

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.402 of 2018**  
**IN**  
**Civil Writ Jurisdiction Case No. 13876 of 2017**

- =====
1. The State of Bihar through the Secretary, Department of Law, Govt. of Bihar, Patna
  2. The Secretary, Department of Law, Govt. of Bihar, Patna.
  3. The Joint Secretary, Department of Law, Govt. of Bihar, Patna.
  4. The District Magistrate, Patna.
  5. The Senior Superintendent of Police, Patna.

.... .... Respondent / Appellant

Versus

Gajendra Prasad, Son of Late Vimal Prasad, Resident of Mohalla-Bhanwar Pokhar Bagicha, P.S. Pirbahore, Town & District Patna.

.... .... Petitioner / Respondent

With

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**Letters Patent Appeal No. 403 of 2018**  
**IN**  
**Civil Writ Jurisdiction Case No. 10661 of 2017**

- =====
1. The State of Bihar,
  2. Special Secretary (Law), Govt. of Bihar, Patna.
  3. The Secretary, Law Department, Bihar, Patna.
  4. The District Magistrate, Nalanda at Biharsharif

.... .... Respondents / Appellants

Versus

1. Manzer Hassan Khan, Son of Late Nehal Hassan Khan, resident of Kaghzi Mohalla Captain Colony P.S.- Biharsharif, District- Nalanda.

.... .... Petitioner / Respondent 1<sup>st</sup> Set

2. Md. Qaiser Imam, son of not known, Public Prosecutor, Nalanda at Bihar sharif

..... Respondent / Respondent 2<sup>nd</sup> set.

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**Appearance:**

(In LPA No.402 of 2018 & LPA No. 403 of 2018)

|                      |   |                                                                                                                            |
|----------------------|---|----------------------------------------------------------------------------------------------------------------------------|
| For the Appellant/s  | : | Mr. Lalit Kishore, A.G.,<br>Mr. Anjani Kumar, AAG IV,<br>Mr. Shailendra Kr. Singh, AC to AAG IV.                           |
| For the Respondent/s | : | Mr. Yogesh Chandra Verma, Sr. Advocate<br>Mr. Rajesh Ranjan,<br>Mr. Shakti Suman Kumar and<br>Mr. Rajiv Ranjan, Advocates. |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**



**Date: 12-07-2018**

In these two analogous Letters Patent Appeals, the State of Bihar has moved before us for setting aside the common judgment dated 26.02.2018 passed in Civil Writ Jurisdiction Case No. 13876 of 2017 and Civil Writ Jurisdiction Case No. 10661 of 2017 by which the learned Writ Court has been pleased to set aside the impugned Memos issued under signature of the Secretary, Law Department, Govt. of Bihar addressed to the District Magistrate, Patna and the District Magistrate, Nalanda respectively informing them that the two writ petitioners who were working as Public Prosecutors at Patna and Nalanda respectively have been removed from their posts and in place thereof the Additional Public Prosecutors were authorized to discharge the duties of the Public Prosecutor as an interim measure.

2. We will briefly refer the facts of the two Writ Applications separately as under:-

**Civil Writ Jurisdiction Case No. 13876 of 2017.**

2.1 The petitioner of this case is a lawyer practicing in Patna Civil Court, he is said to have joined the Bar in the year 1977 and was earlier appointed as Additional Public Prosecutor in the year 1992. According to the petitioner he discharged his duties as Additional Public Prosecutor to the best of his ability and capability.

2.2 The name of the petitioner was included in the panel of



advocates recommended by the learned District & Sessions Judge, Patna for appointment to the post of Public Prosecutor, by virtue of the said recommendation and after following the procedure laid down on this behalf the petitioner was appointed as Public Prosecutor for Patna district by letter dated 31.07.2015 for a period of three years. A copy of the appointment letter dated 31.07.2015 has been brought on record as Annexure-1 to the Writ Application.

2.3 It is the case of the petitioner that while he had been discharging his duties as Public Prosecutor and had successfully completed the probation period, all of a sudden he was served with a letter dated 08.09.2017 issued under signature of the District Magistrate, Patna (Annexure-2 to the Writ Application). The District Magistrate, Patna informed the petitioner vide Annexure-2 to the Writ Application that in the matters relating to the cases registered against illegal mining of sand in Bihta Police Station he had received a letter of the Senior Superintendent of Police, Patna by which it has been informed that the petitioner and other connected Additional Public Prosecutors are not putting the stand of the government properly before the learned courts as a result of which the learned courts have passed orders not to take coercive steps against the accused persons. It is further stated in Annexure-2 that the Senior Superintendent of Police has further reported that because of this kind of order being



passed by the learned courts difficulty is being faced in arrest of the accused and in the matter of conducting raid and further action against them. Annexure-2 further states that a direction has been received in this context from the Joint Secretary, Department of Law, Govt. of Bihar vide letter no. 5201 dated 06.09.2017 whereunder the District Magistrate has been advised to seek explanation from the Public Prosecutor, Patna and to submit his opinion on the same to the department. The petitioner was granted 24 hours from the receipt of the letter to submit his explanation to the District Magistrate, Patna.

2.4 The petitioner submitted his reply vide Memo No. 2708 dated 12.09.2017 to the District Magistrate, Patna. He contended that the government is appointing law officers in Civil Courts, High Courts and in the Supreme Court as also in different other places and in course of hearing of the case the law officer concerned would place his stand but the decision of the case may come either way, it may go against the government, he further explained that it cannot be said on the face of the decision of the court that the conduct of the case and the manner in which a case has been conducted indicate the decision of the case. The petitioner also contended that in fact the allegation as contained in Annexure-2 to the Writ Application is in the nature of an allegation against the court and in the cases, while passing orders of 'No coercive action' the case has been transferred to the court of



learned Additional Sessions Judge 13 for further hearing on the bail plea and the learned Additional Sessions Judge has called for the case diary. The petitioner submitted that it is the discretion of the court to pass an order and there is no basis to say that the court has passed order directing 'No coercive action against the accused' because the concerned Public Prosecutor and the Additional Public Prosecutor did not place the stand of the government properly. In fact, the petitioner submitted to the District Magistrate that only on 11.09.2017 in connection with Bihta Police Station Case No. 520/2017 at least seven Anticipatory Bail Applications, descriptions of which have been duly given in the reply of the petitioner, were rejected by the learned Sessions Judge.

2.5 After submission of the reply, the petitioner was served with a copy of letter dated 15.09.2017 vide Memo No. 14521-24 dated 16<sup>th</sup> September, 2017 issued under signature of the Secretary to the Government, Department of Law (Annexure-4 to the Writ Application) by which the petitioner was removed from the post of Public Prosecutor on the ground that he failed to perform his duties and in his place one Additional Public Prosecutor has been made In-charge of the post.

**Civil Writ Jurisdiction Case No. 10661 of 2017.**

3. In this case the petitioner was appointed on the post of



Public Prosecutor for a period of three years vide Memo No. 4847 dated 31.07.2015 issued under signature of the Law Secretary, Govt. of Bihar. The petitioner has placed on record Memo No. 4847 dated 31.07.2015 and the consequential letter no. 1537 dated 24.08.2015 as Annexures 2 & 3 respectively to the Writ Application. It is his case that vide letter no. 2814 dated 16.11.2016 the District Magistrate, Nalanda informed the Secretary, Department of Law, Govt. of Bihar that the petitioner is not performing his duties properly and because he was not opposing the bail applications of the accused in many cases, the concerned courts have granted bail orders to the accused. The District Magistrate cited by way of example that in Village Bakhra Riot Case the accused were granted bail within two days because the Public Prosecutor did not oppose the application. Similarly he cited Chandi P.S. Case no. 174/2016 in which the main accused were granted bail allegedly because the Public Prosecutor did not oppose the Bail Application. It is further stated that in the District Level Monitoring Committee, in course of meeting, the Additional Sessions Judge VI, Nalanda informed that in Laheri P.S. Case No. 329/2013 arising out of acid attack on a woman the Public Prosecutor was not conducting the case properly. The District Magistrate, therefore, recommended for removal of the Public Prosecutor.

3.1 The petitioner has brought on record his letters dated



03.12.2016 (Annexure-4 series) addressed to the Deputy Collector In-charge, District Legal Section from which it has been shown that in connection with Bakhra Riot Case giving rise to Giriyak P.S. Case No. 267/2016 no accused was granted anticipatory bail by the learned Sessions Court and in case of some of the accused the Bail Applications were disposed of giving direction to the learned Judicial Magistrate, Biharsharif, Nalanda but anticipatory bail was not granted. It further says that in Chandi P.S. Case No. 174/2016 none of the accused has been granted bail till date. He has also informed that in connection with acid attack case the Additional Public Prosecutor, who was conducting the case, had been dropped from the said case and an another Additional Public Prosecutor was appointed in his place to conduct the said case which was being conducted by him under the guidance of the petitioner. The petitioner has also placed on record a certificate said to have been issued by the District & Sessions Judge, Nalanda at Biharsharif showing that the conduct of the petitioner is good and satisfactory. Similar certificates were earlier issued by the District Magistrate, Nalanda at Biharsharif.

**Stand of the Petitioners.**

4. The basic contention of the petitioners before the learned Writ Court was that they have been removed / terminated in a mechanical manner without there being any basis and material on



record to show that they had been failing in their duties. It was contended before the learned Writ Court that a plain reading of the order of removal would confirm that the State respondents is not in possession of any definite material for such removal and that is why certain vague words have been used as foundation for such removal. Petitioners relied upon the judgment of the Hon'ble Supreme Court in the case of **State of Punjab Vs. Brijeshwar Singh Chahal**, reported in (2016) 6 SCC 1, and a Division Bench judgment of this Court in the case of **Uday Nath Roy Vs. The State of Bihar & Ors.**, reported in 1992(2) PLJR 258.

4.1 The writ petitioners assailed the decision making process in the matter of removal of the petitioners. They contended that the appointment of a Public Prosecutor is a special kind of statutory appointment by following the process of consultation with the learned District & Sessions Judge of the District, hence they cannot be removed without seeking a consultation with the learned District & Sessions Judge.

4.2 Further contention of the petitioners was that in the case of Public Prosecutors the District Magistrate has no power to make any recommendations for removal.

**Stand of the State.**

5. In both the cases it is the stand of the State that the



removal of the petitioners from the post of Public Prosecutor is based on the recommendation of the District Magistrate of the concerned district. It is further stated that the petitioners have been removed in accordance with law after following the procedures as provided under Bihar Practice and Procedure Manual. Rule 143 of the Manual has been placed to contend that the Collector of the district is the authority who is empowered to recommend the removal of the Public Prosecutor. It is further stand of the State that the relationship between the State and the Public Prosecutor is that of a client and his lawyer and once the client has lost faith and confidence in his lawyer, he would be fully justified in removing the lawyer and choosing one of his choice.

5.1 The learned Writ Court had, in course of hearing of the Writ Application, called for the concerned file relating to the impugned action of removal and had taken note of the contention of the learned Advocate General with reference to the note-sheets at page 81-84 of the concerned file with reference thereof it was submitted before the learned Writ Court that the exercise was mechanical.

5.2 Before the learned Writ Court the learned Advocate General, in support of his contention that the relationship between the State and the petitioner is that of a client and his lawyer, relied upon a judgment of the Hon'ble Supreme Court in the case of **State of U.P.**



**Vs. Joharimal**, reported in (2004) 4 SCC 714. It was submitted that the scope of interference in such matters under Article 226 of the Constitution of India has been discussed by the Hon'ble Supreme Court in similar matter of removal of an Additional Public Prosecutor appointed under Article 24 of the Code of Criminal Procedure. The contention was that the learned Writ Court will have no jurisdiction to entertain a Writ Application.

5.3 Reliance was also placed on an unreported judgment of the Hon'ble Supreme court in Civil Appeal No. 11199 of 2017 (**The State of Maharashtra & Anr. Vs. Kishor m. Gadhave Patil & Ors.**) to contend that a similar removal being challenged before the Hon'ble Bombay High Court when interfered by the High Court, the Hon'ble Supreme court simply modified the order of removal finding the same as stigmatic and directed for payment of salary etc. for the period of notice in terms of Rule 30(6) of the Maharashtra Law Officers (Appointments, Conditions of Service and Remuneration) Rules, 1984.

#### **FINDINGS AND OPINION OF THE WRIT COURT.**

6. The learned Writ Court rejected all the contentions of the learned Advocate General and, for this purpose, the issues which arose for consideration have been formulated by the learned Writ Court. The learned Writ Court examined the materials available on the



records in case of both the petitioners and found that in the case of Gajendra Prasad, Public Prosecutor, Patna, the District Magistrate, Patna had crossed all limits of propriety. The Public Prosecutor had informed him that in the matters relating to the accused in mining cases the court is in seisin of the matter and has been pleased to pass an order for 'No coercive steps to be taken against the accused until the pendency of the bail application'. The learned Writ Court held that it is wholly unbecoming on the part of the District Magistrate, Patna in questioning the order saying that on the basis of the report of the Superintendent of Police the court has been granting interim order of 'No coercive action' because the Public Prosecutor and the Additional Public Prosecutor are not opposing the Bail Applications properly.

6.1 In the case of Manzer Hassan Khan, the Public Prosecutor at Nalanda, the learned Writ Court has found that he has been removed without even taking note of his explanations available at Annexure-4 series. In fact it has been found that the explanations furnished vide Annexure-4 series of the Writ Application are uncontested because there is no reply of the State to the clarification given by the petitioner thereunder.

6.2 The learned Writ Court further dealt with the provisions of Practice and Procedure Manual, particularly Rule 143 which relates to removal, suspension or other punishment of a



Government Pleader holding that it will not apply in the case of the Public Prosecutor and the Collector will have no power vested with him either to show cause a Public Prosecutor or to recommend for his removal to the Legal Remembrancer, who is the Secretary, Law Department and in the present context it is only the State Government alone which may exercise such powers in an appropriate case.

6.3 The learned Writ Court has also referred the judgment of the Hon'ble Supreme Court in the case of **State of Punjab Vs. Brijeshwar Singh Chahal**, reported in (2016) 6 SCC 1, in which the Hon'ble Supreme Court has taken note of the observations of the Law Commission in its 197<sup>th</sup> Report which suggests that the Public Prosecutor / the Additional Public Prosecutor in the Sessions Court are to be appointed in a manner so as they can be efficient in their functioning, objective and independent of the police and the executive.

6.4 Taking note of a Division Bench judgment of this Court in the case of **Uday Nath Roy Vs. State of Bihar**, reported in 1992 (2) PLJR 258, the learned Writ Court found that the Division Bench of this Court had in paragraph 11 of the judgment held that such appointment cannot be cancelled unless there are cogent reasons for terminating the appointment.

6.5 The learned Writ Court while dealing with the



provision of Section 24 of the Code of Criminal Procedure held that the appointment of a Public Prosecutor is a special kind of appointment and it is made in consultation with the Sessions Judge insofar as the appointment in the district is concerned and, therefore, they could not have been removed on the recommendation of the District Magistrate alone. According to the learned Writ Court, the Public Prosecutor could not have been removed during his tenure of three years unless the view formed by the authorities of the State for removal of the Public Prosecutor is either endorsed by the District & Sessions Judge concerned or the State is in possession of the materials to differ therefrom.

6.6 As regards the contractual relationship between the parties the learned Writ Court relying upon the judgment of the Hon'ble Supreme Court in the case of **Shrilekha Vidyarthi Vs. State of U.P.**, reported in (1991) 1 SCC 212, held that the Hon'ble Supreme Court refused to accept the argument that the appointment of District Government Counsel of the State Government is only a professional engagement like that between a private client and his lawyer or that it is purely contractual with no public element attached to it which may be terminated at any time on the sweet will of the government excluding judicial review. It was held that the scope of judicial review is permissible in the case and the grounds of arbitrariness or



unreasonableness or irrationality would be available to invalidate the action which may be found violative of Article 14 of the Constitution of India.

**Challenge to the Judgment of the Writ Court.**

7. Before us the learned Advocate General assisted by learned Additional Advocate General IV has once again contended that in the matter of removal of a Public Prosecutor the ratio of the judgment of the Hon'ble Supreme Court in the case of **Joharimal** (Supra) would apply. It is contended that in the said case the Hon'ble Apex Court has categorically held that the appointment of a Public Prosecutor would be professional in nature and by holding a post of District Counsel or a Public Prosecutor no status is conferred on the incumbent. Learned Advocate General has read out paragraphs 37, 39, 40 and 68 from the said judgment and submits that in the matter of removal of a Public Prosecutor the Court will normally not interfere and it would not be just and proper for the court to overturn any decision of the Government unless an exceptional case is made out.

7.1 Learned Advocate General further contended that it is a matter of loss of trust on the part of the client in his counsel and the question as to whether the State is satisfied with the performance of its counsel or not, according to learned Advocate General in terms of the judgment of the Hon'ble Supreme Court, it would be primarily a



matter between the State and the counsel.

7.2 Another judgment on which reliance has been placed by the learned Advocate General is the judgment of the Hon'ble Supreme Court in the case of **State of Uttar Pradesh & Ors. Vs. Ajay Kumar Sharma & Anr.**, reported in (2016) 15 SCC 289. Referring to Paragraphs 19 and 20 of the said judgment in the case of **Ajay Kumar Sharma** (Supra) the learned Advocate General would submit that it has been held by the Hon'ble Supreme Court that the State Government was free to determine the course of action after being satisfied with their performance, and that the courts must be circumspect in the exercise of judicial review on matters which fell within the discretion of the State Government, i.e., the appointment of their counsel or advocates. It has also been held by the Hon'ble Supreme Court that the District Counsel do not enjoy any statutory right with respect to their renewal of tenures.

7.3 Once again, the unreported judgment of the Hon'ble Supreme Court in the case of **Kishor M. Gadhave Patil & Ors.** (Supra) has been placed before us to contend that in the said case also the court did not interfere with the order of removal of the Public Prosecutor, rather only the removal of the petitioner was directed to be treated under Rule 30(6) of the Maharashtra Law Officers (Appointments, Conditions of Service and Remuneration) Rules, 1984



(hereinafter referred to as ‘Maharashtra Rules’).

7.4 Assailing the judgment of the learned Writ Court the learned Advocate General has taken us through Rule 143 of Bihar Practice & Procedure Manual and has also drawn our attention towards the ‘NOTE’ appended to sub-rule (2) of Rule 147, according to which, Rules 140-146 and 149 apply also to the Public Prosecutor where the post is held separately. Contention is that the learned Writ Court is not correct in saying that there is no provision for removal of a Public Prosecutor and that the District Magistrate has no jurisdiction to recommend his removal. It is submitted that in any case the tenure of the writ petitioners is going to expire on 31.07.2018. On these grounds prayer has been made to set-aside the impugned judgment.

**Submissions of the writ petitioners – private respondents.**

8. Mr. Yogesh Chandra Verma, learned Senior Counsel representing the private respondents in both the cases, submits that the learned Writ Court has rightly held that the Public Prosecutor appointed through the process of consultation with the learned Sessions Judge cannot be removed without his endorsement or by differing with his opinion based on the materials available in possession of the State. Learned senior counsel further submits that the ‘NOTE’ appended to sub-rule (2) of Rule 147 cannot be construed as a statutory provision empowering the District Magistrate to make



recommendation for removal of the Public Prosecutor.

8.1 Relying upon the judgment of the Hon'ble Supreme Court in the case of **Brijeshwar Singh Chahal** (Supra) learned senior counsel submits that the post of a Public Prosecutor is a statutory post and a Public Prosecutor is supposed to act free from the pressures of police personnel as has been recommended by the Law Commission in its 197<sup>th</sup> Report which finds mention in Paragraph 44 of the judgment of the Hon'ble Supreme Court. It is submitted that removal of a Public Prosecutor from his tenure post merely on the basis of a letter written by the Superintendent of Police stating therein that the courts are passing interim order of 'No coercive action' because it seems that the Public Prosecutor and the connected Additional Public Prosecutors are not putting the stand of the State properly, in absence of any material to support the same would not be just and proper. In the present cases, according to Mr. Verma, the removal of the Public Prosecutors would attract violation of the principles of natural justice and such removals are bound to fall in the category of arbitrary and unreasonable decision on the part of the concerned authority. It is contended that the learned Writ Court has rightly held that the District Magistrate will have no authority to recommend the removal of a Public Prosecutor.

8.2 Learned senior counsel has also relied upon the



Division Bench judgment of this Court in the case of **Uday Nath Roy** (Supra) wherein this Court has held that such appointments cannot be cancelled unless there are cogent reasons for terminating the appointments. In the said case also the Hon'ble Division Bench took note of the failure of the government to furnish the materials justifying the removal and, therefore, quashed the termination order. It is his contention that the ratio of the judgment of this Court in the case of **Uday Nath Roy** (Supra) would equally apply in the facts of the present case. It is contended that in the garb of the loss of trust theory, the Government cannot act like a private litigant as has been held in the case of **Srilekha Vidyarthi** (Supra). The post of a Public Prosecutor is a statutory post and the manner in which the petitioners have been removed would put a Public Prosecutor in the hands of a police officer like the Superintendent of Police and in the command of an executive like a District Magistrate. Learned Senior Counsel therefore submits that the sanctity of the post of a Public Prosecutor has to be saved in the present situation.

### **CONSIDERATION.**

9. Having heard Mr. Lalit Kishore, learned Advocate General assisted by Mr. Anjani Kumar Singh, learned Additional Advocate General IV on behalf of the State of Bihar and Mr. Yogesh Chandra Verma, learned Senior Advocate assisted by Mr. Rajesh



Ranjan, Mr. Shakti Suman and Mr. Rajiv Ranjan, Advocates on behalf of the private respondents as also on going through the entire materials available on the record, we find that in the case of Gajendra Prasad, the Public Prosecutor at Patna, the action was initiated by the District Magistrate on receipt of a letter from the Senior Superintendent of Police, Patna which in turn was based on the letter bearing no. 5979 dated 25.08.2017 written by the Superintendent of Police, West, Patna to the Senior Superintendent of Police, Patna. The basic document in which for the first time an allegation has been made in the concluding part of the letter reads as under:-

“उल्लेख करना है कि गठित एस.आई.टी. द्वारा दिशा निर्देशन एवं निदेशों के आलोक में लगातार अभियुक्तों की गिरफ्तारी हेतु छापामारी एवं अग्रतर कार्रवाई की जा रही है । परन्तु माननीय न्यायालय से अभियुक्तों के विरुद्ध माननीय न्यायालय द्वारा दंडात्मक कार्रवाई पर रोक लगा दिया गया है । जिसके कारण एस.आई.टी. को अग्रतर कार्रवाई करने में कठिनाई हो रही है । ऐसा प्रतीत होता है कि लोक अभियोजक एवं सहायक लोक अभियोजकों द्वारा अभियुक्तों द्वारा दायर अग्रिम जमानत के वाद पर सरकार का उचित पक्ष माननीय न्यायालय में नहीं रखा गया, जिसके फलस्वरूप माननीय न्यायालय द्वारा अभियुक्तों के विरुद्ध नो कोरसिव आदेश पारित किया गया है ।



उपर्युक्त स्थित में आवश्यक है कि अभियुक्तों के विरुद्ध अग्रतर कार्रवाई हेतु अपने स्तर से लोक अभियोजक एवं सहायक लोक अभियोजक द्वारा ससमय माननीय न्यायालय में सरकार का पक्ष रखने हेतु पत्राचार किया जाये ताकि नो कोरसिव पारित आदेश हट सके और एस.आई.टी. द्वारा उन अभियुक्तों के विरुद्ध कार्रवाई किया जा सके ।”

10. On receipt of letter no. 5979, the Senior Superintendent of Police, Patna vide his letter no. 3389, addressed to the District Magistrate, Patna, simply forwarded the letter of the Superintendent of Police, West, Patna reiterating the same thing which we have quoted here-in-above. The consequential letter dated 25.08.2017 was issued by the District Magistrate, Patna on the same day addressed to the Secretary-cum-Legal Remembrancer, Department of Law, Govt. of Bihar in which he recommended the action against the Public Prosecutor and the Additional Public Prosecutor. Thereafter the Law Department advised the District Magistrate, Patna to seek an explanation from the petitioner Gajendra Prasad and other Additional Public Prosecutor. The District Magistrate was asked to give his recommendation thereon. We have already taken note of the subsequent action of the District Magistrate leading to removal of the petitioner Gajendra Prasad.

11. The basic question which arises for consideration in



the case of Gajendra Prasad, Public Prosecutor, Patna is as to whether on the face of the kind of reasons recorded by the Superintendent of Police, West, Patna wherein he has merely expressed his tentative view (ऐसा प्रतीत होता है) that the courts are granting 'No coercive orders' because the Public Prosecutor and connected Additional Public Prosecutors are not placing the stand of the State properly before the courts, the petitioner Gajendra Prasad could have been removed. The reasons and rationale provided in the order of removal has to be tested keeping in mind that there is absolutely no material available on the record to show that in any of the cases the interim order of 'No coercive action' was granted by the courts because of the failure of the Public Prosecutor to place the case of the State. Neither before the learned Writ Court nor before us any such material has been placed. We are simultaneously aware of the judicial pronouncements that the scope of interference in the matters of appointment and removal of a Public Prosecutor would be limited and only in exceptional cases where action of the State is found to be wholly arbitrary, unreasonable as also violative of Article 14 of the Constitution of India, a judicial review would be permissible.

12. The learned Advocate General submits that it is a case of loss of trust on the part of a client in his counsel but we are of the view that in the matter of removal of a Public Prosecutor, who is



holding a statutory post for a fixed tenure of three years after being found fit for such appointment because of his competence and capability and has already completed the probation period and further when he is going to complete his tenure on 31.07.2018 only a mere plea of loss of faith and trust in him will not be sufficient. Such pleas are to be advanced only by putting some cogent materials *prima facie* showing that in the given circumstances in view of the materials available the State Govt. had a reason to loose faith in his counsel, unfortunately for the State respondents no material at all is available on record to show that those are sufficient and cogent materials to suggest that the Public Prosecutor was not putting the stand of the State properly in courts. The reasons shown for removal are in fact non-existent.

13. What appears from the letter of the Superintendent of Police, West, Patna is that in some of the cases relating to unauthorized and illegal mining, the accused moved the court of law seeking their statutory right of anticipatory bail wherein the court called for the case diary and at the same time directed that no coercive action be taken against the accused. Because of these interim orders the Superintendent of Police, West, Patna formed a tentative opinion – ( ऐसा प्रतीत होता है ) that the Public Prosecutor and the connected Additional Public Prosecutors were not placing the case of the



government properly before the courts and only because of this ‘No coercive orders’ has been passed by the courts. We are afraid that if this kind of tentative formation of opinion by a police officer is allowed to be a ground for removal of a Public Prosecutor, the very sanctity and independence of the post of Public Prosecutor would be in danger and he will be in the hands of a police officer to save his post. We reiterate that no material at all has been brought on the records to show that in any of the cases entrusted to the Public Prosecutor he failed to appear or did not argue the matter because of which the interim order was passed. We fail to understand as to how the tentative formation of opinion by the Superintendent of Police, West, Patna without any material on record can lead to removal of the Public Prosecutor who is holding a statutory post after his selection undergoing the procedures laid down

14. In the case of Manzer Hassan Khan, the Public Prosecutor at Nalanda, also we find that he has been removed without there being any material to show that he was not acting properly with due diligence and care. The learned Writ Court has rightly held that the explanation furnished by Mr. Manzer Hassan Khan as contained in Annexure-4 Series to the Writ Application filed by him has not at all been tested and if there is no contest to the explanation of Mr. Khan, we are constrained to hold and declare that there was absolutely no



ground or reason to say that he was not performing his duties satisfactorily, his tenure is also going to expire on 31.07.2018 only.

15. In the opinion of this Court, both the writ petitioners – private respondents are able to make out an exceptional case for judicial interference.

16. The judgments relied upon by the learned Advocate General nowhere say that there cannot be a judicial review of the decision relating to removal of a Public Prosecutor. A Public Prosecutor, it is true, is not holding a civil post as envisaged under Article 309 of the Constitution of India but he is definitely holding a statutory post under Section 24 of the Code of Criminal Procedure. When it comes to apply the principles of natural justice and to test arbitrariness and unreasonableness in a decision-making-process, it is totally immaterial whether the Public Prosecutor is holder of a civil post or a statutory post. Principles of natural justice is like a brooding omnipresence which prevails everywhere. In our considered opinion, removal of both the writ petitioners – private respondents is a result of only arbitrary and unreasonable decision-making-process on the part of the District Magistrate and the Department of Law, Govt. of Bihar.

17. We have also noticed from the materials on the records that the Superintendent of Police, West, Patna had in identical words alleged identical allegations against the Additional Public



Prosecutors also and the letter of the District Magistrate also mentions both the Public Prosecutor as well as Additional Public Prosecutor but surprisingly while removing the Public Prosecutor a direction has been issued to give the charge of the post of Public Prosecutor to the Additional Public Prosecutor. This further indicates that the decision-making-process is wholly arbitrary.

18. Even though the learned Writ Court has gone into the issue of competence of the District Magistrate and the requirement of consultation with the District & Sessions Judge in the matter of removal of a Public Prosecutor, in view of the opinion which we have formed here-in-above, those questions are not required to be answered in the present appeals. We are leaving the questions relating to competence of the District Magistrate to recommend action for removal of Public Prosecutor and Additional Public Prosecutor in terms of Rule 143 of the Bihar Practice & Procedure Manual read with the 'NOTE' appended to sub-rule (2) of Rule 147 open and to be decided in an appropriate case. Similarly, the issue as to whether in the matter of removal of a Public Prosecutor consultation with the learned District & Sessions Judge is an integral part of the decision making process is left open. We are satisfied that the removal of these writ – petitioners is without any basis and material available on record, hence the orders terminating their appointment have been



rightly set aside by the learned Writ Court.

19. For the reasons mentioned here-in-above we find no reason to interfere with the judgment of the learned Writ Court. Both the Letters Patent Appeals have no merit. Those are dismissed accordingly but without any order as to costs.

20. The writ petitioners – private respondents stand reinstated on their respective posts of Public Prosecutor in the district of Patna and Nalanda respectively with all consequential benefits as have been ordered by the learned Writ Court.

**(Rajendra Menon, CJ)**

**(Rajeev Ranjan Prasad, J)**

Dilip, AR

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| AFR/NAFR          | AFR        |
| CAV DATE          | N/A        |
| Uploading Date    | 13.07.2018 |
| Transmission Date | N/A        |

