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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION No.3015 OF 2015

Vikas Baburao Patil-Shirgaonkar	]	
Age 46 years	]	
Occupation: Agriculturist/Advocate	]	
Residing at: Basari, Plot No.32	]	
Sangamnagar, Khed	]	
District Satara 415003.	]	..Petitioner

-Versus-

1] The State of Maharashtra	]	
Through its Law and Judiciary	]	
Department, having its office at	]	
Mantralaya, Mumbai-400032.	]	
2] The Principal Secretary	]	
Law & Judiciary Department	]	
Having its office at Mantralaya	]	
Mumbai-400032.	]	
3] The Collector	]	
District Collector, Satara.	]	..Respondents

.....

Mr. Anil V. Anturkar, Senior Advocate, a/w Mr. Amol Gatne i/b. Mr. S. B. Deshmukh for the Petitioner.

Mr. Sunil V. Manohar, Advocate General, a/w Abhinandan B. Vagyan, Govt. Pleader a/w C.P. Yadav, A.G.P. for the Respondents.

.....

**CORAM: ANOOP V. MOHTA AND
K. R. SHRIRAM,JJ.**

DATE :- 25th MARCH, 2015.

ORAL JUDGMENT (PER ANOOP V. MOHTA, J.):

Rule returnable forthwith. By consent, we have proceeded to hear the matter finally. By keeping all points open, the proposed amendment so filed by the Petitioner is permitted. The Petitioner to carry out the amendment forthwith.

2] The Petitioner presently holding the post of the District Government Pleader and Public Prosecutor at Satara has challenged the notification/notice issued by Respondent No.3-the Collector, dated 19th March, 2015. The Petition is dated 20th March, 2015. By the amendment, the Petitioner has also challenged notification dated 3rd February, 2015/13th February, 2015 issued by the State of Maharashtra, Law and Judiciary Department (the State) whereby, the Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration) (First Amendment) Rules, 2014 (for short “Amended Rules”) has been amended. This has been issued in exercise of power conferred by the proviso to Article 309, Article 165 read with Article 162 of the Constitution of India.

3] The Petitioner has also prayed for a direction against Respondent Nos.1 and 2 to continue the term of the Petitioner in accordance with the notification dated 6th August, 2014 issued by

Respondent No.1 for the remaining term/tenure. A prayer is also made to direct Respondent Nos.1 and 2 to exclude the Petitioner from the operation of the notification dated 16th March, 2015. The Petitioner has also prayed to stay the direction given by Collector dated 19th March, 2015. As there is an urgency expressed by both the parties, by consent, the matter is heard finally.

4] The table of amended rule (2A) reads as under:-

“Read

1	Government Pleaders in the High Court at Bombay and its Benches at Nagpur and Aurangabad	...	(i) (ii)	Advocate General; and Principal Secretary and Remembrancer of Legal Affairs, Law and Judiciary Department, Government of Maharashtra;
1A	Additional Government Pleader, Assistant Government Pleader and Additional Public Prosecutor in the High Court at Bombay and its Benches at Nagpur and Aurangabad.	...	(i) (ii)	Joint Secretary, Law and Judiciary Department; and The person nominated by the Advocate General and Principal Secretary and Remembrancer of Legal Affairs, Law and Judiciary Department, Government of Maharashtra.”

By inserting above, sub-rule (2A), sub-rules 3, 4 and 5 are substituted.

The formation of a committee and the procedure to be followed are as under:-

“(3) The District Magistrate in Brihan Mumbai, 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 Brihan Mumbai, or as the case may be, for a district; and the Committee consisting of the person nominated by the Advocate General and the Collector of the concerned District, shall conduct the interviews of the candidates and recommend to the Government, the names of the candidates which in its opinion are more suitable and meritorious for such appointment, and the Government shall select the candidates recommended for any such appointment.

(4) The Collector of every district other than the district of the Mumbai City and the Mumbai 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 District Government Pleader, or as the case may be, Subordinate Government Pleader; and the Committee consisting of the person nominated by Advocate General and the Collector of the Government, the names of the candidates which in its opinion are most suitable and meritorious for such appointment, and the Government shall, select a candidate from the panel so prepared for any such appointment.

(5) The Commissioner of the concerned Revenue Division other than the Konkan 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 concerned Revenue Tribunal other than Maharashtra Revenue Tribunal at Mumbai; and the Committee consisting of the person nominated by Advocate General and the Commissioner of Konkan Division shall conduct the interviews of the candidates and recommend to the Government, the names of the candidates which in its opinion are most suitable and meritorious for such appointment; and

the Government shall select a candidate from the panel so prepared for any such appointment.”

5] By these amended rules, the committee consisting of the person nominated by the learned Advocate General and the Collector of the District - for sub rules 3 and 4 and the Commissioner of the Konkan Division for sub rule 5, will scrutinize the applications and conduct the interviews for the recommendation of a panel of suitable law officers. The State shall select the candidates from the panel so prepared for such appointment. This will be followed by the earlier practice and procedure as contemplated under section 24 of the Code of Criminal Procedure, 1973 (for short Cr.P.C.) and the Maharashtra Law Officers (Appointment, Conditions of Service, Recruitment and Remuneration) Rules, 1984 (for short “the Rules”).

6] There is no issue that the appointment of law officer is governed by the Rules. The relevant definitions are as under:-

“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 Court 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 basic 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 candidates 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 th 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 th pleasure of Government in Law and Judiciary Department.

(2) No Law Officer shall be continued in office after he has attained the age of 60 years:

Provided that, Government in the Law and Judiciary Department may continue any Law Officer after he has attained the age of 60 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

(c) 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 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.”

8] Both the Senior Counsel read and referred to section 24 of the Code of Criminal Procedure (Cr.P.C.) which is as under:-

“24. Public Prosecutors – (1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.

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

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district: Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.

(5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub- section (4).

(6) Notwithstanding anything contained in sub- section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre:

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub- section

(4).

Explanation : for the purposes of this sub-section,--

(a) “regular Cadre of Prosecuting Officers” means a Cadre of Prosecuting Officers which includes therein the post of a public Prosecutor, by whatever name called, and which provides for promotion of Assistant Public Prosecutors, by whatever name called, to the post;

(b) “Prosecuting Officer” means a person, by whatever name called, appointed to perform the functions of a Public Prosecutor, an Additional Public Prosecutor or an Assistant Public Prosecutor under this Code.

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

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

[Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.]

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

The State amendment is as under:-

“(a) in sub-section (1), the words “after consultation with the High Court” shall be deleted;

(b) in sub-section (4), for the words “in consultation with the Sessions Judge” the words “with the approval of the State Government”, shall be substituted.”

The provision of the Code of Civil Procedure Order XXVII is also referred.

9] Both the Senior Counsel relied upon the following judgments in support of their respective contentions.

- 1) State of Uttar Pradesh and Others V/s. Rakesh Kumar Keshari and another reported in (2011) 5 SCC 341;
- 2) State of U.P. And Another V/s. Johri Mal reported in (2004) 4 SCC 714.
- 3) West Bengal Electricity Regulatory Commission V/s. CESC Ltd. (2002) 8 SCC 715;
- 4) M/s. Lakh Enterprises & Anr. V/s. M/s. Agar Distributors (India) & Ors., 2013(1) ALL MR 178;
- 5) State of Jammu & Kashmir V/s. A. R. Zakki and others 1992 Supp(1) SCC 548;
- 6) Neelima Sadanand Vartak V/s. State of Maharashtra and Others 2005(5) Bom.C.R. 750.

10] In the case of Johri Mal (supra), the Supreme Court has observed as under:-

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

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

conferred on the incumbent.

38. A distinction is to be borne in mind between appointment of a Public Prosecutor or Additional Public Prosecutor, on the one hand, and Assistant Public Prosecutor, on the other. So far as Assistant Public prosecutors are concerned, they are employees of the State. They hold Civil posts. They are answerable for their conduct to higher statutory authority. Their appointment is governed by the service rules framed by the respective State Government. (See Samarendra Das, Advocate Vs. The State of West Bengal and Ors. [JT 2004 (2) SC 413]).

39. The appointment of Public Prosecutors, on the other hand, are governed by the Code of Criminal Procedure and/or the executive instructions framed by the State governing the terms of their appointment. Proviso appended to Article 309 of the Constitution of India is not applicable in their case. Their appointment is a tenure appointment. Public Prosecutors, furthermore, retain the character of legal practitioners for all intent and purport. They, of course, discharge public functions and certain statutory powers are also conferred upon them. Their duties and functions are onerous but the same would not mean that their conditions of appointment are governed by any statute or statutory rule.

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-à-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 vs. Wednesbury Corporation*.

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

46. The Code of Criminal Procedure does not provide for renewal or extension of a term. Evidently, the Legislature thought it fit to leave such matters at the discretion of the State. It is no doubt true that even in the matter of extension or renewal of the term of Public Prosecutors, the State is required to act fairly and reasonably. The State normally would be bound to follow the principles laid down in the Legal Remembrancer Manual.

56. We would, however, like to lay stress on the fact that the consultation with the District Judge must be an effective one. The District Judge in turn would be well advised to take his colleagues into confidence so that only meritorious and competent persons who can maintain the standard of public office can be found out.

57. The High Court failed to consider that the power under Article 226 of the Constitution of India is not at par with the constitutional jurisdiction conferred upon this Court under

Article 142 of the Constitution of India. The High Court has no jurisdiction to direct formulation of a new legal principle or a new procedure which would be contrary to and inconsistent with a statutory provision like Code of Criminal Procedure. (See *State of Himachal Pradesh Vs. A Parent of a Student of Medical College, Simla and Others* and *Asif Hameed and Others Vs. State of Jammu and Kashmir and Others*).

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

In *Rakesh Kumar Keshari* (supra) it is held:-

“31. This Court in the said case has further ruled that so long as in appointing a Counsel, the procedure laid down in L.R. Manual is followed and a reasonable or fair procedure is adopted, the Court would normally not interfere with the decision. What is emphasized by this Court is that the nature of the office held by a lawyer *vis-à-vis*, the State being in the nature of professional engagement, the Courts are normally chary to overturn any decision unless an exceptional case is made out. According to this Court 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 and 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. What is laid down as firm proposition of law is that an incumbent has no legally enforceable right as such and the action of the State in not renewing the tenure can be subjected to judicial scrutiny inter alia only on the ground that the same was arbitrary. It is also held that the Court normally would not delve into the records with a view to ascertain as to what impelled the State not to renew the tenure of the Public Prosecutor or a District Counsel and the Jurisdiction of the Courts in a case of this nature would be to invoke the doctrine of "Wednesbury unreasonableness."

36. Thus it was not open to the respondents to file Writ Petition under Article 226 of the Constitution for compelling the appellants to utilize their services as Advocates irrespective of choice of the State. It was for the State to select its own Counsel. In view of the poor performance of the respondents in handling/conducting criminal cases, this Court is of the opinion that the High Court committed a grave error in giving direction to the District Magistrate to forward better particulars of 10 candidates whose names were included in the two panels prepared pursuant to advertisement dated 16.01.2004 and in setting aside order dated 07-09-2004 of the Principal Secretary to the Chief Minister, U.P. calling upon the District Magistrate to send another panel/list for appointment to the two posts of A.D.G.C. (Criminal).

11] The State has amended the Rules by invoking the same provision of Articles 309, 162, 165, which are the foundation of the existing Rules. The submission of counsel for the Petitioner that the amendment made by the State is contrary to or in breach of section 24 of Cr.P.C. is unsustainable. A Division Bench of this Court (Nagpur Bench) in

Criminal Appeal No.161/2001(Govinda Kashiram Wanare V/s. State of Maharashtra) dated 11th September, 2014, after hearing the Appellant and the APP for the State, has observed as under:-

“With the intervention of the Court, fee structure of the Law Officers has now been substantially increased and the fees received by Law Officers are reasonably commensurate with the dignity of a lawyer who should represent the Government. However, at the same time, it is also necessary that the Government, who is now paying substantial amounts by way of remuneration, should have good Advocates to represent them. Ultimately, what is being paid to the Law Officers is from the public exchequer i.e. from the taxes paid by the common citizens. In that premise, it is necessary that money of common citizens must be utilised for the good and should not be wasted in paying fees of undeserving Law Officers.

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. We

grant three months' time to the State Government for completing this exercise. At this stage, the learned Public Prosecutor states that the Government has already formulated Litigation Policy, which also has taken into consideration the aspect of making meritorious appointments. We appreciate if the State Government has done so. However, if the said policy does not include the screening of the applicants prior to making their appointments by testing their knowledge in a personal interview by experts. We direct the State Government to include the aforesaid directions in the said Policy.

Though, Criminal Appeal No.161/2001 stands disposed of, it shall be kept alive for the aforesaid purpose.

Copy of the order be supplied to the learned Public Prosecutor.”

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 he 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.

13] The statement is made by the learned counsel appearing for the parties that no one has challenged the above judgment. The observations so made cannot be overlooked by the State as everybody is concerned with the betterment of administration of justice. The procedures so adopted is nothing but an additional filter which is intended to be utilized by the State before preparing the basic list of aspirants.

14] We see that there is no reason to disturb the procedure of Rules decided to be followed by the State to appoint efficient law officers. This procedure, in our view, no way can be stated to be arbitrary and/or without any reason. This section and the earlier practice based upon the existing Rules, even otherwise need to be followed by the State. The statement is also made that those provisions and the procedures are not in any way curtailed except the additional procedure of interview as added. This is nothing but a prior pre-stage, before proceeding further with the basic procedures of consultation with State/District Judge/Session Judge including of section 24(4) and (5) of Cr.P.C. After going through the existing rules and the amended rules apart from the judgments read and referred by the parties, we see that there is no contravention and/or

breach of any provisions. The mandate of section 24(4) and (5) (State amendment) with regard to the consultation remained intact even by the new rules.

15] We cannot overlook the power and authority of the State to appoint and select the law officers. The relationship in such appointment is restricted by the terms between the parties. The State would appoint such officers initially for less than three years and later on, after the satisfactory report, may extend the tenure for further period. All these procedures of inspection and/or satisfactory performance are the basic elements even for an initial appointment of such law officer. It is specifically mentioned in the letter that the appointment would be subject to termination, at any point of time. The Petitioner and such persons are fully aware of the appointment tenure and its nature. The Petitioner's appointment initially was for 3 years, though extended for further period, cannot claim as of right that he should be continued, as per the last notification/order. The contention that the State cannot act arbitrarily and/or terminate the tenure abruptly needs to be tested only on the foundation of cogent reasons. The State has decided to reformulate the policy and called upon everyone, including the existing law officers to re-apply for the post as per the notice/invitation/offer. Their re-

appointment will be subject to passing through the stage of interview by the committee. This is one of the elements. The other important elements of eligibility are still the foundation of good and meritorious candidates. The State is under obligation to consider the merit/talent of the candidates/aspirants taking over all view of the matter. We see that there is nothing irrational or unreasonable and/or arbitrary in inviting such applications from concerned person at large and also from the officers who are holding the post in question. The submission that the amendment so made is not applicable or should not be made applicable to the Petitioner and similarly placed persons, for the above reasons, is also unacceptable.

16] The State Government has taken the decision and framed the additional Rules which, according to us, are well within the frame work of law and the record, and in no way is in breach of the existing practice of respective consultations. The added Rules cannot be dissected at the instance of the Petitioner for some law officers like the Assistant Public Prosecutors.

17] The challenge revolving around the use or misuse of the doctrine of pleasure, referring to the State power and the judgments, in

the present facts and circumstances are of no assistance to grant the prayers so made. The whole challenge is unsustainable also in view of the doctrine of estoppel and the legitimate expectation.

18] The submission by the counsel for the Petitioner that the order passed by the Division Bench in Govinda (Supra) was without assignment and therefore, ought not to have been acted upon being *per in curiam*, is untenable. The order was passed by the Division Bench after hearing the parties including the State, through the AGP. No challenge is raised and/or made by the State and/or other concerned person, of any kind, against the observations and the directions. The State, in fact, has acted upon the same, apart from the policy decision so taken. We also find there are no specific pleadings in the Petition in this regard. Therefore, no case of accepting the contentions of the Petitioner.

19] Both the counsel appearing for the parties have read Judgments of this Court including of Neelima Sadanand Vartak (supra). The State, as recorded above, apart from the orders so referred above, has considered the judgments/orders passed by the Courts and decided to proceed with the additional formula. The State is fully aware of their role and the law. The policy decision, therefore, so taken in this background,

in no way, can be stated to be unreasonable, unjust and/or Arbitrary and/or with any political tinge as contended by the Petitioner. We are inclined to observe that the whole action is within the framework of law and the record. There is no case made out to declare the amended rule ultra vires to any provisions.

20] The submission of en-bloc 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 a mass termination of the respective services. Even as per the rules for continuation of tenure or term, satisfactory performance is necessary.

21] There is no challenge and/or even no issue raised with regard to the power of State Government in this regard. There is no challenge even to the earlier Rules which are in existence till this date. This amendment/additional Rules in no way disturbs and/or takes away

the basic procedures to be followed by the concerned while appointing the law officers in State of Maharashtra. No pleadings raised and/or made by the Petitioner in support of the contention/submission to show how the added Rules are unreasonable and/or contrary to Article 14 of the Constitution of India. The basic elements of unreasonableness and/or arbitrariness are not supported by any positive averments except referring to the judgments and section 24 of Cr.P.C. Those judgments and the provisions are taken note of while amending the Rules. The State has to appoint, continue or discontinue law officer within the frame work of law and the respective record.

22] For the above reasons, we refuse to interfere with the scheme and the policy decision so taken by the State, based upon the observations so made in the matter of Govinda (supra) about certain Public Prosecutors. The scheme of pre interview so formulated is only one of the main stages for the betterment of the institution but cannot be read as final steps. There are various other mechanism which need to be followed in search of talent/merit of the deserving candidates/law officers. This will give opportunity to all eligible persons, who want to participate and or render their services but after passing through the procedure. However, it is relevant to note that for success and/or for

failure of any trial or litigation, whether the Criminal and/or Civil, there are earlier stages/steps which need to be taken care of, by all concerned; staff, officers of all sorts covering the inquiry, investigation, collection of evidence/information, material and filing of the documents and proving it. The ultimate decision/order passed by the Court/Tribunal is also based upon the good and effective assistance from the respective parties, counsel, advocates including Government Pleader and/or Public Prosecutor and/or other officers, when they are defending the State or such Authorities in civil or criminal matters. The new procedure so adopted for the betterment of the institution, therefore, needs to be extended and/or at least similar procedure needs to be followed by including timely and regular training and/or judicial training and/or the requisite training for all the concerned with the requisite infrastructure/facilities for any effective and early disposal of the civil and/or criminal matters, apart from the effective/fruitful execution of the same. It is, therefore, desirable that the State to take such steps in all these fields for effective results. We are inclined to observe that there are efficient, competent, effective and talented Government Pleader/ Public Prosecutor/Law Officers in every part of Maharashtra. The individual case needs to be dealt with, at an appropriate and the respective stages of the appointment, continuation and final extension of tenure. The State

and/or the concerned authorities/committee are also required to use its power and authority uninfluenced by anything, but in accordance with law.

23] The learned Advocate General, on instructions, made a statement that so far as age 55 so mentioned in the published notice, the State has decided to raise it to 60, only for those who are presently holding the respective posts. They will carry out an amendment and/or issue notification accordingly at the earliest. The age 55 is restricted to new aspirants/entrants. The existing rules provide limit of 60 years and permitted extension on certain conditions. The State to follow the law while taking any adverse decision against the law officers, including Assistant Public Prosecutors.

24] Therefore, taking over all view of the matters, the Petition is dismissed. Rule stands discharged accordingly. There shall be no order as to costs.

(K.R. SHRIRAM, J.)

(ANOOP V. MPOHTA, J.)