of the Rajasthan State Law and Justice Department and the Office of the Advocate General. But after going through the pleadings in this case, what at once comes to the mind of this Court is that challenging the appointment of any

8 (1993) 3 SCC 114

9 1960 SCC OnLine SC 47



Law Officer on the basis of his parentage that his father is holding the high post must be deprecated. A lawyer earns his identity through performance in the Court, standing at the Bar and reputation among his peers and the general public and not by his parentage. In "*State of U.P. & Ors. v. U.P. State Law Officers Association & Ors.*"¹⁰ the Hon'ble Supreme Court observed that the legal profession is essentially a service-oriented profession and relationship between the lawyer and his client is one of trust and confidence. The client engages a lawyer for personal reasons and would be at liberty to leave him also for the same reason. This is the stand taken by the State-respondents that the bio-data received from the aspirant advocates for appointment to various posts as the Law Officers were scrutinized and those who were found suitable have been appointed. The allegations of pick and choose and favored selection of "X" (name of the advocate is masked by the Court) who happens to be the ward of a Cabinet Minister are vehemently denied. The State-respondents have taken a categorical stand that "X" is eligible for being appointed as an Additional Advocate General and that the Law Minister had no role to play in the selection of the Law Officers. The State-respondents have dubbed the reference of "X" being appointed as Additional Advocate General as motivated and actuated with *malafide* intentions.

13. In our opinion, the appointment of bright young advocates as the Law Officers has unnecessarily been dragged to the Court. An advocate carries an independent identity and he cannot be

10 (1994) 2 SCC 204





projected as a ward or relative of any person holding a high post to scandalize his appointment as the Additional Advocate General or a Law Officer. There can be no fetters on the power of the State Government and the administrative instructions in the Rajasthan Manual and State Litigation Policy as regards the criteria of eligibility for appointment such as age, length of practice, place of practice, etc. of the Additional Advocate General and Law Officers and the same can be superseded, modified or changed at any time by the State Government. Therefore, it must be declared that the State of Rajasthan can make its own decision as to the eligibility criteria which can be changed at any moment and its choice of the advocates for making appointment on the post of Additional Advocate General or other Law Officers cannot be challenged in the Court unless shown arbitrary. It is really very difficult to explain an arbitrary action and there is no easy way to make a catalogue of state action that can be characterized as arbitrary state action. In common parlance, an act which seemingly is not based on any reason or plan or is unfair would be an arbitrary action. In this context, we need to indicate that the petitioner has miserably failed to demonstrate how the appointment of the Law Officers is arbitrary. Even if there was any infraction of the executive instructions in the Rajasthan Manual or the State Litigation Policy in making the appointments of the Law Officers that by itself cannot be a ground to scrutinize the individual cases. In "*J.R. Raghupathy, etc. v. State of A. P. & Ors.*"¹¹ a plea was raised that where guidelines were issued regulating the manner in

11 (1988) 4 SCC 364





which the discretionary power is to be exercised then the Government is bound by its own guidelines and if those guidelines were violated, it is for the Government to offer explanation as to why the guidelines were deviated from. The Hon'ble Supreme Court rejected the submission and held that there is no such inflexible rule of universal application and the guidelines issued by the State Government had no statutory force and were merely in the nature of executive instructions for the guidance. The Hon'ble Supreme Court further held that mandamus does not lie to enforce departmental manuals or instructions not having any statutory force and the provisions thereunder do not give any legal right to any person. This is quite well settled that the choice of eligibility criteria is left to the exclusive domain of the employer and the Courts do not examine the eligibility criteria for appointment to a post with a perspective that more suitable or better criteria could have been adopted by the employer. Therefore, if the State Government makes a conscious decision to appoint an advocate as its Law Officer that decision cannot be questioned on the basis of relationship. The suitability of a lawyer who is engaged by the Government is a matter exclusively within the domain of the executive decision and such a decision cannot be challenged on the ground that other suitable and more competent lawyers have been left out and by doing so the larger public interest has been overlooked.

14. The guiding philosophy behind the Public Interest Litigation is to promote public interest and the Court can take cognizance of such complaint that has the element of public interest involved



therein. The object behind entertaining complaints made by private persons is to ensure that the violation of a legal or constitutional right of a large number of persons who may belong to poor, downtrodden, ignorant or socially and economically disadvantaged section of the society should not go unredressed.

In "*Mrs. Veena Sethi v. State of Bihar & Ors.*"¹² the Hon'ble Supreme Court observed that the Court must uphold the basic human rights of the weaker sections of the society who are poor and ignorant and constitute a large bulk of humanity in this country. In yet another decision, in "*Ramsharan Autyanuprasi & Anr. v Union Of India & Ors*"¹³ the Hon'ble Supreme Court observed that the Public Interest Litigation is for making the basic human rights meaningful to the deprived and vulnerable sections of the community and to ensure them the social, economic and political justice. That is the reason why the Court while entertaining a writ petition labeled as Public Interest Litigation must be careful and examine that the writ petitioner is acting bonafide and not in personal interest or with political motivation or for other oblique considerations (refer, "*S.P. Gupta & Anr. v. Union of India*"¹⁴). In "*State Of Himachal Pradesh v A Parent Of A Student Of Medical College Simla & Ors.*"¹⁵ the Hon'ble Supreme Court held that it is only when the executive is found remiss in discharging its obligation under any law or the Constitution, the writ Court should intervene and ensure that the deprived and vulnerable sections of the community are no longer subjected to

12 (1982) 2 SCC 583

13 1989 Supp (1) SCC 251

14 1981 Supp SCC 87

15 (1985) 3 SCC 169





exploitation or injustice and they are able to realize their social and economic rights. With these considerations in mind, we would examine whether any public interest is involved in this Public Interest Litigation.

15. The State-respondents have taken serious objections to the filing of this writ petition terming it as gross abuse of the process of law. The maintainability of the writ petition has been challenged on several grounds such as status and *locus standi* of the petitioner and the petition being misconceived and baseless and also on the ground that sweeping and reckless statements have been made in the petition. The State-respondents have taken a stand that the Government of Rajasthan adopted the same procedure previously followed for appointment of the Additional Advocate Generals and other Law Officers after the Assembly elections in December 2013 and November 2018. According to the State-respondents, the filing of the present writ petition is motivated and with oblique motives and the petitioner has failed to provide any reason why he did not challenge the previous appointments made during 2013-14 and 2018-19. The State-respondents have also relied on the Rules of Business being followed in the matter to support appointment of the Additional Advocate Generals and other Law Officers through the circulars dated 12th February 2024 and 12th March 2024.

16. In our considered opinion, the present writ petition does not carry any element of public interest and the State-respondents have rightly challenged the maintainability of the writ petition. True, easy access to justice should not be misused as a license to



file misconceived and frivolous petitions¹⁶. In "*Dr. B. Singh v. Union of India & Ors.*"¹⁷ the Hon'ble Supreme Court observed that a public interest litigation should not be "publicity interest litigation" or "private interest litigation" or the latest trend that has emerged as "*paise* income litigation". There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant borne out of wishful thinking. The Hon'ble Supreme Court held that the credibility of claims and complaints made should be adjudged with creditworthiness of the materials produced before the Court and not on the basis of credentials claimed by the persons who might have moved to the Court previously. The petitioner who claims that he filed other Public Interest Litigation has used intemperate language in the pleadings and stooped low to criticize the appointment of the Additional Advocate Generals and other Law Officers on scandalous grounds. The conduct of the petitioner was severely criticized by Mr. M.S. Singhvi, the learned senior counsel and the objection raised on behalf of the State-respondents was sustained to the extent that the statements made by the petitioner in IA No. 01/2024 were expunged vide order dated 16th October 2024 in view of the intemperate language used and unsubstantiated allegations made in the said application. This is one such case that reminds this Court the decision in "*Tehseen Poonawalla v Union Of India*"¹⁸ wherein the Hon'ble Supreme Court observed that the jurisdiction of the Court under Article 226 of the Constitution of

16 *Dr. Buddhi Kota Subbarao v. Mr. K Parasaran & Ors.* : (1996) 5 SCC 530

17 (2004) 3 SCC 363

18 (2018) 6 SCC 72





India has been brazenly mis-utilized by the persons with personal agenda and by those who are motivated by a desire to seek publicity. Also in the past, in "*State Of Uttaranchal v Balwant Singh Chaufal & Ors.*"¹⁹ the Hon'ble Supreme Court observed that it is necessary to protect and preserve the sanctity of the writ jurisdiction in the larger interest of the people of this country and the Court should take effective steps to prevent its abuse.

17. The general rule for entertaining a writ petition seeking exercise of powers and jurisdiction under Article 226 of the Constitution of India is that the person who approaches the Court must show that he is injured or subjected to or threatened with a legal wrong and he has a legal right which is a judicially enforceable right. In "*S.P. Anand, Indore v. H.D. Deve Gowda & Ors.*"²⁰ the Hon'ble Supreme Court observed that the waiver of the *locus standi* rule is permissible only when the Court is satisfied that the carriage of proceedings is in the competent hands of a person who has genuine concern in public interest and is not moved by any extraneous consideration. The petitioner states that the public of the State of Rajasthan is facing grave injustice in the Court of law in the matters where the State of Rajasthan is an opponent. He goes to the extent of saying that the public is not getting justice in the criminal matters before the Court and refers to *Jaipur Serial Bomb Blast Case* in which according to him the Additional Advocate General failed to convince the High Court and on account of such failure four convicted offenders were acquitted. Such statements are highly objectionable and the petitioner who

19 (2010) 3 SCC 402

20 (1996) 6 SCC 734



makes such controversial statements must be held to be an irresponsible person who seems to have no regards for the Court proceedings and the prestige and reputation of the Additional Advocate General. In "*Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed & Ors.*"²¹ the Hon'ble Supreme Court marked a person as a mere busybody or meddlesome interloper who failed to establish his standing to sue. The Hon'ble Supreme Court further observed that such persons masquerade as crusaders for justice; they pretend to act in the name of *pro bono publico*; they indulge in the judicial process for improper motives and; they have no interest of the public in mind or even of their own to protect. The present case is that of a similar kind.

18. While challenging the circulars dated 12th February 2024 and 12th March 2024, the petitioner is also seeking a writ in the nature of *quo warranto* which definitely does not lie on admitted facts that the posts of Additional Advocate General or other Law Officers are not public posts and the advocates engaged on those posts are not holders of any public post. A writ of *quo warranto* is a legal action that can be used to challenge the authority of a person holding a public office. In "*Bharti Reddy v. State of Karnataka*"²² the Hon'ble Supreme Court held that a writ of *quo warranto* cannot be based on assumptions or speculations. A writ of *quo warranto* can be asked in the circumstances such as (i) if a private person is holding a public office which was created by the Constitution or law (ii) if the public office is substantive post and the duties associated with it are public duties (iii) if the person

21 (1976) 1 SCC 671

22 (2018) 6 SCC 162





holding the office is not qualified or (iv) the person holding the office is abusing the powers attached to that office. However, a legal action for a writ of *quo warranto* cannot be invoked in the cases involving private offices or purely contractual relationships. Even if the *locus standi* of the petitioner who has instituted this proceeding for *quo warranto* is relaxed, he is found completely unrelated to the appointments in question whereas there should exist a link howsoever remote it may be.

19. The law recognizes freedom in the matter of engagement of the professional services. The method of appointment is not so devised to ensure that the meritorious alone shall always be appointed and the appointments may be made on the considerations of suitability. In "*University of Mysore & Anr. v. C.D. Govinda Rao & Anr.*"²³ the Hon'ble Supreme Court held that the suitability arrived at by the State Government is not a matter amenable to a proceeding under *quo warranto*. The administrative instructions in the Rajasthan Manual are not issued under the authority of the Governor of the Rajasthan under Article 166 of the Constitution of India. In "*Union of India v. Naveen Jindal & Anr.*"²⁴ the Hon'ble Supreme Court held that the Flag Code is not law within the meaning of Article 13 of the Constitution of India. Following this dictum, in "*Johri Mal*"³ the Hon'ble Supreme Court held that the Legal Remembrancer's Manual contains such executive instructions which do not even fall under clause 3 of Article 166 of the Constitution of India. The judgments in "*Kumari Shrilekha Vidhyarthi*"⁴, "*Johri Mal*"³, "*Brijeshwar Singh Chahal*"¹,

23 AIR 1965 SC 491

24 2004 (2) SCC 510





and "Ajay Kumar Sharma"² lay emphasis on larger public interest in the appointment of competent and suitable Law Officers who can defend and protect the State's interest in the Courts. However, these decisions do not question the State's discretionary powers to appoint a Law Officer of its own choice. In exercise of the jurisdiction under Article 226 of the Constitution of India, this is not the province of the High Court to make a choice of the advocate for appointment as the Law Officer and the choice of the advocate or a set of the advocates must rest with the State Government. The scope of judicial review under Article 226 of the Constitution of India is very limited and it must remain confined to Wednesbury principle of illegality and irrationality in the matters of appointments of the Law Officers. In a matter like the present one, the High Court cannot proceed with an assumption that while taking a decision for appointment of the Law Officers the State Government was acting as *quasi-judicial* body. So long as a reasonable and fair procedure is adopted and followed over a period of time by the successive State Governments the Court cannot interfere with the decision of the State Government to engage a particular set of lawyers as the Additional Advocate Generals or Law Officers for representing the State of Rajasthan in the High Court or before the Hon'ble Supreme Court. This cannot be a legal ground to entertain a writ petition labeled as a Public Interest Litigation that claim of every eligible person was not considered in the matter of appointment of Additional Advocate General and other Law Officers.





20. The judicial review can enter into the realm of contractual matters where it is demonstrated that the equality clause under Article 14 of the Constitution of India was violated, but then, we must remember that engagement of Law Officers is not a matter pertaining to distribution of State largesse. In "*State of U.P. v. Ramesh Chandra Sharma*"²⁵ the Hon'ble Supreme Court observed that the appointment of any legal practitioner as District Government counsel was only a professional engagement. No record has been produced to demonstrate that any one of the Law Officers was ineligible for appointment and it is not shown to the Court how the appointments are flawed in law or that the appointees have been favored. The writ petition is conveniently silent on the factual aspects such as the eligibility, credibility, efficiency and standing of the appointed Additional Advocate Generals, Government counsel, Additional Government counsel, etc. This is not the case pleaded by the petitioner that the Law Officers appointed through circulars dated 12th February 2024 and 12th March 2024 do not possess expertise to cater to the need of different administrative departments so as to safeguard the interest of the State. This is also not a stand taken in the writ petition that selection of the Additional Advocate Generals and Law Officers has been made without any consultation with the Advocate General. The writ petition is completely silent on these aspects and there is no pleadings in this regard. In this context, we are inclined to observe that even if some data are produced that itself would not have been sufficient to question the

²⁵ (1995) 6 SCC 527



appointments made through circulars dated 12th February 2024 and 12th March 2024. The appointments made vide circulars dated 12th February 2024 and 12th March 2024 are not open to challenge by making some vague suggestions. The petitioner cannot seek a *mandamus* against the State-respondents and a *certiorari* shall not lie in the face of compliances demonstrated before this Court.

21. The powers of the High Court under Article 226 of the Constitution of India must be exercised in a judicious and reasonable manner and in the interest of justice. It is widely accepted that exercise of the powers under Article 226 of the Constitution of India should conform to the judiciously evolved rules and one such rule is that the claim made by the petitioner should be determined on the basis of the factual position acknowledged by the respondent or where the factual position can be ascertained by the writ Court from the materials on record and without any strenuous exercise. In "*Dwarka Prasad Agarwal (D) By Lrs. and Anr. v. B.D. Agarwal and Ors.*"²⁶ the Hon'ble Supreme Court observed that the High Court while exercising the power of judicial review is concerned with illegality, irrationality and procedural impropriety of an order passed by the State or statutory authority. In our opinion, this is not in the public interest that the power under Article 226 of the Constitution of India is exercised by the writ Court in a matter where the writ petition is founded solely on vague allegations and opinion of the writ petitioner claiming himself as the protector of public interest.

26 (2003) 6 SCC 230





22. In the end, we would refer to Justice McKenna²⁷ who very aptly made the following observations:

"It may seem unjust and oppressive, yet be free from judicial interference. The problems of Government are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void."

23. For the foregoing reasons, we hold that the writ petition lacks merit and is therefore dismissed.

(REKHA BORANA),J

(SHREE CHANDRASHEKHAR),J

Whether fit for reporting : Yes/No

AjaySingh/-

²⁷ *Metropolis Theatre Co. v. City of Chicago* : 228 U.S. 61 (1913)

