

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.3258 OF 2015

- | | |
|---|---|
| 01 Sambhaji S. Tope | Deleted as per Court's
Order dated 23.03.2015. |
| 02 Kishor M. Gadhave Patil,
age: 56 years, Occ: Law Officer,
working as Additional Government
Pleader/Additional Public Prosecutor,
Government Pleader's Office,
High Court of Bombay, Bench at
Aurangabad. | |
| 03 Smt.Archana V. Gondhalekar, | Deleted as per Court's
Order dated 27.03.2015. |
| 04 Girish K. Naik Thigle, | Deleted as per Court's
Order dated 27.03.2015. |
| 05 Vitthal H. Dighe | Deleted as per Court's
Order dated 23.03.2015. |
| 06 Keshav M. Suryawanshi,
age: 46 years, Occ: Law Officer,
as above. | |
| 07 Nandkumar B. Patil, | Deleted as per Court's
Order dated 23.03.2015. |
| 08 Sunil D. Kaldade,
age: 50 years, Occ: Law Officer,
as above. | |
| 09 Kishor J. Ghute Patil,
age: 51 years, Occ: Law Officer,
as above. | |
| 10 Vinod D. Godbharle,
age: 38 years, Occ: Law Officer,
as above. | |

11 Smt.Vaishali A. More/Shinde,
age: 40 years, Occ: Law Officer,
as above.

12 P.P.More,
age: 39 years, Occ: Law Officer,
as above.

13 Rajendra P. Phatke,
age: 47 years, Occ: Law Officer,
as above.

14 Govind R. Ingole Patil,
age: 36 years, Occ: Law Officer,
as above.

15 Dnyaneshwar R. Korde,
age: 48 years, Occ: Law Officer,
as above.

16 Unmesh S. Mote,

Deleted as per Court's
Order dated 27.03.2015.

17 Vijaykumar G. Shelke,
age: 55 years, Occ: Law Officer,
as above.

18 Smt.Y.M.Kshirsagar/Thorat,
age: 40 years, Occ: Law Officer,
as above.

19 Dattatray V. Tele,
age: 50 years, Occ: Law Officer,
as above.

20 Sunil P. Daund,
age: 50 years, Occ: Law Officer,
as above.

21 Smt.Pratibha J. Bharad,
age: 40 years, Occ: Law Officer,
as above.

22 S.G.Nandedkar,
age: 42 years, Occ: Law Officer,
as above.

23 Smt.S.D.Shelke,

Deleted as per Court's
Order dated 27.03.2015.

24 Shrinivas Ambad,
age: 34 years, Occ: Law Officer,
as above.

25 Aniket Deshmukh,
age: 35 years, Occ: Law Officer,
as above.

26 Smt.Rekha K. Ladda,

Deleted as per Court's
Order dated 27.03.2015.

Petitioners

Versus

The State of Maharashtra,
through its Principal Secretary
and RLA,
Law and Judiciary Department,
Mantralaya, Mumbai-32.

Respondents

Mr.V.D.Sapkal, advocate for petitioners.
Mr.V.J.Dixit, Senior Counsel i/by Mr.S.G.Karlekar, A.G.P for
Respondent State.
Mr.A.N.Nagargoje, advocate for caveator.

WITH

(2) WRIT PETITION NO. 3456 OF 2015

- 1 Adv. Shri Pradeep S/o Natha Jadhav
age 48 years, occ. Law Officer
Working as Assistant Govt. Pleader /
Additional Public Prosecutor
Government Pleader's Office

Jalna, District Court, Jalna.

- 2 Adv. Shri Bharat s/o Kondiba Khandekar
age 45 years, occ. Law Officer
Working as Assistant Govt. Pleader /
Additional Public Prosecutor
Government Pleader's Office
Jalna, District Court, Jalna.

- 3 Adv. Shri Deepak Narayan Kolhe
age 35 years, occ. Law Officer
Working as Assistant Govt. Pleader /
Additional Public Prosecutor
Government Pleader's Office,
Jalna, Dist. Court, Jalna.

Petitioners

versus

- 1 The State of Maharashtra
Through its Principal Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai 32.

- 2 The District Magistrate /
The Collector, Jalna
District Jalna.

Respondents

Mr.V.D.Sapkal, advocate for petitioners.

Mr.V.J.Dixit, Senior Counsel i/by Mr.S.G.Karlekar, A.G.P for
Respondent States.

WITH

(3) WRIT PETITION NO. 3540 OF 2015

- 1 Adv. Shri Shrikrishna Babarao Pawar
age 36 years, occ. Law Officer,
Working as Assistant Govt. Pleader /
Additional Public Prosecutor
Government Pleader's Office,
Parbhani District Court, Parbhani.

2 Adv. Shri Chandrashekhar Balaji Ubale
age 37 years, occ. Law Officer
Working as Assistant Govt. Pleader /
Additional Public Prosecutor
Government Pleader's Office,
Parbhani, District Court, Parbhani

Petitioners

versus

1 The State of Maharashtra
Through tis Principal Secretary
Law and Judiciary Department,
Mantralaya, Mumbai 32.

2 The District Magistrate /
The Collector, Parbhani
District Parbhani

Respondents

Mr.V.D.Sapkal, advocate for petitioners.

Mr.V.J.Dixit, Senior Counsel i/by Mr.S.G.Karlekar, A.G.P for
Respondent State.

WITH
(4) WRIT PETITION NO. 3344 OF 2015

Ganesh s/o Babasaheb Kharsade
age 30 years, occ. Legal Practitioner
r/o Paranda, Tq. Paranda,
Dist. Osmanabad.

Petitioner

versus

1 The State of Maharashtra
Through law and judiciary
Department, Maharashtra State
Mantralaya, Mumbai.

2 The Collector,
Osmanabad,
Tq. & Dist. Osmanabad

Respondents

Mr.V.D.Salunke, advocate for petitioners.

Mr.V.J.Dixit, Senior Counsel i/by Mr.S.G.Karlekar, A.G.P for Respondent State.

**WITH
(5) WRIT PETITION NO.3343 OF 2015**

1 Anant s/o Arjun Patil
age 60 years, occ.Legal Practitioner
r/o Mohide T.S. Tq. Shahada
District Nandurbar.

2 Shamkant s/o Raoji Patil
age 59 years, occ Legal Practitioner
r/o 23, Garud Colony,
Deopur, Dhule
District Dhule

Petitioners

versus

1 The State of Maharashtra
Through the Principal Secretary
Law and Judiciary Department
Mantralaya, Mumbai

2 The Collector and the
District Magistrate, Dhule
District Dhule.

3 The Collector and the
District Magistrate, Nandurbar
District Nandurbar

Respondents

Mr.V.D.Hon, Senior Counsel i/by Mr.A.V.Hon, advocate for petitioners.

Mr.V.J.Dixit, Senior Counsel i/by Mr.S.G.Karlekar, A.G.P for Respondent State.

**CORAM : R.M.BORDE &
V.K.JADHAV, JJ.**

Reserved on : 09th April, 2015.

Pronounced on : 05th May, 2015.

JUDGMENT (Per R.M.Borde, J.):

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 The petitioners are functioning as Additional Government Pleaders / Assistant Government Pleaders / Additional Public Prosecutors in the High Court of Judicature at Bombay, Bench at Aurangabad.

3 The term of appointment of petitioners has not yet expired and it would come to an end in the year 2016. Petitioners contend that their appointment is made in observance of the procedure prescribed under Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration) Rules, 1984 (hereinafter referred to as 'Law Officers' Rules'). The petitioners, thus, contend that they have been regularly appointed pursuance to selection process conducted by the Respondents. By a notification issued on 05.10.2013, about 14 Law Officers have been appointed as Assistant Government Pleaders and Additional Public Prosecutors for the period of three years, whereas, 14 Law Officers are appointed for a period of one year. Similarly, by notification issued on 09.10.2013, 2 Law Officers have been appointed for a period of three years as Assistant Public Prosecutors and Additional Public Prosecutors. The State Government, by issuing notification on 20th October, 2013, appointed 4 Law Officers as Additional Government Pleaders and Additional Public Prosecutors. In similar fashion, Respondent-State, by issuing separate notifications on 09.06.2014, 05.06.2014 and 16th August, 2014, made appointments of 13 Law Officers as

Assistant Government Pleaders and Additional Public Prosecutors for a period of two years. It is, thus, clear that tenure of the Law Officers, appointed as Additional Government Pleaders / Assistant Government Pleaders / Additional Public Prosecutors, is up to the year 2016. It is contended by the petitioners that on 13th October, 2014, 14 posts of Additional Government Pleaders / Assistant Public Prosecutors had fallen vacant and as such, the Government has taken a decision to continue the Law Officers until further orders. An advertisement has also been issued for making regular appointments on 13.10.2014 and the said selection process has not yet been completed.

4 It is the contention of the petitioners that elections to the Maharashtra Legislature Assembly took place in the month of October 2014 and there is change in the Government since new political party assumed power from October 2014. The petitioners allege that newly formed Government run by the different political party wants to install officers of their choice and remove / enblock all the Law Officers functioning at the High Court as well as in all the District Courts in the State. After assumption of reigns by the new political party, a notification has been issued on 13th March, 2015, calling applications from the lawyers with a view to make appointments to the posts of Government Pleader/Assistant Government Pleaders/Additional Government Pleaders/Public Prosecutors/Additional Public Prosecutors, etc. The petitioners contend that though no specific orders of termination are issued, clause 7 contained in the advertisement itself operated as an order of termination without observing the procedure prescribed under Law Officers Rules.

5 The petitioners contend that their career is spotless and unblemished and except barring an 'undisclosed' reason that new Government run by a different political party wants to install their own lawyers in place of petitioners, enblock termination of the Government Pleaders / Additional Government Pleaders / Assistant Government Pleaders / Additional Public Prosecutors is within contemplation. The petitioners contend that the decision taken by the Government is arbitrary and unreasonable and apart from in contravention of Law Officers Rules, is in breach of principles of equality and fair play and as such, violative of Article 14 of the Constitution of India. The relevant clause contained in the advertisement dated 13.03.2015 reads thus:

उमेदवारांसाठी महत्वाच्या सूचना :

१.. प्रस्तावित नवीन नियुक्त्या ज्या दिनांकास अमलात येतील त्या दिनांकापासून सद्यस्थितीत त्या त्या पदावर कार्यरत असलेल्या विधि अधिका-यांच्या नियुक्त्या आपोआप संपुष्टात येतील. त्यामुळे कार्यरत असलेल्या विधि अधिका-यांनी प्रस्तावित नियुक्त्यांसाठी नव्याने अर्ज सादर करणे आवश्यक आहे.

6 Similar clause is included in the advertisement issued for the purposes of making appointment to the posts of Government Pleaders / Public Prosecutors, Assistant Government Pleaders / Additional Public Prosecutors in the District and Sessions Courts throughout the State. Important instructions for the candidates are enumerated in clause 7(1), which reads thus:

7 Important instructions for the candidates: -

(1) The existing appointments on the

respective posts of Law Officers will come to an end automatically on the date of issue of the proposed fresh appointment orders. Hence, the present Law Officers need to apply freshly for the said posts.

7 That, as per the amended Rule 2A, the Selection Committee constituted for the purposes of selecting Government Pleaders in the High Court of Bombay and its Benches at Nagpur and Aurangabad, consists of Advocate General and Principal Secretary and Remembrancer of Legal Affairs, Law and Judiciary Department, Government of Maharashtra; and so far as appointments to the posts of Additional Government Pleaders / Assistant Government Pleaders and Additional Public Prosecutors in the High Court of Bombay and its Benches at Nagpur and Aurangabad, shall consist of Joint Secretary, Law & Judiciary Department and a person nominated by the Advocate General and Principal Secretary and Remembrancer of Legal Affairs, Law and Judiciary Department, Government of Maharashtra. The change is brought about in the selection panel in view of the directives issued by the Division Bench of this Court at Nagpur in Criminal Appeal No.161 of 2001 on September 11, 2014. The Division Bench has observed in the order that:

“At times, it is noticed that the appointments of the Law Officers are made on political consideration rather than on merits.

No doubt that at present the appointments are routed through a committee consisting of learned Advocate General and Principal Secretary, Law & Judiciary Department. However, the present system does

not provide for orally interviewing the applicants prior to their appointment as Law Officers. Oral interview is one of the suitable methods for judging merits of a candidate. We find that if interviews are held prior to the appointments being made as Law Officers by the persons who are having expertise in law then it would be ensured that at least lawyers with basic understanding of law and knowledge of at least basic principles of law would be appointed.

We, therefore, direct that the State Government shall reframe the rules regarding making appointments of Law Officers. Needless to state that such rules shall consist of provisions that the candidates, who are appointed as Law Officers, are interviewed by a panel consisting of Principal Secretary, Law & Judiciary Department and the learned Advocate General or a representative, which the learned Advocate General deems fit for that purpose.

8 The Law Officers Rules, as such, have been amended in observance of the judgment delivered by the Division Bench at Nagpur.

9 Certain Rules governing appointments are necessary to be noted. Same are quoted herein below:

“Government Pleader” means an advocate appointed to that post under these rules by Government in the Law and Judiciary Department.-

(i) In relation to the High Court at Bombay, to conduct civil cases, appeals, applications, references, petitions including petitions for exercise of powers under Articles 226 and 227 of the Constitution and other Courts at

Bombay, for and on behalf of the State or its officers and includes an Additional Government Pleader and Assistant Government Pleader and Honorary Assistant to a Government Pleader;

(ii) In relation to the High Court at Nagpur and Aurangabad, to conduct civil cases, appeals, applications, references and petitions including petitions for exercise of powers under Articles 226 and 227 of the Constitution for and on behalf of the State or its officers and includes an Additional Government Pleader and Assistant Government Pleader and Honorary Assistant to a Government Pleader;

(iii) In relation to the Bombay City Civil Court at Bombay, to conduct civil cases and other proceedings for and on behalf of the State or its officers and includes an Additional Government Pleader and Assistant Government Pleader;

(iv) In relation to the Court of Small Causes at Bombay, to conduct civil cases, appeals and other proceedings for and on behalf of the State, or its officers;

(v) In relation to any Court at the district headquarters in the mofussil, to be called a District Government Pleader, to conduct civil suits, appeals, applications and other proceedings, for and on behalf of the State or its officers and includes an Additional or Assistant Government Pleader and Honorary Assistant to a District Government Pleader;

(vi) In relation to any Court at taluka headquarters, to be called a Subordinate Government Pleader, to conduct civil cases, applications and other proceedings for and on behalf of the State or its officers;

(vii) In relation to the Maharashtra Revenue Tribunal, to be called a Special Government Pleader or Additional Special Government

Pleader, to conduct appeals, revisions, review applications or any other application for and on behalf of the State or its officers.

“Law Officer” means an advocate appointed by Government in the Law and Judiciary Department, under these rules, to conduct cases on behalf of the State or its officers before any Court or the Maharashtra Revenue Tribunal and includes an Advocate-General, a Government Pleader and Public Prosecutor.

“Public Prosecutor” means an advocate appointed as a Public Prosecutor by Government in the Law and Judiciary Department under these rules for the High Court and for every district in the State under sub-sections (1) and (3) of section 24 of the Code of Criminal Procedure, for conducting any prosecution, appeal, application or other proceedings on behalf of the State and includes an Additional Public Prosecutor.

7 The relevant Rules are as under:-

11 Eligibility of appointment:- (1) A person to be appointed as a Government Pleader or Public Prosecutor shall be one -

- (a) who is a citizen of India;
- (b) who has obtained a degree in Law from any statutory University and has been enrolled as an advocate;
- (c) who is not more than fifty-five years of age on the date of appointment;
- (d) who has been in practice as an advocate,-
 - (i) in the case of Government Pleader or Additional Government Pleader in the High Court, for not less than ten years;

(ii) in the case of any other Government Pleader or Additional or Assistant Government Pleader, Public Prosecutor or Additional Public Prosecutor, for not less than seven years;

(iii) in the case of Subordinate Government Pleader at taluka headquarters, for not less than three years; and

(iv) in the case of an Honorary Assistant to the Government Pleader in the High Court or District Government Pleader in the mofussil Court, for not less than three years.

(2) Notwithstanding anything contained in the foregoing provisions, if in the opinion of Government in the Law and Judiciary Department a person is, -

(i) a distinguished jurist, he shall be eligible for being appointed as an Assistant Government Pleader on the Original and Appellate Side of the High Court at Bombay, irrespective of the fact whether such a person is or is not practising as an advocate, or if he is or was practising as an advocate, whether he has or has not completed the period of practice prescribed in sub-clause (ii) of clause (d) of sub-rule (1) on the date of such appointment; or

(ii) a retired judicial officer or officer of the rank not below that of a Joint Secretary in the Law and Judiciary Department and who, prior to his joining service as such officer was a practising advocate, or had practised as an advocate for not less than seven years, he shall be eligible for being appointed as an Assistant Government Pleader on the Original and Appellate Side of the High Court at Bombay.

12 Additional qualifications to be considered for appointment . - Appointment of any person

who is eligible to be appointed under rule 11 shall, however, be made having regard to his integrity, reliability, reputation, character and antecedents in addition to his qualifications and experience.

13 Appointment – (1) Every Government Pleader referred to in clause (j) of rule 2, or Public Prosecutor or Additional Public Prosecutor for High Court or for each district shall be appointed by Government in the Law and Judiciary Department (hereinafter in this rule referred to as “the Government”).

(2) The Government shall invite applications from advocates in such manner as it thinks fit, and select from amongst the applicants a suitable candidate for appointment of -

(i) a Government Pleader or Additional or Assistant Government Pleader or Honorary Assistant to the Government Pleader in the High Court or in the Bombay City Civil Court or in the Court of Small Causes at Bombay; and

(ii) a Special Government Pleader and Additional Special Government Pleader for the Maharashtra Revenue Tribunal at Bombay;

(iii) a Public Prosecutor or Additional Public Prosecutor in the High Court.

(3) The District Magistrate in Greater Bombay, or as the case may be in every district shall invite applications from advocates in such manner as he thinks fit, for inclusion of the names of suitable candidates from amongst them, with the approval of the Government, in the panel for appointment of Public Prosecutor or Additional Public Prosecutor for Greater Bombay, or as the case may be, for a district; and the Government shall select a candidate from the panel so prepared for any such appointment.

(4) The Collector of every district other than the district of the City of Bombay and the Bombay Suburban District shall invite applications from advocates in such manner as he thinks fit, for inclusion of the names of suitable candidates from amongst them. With the approval of the Government, in the panel for appointment of District Government Pleader or Additional or Assistant Government Pleader or Honorary Assistant to the District Government Pleader, or as the case may be, subordinate Government Pleader and the government shall select a candidate from the panel so prepared for any such appointment.

(5) The Commissioner of the Pune Division, Nagpur Division, Kolhapur division and Aurangabad Division shall invite applications from advocates in such manner as he thinks fit, for inclusion of the names of suitable candidates from amongst them, with the approval of the Government in the panel for appointment of a Special Government Pleader for the Maharashtra Revenue Tribunal at Pune, Nagpur, Kolhapur or as the case may be, Aurangabad; and the Government shall select a candidate from the panel so prepared for any such appointment.

(6) A person appointed as the Government Pleader or Additional or Assistant Government Pleader may also be appointed as a Public Prosecutor or Additional Public Prosecutor under sub-section (1), or as the case may be, sub-section (3) of section 24 of the Code of Criminal Procedure.

30 Period of Appointment.- (1) All the Law Officers except the Advocate General shall hold office during the pleasure of Government in Law and Judiciary Department.

(2) No Law Officer shall be continued in

office after he has attained the age of 62 years;

Provided that, Government in the Law and Judiciary Department may continue any Law Officer after he has attained the age of 62 years, if it is satisfied that the said Law Officer is physically fit and there are good reasons to warrant his retention in office.

(3) Subject to the other provisions contained in this rule and unless the order of appointment directs otherwise, a person appointed as a Law Officer shall hold office at a time for a term not exceeding three years.

(4) A Law Officer shall be eligible for reappointment after the expiry of his term and for that purpose the work of a Law Officer shall be reviewed every year and a report about his work and ability shall be sent to Government in the Law and Judiciary Department at least three months before the expiry of his term--

(a) in the case of the Law Officers in the Nagpur and Amravati Divisions by the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur;

(b) in the case of the Law Officers in the area of jurisdiction of the High Court at Aurangabad, by the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Aurangabad; and

© in the case of other Law Officers, by the Solicitors to Government (Mofussil Litigation) and by the concerned Joint Secretary or the Deputy Secretary in the Law and Judiciary Department (City Civil and Criminal Litigation) at Bombay, as the case may be.

(5) A Law Officer shall be liable to be removed from his office at any time, if he is

guilty of any act or conduct which, in the opinion of Government in the Law and Judiciary Department, is incompatible with his duties as such Law Officer. The decision of Government in the Law and Judiciary Department in such cases shall be final.

(6)(a) Notwithstanding anything contained in sub-rules (2) and (3), but save as otherwise provided in sub-rule (5), the appointment of any Law Officer, which is at the pleasure of the Government, may at any time, be re terminated by Government in the Law and Judiciary Department by giving him one months notice or where any retainer is payable to such Law Officer, be terminated forthwith by paying him one months retainer in lieu of such notice.

(b) Any Law Officer may resign his appointment either by giving one months notice to Government, in the Law and Judiciary Department or may resign forthwith by surrendering one months retainer where such retainer is payable to him.

(7) A Law Officer whose term of office has expired, shall not after the expiry of such term be entitled to appear on behalf of the State or its officers in any case, civil or criminal, which may then be pending in the Court.

10 Section 24 of the Code of Criminal Procedure relates to appointment of Public Prosecutors and the said Section has been amended by the State of Maharashtra whereby in sub-section (1) and sub-section (4), the phrase "after consultation with the High Court", and "in consultation with the Sessions Judge" are deleted and are substituted by a phrase "with the approval of the State Government".

11 The petitioners contend that they were selected and appointed by a Committee comprising of Advocate General and Principal Secretary & Remembrancer of Legal Affairs, Law & Judiciary Department, in accordance with the policy declared by the Government on 22.07.2003. The petitioners contend that since they are appointed by observing the procedure, which was prevailing at the time of their appointment and for a specific duration, their engagement cannot be brought to an end abruptly without observing the procedure prescribed under Rule 30 of the Law Officers Rules.

12 It is no doubt clarified in sub-rule 6 of Rule 30 that the appointment of any Law Officer is at the pleasure of the Government. However, the engagement may be terminated by the Government in Law & Judiciary Department by giving him one months notice or where any retainer is payable to such Law Officer, be terminated forthwith by paying him one months retainer in lieu of such notice. In similar fashion, any Law Officer may resign his appointment either by giving one months notice to Government in the Law and Judiciary Department or may resign forthwith by surrendering one months retainer where such retainer is payable to him. It is clarified that none of the Law Officer, engaged for prescribed duration, has tendered resignation. The impugned clause in the advertisement, which provides that the existing appointments of the Law Officers will come to an end automatically on the date of issue of proposed fresh appointment orders, is contrary to Rule 30 of the Rules and the intention of the Government to terminate appointments of all the Law Officers is writ large. It can also be inferred from the directives contained in

the said clause to all the Law Officers to apply freshly for the said post. It is contended that for continuation of Law Officers until completion of their tenure, no fresh application need to be made. It cannot be expected of the Law Officers to undergo selection process since they are already occupying posts.

13 Learned Senior Counsel appearing for Respondent-State contends that for continuation of the Law Officers, even for completion of their tenure of appointment, they will have to appear before the Interview Panel after tendering an application as required under the advertisement. It is denied emphatically that the Government proposes to terminate appointments of the existing Law Officers in the State enmass.

14 When the matter was taken up for consideration on 31.03.2015, 06.04.2015, 08.04.2015 and 09.04.2015, the State Government was specifically asked, as to whether the Government intends to file return controverting the contentions raised by the petitioners in the petition. It is surprising to note that in spite of repeatedly calling upon the Respondent-State to file reply and clarify stand of the State Government, learned Special Counsel has expressed his inability to file return. It was also suggested to the learned Special Counsel to clarify the stand in respect of averments made by the petitioners in the petition and the apprehension expressed as regards enmass termination of appointments of all the existing Law Officers in the State. Except denying orally, the learned Special Counsel failed to file affidavit-in-reply. It was also asked as to what is the reason for failure of

the State Government to file return in the matter, however, no explanation has been tendered. After persistently calling upon the State to place its stand in writing on record and to clarify as to whether in the event, the Law Officers, presently holding office and whose tenure has not yet come to an end, appear before the Interview Panel and if the Interview Panel find such Law Officer suitable, whether orders of continuation for enabling such Law Officer to complete the tenure would be issued; or whether fresh appointment of such Law Officer would be made, a written instruction dated 19.04.2015 was placed on record (which is marked as "X" for identification), informing that the existing Law Officers, pursuant to the selection process, if selected, shall be appointed afresh. Thus, from the written instruction placed on record on behalf of the State Government, intention of the State Government to terminate appointments of all the existing Law Officers enmass and issue fresh appointment orders, if selected during selection process, is writ large. Thus, from the failure of the State Government to file reply and in view of the communication referred to above, marked "X" for identification, no other inference can be drawn and the contention raised by the petitioners, in the petition, that the State Government proposes to terminate appointments of all the existing Law Officers enmass, whose term has not come to an end as yet, without assigning any reason and without observing the procedure prescribed under Rule 30 of the Law Officers Rules, shall have to be accepted.

15 The petitioners have placed reliance on the judgment in the matter of **Kumari Shrilekha Vidyarthi, etc. Vs. State of U.P. and others**, reported in AIR 1991 SC 537. In the reported

matter, the decision of the State of Uttar Pradesh, terminating, by issuing a general order, appointments of the Government Counsel (Civil, Criminal and Revenue), in all the Districts of State of U.P., with effect from 28.02.1990 and direction to prepare a fresh panel to make appointments in place of existing incumbents, was a matter of challenge. The orders of enmass termination of all the Law Officers were issued with effect from 28.02.1990 irrespective of the fact, whether the term of the incumbent had expired or was subsisting. The validity of the State action was challenged in these matters after the challenge has been rejected by the Allahabad High Court. Since challenge was turned down by Allahabad High Court, matter reached the Supreme Court. As in the instant matter, it was contended before the Supreme Court that appointment of the Government Counsel is only a professional engagement terminable at will on either side and not appointment to a post under the Government; and the Government has power to terminate the appointment at any time 'without assigning any cause'.

16 In the instant mater also, relying on Rule 30(6) of the Law Officers Rules, it is contended that the appointment of any Law Officer is at the pleasure of the Government and is terminable without assigning any reasons. While considering similar contentions raised in **Shrilekha's** matter (*supra*), the Supreme Court, in paragraph 13 of the judgment, has observed thus:

“13 The learned Additional Advocate General contended that clause 3 of para 7.06 says that the appointment of a District Government Counsel is only professional engagement terminable at will on either side and not appointment to a post under the

Government; and the Government has the power to terminate the appointment at any time 'without assigning any cause'. He contended that this power to terminate the appointment at any time without assigning any cause and the clear statement that the appointment is only professional engagement terminable at will on either side is sufficient to indicate that the relationship is the same as that of a private client and his counsel. In our opinion, this provision has to be read not in isolation, but in the context in which it appears and along with the connected provisions, already referred. The expression 'professional engagement' is used therein to distinguish it from 'appointment to a post under the Government' in the strict sense. This, however, does not necessarily mean that a person who is not a Government servant holding a post under the Government does not hold any public office and the engagement is purely private with no public element attaching to it. This part of cl.3 of Para 7.06 means only this and no more. The other part of cl.3 which enables the Government to terminate the appointment 'at any time without assigning any cause' can also not be considered in the manner, suggested by the learned Additional Advocate General. The expression at any time merely means that the termination may be made even during the subsistence of the term of appointment and 'without assigning any cause' means without communicating any cause to the appointee whose appointment is terminated. However, without any cause is not to be equated with without existence of any cause. It merely means that the reason for which the termination is made need not to be assigned or communicated to the appointee. It was held in *Liberty Oil Mills vs. Union of India* (1984) 3 SCC 465 : (AIR 1984 SC 1271) that the expression 'without assigning any reason' implies that the decision has to be communicated, but reasons for the decision have not to be stated; but the reasons must

exist, otherwise, the decision would be arbitrary. The non-assigning of reasons or the non-communication thereof may be based on public policy, but termination of any appointment without the existence of any cogent reason in furtherance of the object for which the power is given would be arbitrary and, therefore, against public policy. Cl. 3 of para 7.06 must, therefore, be understood to mean that the appointment of a District Government Counsel is not to be equated with appointment to a post under the Government in the strict sense, which does not necessarily mean that it results in denuding the office of its public character; and that the appointment may be terminated even during currency of the term by only communicating the decision of termination without communicating the reasons which led to the termination. It does not mean that the appointment is at the sweet will of the Government which can be terminated at any time, even without the existence of any cogent reason during the subsistence of the term. The construction, suggested on behalf of the State of U.P. Of this provision, if accepted, would amount to conceding arbitrary power of termination to the Government, which by itself is sufficient to reject the contention and thereby save it from any attack to its validity.

17 It is, thus, required to be noted that the State Government does have the power to terminate the appointment. However, such termination cannot be *de hors* the Rules. The State Government may not communicate the reasons, but existence of reasons for terminating the appointment, is a precondition.

18 In the instant matter, though it is denied by the State orally that it does not propose to terminate the appointments of Law Officers enmass, bare perusal of clause 7(1) of the

advertisement together with communication produced on record, marked "X", it is clear that engagement of all the Law Officers in the State, whose tenure is yet to come to an end, is being terminated without assigning any reasons and without observing the procedure prescribed under Law Officers Rules. The failure of the State Government to file affidavit-in-reply controverting the contentions, together with the circumstances pointed out above, persuade us to accept the contentions raised by the petitioners , in that behalf.

19 It is true that there is a presumption of validity of State action and the burden is on the person, who alleges violation of Article 14, to prove the same. However, if the State is unable to produce the material to justify its action as fair and reasonable, the burden on the person alleging arbitrariness, must be held to have been discharged. It is true that the scope of judicial review is limited as indicated in the case of **Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay**, reported in AIR 1989 SC 1642, to oversee the State action for the purpose of satisfying that it is not vitiated by the vice of arbitrariness and no more. As has been observed by the Supreme Court in **Shrilekha's** (*supra*) judgment in paragraph 35, it is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is *sine qua non* to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract.

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

20 So far as instant matter is concerned, considering the facts and circumstances and reluctance of the State Government to disclose the reasons and its stand before the Court, no other inference is permissible except that the action of the State is arbitrary since no reason or cogent explanation is forthcoming. In **Shrilekha's** matter, the Supreme Court, in paragraph 46 of the judgment, which squarely applies to the instant matter, has observed thus:

“46 Viewed in any manner, the impugned circular dated 06.02.1990 is arbitrary. It terminates all the appointments of Government Counsel in the districts of the State of Uttar Pradesh by an omnibus order, even though, these appointments were all individual. No common reason applicable to all of them justifying their termination in one stroke on a reasonable ground has been shown. The submission on behalf of the State of Uttar Pradesh at the hearing that many of them were likely to be reappointed is by itself ample proof of the fact that there was total non application of mind to the individual cases before issuing the general order terminating all the appointments. 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 non-suitability 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 non-arbitrary. The impugned circular must, therefore, perish on the ground of arbitrariness which is an available ground for judicial review in such a situation.

21 The Respondent-State, placing reliance on the judgment in the matter of **State of U.P. And another Vs. Johri Mal**, reported in AIR 2004 SC 3800, has contended that the appointment of law officers is merely a professional engagement and as such, action of the State Government is not amenable to be challenged and no judicial review thereof is permissible. It is contended that the view expressed in **Shrilekha's** matter, has not been approved by the Supreme Court in **Johri Mal's** matter. On reading the judgment in the matter of **Johri Mal** and more particularly, paragraphs 59 and 60 thereof, the disagreement expressed is only in respect of nature of engagement and as regards principle laid down in reference to Wade's Administrative Law, 6th Edition, page 401, which reads thus:

“ For the same reasons there should in principle be no such thing as unreviewable administrative discretion, which should be just

as much a contradiction in terms as unfettered discretion. The question which has to be asked is what is the scope of judicial review, and in a few special cases the scope for the review of discretionary decisions may be minimal. It remains axiomatic that all discretion is capable of abuse, and that legal limits to every power are to be found somewhere.”

22 Even on consideration of the propositions laid down in the matter of **Johri Mal**, that appointment of the Law Officers of the State is merely a professional engagement, the State action, in the instant matter of enblock termination before completion of their tenure is surely amenable to judicial review. In paragraph no.28 of the judgment in the matter of **Johri Mal**, it is observed thus:

“28 The scope any 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 supreme 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 occasions 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 v. State of Ellinois*, 1876 (94) US (Supreme Reports) 113.

23 Much emphasis has been led on the observations made in paragraphs 40 and 41 of the judgment in the matter of **Johri Mal**, which read thus:

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

an exceptional case is made out. The question as to whether the State is satisfied with the performance of its counsel or not is primarily a matter between 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. The jurisdiction of the Courts in a case of this nature would be to invoke the doctrine of 'Wednesbury Unreasonableness' as developed in *Associated Picture House v. Wednesbury Corporation*, (1947) 2 ALL ER 640.

41 In *Om Kumar and others v. Union of India* (2001) 2 SCC 386, it was held that where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the constitutional Courts as primary reviewing Courts to consider the correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. For judging the arbitrariness of the order, the test of unreasonableness may be applied. The action of the State, thus, must be judged with extreme care and circumspection. It must be borne in mind that the right of the public prosecutor or the district counsel do not flow under a statute. Although, discretionary powers are not beyond pale of judicial review, the Courts, it is trite,

allow the public authorities sufficient elbow space/play in the joints for a proper exercise of discretion.

24 At the same time, observations made by the Supreme Court in the aforesaid matter in paragraph 76 of the judgment needs to be considered. Similarly, paragraphs no.77 to 79 also must be considered, which read thus:

“76 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.

77 The appointment in such a posit 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.

78 We cannot but express our anguish over the fact that in certain cases recommendations are made by the District Magistrate having

regard to the political affinity of the lawyers to the party in power. Those who do not have such political affinity although competent are not appointed. Legal Remembrancers Manual clearly forbids appointment of such a lawyer and/or if appointed, removal from his office. The District Judge and the District Magistrate, therefore, are duty bound to see that before any recommendation is not made, or any political affinity. They must also bear in mind that the Manual postulates that any lawyer who is guilty of approaching the authorities would not be entitled to be considered for such appointment.

79 The State, therefore, is not expected to rescind the appointments with the change in the Government. The existing panel of the district Government Counsel may not be disturbed and a fresh panel come into being only because a new party has taken over change of the Government.

25 On reading the judgment, referred to above, it is, thus clear that the Court can interfere when there is a deviation from legal policy or that there is any breach of statutory provisions of law while removing any Law Officer. The contention raised by the petitioners that the move of the State Government is politically motivated need not be commented upon. However, expectations expressed by the Supreme Court in the matter of **Johri Mal** (*supra*), that the State Government is not expected to rescind the appointments with the change in the Government and that the existing panel may not be disturbed only because a new party has taken over, also needs an emphasis. It is true that only when good and competent lawyers are appointed by the State, public interest would be safeguarded. It also cannot be denied 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. The State Government may also replace an efficient, honest and competent lawyer, *inter alia*, when it is in a position to appoint a more competent lawyer. In such an event, even a good performance by a lawyer may not be of much importance.

26 In the instant matter, however, as has been stated above, it is always open for the State government to replace the existing member of the panel by making appointment of more competent and suitable law officer. However, it cannot be lost sight of the fact that for the purposes of removal of law officer before completion of his tenure, the procedure prescribed under Rule 30 of the Law Officers Rules has to be adhered to. The power of the State Government to appoint Law Officers of its choice can never be denied. It is also true that appointment of a Law Officer is at the pleasure of the Government. However, while terminating the Law Officer holding the office, procedure prescribed under Rule 30 (6) needs to be followed. As has been laid down in **Shrilekha's** matter (*supra*), the State Government is not obliged to inform the reasons for termination of professional engagement, however, existence of reasons is a *sine qua non* for such action.

27 As regards status of a Government Pleader and his duties are concerned, the Supreme Court has observed in the matter of **Mundrika Prasad Sinha Vs. State of Bihar**, reported in AIR 1979 SC 1871, that a Government Pleader is more than an advocate for the litigant and that a Government Pleader, in a sense,

every member of the legal profession, has a higher dedication to the people. In paragraphs no.15 and 16 of the judgment, the Supreme Court has observed thus:

“15 Coming to the larger submission of counsel for the petitioner, we do recognise its importance in our era of infiltration of politicking even in forbidden areas. A Government Pleader is more than an advocate for a litigant. He holds a public office. We recall with approval the observations a Division Bench of the Madras High Court made in Ramachandran v. Alagiriswami and regard the view there, expressed about a Government Pleader's office, as broadly correct even in the Bihar set-up.

“.... the duties of the Government Pleader, Madras are duties of a public nature. Besides, as already explained the public are genuinely concerned with the manner in which a Government Pleader discharges his duties because, if he handles his cases badly, they have ultimately to foot the bill. The Rajasthan case does not take into account all the aspects of the matter.

(36) The learned Advocate General argued that the Government Pleader, Madras is only an agent of the Government, that his duties are only to the Government who are his principals and that he owes no duty to the public at all and that for that reason he would not be the holder of a Public Office.

(37) It is difficult to accept this view. The contention of the learned Advocate General may have been less untenable if the duties of the Government Pleader were merely to conduct in courts cases to which Government are a party. But, as the rules stand, he has a number of other duties to discharge. Besides, even if his

only duty is the conduct of cases in which Government have been impleaded, still as explained more than once before the public are interested in the manner in which he discharges his duties.

.....

(90) I am clearly of opinion that having regard to the fact that the Government Pleader of this court is employed by the State on remuneration paid from the public exchequer and having regard to the various functions and duties to be performed by him in the due exercise of that office, most of which are of an independent and responsible character, the office must be held to be a public office within the scope of a *quo warranto* proceeding.

I consider that the most useful test to be applied to determine the question is that laid down by Erle, J. in (1851) 17 QB 149. The three criteria are, source of the office, the tenure and the duties. I have applied that test and I am of the opinion that the conclusion that the office is a public office is irresistible."

16 In this view, ordering about a Government Pleader is obnoxious but nothing savouring of such conduct is made out although we must enter a caveat that Governments under our Constitution shall not play with Law Offices on political or other impertinent considerations as it may effect the legality of the action and subvert the rule of law itself. After all, a Government Pleader and, in a sense, every member of the legal profession, has a higher dedication to the people.

28 In the matter of **State of U.P. Vs. U.P. State Law Officers' Association**, reported in AIR 1994 SC 1654, the Supreme Court has observed that the Law Officers are not appointed as a

part of the spoils system. Having been selected on merit and for no other consideration, they are entitled to continue in their office for the period of contract of their engagement and they can be removed only for valid reasons. The people are interested in their continuance for the period of their contracts and in their non substitution by those who may come in through the spoils system. It is in these circumstances that the Court held that the wholesale termination of their services was arbitrary and violative of Article 14 of the Constitution.

29 The Division Bench of this Court in **Writ Petition No.6227 of 2000** in the matter of Advocate Pratap Narayanrao Pawar Vs. State of Maharashtra & another, decided on 22.06.2001, while considering Pleasure Doctrine, has observed that:

“Today, the pleasure doctrine can be successfully invoked only when it is demonstrable that its invocation was for advancing public interest. This power that is vested in the Government and can be used for weeding out the corrupt, the inefficient, and for chopping out dead wood.” In the instant matter, although the Respondent-State has invoked Pleasure Doctrine, it has not been demonstrated that its invocation is for advancing public interest or that by adopting the doctrine, corrupt, inefficient are being weeded out; nor it can be demonstrated that officers holding the office and whose termination has not yet expired, are amongst those, as referred above i.e. corrupt, inefficient or a dead wood.

In a Socialistic, Democratic and Republican Constitution intended to secure, inter alia, social, economic and political justice,

the concept of the pleasure doctrine (which was and is intended for subserving public good) needs to be reconciled with the rights of the citizen, so that there is no arbitrary action on the part of the State. Arbitrary action is anathema to Article 14 and is clearly interdicted by it. If there be good reason contributing to public interest, the invocation of the pleasure doctrine can be upheld; or else, the presumption is that the action of the State is arbitrary and, therefore, hit by Article 14.”

30 Here is a case of abrupt removal from the office without adhering to the procedure prescribed under Rule 30 of the Law Officers Rules and as such, action shall be deemed to be arbitrary.

31 Heavy reliance is placed by the Respondents on the judgment of Division Bench of this Court, delivered at Mumbai, in the matter of **Vikas Baburao Patil Shirgaonkar Vs. State of Maharashtra and others** (Writ Petition No.3015 of 2015, decided on 25.03.2015). The petition was presented by a District Government Pleader and Public Prosecutor, District Court Satara, challenging the notification / notice issued by the Collector dated 19.03.2015 so also the notification dated 03.02.2015 / 13.02.2015, issued by the State of Maharashtra, whereby the Maharashtra Law Officers Rules have been amended. The notification challenging the aforesaid matter is containing identical clause in respect of automatic termination of the existing Law Officers on selection/appointment of Law Officers pursuant to the Notification.

32 It is contended that since challenge raised to the

notification has been turned down in the aforesaid judgment, it is not permissible for this Court to examine the issue once again. The Division Bench of this Court at Mumbai, while dealing with the challenge has observed in paragraphs no.12 and 20 of the judgment, thus:

“12 Apart from these observations, even otherwise the State has ample power to add or amend the related policy and add certain more procedure / pre-stages before appointing the eligible and competent Law Officers. Based upon the same, the impugned orders/notices inviting applications from all the concerned cannot be faulted with merely because the Petitioner will be affected by this to the extent of stated abrupt termination of his tenure to the post which is holding as of today, if new appointment is made, replacing him by some other law officer. As per the amended rule, even the Petitioner or such person is permitted to participate in the new selection process, they are also required to go through this new process/procedure, provided they are otherwise eligible for the respective posts. This is not a case of abrupt en bloc termination of tenure of existing post/office as stated by Mr.Anturkar.

20 The submission of en-block termination of the services of law officers is unacceptable as the intention is very clear to give opportunity to all the concerned to show their merit and/or pass through this examination of interview, so that even the existing law officers can be continued if their performance is good and based upon the eligibility and respective merits. Therefore, it is in the interest of all. The added procedure so adopted and the Scheme so formulated in no way, can be stated to be a case of mass termination of the respective services. Even as per the rules for continuation of tenure or term, satisfactory performance is necessary.

33 The Division Bench did not accept case of the petitioner therein in respect of abrupt enblock termination of services of Law Officers.

34 In the instant matter, as has been stated above, the State Government was called upon to file an affidavit controverting the contentions of the Respondents that the State does not propose to replace the Law Officers whose tenure has not come to an end enblock and that they would be replaced by observing the procedure prescribed under Rule 30 of the Law Officers Rule. However, in spite of insistence, the State Government refused to file such affidavit. The State Government was also asked about the propriety of calling upon the existing Law Officers, whose tenure has not come to an end, to appear before the Interview Panel if the State Government does not intend to discontinue their engagement abruptly before completion of their tenure. It is contended that in order to examine their suitability, they are required to appear before the Interview Panel although tenure of their engagement has not come to an end. It was logical that if they fail to satisfy Interview Panel, their engagement shall come to an end. This procedure itself would be obviously in contradiction with the procedure prescribed under Rule 30 of Law Officers Rules. It is open for the State to discontinue the engagement even without assigning any reason, however, existence of reasons is a necessity. If at all, engagement of the Law Officers, who are presently functioning, is to be brought to an end, there is no propriety in asking them to appear before the Interview Panel. Moreover, the procedure prescribed of holding interviews post decision of the Division Bench at Nagpur, shall apply to the future

appointments and cannot be made applicable as a precondition for continuance of tenure of the Law Officers who are presently holding the office. The amendment to the relevant Rules prescribing modalities of selection of Law Officers shall obviously be prospective in nature and the Law Officers already holding office and whose term is yet to come to an end, cannot be made subject to the amended Rule and cannot be asked to appear before the Interview Panel. It is clarified at the cost of repetition that the State Government does have the power to terminate the engagement of the Law Officers. However, such termination shall be in observance of Rule 30 of the Law Officers Rules. The power of the State Government to appoint Law Officers of its choice, obviously, cannot be disputed but the enblock discontinuance of engagement of all the Law Officers whose tenure is yet to come to an end shall have to be branded as arbitrary. The State Government failed to file affidavit-in-reply in spite of insistence nor has disclosed its stand before the Court. However, at the concluding stage of the hearing, in reply to a query, as to whether the Law Officers, who would be appearing before the Selection Panel, would be issued with the orders of continuation with a view to enable them to complete their existing tenure or would be appointed afresh, it was replied that the existing Law Officers, pursuant to the selection process, if selected, shall be appointed afresh. The communication dated 19.04.2015 signed by the Joint Secretary-cum-Legal Advisor is placed on record. It is, thus, clear that engagement of the existing Law Officers, who do not appear before the Interview panel, although they were selected in observance of the procedure prescribed at the time of their selection and whose tenure is yet to come to an end, would be

discontinued. Such of those Law Officers who would appear before the Interview Panel would be issued appointment orders afresh meaning thereby tenure of their existing engagement, although has not come to an end and is likely to come to an end in 2016, would be terminated.

35 This aspect of the matter was not disclosed to the Division Bench at Mumbai, which has resulted in drawing a conclusion that the State Government does not propose to terminate engagement of the Law Officers enblock. The Division Bench at Mumbai, though referred to the judgment in the matter of **Shrilekha** (*supra*), as well as in the matter of **Johri Mal** (*supra*), has not dealt with the issue in respect of observance of procedure prescribed under the Rules while terminating engagement of the existing Law Officers before completion of their tenure. Though Rule 30 has been reproduced in the judgment, the action of the State Government in respect of discontinuance of engagement of existing Law Officers in breach of Rule 30(6) of the Law Officers Rules, has not been dealt with in the judgment. The Division Bench at Mumbai was misinformed as regards intention of the State Government to continue the engagement of existing Law Officers enblock.

36 Clause No.7 contained in the advertisement is also quite clear and its bare perusal leads us to draw only an inference that on the date of issue of proposed fresh appointment orders, existing appointments on the respective posts of Law Officers will come to an end automatically. The clause contained in the advertisement is quite clear since it stipulates automatic

discontinuance of engagement of the Law Officers on and from the date of issue of proposed fresh appointment orders in pursuance to the advertisement. The intention of the State Government in respect of discontinuing engagement of existing Law Officers gets strengthened in view of the direction contained in clause no.7 of the advertisement itself to the existing Law Officers to apply freshly for the said posts.

37 The State Government was called upon to explain that if it is not its intention to bring to an end engagement of the existing Law Officers holding the posts and whose tenure continues for further period, however, the State Government refused to clarify its stand and make a statement either orally or in writing that engagement of the existing Law Officers would not be brought to an end without observing the procedure prescribed under Rule 30. The reluctance of the State Government either to place in writing before the Court that there shall be adherence to Rule 30 while discontinuing engagement of the existing Law Officers, leads us to draw an irresistible conclusion that the State Government proposes to bring to an end engagement of the existing Law Officers enblock. Had it not been the intention of the State Government, there was no reason for calling upon all existing Law Officers, whose tenure has not come to an end, to apply freshly for the concerned posts.

38 In view of the reasons recorded above, there is no other alternative except to quash clause no.7(1) in the advertisement issued for appointing Government Pleaders, Additional Government Pleaders, Assistant Government Pleaders,

Public Prosecutors and Additional Public Prosecutors in the High Court of Judicature at Bombay and its Benches at Nagpur and Aurangabad. Similar clause contained in the notification/advertisement issued by the State Government calling applications for making appointment to the posts of Government Pleaders, Additional Government Pleaders, Assistant Government Pleaders, Public Prosecutors and Additional Public Prosecutors in the District and Sessions Court in the State also deserves to be quashed and same is accordingly quashed. It is, however, clarified that the State Government shall have entitlement to select the candidates and make appointment in pursuance to the advertisement already issued, in observance of the existing procedure. However, engagement of the existing Law Officers, whose tenure has not yet expired, cannot be discontinued or their engagement cannot be terminated without observing the procedure prescribed under Rule 30(6) of the Law Officers Rules.

39 Writ Petitions are, thus, partly allowed. Rule is made absolute to the extent specified above. In the facts and circumstances of these cases, there shall be no order as to costs.

V.K.JADHAV
JUDGE

R.M.BORDE
JUDGE