

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12117 of 2018

Mr. Nasiruddin Haider, S/o Md.Amir Hassan, Resident of Village- Benibad,
Post - Benibad, Via Kiotsa Barbari, P.S. Gayghat, District-Muzaffarpur.

... .. Petitioner

Versus

1. The State of Bihar through Secretary, Department of Law, Government of Bihar, Patna.
2. The District Magistrate, Darbhanga.
3. The District & Sessions Judge, Darbhanga through the Registrar, Civil Court, Darbhanga.
4. The Incharge PP (Mr. Vinay Kumar Singh) Advocate Civil Court, Darbhanga.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Yogesh Chandra Verma, Sr. Advocate Mr. Fahad Khurshid, Advocate
For the State	:	Mr. Md.Raisul Haque, SC-10 Mr. Md. Obaidullah, A.C. to S.C.-10
For the Respondent No.4 :		Mr. Y.V. Giri, Sr. Advocate Mr. Sumit Kumar Jha, Advocate Mr. Rajat Tiwary, Advocate Mr. Rajesh Kumar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
C.A.V. JUDGMENT
Date : 20-12-2018

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for private respondent
no.4.

2. In this case, the petitioner is challenging the order
containing memo no.1531 dated 05.06.2018 (Annexure-4)
passed by the District Magistrate, Darbhanga, whereby and



where-under informed the petitioner that he was appointed for three years and after its expiry, his period in the office is over and in the same transaction by the same order, in exercise of power conferred under Clause-139 Bihar Practice & Procedure Manual, appointed Sri Binay Kimar Singh, Additional Public Prosecutor, as In-charge Public Prosecutor, Darbhanga.

3. The plea has been taken by the petitioner that the Collector, in exercise of power under Section 24 of the Cr.P.C. in consultation with the District Judge would prepare the panel of lawyers and that panel will be sent to the Government for appointment of Public Prosecutor and Additional Public Prosecutor, the Collector does not have power either to appoint or remove Public Prosecutor or Additional Public Prosecutor or appoint regular Public Prosecutor or temporary Public Prosecutor or to make a local arrangement in the manner it has been done by the impugned order dated 05.06.2018.

4. The short facts of this case are that vide letter containing memo no.713 dated 30.01.2015 (Annexure-1) the petitioner, namely Nasiruddin Haider was appointed as Public Prosecutor for three years. The first year has been treated as probation period and rest two years have been treated to substantive period of engagement. In the said letter, it has



further been mentioned, on his appointment as Public Prosecutor, if he was holding any of the posts as Additional Public Prosecutor, Special Public Prosecutor, Government Advocate, Assistant Government Advocate, will be treated to have vacated and during that period he was authorized to represent the State of Bihar in all criminal cases, which would arise in the District of Darbhanga. After the expiry of three years, a letter dated 05.06.2018 (Annexure-4) has been issued by the Collector, whereby, the petitioner has been removed/ousted from the Post of Public Prosecutor and in his place Sri Vinay Kumar Singh, private respondent no.4, has been appointed.

5. In order to substantiate his case, learned counsel for the petitioner submits that the appointment of Public Prosecutor is a serious business, he is holding a very important office, discharging the function as a first Law Officer for the Darbhanga district for conducting criminal cases. The Collector is bereft of power to remove the petitioner from the post of Public Prosecutor and in his place appoint Sri Vinay Kumar Singh, so the impugned order *per se* is illegal, void and not sustainable in law.

6. Learned counsel for the petitioner has placed reliance on the decision rendered in the case of ***State of Punjab***



and Anr. vs. Brijeshwar Singh Chahal and Anr. reported in *2016(2) PLJR 267 (S.C.)*; *Dinesh vs. The Union of India and Ors.* reported in *2016 (4) PLJR 1131*; order of this Court dated *12.07.2018* passed in *L.P.A. No.402 of 2018* and the order dated *26.02.2018* passed in *C.W.J.C. No.10661 of 2017*.

7. Learned counsel for the petitioner has also placed reliance on the decision rendered in the case of *Reji Kumar and others vs. Director of Health Services, Kerala and Others* reported in *(2009) 16 SCC 385* dealing with the efficacy of the post of Public Prosecutor.

8. In contra, learned counsel for private respondent no.4, Sri Vinay Kumar Singh, submits that the prayer which has been made by the petitioner is not entertainable on the ground that the person claiming to continue to hold the post of Public Prosecutor must have a legal right, as the petitioner was appointed as Public Prosecutor for a fixed period, after its expiry, the Collector has only communicated that he ceases to be the Public Prosecutor. The claim of the petitioner to allow him to hold the office is nothing but illegal usurpation of the office, as the tenure of petitioner to hold the office is over, so the prayer by made by the petitioner for his continuation as Public Prosecutor is nothing but soliciting his extension of period,



which is not suited to legal profession and not permissible under the legal parlance. It has further been stated that the impugned order is severable as it has two parts, by first part only declaration has been made with regard to the expiry of the period of the petitioner as Public Prosecutor and second part is induction of Sri Vinay Kumar Singh as In-charge Public Prosecutor. Even if one part is declared to be illegal, another part will survive. It has further been submitted that before challenging the impugned order the petitioner must show before this Court his legal right over the post of Public Prosecutor and if the petitioner does not have legal right the *mandamus* cannot be issued for his continuation as Public Prosecutor.

9. As has been claimed, the appointment of the petitioner is for fixed period, is tenure appointment and on expiry of fixed period, he will automatically cease to hold the office, learned counsel for private respondent no.4, has placed reliance on the decision of the Hon'ble Supreme Court rendered in the case of ***Dr. L.M. Nath vs. Dr. S.K. Kacker and Ors.*** reported in ***1996 (1) SCC 229***. It has further been submitted that if this Court exercises its jurisdiction in favour of the petitioner, it will lead to perpetuation of illegality, which has been deprecated, in support of his submission, he has placed reliance



on the decision rendered in the case of *State of Uttar Pradesh and Others vs. Rekha Rani* reported in *2011 (11) S.C.C. 441*. Further submitted, the aspect of removal of Public Prosecutor after the period and the legal right of claimant has elaborately been dealt with by the Hon'ble Supreme Court in the case of *State of U.P. and another vs. Johri Mal* reported in *2004 (4) SCC 714*. Further placed reliance on the decision rendered in the case of *State of Uttar Pradesh and Others vs. Rekesh Kumar Keshari and another* reported in *2011(5) SCC 341*; *State of Uttar Pradesh and Others vs. Satyavrat Singh* reported in *(2014) 14 SCC 548*; *State of Uttar Pradesh and Others vs. Ajay Kumar Sharma and another* reported in *2016 (15) S.C.C. 289*.

10. It has further been submitted that the judgment which has been pressed in service by learned counsel for the petitioner does not apply to the facts of this case. It has been submitted that the order passed by the learned Single Judge in C.W.J.C. No. 10661 of 2017, which has partly been affirmed in L.P.A. No.402 of 2018, is not applicable to the facts of the present case on the ground that in those cases the tenure of Public Prosecutors were prematurely terminated by the Collector. In that context, this Court has held that the Collector does not have a power to terminate the engagement of Public



Prosecutor mid way, but here the situation is otherwise, the tenure posting of the petitioner has already been completed, in such circumstance, this local arrangement has been made so that the district should not remain bereft of the Public Prosecutor. Section 2(u) of the Cr.P.C. defines Public Prosecutor and Section 225 of the Cr.P.C. prescribes that every trial will be conducted by the Public Prosecutor. It has further been stated that though there is no such provision in Section 24 of the Cr.P.C. for the temporary arrangement or local arrangement, but Clause-139 of the Bihar Practice & Procedure Manual, gives ample power to the Collector to make local arrangement pending the final appointment of the Public Prosecutor. It has further been submitted that the Collector has already sent names for the appointment of Public Prosecutor, awaiting communication from the Government.

11. Learned counsel for the private respondent has also placed reliance on some of the Clauses and paragraphs of the Bihar State Litigation Policy, 2011 and submits that the appointment of Public Prosecutor as well as Government Pleader and Additional Public Prosecutor in the district will be as per the procedure laid down in the relevant law i.e. Practice and Procedure (P.P.) Manual and Cr. P.C. The Screening



Committees will make their recommendations to the Law Department. On that strength, learned counsel for the private respondent submits that the authority lies with the Collector to make appointment of Public Prosecutor by way of local arrangement.

12. Learned counsel for the State has reiterated and adopted the argument of private respondent and submitted that Clause-139 of the Bihar Practice & Procedure Manual, gives ample power to the Collector to appoint an advocate as Public Prosecutor on a working arrangement or local arrangement.

13. In reply, learned counsel for the petitioner submits that the appointment of Sri Vinay Kumar Singh, private respondent no.4, as In-charge Public Prosecutor is nothing but an action taken by the illegal person i.e. Collector and in illegal manner, which has not been envisaged under Section 24 of the Cr.P.C., the petitioner has illegally been booted out and Sri Vinay Kumar Singh has wrongly been appointed as In-charge Public Prosecutor, thereby ousted the petitioner by a person who has no authority to appoint or terminate the Public Prosecutor, so the entire process and the action of the Collector is completely illegal, void, misleading and liable to be interfered by this Court.



14. Learned counsel for the petitioner has placed reliance on the judgment rendered in the case of ***Harpal Singh Chauhan and Other vs. State of U.P.*** reported in ***A.I.R. 1993 S.C. 2436***, submitted that in the aforesaid case the Hon'ble Supreme has held that no any extension, substitution or any local arrangement can be made by the Collector as all power lies with the State Government as the post of Public Prosecutor is a very important post in the district may not come under the control and shadow of the Collector, he must conduct cases independently, fearlessly and without any influence, the Collector has only authority to prepare the panel after due consultation with the District Judge and only thereafter the State would choose the names from the list recommended by the Collector. The Collector cannot usurp and exercise the power of the Government, it is the only the Government, which has the power and authority to appoint Public Prosecutor. Further stated that when a thing has to be done in a particular manner that thing has to be done in that manner alone and not in another manner, if any action has been taken *de hors* to the manner prescribed, then the entire action or the order would vitiate, resultant action will be treated to be void.

15. Learned counsel for the petitioner further submits



that the Bihar State Litigation Policy, 2011 with respect to engagement of Public Prosecutor is no longer in operation in view of the Rule framed by the State Government in the name and style of the Bihar Law Officers (Engagement) Rules, 2017, so the preparation of panel and appointment of Public Prosecutor has to be made in terms of Section 24 of Code of Criminal Procedure vis-a-vis the Rule prescribing the method and manner, has been enacted on the direction of the Hon'ble Supreme Court. It has been submitted by the petitioner that he has been booted out by the Collector under the influence of the District and Sessions Judge on the reason that he has filed a complaint against the District Judge, Darbhanga, against his ill treatment with him.

16. It has also been submitted by learned counsel for the State that already the name of certain advocates have been sent for being appointed on the post of Public Prosecutor, but till date no final outcome has come from the Government.

17. Looking to spectrum of area of dispute, the Court has to decide the following issues, which are as follows:-

(i) Whether the petitioner has legal right to claim the issue of writ of *mandamus* in his favour to



continue to hold the office of Public Prosecutor.

(ii) Whether the person, who is holding tenure post for a fixed period, comes to an end automatically by efflux of period stipulated in the terms of appointment.

(iii) If this Court interfere with the impugned order, will it lead to perpetuation of illegality.

(iv) Whether the Collector has power to terminate the Public Prosecutor on completion of tenure post and simultaneously appoint another Additional Public Prosecutor to become In-charge Public Prosecutor as this type of arrangement has not been envisaged under Section 24 of the Criminal Procedure Code as well as Clause-139 of the Bihar Practice & Procedure Manual, does not apply for the appointment of Public Prosecutor.

18. This Court will prefer to deal with the issue nos. 1 and 2 jointly as both are inter-connected issues. In the present case, the appointment of the petitioner was for three years beginning from the date of his joining and will come to an end automatically after expiry of period and the post will be treated



to have fallen vacant. The tenure post is in the nature of fixed period appointment, during that period the person who is appointed has right to continue on the said post. It is by and large a contractual appointment for a fixed period and the person who is holding the same, knows that his tenure is fixed and whereafter the extension of the period dependent on the decision of the employer or the State Government. The appointment of a Public Prosecutor is a serious business as the person who is appointed remain in-charge to represent the State in all criminal cases arising in the district and he discharges the Public duty. At the same time, the action of the State should be reasonable and non-arbitrary to satisfy the test of reasonableness enshrined in Article-14 of the Constitution of India, which pervades in the Constitutional scheme, which is a golden thread runs through the entire Constitution even in the case of contractual appointment, as the holder of an office or post or appointment to the post of Public Prosecutor are no more than professional engagement like the one between the private client and his lawyer, but has a public element attached with. The holder of the office are being paid remuneration out of public exchequer and Public Prosecutor are entrusted the responsibility of acting only in the interest of administration of justice. In the case of Public



Prosecutor or Additional public element flows from the statutory provision in the Code of Criminal Procedure that attribute of holder of public office, which cannot be whittled down by the assertion that their engagement is purely professional between a client and his lawyer with no public element attached with, and as such, the nature of office he is holding attracts Article -14 of the Constitution of India.

19. The nature of appointment and its efficacy came for consideration before the Hon'ble Supreme Court in the case of ***Kumari Shrilekha Vidyarthi vs. State of U.P. and Ors*** reported in ***1991 SCC (1) 212***. In that case the Hon'ble Supreme Court has held that Article 14 of the Constitution of India has a full play in the matter of appointment of public Prosecutor. The requirement of Article 14 is the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. There is a basic difference between the acts of the State which must invariably being a public interest and those of a private individual, engaged in similar activities, being primarily for personal gain, which may or may not promote public interest. Viewed in this manner, the Hon'ble Supreme Court has held that Article 14 of the Constitution would be extended even



in the nature of contractual matters for regulating the conduct of the State activity. Applicability of Article- 14 of the Constitution i.e. to act fairly and reasonably is applicable in all State actions whether it is contractual matter, tenure appointment or in any form of appointment or engagement. This principle has been followed in all subsequent judgment that has dealt with the nature of appointment/engagement of Public Prosecutor.

20. In the case of *State of U.P vs U.P. State Law Officers Association* reported in *1994 (2) SCC 204*, it has been held that the Government or the public body represents public interests and whoever is in-charge of running their affairs, is no more than a trustee or a custodian of the public interests. The protection of the public interests in the best possible manner is the primary duty of the Court. The public bodies are under an obligation to the society to take the best possible steps to safeguard such interests, and as such the obligation caste on the State to engage the most competent person to hold the office of the Public Prosecutor. The mode of appointment of Public Prosecutor emanates from the provisions of Section 24 of the Code of Criminal Procedure, which prescribes the manner and method of the appointment to the office of the Public Prosecutor, hence, it has to be in conformity with the obligation



caste upon them to select the most meritorious person. In Section 24 of the Code of Criminal Procedure itself provides the inbuilt protection to choose and appoint the best person who can lead the State in criminal cases.

21. In the case of *State of U.P. And Anr vs Johri Mal (supra)* also the Hon'ble Supreme Court has held that the appointment of Public Prosecutor or District Counsel should not be made to pursue the political goal or to give some undue advantage to certain sections of people. Retention of Counsel to the post of Public Prosecutor by the State must be weighed on the scale of public interest. The State should replace an efficient, honest and competent lawyer 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 unless he is honest. In the said judgment the power of judicial review, its scope and applicability including judicial restrain has been considered and the Court has held that the power of judicial review is the weapon to the Court which only obliges the Court to remain concerned with the decision making process than the merit of the decision itself and the Court would refuse to exercise this power when serious disputed question of facts involved; 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 facts of a given case as otherwise the decision would be tested on the grounds of illegality, irrationality or procedural impropriety. How far the Court under judicial review can re-appreciate the findings of facts depends on the ground of judicial review. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment, reaches on a matter which is authorized or enjoined by law to decide for itself a conclusion which is correct in the Court of law. It has further been held that the writ of *mandamus* can only be issued when the person establishes his legal right in himself and the corresponding legal duty in the public authorities. It has further been held that the extension of tenure of office of Public Prosecutor should not be compared with the right of renewal under a licence or a 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 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 (1947) 2 All ER 640*). Further held that malice of law would be applicable while testing the case on the ground of judicial review.

22. It will be relevant to quote paragraph nos. 43 to 46 of the aforesaid judgment, which are as follows:-

“43. The State, however, while appointing a counsel must take into account the following fundamental principles which are required to be observed that good and competent lawyers are required to be appointed for; (i) good administration of justice; (ii) to fulfill its duty to uphold the rule of law; (iii) its accountability to the public; and (iv) expenditure from the tax payers' money.

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.

45. However, malice in law can also be a ground for judicial review.

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.”

23. The same principle has also been applied in the case of ***State of U.P & Ors. vs. Rakesh Kumar Keshari & Anr. (supra); State of U.P. vs. Satyabrat Singh (supra)*** and ***State of U.P. vs. Ajay Kumar (supra)***. In all the aforesaid case, the principle delineated in the case of Kumari Shrilekha Vidyarthi (supra) as well as Johri Mal (supra) having been followed.



24. In the matter of tenure appointment the Hon'ble Supreme Court in the case of ***Reji Kumar and Ors. vs Director of Health Services, Kerala and Others (supra)*** has held that the appointment for fixed term comes to an end after expiry of the period of tenure, there would be no relationship of master and servant between the employer and the employee, only the relationship is continued by a fresh letter or by intervention of the Court's order. However, this matter relates to appointment of an employee and it does not deal with the matter of appointment of an Advocate as a Public Prosecutor.

25. In the case of ***Dr. L.M. Nath vs Dr. S.K. Kacker & Ors (supra)*** the Hon'ble supreme Court was considering the tenure appointment in the context of interim order passed, giving direction to continue on the said post even after expiry of the period mentioned therein, which has severely been criticized by the Hon'ble supreme Court and held that it is not fair on the part of the High Court to pass interim order, thereby staying the operation of the order and directing to continue an employee to the said post. It has further been held that the life an appointment as the date specified therein, in view of nature of appointment, being a tenure post. Further held that unless the reasoned order, expressly extending his tenure, is passed, he has



no right to continue on the said post after expiry of period mentioned therein.

26. The decision rendered in the case of *State of Uttar Pradesh and Others vs. Rekha Rani (supra)*, which has been placed reliance by other side, does not apply to the facts of the present case as in the aforesaid case the Court has held that temporary employee does not have a right to continue on the post, termination of service is not by way of major punishment, hence opportunity of hearing does not arise. In the context of the present case, of-course the period of engagement of the petitioner having been mentioned in his letter of appointment is three years, is in the nature of tenure appointment, he cannot by way of right claim his continuation of engagement as Public Prosecutor as it has been mentioned in the appointment letter that on expiry of the period, it will be treated to be vacant, but it has to be tested on the anvil of arbitrary action, thereby he has been terminated and private respondent namely, Vinay Kumar Singh, has been made inducted, on the fact, which this Court is taking judicial notice, that in the entire State of Bihar the period of all Public Prosecutors and Additional Public Prosecutors have already expired and even than they are holding and discharging the function of Public Prosecutors and Additional Public



Prosecutors. In Johri Mal case (supra) the Court has held that while applying the principle of judicial review the Court will apply the test mentioned in the doctrine of 'Wednesbury Unreasonableness' and will also take notice the malice of law while exercising the power of judicial review. When all Public Prosecutors, except the present petitioner, are continuing but selectively and singly the petitioner has been dethrone to hold the post of Public Prosecutor itself is indicative arbitrary exercise of power.

27. In the case of *P. Venugopal vs Union Of India* reported in *2008(5) SCC 1*, in which the amendment was brought by adding sub-section (1A) of Section 11 of the All India Institute of Medical Sciences (Amendment) Act, 2007 with the sole motive to terminate the services of P. Venugopal, who was holding the post of Director of All India Institute of Medical Sciences. In that context, the Hon'ble Supreme Court has held that if the legislation is framed with the sole purpose to terminate the service of a single person, violates the basic principle of reasonableness and suffering from arbitrariness and would be hit by Article 14 of the Constitution of India and the Hon'ble Supreme Court has held that there cannot be any permissibility for any artificial and impermissible classification



between the writ petitioner on the one hand and any future Director of AIIMS on the other when it relates to the premature termination of the term of office of the Director, and as such an impermissible classification through a one man legislation clearly indicates foul play, violates the provisions of Article 14 of the Constitution being an apparent case of "naked discrimination", in our democratic civilized society, renders the impugned proviso as void, ab initio and unconstitutional and the Hon'ble Supreme Court brought him to the same place again. In this case also, the petitioner is the single person who was booted out from the office by improper legislation.

28. Now, this Court is examining as to whether the Collector could have passed an order, thereby the petitioner has been booted out and private respondent, Vinay Kumar Singh, has been inducted and made In-charge of the office of the Public Prosecutor and held that he has done it in exercise of power conferred under Clause-139 of the Bihar Practice & Procedure Manual. Sub-section 3 of Section 24 of the Code of Civil Procedure, provides for every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district and the manner and method has been prescribed that the District



Magistrate in consultation with the Sessions Judge, would 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 and further restricted the State Government only appoint the persons whose names are there in the list prepared by the District Magistrate after consultation with the Sessions Judge.

29. Clause-139 of the Bihar Practice & Procedure Manual, prescribes as follows:-

“139. Filing in of temporary vacancy:- In the event of a temporary vacancy in the office of Government Pleader, the Collector shall, in consultation with the Sessions Judge, appoint a qualified pleader to act in the office until such pleader is relieved by a Government Pleader duly appointed, or until his appointment is cancelled by the Collector. The Collector shall forthwith report to the Legal Remembrancer through the Commissioner the occurrence of every such vacancy and the making or cancellation of every such appointment for the approval of Government.”

30. First thing is very much clear that there is no such situation has been envisaged under Section 24 of the Code of Criminal Procedure to make temporary arrangement to the



office of the Public Prosecutor, it only talks about the appointment of Public Prosecutor on permanent basis. Clause-139 of Bihar Practice & Procedure Manual mentions that the Collector by way of tempoary arrangement make appointment of Public Prosecutor or the Government Pleader, which is in conflict with the provision of Section 24 of the Code of Criminal Procedure and it has been held in the case of Johri Mal (supra) that legal remembrancer Manual is in the nature of an executive order and is not law within the meaning of Article 13 of the Constitution of India. Further held that the executive instructions does not carry the same status as that of the statute.

31. It will be relevant to quote paragraph no. 86 of Johri Mal case (supra), which is as follows:-

“86. We are also pained to see that the Stat of Uttar Pradesh alone had amended sub-section (1) of Section 24 and deleted sub-sections (3), (4) and (5) of Section 24 of the Code of Criminal Procedure. Evidently, the said legislative step had been taken to overcome the decision of this Court in Kumari Shrilekha Vidyarthi (supra). We do not see any rationale in the said action. The learned counsel appearing for the State, when questioned, submitted that such a step had been taken having regard to the fact that exhaustive provisions are laid down in Legal



Remembrancer Manual which is a complete code in itself. We see no force in the said submission as a law cannot be substituted by executive instructions which may be subjected to administrative vagaries. The executive instructions can be amended, altered or withdrawn at the whims and caprice of the executive for the party in power. Executive instructions, it is beyond any cavil, do not carry the same status as of a statute.”

32. In view of the aforesaid decision of the Hon’ble Supreme Court the status of the Public Prosecutor Manual is not a law under Article 13 of the Constitution of India, is mere an executive instructions and the Collector does not have jurisdiction to act de hors to the provision of Section 24 of the Code of Criminal Procedure and this Court further takes note of the fact that Section 24 of the Code of Criminal Procedure only obliges the Collector to prepare the list of the Advocates in consultation with the Sessions Judge, who are fit to be appointed as Public Prosecutor or Additional Public Prosecutor and send the same to the Government and it is the Government, which has authority to appoint the Public Prosecutor or Additional Public Prosecutor. It does not empowered in any manner the Collector to tinker or pass any order, thereby he can communicate the person, who is holding the office of the Public Prosecutor, that



he is no longer a Public Prosecutor and induct another person by way of temporary arrangement. Even presuming that Section 24 of the Code of Criminal Procedure envisaged the engagement of Public Prosecutor by way of temporary arrangement, but that can only be done by the State Government and the Collector who has only been authorized to prepare the panel of Advocates, cannot have jurisdiction to communicate the person, who is holding the office of Public Prosecutor, that he is no longer a Public Prosecutor in view of the fact that in the entire State of Bihar it is only the petitioner who has been de-throned to discharge the duty of Public Prosecutor and private respondent namely, Mr. Vinay Kumar Singh, has been asked to discharge the duty of the office of the Public Prosecutor.

33. This view has already been tested in C.W.J.C. No.10661 of 2017 (Manzer Hassan Khan vs. The State of Bihar and Ors.) and another analogous case. In these cases also, this Court has held that the Collector has not been vested with any jurisdiction either to show-cause Public Prosecutor or recommend for his removal to the Secretary, Law Department as well as Rule-143 of the Bihar Practice and Procedure Manual does not deal with removal, suspension and punishment of Public Prosecutor, rather it relates to Government Pleader. It is



the State Government alone, which may exercise such power in appropriate cases and that has been affirmed by the Division Bench in L.P.A. No.402 of 2018. Hence, the contention raised by the respondents that this order does not apply to the facts of this case as it was a case of premature termination of service, hardly makes any change to the situation. It will equally be applicable to the cases where the period of the office has already expired. Only the State Government has jurisdiction to appoint or remove any Public Prosecutor or Additional Public Prosecutor not any officers of the State Government.

34. In such view of the matter, the order containing memo no.1531 dated 05.06.2018 (Annexure-4) passed by the District Magistrate, Darbhanga, is quashed.

35. Accordingly, this writ petition is allowed. Consequently, Interlocutory Application Nos. 5968 and 6084 of 2018 will be treated to have been disposed of.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	06.11.2018
Uploading Date	21.12.2018
Transmission Date	N/A.

