HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Special Appeal No. 151/2025
In
S.B. Civil Writ Petition No.14130/2024

Sunil Samdaria [redacted]

----Petitioner/Appellant

Versus

1. State Of Rajasthan, Through Its Principal Secretary, Department Of Law And Legal Affairs, State Secretariat, Jaipur.
2. Shri Padmesh Mishra [redacted]

----Respondents

For Appellant(s) : Mr. Sunil Samdaria, appellant present in person

For Respondent(s) : Mr. Vigyan Shah, AAG assisted by
Mr. Priyam Agarwal
Mr. Rohit Tiwari, AGC
Ms. Ritika Naruka
Ms. Tanvisha Pant
Mr. Vivek
Mr. Kshitij Jain
Mr. Gagan Gupta, Sr. Adv. assisted by Mr. Shashwat Purohit

HON'BLE THE ACTING CHIEF JUSTICE MR. SANJEEV PRAKASH SHARMA

HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU

Judgment

Date of conclusion of arguments	**:**	**14th November,2025**
Date on which judgment was reserved	**:**	**14th November,2025**
Whether the full judgment or only the operative part is pronounced	**:**	**Full judgment**
Date of pronouncement	**:**	**2nd December, 2025**

REPORTABLE

(Per Hon'ble the Acting Chief Justice)

1. The appellant by way of this special appeal assails the order dated 04.02.2025 passed by the learned Single Judge whereby, the writ petition preferred by him was dismissed.

2. The appellant is a practicing Advocate and had moved writ petition before this Court in the nature of *quo warranto* as against the respondent No.2 on the ground that the respondent No.2 does not possess the minimum requisite experience of practice of ten years as an Advocate for being appointed as an Additional Advocate General.

3. The entire basis of challenge of qualification and eligibility of respondent No.2 is the State Litigation Policy, 2018 and therefore, in the writ petition the appellant/petitioner prays for setting aside the order dated 23.08.2024 whereby, respondent No.2 was appointed as the Additional Advocate General of Rajasthan for the cases to be taken up in the Supreme Court. Further, he challenges the Clause 14.8 incorporated in the Litigation Policy and prays to hold it to be arbitrary, illegal and invalid.

4. The learned Single Judge proceeded to examine the Clauses of the State Litigation Policy, 2018 and like on earlier judgments passed by the Court in the case of **Ishwar Prasad Vs. State of Rajasthan in D.B. Civil Writ Petition No.5313/2024** dated 03.12.2024 and the Supreme Court's order in the case of **Dr. Abhinav Sharma Vs. Sunil Samdaria in Civil Appeal No.4501/2015** and proceeded to hold that the post of the Additional Advocate General is not a public office. Secondly the learned Single Judge, on merits, held that the power existed with the State

Government in terms of Clause 14.8 to appoint any counsel to any post after considering his experience in the respective field and the requirement of 10 years cannot be said to be inflexible.

5. On the challenge to Clause 14.8, the learned Single Judge held that there is no input for leveling allegations of arbitrariness and colourable exercise of power available with the appellant and the council of Ministers have taken a decision to introduce Clause 14.8 in the State Litigation Policy. Merely on account of sequence of events, the learned Single Judge held that it may be a coincidence, but inference cannot be drawn of arbitrariness or the colourable exercise of power by the State.

6. Learned Single Judge further proceeded to hold that it would not be advisable for the Court to interfere in policy decisions on the issue of it being vice or not as per the choice for the Court and therefore, rejected the contentions of Clause 14.8 of the Policy being illegal, arbitrary and unjustified. Further argument regarding the Additional Advocate General appointment without consultation of Advocate General raised by the appellant was also rejected and it was found to be designed by the State and therefore, not worth acceptance and dismissed the writ petition following the judgment passed in the case of **Ishwar Prasad Vs. State of Rajasthan (supra)**.

7. In special appeal, the appellant-petitioner reiterated his arguments and vehemently argued that the learned Single Judge has erred in dismissing his writ petition.

8. At the outset, we have asked learned counsel to address on the enforceability of the Litigation Policy of the State as the appellant had preferred a writ of *quo warranto*. Learned counsel has referred to the order passed by the Supreme Court in the case of **State of Rajasthan Vs. Man Sukh Das in Special Leave Petition (Civil) Diary No.4941/2018** dated 03.07.2018. The Apex Court while hearing a petition coming from State of Rajasthan relating to the appeal having been dismissed on the ground of delay of 554 days and SLP being filed after delay of 273 days, observed that it is in the interest of the State that they should have a comprehensive litigation policy. Learned counsel submits that as the Rajasthan State Litigation Policy, 2018 came into force on account of the observations made by the Supreme Court in the case of **State of Rajasthan vs. Man Sukh Das** (supra), the policy would be deemed to be enforceable in law having been framed under the directions of the Supreme Court. He further submits that as the amendment made in the State Litigation Policy, while introducing Clause 14.8, has been notified in the Gazette, it would have a statutory force of law. Learned counsel has again argued at length reasserting what he has already argued before the learned Single Judge and has relied on the same judgments which were taken note of by the learned Single Judge and not accepted.

9. On the other hand, learned counsel appearing for the State has submitted that the State Litigation Policy is not having any statutory character and would not be enforceable

in law. The directions issued by the Supreme Court were in the nature of making observations and suggestions to the State to have their own Litigation Policy. Learned counsel submits that the policy does not bind the State Government with regard to appointment of the Government Advocates, Additional Advocate Generals or the Advocate General and is in the nature of guidelines only. No statutory right is created in any person for claiming under the policy enforcing any of the clauses of the policy, nor any right is taken away if there is departure from the State Litigation Policy.

Our discussions and conclusions

10. Article 226 of the Constitution provides as under:

> *"226. Power of High Courts to issue certain writs*
> *(1) Notwithstanding anything in article 32 [***] every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including 3[writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose].*
>
> *(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the scat of such Government or authority or the residence of such person is not within those territories.]*
>
> *[(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without--*
>
> *(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and*
> *(b) giving such party an opportunity of being heard,*
> *makes an application to the High Court for the vacation of such order and furnishes a copy of such application to*

the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.]

[(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.]"

11. On the conditions where a writ of *quo warranto* would lie, the a concurring opinion delivered in **B.R. Kapur vs State of T.N. and Anr. (2001) 7 SCC 231** in the Hon'ble Supreme Court held as under:

*"**79.** Insofar as it relates to Article 361 of the Constitution, that the Governor shall not be answerable to any court for performance of duties of his office as Governor, it may, at the very outset, be indicated that we are considering the prayer for issue of the writ of quo warranto against Respondent 2, who according to the petitioner suffers from disqualification to hold the public office of the Chief Minister of a State. A writ of quo warranto is a writ which lies against the person, who according to the relator is not entitled to hold an office of public nature and is only a usurper of the office. It is the person, against whom the writ of quo warranto is directed, who is required to show, by what authority that person is entitled to hold the office. The challenge can be made on various grounds, including on the grounds that the possessor of the office does not fulfil the required qualifications or suffers from any disqualification, which debars the person to hold such office. So as to have an idea about the nature of action in the proceedings for writ of quo warranto and its original form, as it used to be, it would be beneficial to quote from Words and Phrases, Permanent Edn., Vol. 35-A, p. 648. It reads as follows:*

"The original common law writ of quo warranto was a civil writ at the suit of the Crown, and not a criminal prosecution. It was in the nature of a writ of right by the King against one who usurped or claimed franchises or liabilities, to inquire by what right he claimed them. This writ, however, fell into disuse in England centuries ago, and its place was supplied by an information in the nature of a quo warranto, which in its origin was a criminal method of prosecution, as well as to punish the

> *usurper by a fine for the usurpation of the franchise, as to oust him or seize it for the Crown. Long before our revolution, however, it lost its character as a criminal proceeding in everything except form, and was applied to the mere purposes of trying the civil right, seizing the franchise, or ousting the wrongful possessor, the fine being nominal only; and such, without any special legislation to that effect, has always been its character in many of the States of the Union, and it is therefore a civil remedy only. Ames v. State of Kansas [4 S Ct 437, 442 : 111 US 449 : 28 L Ed 482 (1884)] , People v. Dashaway Assn. [24 P 277, 278 : 84 Cal 114] ” ”*

12. The Hon’ble Supreme Court in **Bharati Reddy vs State of Karnataka and Ors. (2018) 6 SCC 162** held that:

> "***39.*** *We have adverted to some of those decisions in the earlier part of this judgment. Suffice, it to observe that unless the Court is satisfied that the incumbent was not eligible at all as per the statutory provisions for being appointed or elected to the public office or that he/she has incurred disqualification to continue in the said office, which satisfaction should be founded on the indisputable facts, the High Court ought not to entertain the prayer for issuance of a writ of quo warranto."*

13. The Hon'ble Supreme Court in the case of **Central Electricity Supply Utility Of Odisha vs Dhobei Sahoo and Ors** has held that a writ of *quo warranto* can be issued in following circumstances:

> "***21.*** *From the aforesaid exposition of law it is clear as noonday that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority.* "

14. Any person can file a petition for seeking a writ of *quo warranto* against any persons who is holding a public post.

The Supreme court has time and again examined what is a public post. In the case of **Kumari Shrilekha Vidyarthi and Ors. Vs. State of U.P. & Ors: (1991) 1 SCC 212** Supreme Court has held as under:

> "***12.*** *The above provisions in the L.R. Manual clearly show that the Government Counsel in the districts are treated as Law Officers of the State who are holders of an 'office' or 'post'. The aforesaid provisions in Chapter VII relating to appointment and conditions of engagement of District Government Counsel show that the appointments are to be made and ordinarily renewed on objective assessment of suitability of the person based on the opinion of the District Officer and the District Judge; and character roll is maintained for keeping a record of the suitability of the appointee to enable an objective assessment for the purpose of his continuance as a Law Officer in the district. There are provisions to bar private practice and participation in political activity by DGCs. Apart from clause (3) of para 7.06 to which we shall advert a little later, these provisions clearly indicate that the appointment and engagement of District Government Counsel is not the same as that by a private litigant of his counsel and there is obviously an element of continuity of the appointment unless the appointee is found to be unsuitable either by his own work, conduct or age or in comparison to any more suitable candidate available at the place of appointment. Suitability of the appointee being the prime criterion for any such appointment, it is obvious that appointment of the best amongst those available, is the object sought to be achieved by these provisions, which, even otherwise, should be the paramount consideration in discharge of this governmental function aimed at promoting public interest. All Government Counsel are paid remuneration out of the public exchequer and there is a clear public element attaching to the 'office' or 'post'.*
>
> ***13.****…….This, however, does not necessarily mean that a person who is not a government servant holding a post under the government does not hold any public office and the engagement is purely private with no public element attaching to it…….Clause (3) of para 7.06 must, therefore, be understood to mean that the appointment of a District Government Counsel is not to be equated with appointment to a post under the government in the strict sense, which does not necessarily mean that it results in denuding the office of its public character*
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> ***14.****…….Section 321 permits withdrawal from prosecution by the Public Prosecutor or Assistant Public Prosecutor in charge of a case, with the consent of the court, at any*

time before the judgment is pronounced. This power of the Public Prosecutor in charge of the case is derived from statute and the guiding consideration for it, must be the interest of administration of justice. There can be no doubt that this function of the Public Prosecutor relates to a public purpose entrusting him with the responsibility of so acting only in the interest of administration of justice. In the case of Public Prosecutors, this additional public element flowing from statutory provisions in the Code of Criminal Procedure, undoubtedly, invest the Public Prosecutors with the attribute of holder of a 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 attaching to it.

17. *We are, therefore, unable to accept the argument of the learned Additional Advocate General that the appointment of District Government Counsel by 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 attaching to it, which may be terminated at any time at the sweet will of the government excluding judicial review. We have already indicated the presence of public element attached to the 'office' or 'post' of District Government Counsel of every category covered by the impugned circular "*

15. However, the said judgment was doubted to the extent of whether lawyers can be said to be holding a public post. With regard to aspect of appointment of Government Law Officers and whether it can be said to be a public office in **State of U.P. Vs. Johri Mal : (2004) 4 SCC 714** the Hon'ble Supreme Court held as under:

> *"**38.** A distinction is to be borne in mind between appointment of a Public Prosecutor or Additional Public Prosecutor, on the one hand, and Assistant Public Prosecutor, on the other. So far as Assistant Public Prosecutors are concerned, they are employees of the State. They hold civil posts. They are answerable for their conduct to higher statutory authority. Their appointment is governed by the service rules framed by the respective State Governments. (See Samarendra Das v. State of W.B. [(2004) 2 SCC 274 : 2004 SCC (L&S) 402 : JT (2004) 2 SC 413])*
> ***39.** The appointment of Public Prosecutors, on the other hand, is governed by the Code of Criminal Procedure and/or the executive instructions framed by the State governing the terms of their appointment. Proviso appended to Article 309 of the Constitution of India is*

not applicable in their case. Their appointment is a tenure appointment. Public Prosecutors, furthermore, retain the character of legal practitioners for all intent and purport. They, of course, discharge public functions and certain statutory powers are also conferred upon them. Their duties and functions are onerous but the same would not mean that their conditions of appointment are governed by any statute or statutory rule.

40. *So long as in appointing a counsel the procedures laid down under the Code of Criminal Procedure are followed and a reasonable or fair procedure is adopted, the court will normally not interfere with the decision. The nature of the office held by a lawyer vis-à-vis the State being in the nature of professional engagements, the courts are normally chary to overturn any decision unless an exceptional case is made out…… "*

16. Furthermore, in **State of U.P. Vs. Ajay Kumar Sharma (2016) 15 SCC 289,** the Hon'ble Supreme Court quoted **Johri Mal (supra)** as under:

"***19.*** *In Johri Mal [State of U.P. v. Johri Mal, (2004) 4 SCC 714], this Court perused the LR Manual as also the Code of Criminal Procedure and reiterated that the District Counsel stood professionally engaged; that the State Government was free to determine the course of action after being satisfied of 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. appointment of their counsel or advocates. This Court reiterated that the District Counsel do not enjoy the statutory rights with respect to the renewals of tenures and the State Government enjoyed the discretionary powers in this respect. The curial performance of the advocates should not be the sole criterion for their reappointment as District Counsel and that the State Government must be free to repose trust and confidence in the persons whom they choose to appoint as their advocates. We can do no better than reproduce the following paragraphs from this judgment which is binding on us as also on any and every other two-Judge Bench: (SCC pp. 735-36 & 745, paras 40-41, 44, 46 & 75)*

"40. So long as in appointing a counsel the procedures laid down under the Code of Criminal Procedure are followed and a reasonable or fair procedure is adopted, the court will normally not interfere with the decision. The nature of the office held by a lawyer vis-à-vis the State being in the nature of professional engagements, the courts are normally chary to overturn any decision unless an exceptional case is made out. The question as to whether the State is satisfied with the performance of

its counsel or not is primarily a matter between it and the counsel. The Code of Criminal Procedure does not speak of renewal or extension of tenure. The extension of tenure of Public Prosecutor or the District Counsel should not be compared with the right of renewal under a licence or permit granted under a statute. The incumbent has no legal enforceable right as such. …

41. In Om Kumar v. Union of India [Om Kumar v. Union of India, (2001) 2 SCC 386 : 2001 SCC (L&S) 1039] it was held that where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the constitutional courts as primary reviewing courts to consider the correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. For judging the arbitrariness of the order, the test of unreasonableness may be applied. The action of the State, thus, must be judged with extreme care and circumspection. It must be borne in mind that the rights of the Public Prosecutor or the District Counsel do not flow under a statute. Although, discretionary powers are not beyond the pale of judicial review, the courts, it is trite, allow the public authorities sufficient elbow space/play in the joints for a proper exercise of discretion.

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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 the 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.

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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's Manual.

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

17. In the opinion of this Court, while the post of Advocate General having its construe from Article 165 of the Constitution would fall in the category of public post and he would be categorized as holding a public office. The Advocate General possesses administrative powers and he also possess powers of drawing disbursing officer in the GF & AR. However, the posts of Additional Advocate General and the Government Counsels would not fall in the same category. They are the lawyers who are appointed to assist the office of Advocate General, while in Rajasthan all the posts are categorized of different nomenclatures as Government Counsel, Government Advocate, Additional Advocate General, Assistant to Additional Advocate General, Additional Government Counsel, Deputy Government Counse, Additional Government Advocate, Deputy Government Advocate and Assistant Government Advocate. However, in other States, the nomenclatures are different, as like in Punjab, there are Senior Additional Advocate General, Additional Advocate General, Senior Deputy Advocate

General, Deputy Advocate General, Assistant Advocate General. While in State of Punjab and Haryana after the judgment passed in the case of **State of Punjab Vs. Brijeshwar Singh Chahal (2016) 6 SCC 1,** the posts were created by the State Government and Rules were framed. So far as Rajasthan is concerned, the State Government has only framed State Litigation Policy, 2018. In State of Rajasthan, we notice that in the District Courts, Public Prosecutor and Additional Public Prosecutor are appointed by the Rules framed under Proviso to Article 209 of the Constitution relating to Special Public Prosecutor Rules. Such persons appointed through the State Machinery are governed by the State Service Rules. In addition thereto, the State Government also has a process to appoint Special Public Prosecutor, Special Government Advocates who are assigned a specific work for appearance in the Courts in relation to a particular Department or in relation to particular case. Thus, appointment may be case centric and department centric. In the High Court, while there are lawyers who are appointed specifically for dealing with criminal cases and for them, approval under Section 24 Cr.P.C. (Section 18 of B.N.S.S.) from the High Court is required. Another set of lawyers are appointed by the State Government for dealing with different kinds of cases. It is a noted fact that the Additional Advocate General are assigned different department for whom they appear in the Court and their departments are also changed from time to time as per the directions of the State Government. Their tenure is not

fixed and therefore, they cannot be said, in any manner, to be responsible for any Government action and their arguments are totally depend on the brief as received to them. They are in the nature of assisting the Advocate General. The State policy generally lays down that an Additional Advocate General should have minimum ten years of experience in practice. It would be, therefore, apposite to quote certain aspects relating to Rajasthan State Litigation Policy, 2018 as under:-

> *"1.2 Pursuant to the recommendation of 13th Finance Commission and the resolution adopted at the National Consultation on "Strengthening the Judiciary towards reducing pendency and delay" held on 24.10.09, the National Litigation Policy was framed which in turn led to the promulgation of the Rajasthan State Litigation Policy, 2011, However, during the last few years, it has been observed that a comprehensive review of the policy is needed to ensure that its objectives are achieved.*
>
> *1.4. The circulars issued by the Law Department from time to time, shall remain in force to the extent this document is silent and shall be followed in the spirit of this policy.*
>
> *2.4 With a view to become an efficient and model litigant, the State shall be guided by the following principles:*
>
> *(i) The State shall manage and conduct its litigation in responsible, sensitive and efficient manner.*
> *(ii) Cases which can be resolved by having recourse to alternative dispute resolution mechanism i.e. mediation, arbitration, Lok Adalats etc. will be resolved through such mechanism only. The alternative dispute resolution mechanism will be encouraged as cost effective and time saving mode of settling legal disputes.*
> *(iii) Management and conduct of litigation shall be done in a coordinated, time bound and cohesive manner.*
> *(iv) Objections on extremely technical points will be avoided by the State unless the same goes to the root of the matter.*
> *(v) Litigation shall not be resorted to, for the sake of litigation.*
> *(vi) Endeavour shall be made to withdraw infructuous and petty cases by periodical scrutiny of the pending cases.*
> *(vii) State should be represented by competent counsels.*

3.2 it shall be mandatory for all departments to follow this policy.

3.3 The Policy shall serve as the authoritative reference for all questions of procedure, norms and interpretation in relation to management and conduct of litigation at all stages & forums

14. APPOINTMENT OF COUNSEL FOR THE STATE

14.1 The State Litigation, apart from revenue matters, service matter, matters of public important involves other variegation of cases also. it is important to select and appoint efficient Counsels to handle the State litigation and safeguard the State interest.

14.2 Advocate General is appointed under Article 165 of the Constitution of India is a Constitutional Authority with a prime duty to advise on the legal matters. Additional Advocate Generals are appointed to held and share the responsibility of the Advocate General. Appointment of Additional Advocate General as per the requirement should be made on the advice of any in effective consultation withe the Advocate General.

14.3 All other Counsels/Advocates for efficient and effective discharge of the duties shall be selected by the State Level Empowered Committee.

14.4 The Committee shall screen the aspirants possessing minimum experience of practice in High Court/Supreme Court as laid down in the table herein below or as prescribed by the State Government from time to time or any law for the time being in force:-

S.No.	*Post*	*Minimum experience of practice*
1.	*Additional Advocate General*	*10*
2.	*Government Counsel*	*07*
3.	*Additional Government Counsel*	*07*
4.	*Deputy Government Counsel*	*05*
5.	*Assistant Government Counsel*	*03*
6.	*Panel Lawyer, Hon'ble Supreme Court, New Delhi*	*05*

14.5 For ascertaining effective experience and competence to handle State Litigation in Courts the Committee shall be at liberty to formulate its own principles and procedure.

14.6 The State has multifarious type of litigation and services of Counsels competent to handle them are necessary. At the time of selection of the Law Officers to represent the State the specific requirements of expertise to cater to the need of different Administrative

Departments shall be kept in consideration, so that State interest is safe guarded and the State may not have to look around time and again to engage some expert Counsel on higher remuneration to conduct the case.

14.7 The Committee shall submit the list of the selected Counsels to the Law Minister for further necessary action. The selection process shall be final only after the approval at the appropriate level."

18. Notification dated 23.08.2024 issued by the Law and Legal Affairs Department of Government of Rajasthan inserted clause 14.8, which reads as under:

"माननीय मंत्रिमण्डल की आज्ञा कमांक *58/2024* दिनांक *23.08.2024* की पालना में राजकीय वादकरण नीति *2018* के अध्याय *14* में संशोधन कर बिन्दु संख्या *14.7* के पश्चात एक नवीन बिन्दु निम्नानुसार समाविष्ट किया जाता है-

"14.8- Notwithstanding anything contained in the Policy, the authority of the appropriate level shall have power to appoint any counsel to any post after considering his expertise in the respective field."

19. As per the Merriam-Webster Law Dictionary, the word 'enforceable' means:

"capable of being enforced especially as legal or valid"

20. In **Shilpi Bose and Ors. vs State of Bihar and Ors.** ***MANU/SC/0147/1991***, the Hon'ble Supreme Court held as under:

"4. In our opinion, the Courts should not interfere with a transfer Order which are made in public interest and for administrative reasons unless the transfer Orders are made in violation of any mandatory statutory Rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer Orders issued by the competent authority do not violate any of his legal rights. Even if a transfer Order is passed in violation of executive instructions or Orders, the Courts ordinarily should not interfere with the Order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer Orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be

conducive to public interest. The High Court over looked these aspects in interfering with the transfer Orders."

21. Not every kind of policy wields statutory force, as is evident from the decision of the Hon'ble Supreme Court in **Union of India and Ors. vs S.L. Abbas (1993) 4 SCC 357**:

> ***"6.*** *An order of transfer is an incident of Government service. Fundamental Rule 11 says that "the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority". Fundamental Rule 15 says that "the President may transfer a Government servant from one post to another". That the respondent is liable to transfer anywhere in India is not in dispute. It is not the case of the respondent that the order of his transfer is vitiated by mala fides on the part of the authority making the order, — though the Tribunal does say so merely because certain guidelines issued by the Central Government are not followed, with which finding we shall deal later. The respondent attributed "mischief" to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred because his wife is working at Shillong, his children are studying there and also because his health had suffered a setback some time ago. He relies upon certain executive instructions issued by the Government in that behalf. Those instructions are in the nature of guidelines. They do not have statutory force.*
>
> ***7.*** *Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it……"*

22. Policy is, thus, a guideline. It advises how State as a litigant should function. However, from a bare reading of the Clauses, as noticed above, it is apparent that even the circulars issued prior to the State Litigation Policy have been allowed to continue. The framers nowhere intended it to become a hard and fast rule. If the State would have wanted to make a rule, it could always make a Rule in terms of Proviso to Article 209 of the Constitution which would have resulted in creation of posts.

23. Furthermore, in the context of issuance of the writ of *quo warranto*, the Hon'ble Delhi High Court in **Bridge and Roof Company (India) Ltd. Executives' vs M.K. Singh and Ors. *2015 SCC OnLine Del 6419*** held that:

> *"A petition seeking a writ etc. of a quo warranto lies only against an appointment made which is in violation of a statutory provision or a statutory rule. A writ, order or direction in the nature of quo warranto cannot be sought merely on account of violation of any circular or guideline or direction i.e where the appointment is not alleged to be in violation of a statutory provision."*

24. Apart from the contents of the State Litigation Policy, as noticed above, another argument has been raised by the appellant-petitioner of the Gazette notification regarding amendment in the State Litigation Policy and the Court would draw an inference of the policy being enforceable in law. Learned counsel for the petitioner has also raised the submission that since the amendment made in Clause 14.8 was notified in Gazette, therefore, the same should be treated as statutory amendment and would, therefore, be amenable to writ jurisdiction as it has acquired enforceable status.

25. To examine the aforesaid aspect, it would be apposite to note that the Gazette of India notifications are published in various Parts, Sections and Sub-sections of Gazette and the contents of each Part & Section are different from another and the same are reproduced for ready reference as under:

DEPARTMENT OF PUBLICATION
MINISTRY OF URBAN DEVELOPMENT
CIVIL LINES, DELHI – 110054.

Detail of the contents of Gazette of India Notifications published in various Parts, Sections and Sub-Sections of Gazette of India

Part, Section & Sub-Section	Contents published in the Gazette of India
Part I Section 1	Notifications relating to Non-Statutory Rules, Regulations, Orders and Resolutions issued by the Ministries of the Government of India (other than the Ministry of Defence) and by the Supreme Court of India.
Part I Section 2	Notifications regarding Appointments, Promotions, Leave etc. of Government Officers issued by the Ministries of the Government of India (other than the Ministry of Defence) and by the Supreme Court of India.
Part I Section 3	Notifications relating to Resolutions and Non-Statutory Orders issued by the Ministry of Defence.
Part I Section 4	Notifications regarding Appointments, Promotions, Leave etc. of Government Officers issued by the Ministry of Defence.
Part II Section 1	Acts, Ordinances and Regulations.
Part II Section 1 A (Hindi)	Authoritative texts in Hindi languages of Acts, Ordinances and Regulations.
Part II Section 2	Bills and Reports of the Select Committee on Bills.
Part II Sec. 3 Sub Sec. (i)	General Statutory Rules (including Orders, By laws etc. of general character) issued by the Ministries of the Government of India (other than the Ministry of Defence) and by the Central Authorities (other than the Administration of Union Territories).
Part II Section 3 Sub Section (ii)	Statutory Orders and Notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by the Central Authorities (other than the Administration of Union Territories).
Part II Section 3 Sub Section (iii)	Authoritative texts in Hindi (other than such texts, published in section 3 or section 4 of the Gazette of India of General Statutory Rules and Statutory Orders (including Bye-laws of a general character) issued by the Ministries (including Ministry of Defence) and by Central authorities (other than Administration of Union Territories).
Part II Section 4	Statutory Rules & orders issued by the Ministry of Defence.

Part III Section 1	Notifications issued by the High Courts, the Comptroller and Auditor General, Union Public Service Commission the Indian Government Railways and by Attached and Subordinate offices of the Government of India.
Part III Section 2	Notifications and Notices issued by the Patent Office, relating to Patents and Designs.
Part III Section 3	Notifications issued by or under the authority of Chief Commissioners.
Part III Section 4	Miscellaneous Notifications including Notifications, Orders Advertisements and Notices issued by Statutory Bodies.
Part IV	Advertisements and Notices issued by the Private Individuals and Private Bodies.
Part V	Supplement showing Statistics of Births and Deaths etc. both in English and Hindi.

26. From the above, it is apparent that similar Gazette notifications of State Government, to the Gazette Notifications wherein amendment has been made to the policy guidelines, would not fall in Part-II Section 4 or Part-II Section 1, but would fall under Part-I Section 1 alone. The present notification as issued by the State Government in the Gazette is, thus, not an amendment in the Rule and is only to notify the new clause which has been added to the litigation policy. Such notification does not, therefore, come within the four corners of an amendment in the Rule. We also notice that the petitioner himself accepted the notification to be not an amendment in the Rule and therefore, challenged the same before the learned Single Judge instead of challenging the vires before the Court, which would have come before the Division Bench. In view thereto, he is now being estopped to say that the same

would make the litigation policy come within the four corners of the Rules. For the reasons as stated hereinabove, we, therefore, reject the contention of the petitioner that the State Litigation Policy is enforceable in law.

27. Having reached to the conclusion that the State Litigation Policy, 2018, is not enforceable in law and writ of *quo warranto* would not lie, this Court would not examine the eligibility and qualifications of the respondent No.2 for being appointed as an Additional Advocate General of the State to argue cases in Supreme Court. It is otherwise also not within the four corners of this Court to examine as to whom the State Government thinks it proper to be an expert, in their opinion, for arguing their cases and presenting them before the Court. Art of presentation of a case and art of advocacy is not bound by years of experience. The years of experience, of course, may have its own importance for the purpose of assessing the knowledge of an individual. However, for the purpose of litigation, a persons who may be having vast knowledge like professor of law, may not be suitable to argue cases in the Court and we, therefore, do not agree that a hard and fast rule may be laid down for appointing any persons as Advocate General and Additional Advocate General or any of the post or any other government lawyer with a different nomenclature and it should be best to left for the litigant to decide. A writ of *quo warranto* would, therefore, not lie.

28. We, therefore, while following the reasoning as adopted by the learned Single Judge on examining further, as above, conclude that the nomination of respondent No.2 as Additional Advocate General for the Supreme Court by the State Government in terms of the State Litigation Policy departuring from the general rules cannot be said, in any manner, to be illegal, arbitrary and unjustified or whimsical. A writ of *quo warranto* filed by the lawyer petitioner, based on unforceable State Litigation Policy which does not have any statutory character, therefore, was rightly dismissed by the learned Single Judge and the appeal also deserves to be dismissed.

29. In view of the above, the special appeal is dismissed accordingly.

30. All pending applications also stand disposed of.

(BALJINDER SINGH SANDHU),J (SANJEEV PRAKASH SHARMA),ACTING CJ

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