

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.9000 OF 2016

Dilip s/o Gangaram Patil,
age: 55 years, Occ: Advocate,
R/o 34A, "Mandad", Bijalinagar,
Wadi-Bhokar Road, Deopur,
Dhule, District Dhule.

Petitioner

Versus

01 The State of Maharashtra,
through its Principal Secretary,
Law & Social Justice Department,
Mantralaya, Mumbai-32.

02 The Secretary,
Law & Judiciary Department,
Law & Social Justice Department,
Mantralaya, Mumbai-32.

03 Sunil Popatlal Jain,
age: major, Occ: Legal Practitioner,
presently working as
District Government Pleader,
District Government Pleader's Office,
District & Sessions Court premises,
Dhule, District Dhule.

04

Deleted vide Court's
order dated 24.08.2016.

05 The District Magistrate,
Dhule.

Respondents

Mr.V.D.Sapkal, advocate for the petitioner.
Mr.V.J.Dixit, Special Counsel with Mr.A.B.Girase, Government
Pleader for Respondents No.1, 2 & 5.
Respondent No.4 deleted vide Court's order dated 24.08.2016.
Mr.R.S.Deshmukh, advocate for Respondent No.3.

**CORAM : R.M.BORDE AND
K.L.WADANE, JJ.**

**Reserved on : 02nd May, 2017
Pronounced on:06th June, 2017.**

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 petitioner is objecting to the appointment of Respondent No.3 as District Government Pleader and Public Prosecutor for District Dhule, made in pursuance to the notification issued by the Government on 05.07.2016 and praying to quash the said notification. The petitioner is also seeking a direction to the respondents to appoint him as District Government Pleader and Public Prosecutor for District Dhule in accordance with recommendations made by the Interview Committee and the High Power Committee. Though the petitioner has prayed for issuance of directions for making his appointment as District Government Pleader and Public Prosecutor, the said relief has not been pressed seriously and as such, there is no reason to consider the prayer made by the petitioner in that regard. The issue raised in the instant petition primarily relates to the appointment of respondent no.3 as District Government Pleader and Public Prosecutor for District Dhule.

3 The State Government had issued an advertisement on 03.02.2015 inviting applications for selection of District

Government Pleader and Public Prosecutor as well as Assistant Government Pleader/Additional Public Prosecutor in District & Sessions Court at Dhule.

4 In pursuance to the advertisement issued on behalf of the Government, twelve applications were received for the post of District Government Pleader & Public Prosecutor, whereas, fourteen applications were received for the post of Assistant Government Pleader/Additional Public Prosecutor. The petitioner was also one of the applicants for the post of District Government Pleader and Public Prosecutor for Dhule district. The Committee was constituted for conducting interviews in accordance with amended rule 13(2)(a) of the Maharashtra Law Officers (Appointment, Conditions of Service And Remuneration) Rules, 1984 (hereinafter referred to as, "the Law Officers Rules, 1984"). The Committee consists of Advocate General or his nominee and the District Magistrate. The District Magistrate is expected to consult the Principal District & Sessions Judge, Dhule and as such, remarks of Principal District Judge were invited in respect of performance of the candidates who had applied in pursuance to the advertisement.

5 The Committee consisting of nominee of the Advocate General and the District Magistrate recommended names of the advocates to the State Government, as mandated under the Rules on 28.05.2015. The name of the petitioner and one Mr.Wagh were recommended. However, according to the petitioner, there is no specific recommendation in respect of respondent no.3. It is also contended by the petitioner that there are certain criminal cases

pending against respondent no.3, however, respondent no.3 did not disclose in respect of pendency of criminal cases against him or his involvement in the criminal cases. Apart from the fact that name of respondent no.3 was not recommended by the Committee constituted under the rules, respondent no.3 is not worthy to be entrusted with the responsibility of coveted office of District Government Pleader and Public Prosecutor for District Dhule. The Principal District and Sessions Judge, Dhule, did not recommend name of respondent no.3 and also intimated in respect of involvement of respondent no.3 in number of crimes. It is the contention of petitioner that though respondent no.3 has been acquitted in S.T.C. No.7940/2001 (Crime No.150/2001), the order of acquittal has been challenged in Criminal Revision Application No.295/2005 presented to the High Court and the Revision Application is admitted and pending for final disposal. Respondent No.3, according to the petitioner, is accused of committing crime involving moral turpitude and as such, ought not to have been considered for appointment. According to the petitioner, appointment of respondent no.3 is made as a result of political interference overlooking his past criminal record and doubtful integrity. The petitioner, as such, prays to quash the notification appointing respondent no.3 as District Government Pleader and Public Prosecutor.

6 In reply to the contentions raised by the petitioner, respondent no.3 contends that his name has been included in the panel prepared by the Committee conducting interview. The Committee conducting interview consists of a person nominated by the Advocate General and Collector of the concerned district and

the relevant rule mandates making appointment of a candidate from the panel so prepared for such appointment. Respondent No.3, thus, contends that requirement of law, that the name of the candidate shall appear in the panel prepared by the Interview Committee, has been fulfilled and as such, there is no scope for interference in the matter.

7 So far as the contention raised by petitioner in respect of pendency of Criminal Case is concerned, it is contended by respondent no.3 that at present there are no criminal cases pending against him. In Criminal Case bearing No.S.T.C.C. No.7940/2001 (Crime No.150/2001) under the provisions of Sections 448, 504, 506 and 509 of the Indian Penal Code, respondent no.3 has been acquitted by the concerned Court by an order dated 18.08.2005. Though the order of acquittal is impeached by presenting Criminal Revision Application No.295/2005 before the High Court and though said proceedings are pending, it does not have any adverse effect on the eligibility of respondent no.3 for being considered for the post of District Government Pleader and Public Prosecutor. There was another criminal case bearing S.T.C.C. No.5265 of 2004 (Crime No.82/2004), wherein respondent no.3 was involved along with 60 other accused. However, proceedings of the case has been stayed in view of provisions of Section 258 of the Criminal Procedure Code.

8 It is stated that although respondent no.3 was active party worker of *Shivsena* party, however, since 2010 onwards, he ceases to be a member of any political party. According to

Respondent No.3, his appointment is made in conformity with procedure prescribed under the rules as well as in accordance with Section 24 of the Code of Criminal Procedure. Respondent No.3 contends that scope of judicial review of the action of appointment of respondent no.3 as a District Government Pleader and Public Prosecutor, in exercise of powers under Article 226 of the Constitution of India, is limited and it would be impermissible for the High Court to cause interference in the action of the State Government of appointing respondent no.3 as District Government Pleader and Public Prosecutor.

9 Respondent No.3 further contends that in view of the judgment of the Hon'ble Supreme Court in the case of **State of Uttar Pradesh & another Vs. Johri Mal**, reported in AIR 2004 SC 3800, appointment of respondent no.3 is in the nature of professional engagement and the State Government has a discretion to engage the advocate of its choice to represent the State in the Court of law. It would be inappropriate, according to respondent no.3, to direct termination of professional engagement of respondent no.3 made by the State Government. Respondent No.3 further contends that since he has been appointed in conformity with the Law Officers Rules, 1984 and since his name appears in the panel prepared by the Interview Committee consisting of nominee of Advocate General and District Magistrate, no fault can be found with the appointment of respondent no.3. Respondent No.3, as such, prays for dismissal of the writ petition.

modalities in respect of appointment of the Government Pleader or Additional Government Pleader or Public Prosecutor or Additional Public Prosecutor in the High Court as well as in the District Court. The rules define "Government Pleader" as an advocate appointed to that post under the rules by the Government in the Law and Judiciary Department 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. The eligibility for appointment is prescribed under Rule 11 of the Rules of 1984. Initially Rule 13, which relate to procedure of appointment, did not provide for constitution of a Committee for conducting oral interview of the candidates to examine the suitability and to judge merit of the candidates. The Division Bench of this Court at Nagpur in **Criminal Appeal No.161/2001, decided on September 11, 2014**, made certain observations in the order which necessitated amendment in Rule 13. The Division Bench has observed in the said order that the procedure prescribed at present mandates routing of appointments 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 candidates prior to their appointment as Law Officers. Oral interview is one of the suitable methods for judging merits of a candidate. The Court expected, as such, to hold the interviews prior to making appointments as Law Officers by the persons who are having expertise in law so as to ensure that at least lawyers with basic

understanding of law and knowledge of at least basic principles of law would be appointed. A direction was issued to the State Government to reframe Rules for making appointments of Law Officers.

11 In observance of the directions issued by Division Bench of this Court, Rule 13 of Law Officers Rules of 1984 was amended and amended sub rule (4) of Rule 13 provides thus:

13 Appointment – (1)

(2)

(I)

(ii).... ..

(iii)

(3)

(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.

12 The Law & Judiciary Department issued a circular on 16.03.2015 under the signature of Legal Advisor-cum-Joint Secretary, Law & Judiciary Department concerning appointments to the post of District Government Pleader and Public Prosecutors as well as Assistant Government Pleader/Additional Public Prosecutors in all the districts. In paragraph no.3 of the Circular, it is recorded that, in view of Section 24 of the Code of Criminal Procedure and Rule 13 of Law Officers Rules, 1984, panel of advocates is required to be prepared and same shall be forwarded to the State Government for approval. The detailed procedure in respect of inviting applications, etc. has been prescribed in the circular. In sub paragraph (5) of paragraph 4, it is recorded that in view of directions contained in the judgment of this Court in Writ Petition No.7232 of 2004, decided on 12.08.2015, panel of three candidates is required to be prepared. The District Magistrate shall consult the Principal District & Sessions Judge and by giving primacy to the opinion of Principal District & Sessions Judge, the panel shall be prepared. The information shall be submitted in proforma "A" and "A-1" appended to the circular. It transpires that in pursuance to the advertisement, twelve applications were received for the post of Government Pleader. Those were considered by the Committee consisting of nominee of Advocate General and the District Magistrate and information in proformas "A" and "A-1" has been transmitted to the Government by the District Magistrate on 28.05.2015.

13 So far as respondent no.3 is concerned, the opinion expressed by the Principal District & Sessions Judge in respect of Respondent no.3 is:

“Not recommended. Gets annoyed very often and of complaining nature. Aggressive advocate. Average performance. Not sufficient knowledge of civil law and not sufficient experience of civil matters.”

The recommendation of the Interview Committee, concerning respondent no.3, is:

“Recommended on the basis of his performance during the interview. However, it will not be appropriate to appoint him as District Government Pleader, because he has a lineage towards a particular political party. Some police cases were registered against him but he has vehemently avoided to furnish the details. This proves that he tried to conceal the facts and vital information about the police cases registered against him. Therefore, his integrity cannot be certified.”

14 That, so far as petitioner and one Mr.Adhar Santu Wagh are concerned, their candidature has been recommended by the Principal & District Sessions Judge as well as by the Interview Committee. The Interview Committee has strongly recommended candidature of petitioner and has recorded thus:

“Strongly recommended. Sufficient experience in conducting Civil and Criminal matters. Very good manners and dressing sense at interview. Very good expressing ability and legal acumen.”

So far as Mr.Adhar Santu Wagh is concerned, his candidature has been recommended by the Interview Committee and it is recorded that he was working as Assistant Government

Pleader since 1991 at Dhule.

15 The District Magistrate has communicated necessary information to the State Government in proformas "A" and "A-1". The opinion expressed by the Principal District & Sessions Judge and remarks about suitability for appointment as District Government Pleader and Public Prosecutor have been communicated in proforma "A", as recorded above. Proforma "A-1" is to be filled in and signed by the Principal District & Sessions Judge, Dhule. So far as respondent no.3 is concerned, the Principal District & Sessions Judge, Dhule, has recorded his remark against the column "General reputation" as "Aggressive Advocate". So far as performance is concerned, the remark offered is "Average". So far as conduct of respondent no.3 is concerned, it is recorded, "Gets annoyed very often and of complaining nature". Against the column, "Result", the Principal District & Sessions Judge has offered a remark "Not recommended".

16 On perusal of the remarks of the Interview Committee as well as opinion of Principal District & Sessions Judge, it is evident that candidature of respondent no.3 has not been recommended by the Interview Committee for his appointment as District Government Pleader and Public Prosecutor.

17 The State Government has constituted a High Power Committee for scrutinising the applications for appointment to the post of District Government Pleader and Public Prosecutor for making recommendations to the State Government. The Advocate General, State of Maharashtra, is the Chairman of the High Power

Committee, whereas, Principal Secretary, Law & Judiciary Department, is one of the members. Accordingly, the High Power Committee has scrutinised the applications and tendered recommendations to the State Government. The proceedings of the High Power Committee are placed on record at Exhibit-C. Though the High Power Committee has included name of respondent no.3 in the panel, the Secretary, Law & Judiciary Department, has opposed the notings and tendered descending note. The Principal Secretary, Law & Judiciary Department, has invited attention to amended rule 13(4) of the Rules of 1984 as well as Section 24 (4) of the Code of Criminal Procedure. It is recorded in the note that the High Court, in its judgment in the matter of **Vilas Jagannath Dhorde Patil Vs. State of Maharashtra** (Writ Petition No.1507/2009, decided on 17.07.2009), expressed that the only eligibility criteria for consideration of a candidate is **inclusion of a candidate in the list prepared by the District Magistrate.** A particular recommendation of the District Magistrate or that of the High Power Committee is not peremptorily binding upon the Government. Technically speaking, though the Government may appoint a candidate who is not recommended by the High Power Committee, provided his name is included in the list prepared by the District Magistrate. Sub rule (4) of Rule 13 of Rules of 1984, however, requires that the Committee at the District Level, shall recommend the names of the candidates which in its opinion are most suitable and meritorious, for such appointment.

18 In the instant matter, though the proceedings of the High Power Committee make a reference to the name of respondent no.3 as a candidate included in the panel, there does not appear to

be a clear recommendation by the Interview Committee consisting of nominee of the Advocate General and the District Magistrate. Sub-rule (4) of Rule 13, as amended, provides that 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, sub-ordinate Government Pleader and the Government shall select a candidate from the panel so prepared for any such appointment. The prerequisite for making appointment to the post of District Government Pleader is that the name of the candidate shall be recommended and shall be included in the list prepared by the Committee consisting of nominee of the Advocate General and the Collector of the concerned District.

19 It must be reiterated that so far as recommendation of the Interview Committee concerning respondent no.3 is concerned, is not favourable to respondent no.3 and it is clearly recorded by the Interview Committee that, *"It may not be appropriate to appoint respondent no.3 as District Government Pleader because he has a lineage towards particular political party. Some police cases were registered against him but he has vehemently avoided to furnish the details. This proves that he tried to conceal the facts and vital information about the police cases registered against him. Therefore, his integrity cannot be certified"*. Though, in the first

sentence, it is recorded that, “*Recommended on the basis of his performance during the interview*”, the remark, in its totality needs to be considered and only first sentence cannot be read out of context to interpret in favour of respondent no.3. There is a clear opinion expressed by the Interview Committee that respondent no.3 is not suitable for appointment to the post of District Government Pleader and Public Prosecutor and that he is involved in criminal cases and his integrity also cannot be certified. It is, thus, clear that the mandate of rule 13(4) of the Rules of 1984 has been breached and appointment of respondent no.3 is clearly in breach of the rules as well as cannot be said to be in the public interest.

20 It cannot be controverted that the public interest would be safeguarded only when good and competent lawyers are appointed as District Government Pleaders and Public Prosecutors and 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.

21 The State Government shall have to ensure for appointment of efficient and honest lawyers with a view to safeguard public interest.

22 As regards status of a Government Pleader and his duties are concerned, the Hon'ble 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.

Supreme Court has observed that the Law Officers are not appointed as a part of the spoils system.

24 The Hon'ble Supreme Court, in paragraph 44 of the judgment in the matter of **State of U.P. Vs. Johri Mal** (*supra*), has observed thus:

“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 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.”

25 In the instant matter, as has been recorded above, there is no clear recommendation of Interview Committee, as mandated by Rule 13(4) of the Rules of 1984 favouring appointment of respondent no.3. Apart from this, the Principal District & Sessions Judge has adversely commented upon suitability of respondent no.3.

26 Though it is contended that in view of Section 24 of the Criminal Procedure Code, while making appointment to the

post of District Government Pleader in the State of Maharashtra, it is not necessary to consult the Principal District Judge and the opinion of the Sessions Judge has no primacy so far as making appointment to the post of Public Prosecutor and the District Magistrate is expected to prepare the panel with the approval of the State Government.

27 As has been recorded above, the circular issued by the Law & Judiciary Department of the State of Maharashtra clearly records in paragraph 5 that while preparing the panel, the District Magistrate shall consult the Principal District & Sessions Judge and the opinion of the Principal District & Sessions Judge shall be given due weightage. The State Government has also prescribed proforma "A-1" which provides for recording opinion of the Principal District and Sessions Judge. The State Government has been following the procedure for inviting opinion of the Principal District & Sessions Judge while preparing the panel for making appointment to the post of District Government Pleader and the Public Prosecutor. At the cost of repetition, it must be noted here that candidature of respondent no.3 has not been recommended by the Principal District & Sessions Judge and the Principal District and Sessions Judge has adversely commented upon suitability of respondent no.3 for the post of District Government Pleader and Public Prosecutor.

28 Learned Counsel appearing for the petitioner has invited our attention to the judgment of the Division Bench of this Court in the matter of **Jayant s/o Shivajirao Jagdale Vs. State of Maharashtra**, reported in 2010 (2) ALL MR 208. The petitioner

before the High Court, who was an advocate practising in the District & Sessions Court, Osmanabad, requested the High Court to quash the order dated 09.06.2009, issued by the Law & Judiciary Department, appointing one Mr. Shashikant Nimbalkar as District Government Pleader and Public Prosecutor for Osmanabad district and for setting aside the order passed by the Law and Judiciary Department dated 22.05.2009 staying the effect and operation of the order appointing the petitioner as District Government Pleader and Public Prosecutor for Osmanabad district. The name of the petitioner, before the High Court, was recommended for the post of District Government Pleader and Public Prosecutor and in fact a notification, in that regard also came to be issued on 22.05.2009, which was published in the Government Gazette on 09.07.2009. The said notification has been stayed for the reason that there was no recommendation from the Principal District & Sessions Judge, Osmanabad for inclusion of name of the petitioner in the panel prepared for making appointment to the post. The petitioner, before the High Court, contended that in view of Section 24 of the Code of Criminal Procedure, it was not necessary for the State to consult the Principal District & Sessions Judge and the amended Section 24, so far as it applies to the State of Maharashtra, does not provide for consultation with Principal District & Sessions Judge before finalisation of panel. It was, thus, contended before the High Court that suspension of the notification of appointment of the petitioner to the post of District Government Pleader and Public Prosecutor on the ground of failure of the Collector to consult the Principal District & Sessions Judge, is not sustainable and the order deserves to be set aside. Reliance was placed by the

petitioner on the judgment in the matter of **Vilas Dhorde Patil** (*supra*). In Dhorde Patil's case, referring to the provisions of Section 24(4) of the Code of Criminal Procedure, so far as it applies to the State of Maharashtra, the Division Bench disagreed with the opinion expressed in the judgment in the matter of **Mrs. Neelima Sadanand Vartak Vs. State of Maharashtra & others**, reported in 2005 (5) BCR 750. The Division Bench, in the matter of **Vilas Dhorde Patil** has referred to the statement of objects and reasons, which reads thus:

“STATEMENT OF OBJECTS AND REASONS”

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 2
 3
 4 With the experience of the working of the new Code for more than six years, the State Government has come to the conclusion that the statutory obligation on Government to consult the Judiciary, which makes its recommendation almost binding, should be dispensed with the Government should be free to appoint Counsel of its own choice and confidence, both in the High Court and in the Sessions Court.”

It is further observed thus:

The legislature has in its wisdom thought to exclude the requirement of consultation with District and Sessions Judge and has given free hand to the Government to make the appointments, as per its own choice and confidence, of the persons whose names are included in the panel prepared under sub-section (4) of section 24. It is urged that now, to read again the said provision in amended

provision, would not only defeat the very object of amendment, but would also amount to legislating, as has been pointed out by the respondents. The learned counsel for the respondents contended that the view taken by the Division Bench of this Court in Vartak's case is contrary to the intendment of legislature. We however, do not express any opinion either one way or another, for the simple reason that in the instant case, there has been consultation with the District and Sessions Judge by the District Magistrate.

Bare perusal of the provisions of sub-section (4) and (5) of section 24 reveals that only eligibility criteria for being appointed to the post of District Government Pleader and Public Prosecutor is that the name of the candidate should be included in the panel of person fit to be appointed, prepared by the District Magistrate. There is no dispute in the present case that the name of the petitioner as well as that of respondent No.5 is included in the panel of fit persons prepared under sub-section (4) of section 24 by the District Magistrate. The prohibition under sub-section (5) of section 24 does not at all operate in this case."

29 In the matter of **Jayant s/o Shivajirao Jagdale's** matter, the State Government took a totally contradictory stand and it was argued that the State Government is following the policy of consulting Principal District & Sessions Judge of the concerned district and as such the State of Maharashtra adopted the stand, which was reflected through the statement made by the learned Advocate General in the case of Mrs. Neelima Vartak. In Jayant Jagdale's matter, the State has maintained its stand of necessity of observance of practice of consulting the Principal District and Sessions Judge while preparing panel. The stand

taken by the State of Maharashtra in the matter of Jayant Jagdale's matter was accepted. In paragraph 17 of the judgment, the Division Bench has observed thus:

“17 The observations of the Apex Court in **Johri Mal**'s case and the stand accepted by the Government of Maharashtra that the State will have to follow the decision in Johri Mal's case, we need not dilate on the arguments advanced on behalf of the State in the case of Vilas Dhorde Patil (cited supra). More so the practice of consultation with the District Judge according to the learned Counsel Shri Damle, is continued since long and the State is determined to go ahead with the said practice in tune with the judgment of the Apex Court and the judgment of the Bombay High Court in Vartak's case. There is no dispute on the point that the name of the petitioner was not recommended by the District and Sessions Judge Osmanabad.”

30 The Division Bench, thus, opined that the practice adopted by the State Government of having consultation with the Principal District & Sessions Judge is a longstanding practice and is in consonance with the observations of the Hon'ble Supreme Court in the matter of **Johri Mal**. In paragraph no.22 of the judgment, the Division Bench has observed thus:

“22 In view of the stand adopted by the State Government that the name of the petitioner was not recommended by the District and Sessions Judge we find that the decision to cancel the appointment of the petitioner could not be termed to be unreasonable and arbitrary. We expect the State Government to take prompt and appropriate decision in respect of the preliminary enquiry report submitted in respect

of the allegations made against respondent No. 2 at the earliest on its own merits and keeping in view the observations made by us, as above.

31 In the instant matter, the learned Special Counsel appearing for the State Government, tries to disown the stand taken by the State Government in the matter of **Jayant Jagdale** and prefers to place reliance on the observations made by the High Court in the matter of **Vilas Dhorde Patil**. It does appear that the State Government is not consistent with its stand and tries to shift its stand as per convenience in different matters. Although the circular issued by the State Government mandates calling opinion of the District & Sessions Judge in proforma "A-1" and though paragraph no.5 of the aforesaid circular specifically directs the District Magistrate to provide due weightage to the opinion of the Principal District & Sessions Judge, we fail to understand as to how the State Government now can adopt a contrary stand that it was uncalled for to give any weightage to the opinion expressed by the Principal District & Sessions Judge. As has been contended by the learned Special Counsel that in the matter of **Jayant Jagdale**, it was a longstanding and established practice adopted by the State Government to consult the Principal District & Sessions Judge and in the instant matter also the circular issued on behalf of the State Government not only requires calling for opinion of the Principal District & Sessions Judge, but mandates the District Magistrate to give due weightage to the opinion expressed by the Principal District & Sessions Judge. It does appear that the longstanding practice is in consonance with the opinion expressed by the Hon'ble Supreme Court in the matter of **Johri Mal**. It does appear that the State Government shifts the stand in each matter

to suit its convenience. In the instant matter, there is neither positive recommendation in favour of respondent no.3 by the Principal District & Sessions Judge as well as opinion expressed by the Interview Committee also cannot be considered as a recommendation for making appointment of respondent no.3 as District Government Pleader. In any case, appointment of respondent no.3 is in breach of the policy adopted by the State Government as well as rule 13(4) of the Rules of 1984.

32 That, so far as contention raised by respondent no.3 regarding impermissibility to review administrative decision in exercise of powers under Article 226 of the Constitution is concerned, same is devoid of substance. The Hon'ble Supreme Court, in the matter of **Johri Mal** (*cited supra*), has considered scope of judicial review of administrative decisions. In paragraphs no.28 and 31 of the judgment, the Hon'ble Supreme Court has 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.

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

serious disputed questions of facts; when the decision of the Tribunal or the decision of the fact finding body or the arbitrator is given finality by the statute which governs a given situation or which, by nature of the activity the decision maker's opinion on facts is final. But while examining and scrutinizing the decision making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the court of judicial review can reappreciate the findings of facts depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well-nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts+ of the case and coming to a plausible conclusion and then testing the decision of the authority on the touch-stone of the tests laid down by the Court with special reference to a given case. This position is well settled in Indian administrative law, therefore, to a limited extent of scrutinizing the decision making process, it is always open to the Court to review the evaluation of facts by the decision maker.”

33 Considering the limitations, as laid down aforesaid in respect of exercise of powers of judicial review, we are of the opinion that the instant matter fits within the exceptions carved out in favour of taking judicial review of the administrative action. The appointment of respondent no.3, as has been stated above, is not as per the criteria prescribed for appointment to the post of District Government Pleader and Public Prosecutor and is in clear violation of rules prescribed by the State Government, apart from the fact that well established practice of abiding by the opinion of the Principal District & Sessions Judge has been deviated in the

instant matter.

34 It has not been denied by respondent no.3 that he was prosecuted in S.T.C.C. No.7940 of 2009 for commission of offences punishable under Sections 449, 504, 506 and 509 of the Indian Penal Code. The informant Sangita Jadhav, in the First Information Report, lodged at City Police Station Dhule on 20.07.2001, has stated that while she was at her residence and breast feeding her child, accused along with one Praksh forced entry in her house. The accused was staring at the bare breast of the complainant and while she tried to cover it, he told her as to why she was covering her breast, he would disrobe her in open court. Though respondent no.3, who was accused in the said case, came to be acquitted, it must be taken note of that Criminal Revision Application is filed challenging acquittal of respondent no.3 and same has been admitted and pending for final disposal. The District Government Pleader is expected to be a guardian and protector of civil rights of the citizens and is expected to safeguard rights of general public as against criminals and anti social elements. It is a matter of concern as to how the State Government thought it fit to appoint such a person whose integrity is doubted, who was, at some point of time, involved in the crime involving moral turpitude. It is also a matter of grave concern as to why bypassing favourable recommendations in favour of other candidates, the State Government has appointed a candidate who was neither recommended by the Principal District & Sessions Judge nor even by the Interview Committee. The observations made by the Hon'ble Supreme Court, in the matter of **Johri Mal**,

needs to be respected. “It is only when good and competent counsel are appointed by the State, the public interest would be safeguarded. The State, while appointing 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”.

35 In the instant matter, in spite of there being no recommendation by the Interview Committee and adverse remarks recorded by the Principal District and Sessions Judge, in spite of involvement of respondent no.3 in various crimes, in spite of observance of the Interview Committee that integrity of respondent no.3 is doubtful, still the State Government has insisted to make appointment of respondent no.3. Though the Secretary, Law & Judiciary Department, has forwarded his descending note, the State, in breach of the policy recorded in the circular dated 16.03.2015, proceeded to make appointment of respondent no.3, which deserves to be set aside in public interest.

36 The appointment of respondent no.3 has also been proved to be disastrous considering his post-appointment. The Superintendent of Police, Dhule has lodged a complaint against respondent no.3, to the Additional Secretary, Law & Judiciary Department, which is placed on record by the petitioner, complaining of undue interference in police investigation. The District Government Pleader i.e. respondent no.3 is alleged to have

questioned the police and raised an issue as to why the investigating machinery is trying to please muslim community. The allegations against respondent no.3 are in respect of harbouring communal bias, which itself is not befitting to the status of District Government Pleader. Though the complaint made by the Superintendent of Police is at the stage of preliminary investigation, the contents thereof itself speak of communal bias of the District Government Pleader.

37 For the reasons recorded above, we are of the considered view that appointment of respondent no.3 as District Government Pleader, being in breach of Law Officers Rules of 1984, deserves to be set aside in public interest.

38 Writ Petition, thus, deserves to be allowed and is accordingly allowed to the extent that the notification, appointing respondent no.3 as District Government Pleader and Public Prosecutor, district Dhule, dated 05.07.2016, is quashed and set aside.

39 Rule is accordingly made absolute. In the facts and circumstances of this case, there shall be no order as to costs.

40 At this stage, learned Counsel appearing for respondent no.3 prays for suspension of operation of the judgment so as to facilitate the respondent to avail of the remedies available in law.

41 Normally, this Court would have considered the prayer,

however, this is a peculiar case compelling us to turn down the prayer. It is recorded in the judgment in detail that the Law Officers Rules of 1984 have not been followed while appointing respondent no.3 as District Government Pleader. Apart from non observance of the rules, it is noticed that the Principal District Judge, Dhule has not recommended the candidature of respondent no.3. It is recorded by the Principal District Judge, that: "*Not recommended. Gets annoyed very often and of complaining nature. Aggressive advocate. Average performance. Not sufficient knowledge of civil law and not sufficient experience of civil matters.*" The Interview Committee has recorded that, "Recommended on the basis of his performance during the interview. However, it will not be appropriate to appoint him as District Government Pleader, because he has a lineage towards a particular political party. Some police cases were registered against him but he has vehemently avoided to furnish the details. This proves that he tried to conceal the facts and vital information about the police cases registered against him. Therefore, his integrity cannot be certified."

42 Even after adverse findings recorded by the learned Principal District Judge as well as the Interview Committee and in spite of availability of a meritorious candidate, the State proceeded to appoint respondent no.3. One of the members of the High Power Committee i.e. the Secretary, Law & Judiciary Department, also opposed the proposal for appointment of respondent no.3. Respondent No.3 in past, was involved in criminal cases and one of the criminal cases, in which he was accused, the allegations are of filthy nature. The post-appointment conduct of the respondent no.3 is also not in consonance with the maintenance of decorum of

the office of District Government Pleader. It is alleged by the Superintendent of Police, District Dhule, that respondent no.3 interfered in the ongoing investigation in relation to one crime and raised objection against the investigating officer for not proceeding against persons belonging to Muslim community. It is alleged in the complaint that Respondent No.3 – District Government Pleader has communal bias against minority community, which is not befitting to the status of District Government Pleader/Public Prosecutor.

43 For the reasons recorded above, we are not inclined to consider the request made by respondent no.3 for staying operation of the judgment and order. Request is, thus, rejected.

K.L.WADANE
JUDGE

R.M.BORDE
JUDGE

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