



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 18266/2025

Pratap Singh [REDACTED]

----Petitioner

Versus

1. The Jaipur Development Authority, Through Its Secretary, Jawahar Lal Nehru Marg, Jaipur (Raj.).
2. The Commissioner, Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).
3. The Director (Law), Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).

----Respondents

Connected With

S.B. Civil Writ Petition No. 6626/2021

Ram Singh [REDACTED]

----Petitioner

Versus

1. Jaipur Development Authority, Through Its Secretary, Indira Circle, JIn Marg, Jaipur.
2. Commissioner, Jaipur Development Authority, Indira Circle, JIn Marg, Jaipur.

----Respondents

S.B. Civil Writ Petition No. 6629/2021

Rikhab Chand Dhakad [REDACTED]

----Petitioner

Versus

1. Jaipur Development Authority, Through Its Secretary, Indira Circle, JIn Marg, Jaipur.
2. Commissioner, Jaipur Development Authority, Indira Circle, JIn Marg, Jaipur.





----Respondents

S.B. Civil Writ Petition No. 9107/2021

Omprakash Yadav [REDACTED]

----Petitioner

Versus

1. Jaipur Development Authority, Through Its Secretary, Indira Circle, JIn Marg, Jaipur.
2. Commissioner, Jaipur Development Authority, Indira Circle, JIn Marg, Jaipur.
3. Director (Law), Jaipur Development Authority, Indira Circle, JIn Marg, Jaipur.

----Respondents

S.B. Civil Writ Petition No. 9112/2021

Ram Awtar Sharma [REDACTED]

----Petitioner

Versus

1. Jaipur Development Authority, Through Its Secretary, Indira Circle, JIn Marg, Jaipur.
2. Commissioner, Jaipur Development Authority, Indira Circle, JIn Marg, Jaipur.
3. Director (Law), Jaipur Development Authority, Indira Circle, JIn Marg, Jaipur.

----Respondents

S.B. Civil Writ Petition No. 9751/2021

N.p. Upadhyay [REDACTED]

----Petitioner

Versus

1. Jaipur Development Authority, Through Its Secretary, Indira Circle, J.l.n. Marg, Jaipur.
2. Director (Law), Jaipur Development Authority, Indira





Circle, J.I.n. Marg, Jaipur

----Respondents

S.B. Civil Writ Petition No. 18267/2025

Fateh Chand

[Redacted]

----Petitioner

Versus

1. The Jaipur Development Authority, Through Its Secretary, Jawahar Lal Nehru Marg, Jaipur (Raj.).
2. The Commissioner, Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).
3. The Director (Law), Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).

----Respondents

S.B. Civil Writ Petition No. 18268/2025

Dharmesh Jeph

[Redacted]

----Petitioner

Versus

1. The Jaipur Development Authority, Through Its Secretary, Jawahar Lal Nehru Marg, Jaipur (Raj.).
2. The Commissioner, Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).
3. The Director (Law), Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).

----Respondents

S.B. Civil Writ Petition No. 18269/2025

Krishan Mohan

[Redacted]

----Petitioner

Versus

1. The Jaipur Development Authority, Through Its Secretary, Jawahar Lal Nehru Marg, Jaipur (Raj.).





2. The Commissioner, Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).
3. The Director (Law), Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).

----Respondents

S.B. Civil Writ Petition No. 18270/2025

Sanjeev Kumar Saini



----Petitioner

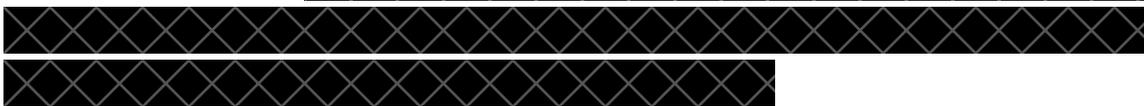
Versus

1. The Jaipur Development Authority, Through Its Secretary, Jawahar Lal Nehru Marg, Jaipur (Raj.).
2. The Commissioner, Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).
3. The Director (Law), Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).

----Respondents

S.B. Civil Writ Petition No. 18271/2025

Mahendra Yadav



----Petitioner

Versus

1. The Jaipur Development Authority, Through Its Secretary, Jawahar Lal Nehru Marg, Jaipur (Raj.).
2. The Commissioner, Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).
3. The Director (Law), Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).

----Respondents

S.B. Civil Writ Petition No. 18272/2025

Akhilesh Arya



----Petitioner

Versus





1. The Jaipur Development Authority, Through Its Secretary, Jawahar Lal Nehru Marg, Jaipur (Raj.).
2. The Commissioner, Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).
3. The Director (Law), Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).

----Respondents

S.B. Civil Writ Petition No. 18273/2025

Suraksha Jasuja

----Petitioner

Versus

1. The Jaipur Development Authority, Through Its Secretary, Jawahar Lal Nehru Marg, Jaipur (Raj.).
2. The Commissioner, Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).
3. The Director (Law), Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).

----Respondents

S.B. Civil Writ Petition No. 18274/2025

Priyanka Sharma

----Petitioner

Versus

1. The Jaipur Development Authority, Through Its Secretary, Jawahar Lal Nehru Marg, Jaipur (Raj.).
2. The Commissioner, Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).
3. The Director (Law), Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).

----Respondents

S.B. Civil Writ Petition No. 18275/2025

Firoz Akhtar



----Petitioner

Versus

1. The Jaipur Development Authority, Through Its Secretary, Jawahar Lal Nehru Marg, Jaipur (Raj.).
2. The Commissioner, Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).
3. The Director (Law), Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).

----Respondents

S.B. Civil Writ Petition No. 18321/2025

Rampal Chawla

----Petitioner

Versus

1. The Jaipur Development Authority, Through Its Secretary, Jawahar Lal Nehru Marg, Jaipur (Raj.).
2. The Commissioner, Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).
3. The Director (Law), Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).

----Respondents

S.B. Civil Writ Petition No. 18680/2025

Sunita Sharma

----Petitioner

Versus

1. The Jaipur Development Authority, Through Its Secretary, Jawahar Lal Nehru Marg, Jaipur (Raj.).
2. The Commissioner, Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).
3. The Director (Law), Jaipur Development Authority Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).

----Respondents





For Petitioner(s) : Mr. Kamlakar Sharma, Sr. Adv. assisted by Mr. Yogesh Kalla and Mr. Ranvijay Singh in CWP Nos.18266/2021, 18267/2025, 18268/2025, 18269/2025, 18270/2025, 18271/2025, 18272/2025, 18273/2025, 18274/2025, 18275/2025, 18321/2025 and 18680/2025 Mr. Dinesh Yadav and Mr. Ankit Yadav in CWP No.18266/2025 Mr. R.N. Mathur, Sr. Adv. assisted by Mr. Sahil Sharma and Mr. Ashish Sharma in CWP No.6626/2021, 6629/2021, 9107/2021 and 9112/2021 Mr. Ravi Shanker Sharma and Mr. Pawan Sharma in CWP No.9751/2021 Mr. Azad Ahmed in CWP No.18321/2025

For Respondent(s) : Mr. Abhishek Sharma and Ms. Pooja Sharma in CWP Nos.18266/2025, 18321/2025 and 18680/2025 Mr. Rishabh Khandelwal in CWP Nos.6626/2021, 6629/2021, 9107/2021 and 9112/2021 Mr. Ajay Shukla along with Mr. Raghav Sharma in CWP No.9112/2021 and 9751/2021

HON'BLE MR. JUSTICE GANESH RAM MEENA

Order

Reportable:

Arguments concluded on	:::	March 05, 2026
Judgment reserved on	:::	March 05, 2026
Judgment pronounced on	:::	March 25, 2026





1. Since a common question is involved in all these writ petitions, hence, they are being decided by this common order.

2. The dispute which has been brought before this Court by filing all these writ petitions is with regard to removal of Assistant Advocates appointed/ engaged by the respondent-Jaipur Development Authority (for short 'the JDA') so as to coordinate in between the office of the JDA and the Panel Counsels of the JDA, to submit the reply on behalf of the JDA well in time. The engagement of the Assistant Advocates has been made because of the scarcity of Law Officers in the JDA.

3. In-stead of recording the facts of each and every case, for consideration of the dispute, the Court deems proper to record the facts of S.B. Civil Writ Petition No.18266/2025.

4. The JDA issued an office order dated 11.09.2009 (Annex.15 in the writ petition) so as to engage the Assistant Advocates in the JDA to coordinate amongst the Officers-in-charge and the Panel Counsels of the JDA. The order dated 11.09.2009 contains the work to be performed by the Assistant Advocates and the eligibility for engagement. The said order also contains that in case the work performance of the Assistant Advocates is not found to be satisfactory, they can be removed without any notice.





5. Another order dated 22.05.2014 (Annex.2 in the writ petition) was also issued by the JDA superseding the earlier orders wherein also they have incorporated condition No.7 that if the work performance of the Assistant Advocates is not found to be satisfactory, they can be removed on the report of the Zone Commissioner.

6. Another order dated 18.05.2022 (Annex.5 in the writ petition) was also issued by the JDA wherein also the similar provisions were incorporated.

7. The petitioner- Pratap Singh was engaged as an Assistant Advocate vide order dated 21.12.2009 on consideration of his application submitted in furtherance of the order dated 11.09.2009. Though in the order of engagement/ appointment dated 11.09.2009, no specific period for which he has been engaged, is mentioned. However, the petitioner- Pratap Singh continued for a long and his engagement was cancelled vide order dated 14.11.2025 and by the same order other petitioners who were engaged as Assistant Advocates by the JDA, their engagement was also cancelled. The petitioner by filing the present writ petition has assailed the order dated 14.11.2025 to the extent of cancellation of his engagement as an Assistant Advocate and similarly in other petitions the petitioners therein have challenged the cancellation of their engagements.





8. Shri Kamlakar Sharma Senior Advocate assisted by Mr. Yogesh Kalla and Mr. Ranvijay Singh, learned counsels appearing for the petitioners submitted that the order of cancelling the engagement / appointment of the petitioners as Assistant Advocates is wholly illegal, arbitrary and violative of principles of natural justice and is contrary to the terms and conditions as provided in the orders issued by the respondent- JDA time to time. He submitted that the orders issued by the JDA provide for cancelling the engagement or removal of Assistant Advocates in case their work performance is not found to be satisfactory in the report of Zone Commissioner. He also submitted that as per document Annex.13 dated 11.11.2025, the work performance of the petitioner and certain other Assistant Advocates, whose names appear in the said document, is found to be qualitative and satisfactory. Learned Senior Advocate also submitted that the Assistant Advocates who have been engaged by the JDA, their engagements have been cancelled not because there is any adversity as regards their work performance but under the directions of the Hon'ble Minister who is also the Chairman of the JDA and that too for no good reasons. Learned Senior Advocate also submitted that the respondent- JDA in their own reply in para No.6 has stated that the work performed by the Assistant Advocates is temporary in nature and their services can be terminated in case of misconduct,





indiscipline or actions detrimental to the interests of the JDA. However, no such cause or reason appears from the record so as to remove the petitioners. Senior Advocate to support the submissions has placed reliance upon following judgments:-

1. *Kumari Shrilekha Vidyaarathi etc. etc. v. State of U.P. & Ors., reported in AIR (1991) SCC 212 delivered by the Hon'ble Apex Court; and*

2. *State of Uttar Pradesh & Ors. v. Ashok Kumar Nigam, reported in (2013) 3 SCC 372.*

9. Shri R.N. Mathur, Senior Advocate assisted by Mr. Sahil Sharma and Mr. Ashish Sharma, learned counsels appearing from one of the petitioner side submitted that the work of the petitioner who has been engaged as an Assistant Advocate has been found to be satisfactory as is evident from the experience certificate dated 13.01.2012 (annex.8 in CWP No.6626/2021). He has also referred the terms and conditions as regards the engagement of the Assistant Advocates to the orders issued by the JDA from time to time. He also submitted that the work which is assigned to the persons engaged as Assistant Advocates is of permanent nature as the litigation qua the JDA are increasing day-by-day and there is scarcity of the Law Officers in the JDA. Learned Senior Advocate also submitted that the order of removal of petitioners has been issued at the instance of Hon'ble Minister without there being any good reason and it seems to be a decision so as to appease the lawyers who are affiliated with





the political party to which the Hon'ble Minister belongs. Learned Senior Advocate also submitted that the order of removal of the petitioners is wholly arbitrary and deserves to be quashed and set aside.

To support the submissions, learned Senior Advocate has placed reliance upon following judgments:-

1. *Kumari Shrilekha Vidyaarathi etc. etc. v. State of U.P. & Ors., reported in AIR (1991) SCC 212 delivered by the Hon'ble Apex Court; and*

2. *State of U.P. & Anr. v. Johri Mal, reported in AIR 2004 sC 3800 delivered by Hon'ble the Apex Court.*

10. The other counsels appearing for the petitioners have adopted the arguments advanced by the learned Senior Advocates.

11. Mr. Abhishek Sharma, counsel appearing for the JDA submitted that the petitioners have not been engaged as employees by the JDA and they have been engaged as Assistant Advocates on contractual basis for performing the work of temporary nature and therefore, the writ petitions filed by the petitioners are not maintainable. He has made a reference of the additional affidavit submitted by the JDA stating that there are 58 vacancies of the Assistant Advocates. He further submitted that there is no vested rights of the petitioners to continue as Assistant Advocates and they cannot claim their continuation. He made a reference of Clause 3 of the order dated 18.05.2022





(Annex.5). The said clause provides that the person who has been engaged as an Assistant Advocate cannot claim to continue in service and has also referred Clause 12 of the said order submitting that a person engaged as an Assistant Advocate can be removed.

12. Shri Rishabh Khandelwal, counsel appearing for the JDA in some of the petitions submitted that the respondent-JDA cannot be compelled to engage the particular persons as Assistant Advocates and also cannot be forced to take the services of the petitioners.

To support the submissions, learned counsel appearing for the JDA has placed reliance upon following judgments:-

1. *Sushil Kumar Gupta v. State of U.P. & Ors.*, reported in (2002) 10 AHC CK 0 179 delivered by the Allahabad High Court;

2. *Om Prakash Joshi, Advocate & Ors. v. State of Rajasthan & Or.*, reported in 2001 Supreme (Raj.) 699, delivered by Hon'ble Division Bench of the Rajasthan High Court; and

3. *State of Maharashtra & Ors. v. Anita & Anr. etc.*, Civil Appeal Nos. 6132-33 of 2016 (Arising out of SLP(C) No.34788-34789 of 2012) decided on July 12, 2016, delivered by the Hon'ble Apex Court.

13. Mr. Ajay Shukla, counsel appearing for the JDA in certain petitions submitted that the claim of the petitioners is against the doctrine of pleasure.

14. Considered the submissions made by learned Senior Advocates appearing for the petitioners and learned counsels appearing for the JDA and gone through the entire





material made available to the court including the judgments as referred.

15. The basic question which emerges from the pleadings and the submissions made by learned Senior Advocates appearing for the petitioners is that the act of the respondents in removing the petitioners from their engagements as Assistant Advocates by the impugned order is an arbitrary act?

16. It is settled principle of law that the Welfare State and its instrumentalities / undertakings are required to act in a bonafide manner and shall not adhere to any arbitrary exercise of powers and are to avoid arbitrariness in their action and decisions.

17. The JDA from time to time issued various orders like the order dated 11.09.2009 (Annex.15), the order dated 22.05.2014 (Annex.2) and the order dated 18.05.2022 (Annex.5) with regard to the terms and conditions of engagements of Assistant Advocates. The said orders speak that the Assistant Advocates are being engaged by the JDA for coordinating in between the Officers of the JDA and the Panel Counsels of the JDA so as to streamline the work of the replies with comments on legal aspects of the matters. As per the terms and conditions incorporated in all these orders, the engagement of the Assistant Advocates, no fixed term of their engagements has been provided and the Assistant





Advocates, being engaged by the JDA can continue till removal and are being continued for a long time. As per the terms and conditions of the said orders, an Assistant Advocate can only be removed or his engagement can be cancelled if his work performance is not found to be satisfactory. The condition regarding the removal / cancellation of the engagement as incorporated in the order dated 11.09.2009 is quoted as under:-

"उपरोक्त कार्य हेतु इच्छक अधिवक्ताओं से उपरोक्तानुसार प्रभारीधिकारी / प्रकोष्ठाधिकारियों द्वारा अपने स्तर से ही आवेदन प्राप्त कर सचिव जविप्रा से अनुमोदन करा पार सहायक अधिवक्ता नियुक्त किया जावेगा तथा कार्य संतोषप्रद नहीं पाये जाने पर बिना किसी नोटिस भी उसे हटाया जा सकेगा।"

There is Clause 7 in the order dated 22.05.2014, which is quoted as under:-

"सहायक अधिवक्ताओं के कार्य संतोषजनक नहीं होने की जोन उपायुक्त की रिपोर्ट के आधार पर इन्हें हटाया जा सकेगा।"

In the order dated 18.05.2022, the relevant clause is 12, which is quoted as under:-

"12. उक्तानुसार शर्तों की अनुपालना नहीं किये जाने पर एवं संबंधित जोन उपायुक्त/प्रकोष्ठ प्रभारी की रिपोर्ट के आधार पर संबंधित सहायक अधिवक्ता के विरुद्ध नियमानुसार कार्यवाही की जावेगी जिसमें जविप्रा के कार्य से पृथक किया जाना भी सम्मिलित होगा।"

There is no other clause in the orders regarding the process and reasons/ cause for their removal.

18. The terms and conditions as regards the dis-engagement/ cancellation of the engagement speak that the Assistant Advocates engaged by the JDA can be removed or





disengaged at any point of time only, if their work performance is not found to be satisfactory in the report of the Zone Deputy Commissioner / Cell In-charge. The respondents in their reply to the writ petition, in para No.6 have also categorically stated that the services of the Assistant Advocates can be terminated in case of misconduct, indiscipline or actions detrimental to the interests of the JDA. Said para 6 of the reply is quoted as under:-

"6. The work performed by the Assistant Advocates is temporary, and their services may be terminated in case of misconduct, indiscipline, or actions detrimental to the interests of the JDA. To ensure effective representation and defence in the pending legal cases related to the Jaipur Development Authority in various courts, the appointments of all previously appointed permanent advocates/ panel advocates assistant advocates have been cancelled, and new advocates/ assistant advocates have been appointed in their place."

19. The respondent- JDA neither in the reply to the writ petition or during the course of arguments has pointed any report of the Officers of the JDA as regards the unsatisfactory work performance of the petitioners.

20. The Court in the facts and circumstances as borne out from the pleadings and submissions has to see what constitutes the arbitrariness. The Court is of the opinion that the arbitrariness of an Authority is to be assessed from the





facts of the case. There cannot be any direct evidence of arbitrariness but same has to be gathered from the material placed before the Court. The Court has to see whether the act of the respondents under challenge in the petitions is reasonable in view of the terms and conditions provided by the respondents or the act neglects the ground of removal or disengagements of the petitioners. If the act of the respondents as regards removal of the petitioners neglects the consideration of basic ground for their removal as provided under the orders then certainly such act of the respondents has to be held arbitrary. In the orders issued by the respondent- Authority it has been provided that the Assistant Advocates who are being engaged by the JDA after considering their all credentials and eligibility criteria, they can be removed only in case their work performance is not found to be satisfactory. It has come out that the work performance of the petitioners has been certified to be qualitative and satisfactory by the respondent- Authority and still under the directions of the Hon'ble Minister, their engagements have been cancelled for no good reason. The respondents have failed to convince this Court that as to why the lawyers who have gained much experience as Assistant Advocates are being thrown out for no good reason. The respondents may have provided a tenure for engagement of Assistant Advocates while engaging and on completion of





such tenure their engagements would have automatically come to an end but no tenure of their engagement has been provided. Therefore, the respondents are under an obligation to adhere to the terms and conditions as incorporated in the orders of engagements.

21. From the aforesaid discussion and also on scrutiny of the material placed before this Court, the Court can safely held that the act of the respondents in removal / cancellation of the engagements of the petitioners is arbitrary act of the respondents.

22. The Hon'ble Apex Court in the case of **Kumari Shrilekha Vidyaarthi (supra)** has observed in paras 2,4, 7,8,9,15,17,18,19,22,28,29,34, 39, 40, 41, 47 and 49 as under:-

"2. By one stroke, seemingly resorting to the Spoils System alien to our constitutional scheme, the Government of State of Uttar Pradesh has terminated by a general order the appointments of all Government Counsel (Civil, Criminal, Revenue) in all the districts of the State of U.P. w.e.f. February 28, 1990 and directed preparation of fresh panels to make appointments in place of the existing incumbents. This has been done by Circular G.O. No. D-284-Seven-Law-Ministry dated February 6, 1990, terminating all the existing appointments w.e.f. February 28, 1990, irrespective of the fact whether the term of the incumbent had expired or was subsisting. The validity of this State action is





challenged in these matters after the challenge has been rejected by the Allahabad High Court. They have all been heard together since the common question in all of them is the validity of the Circular G.O. No. D-284-Seven-Law-Ministry dated February 6, 1990 issued by the Government of State of Uttar Pradesh.

...

4. Broadly, two questions arise for decision by us in this bunch of matters. These are: Is the impugned circular amenable to judicial review?; and if so, is it liable to be quashed as violative of Article 14 of the Constitution of India, being arbitrary?

...

7. Several arguments were advanced by the learned counsel on both sides relating to the nature of these appointments about which there is a serious contest between the parties. In the present case, it is not necessary for us to consider at length the exact nature of these appointments which is material only for indicating the extent of security of tenure of the appointee to these offices since in our opinion the main attack to the impugned circular on the ground of arbitrariness can be upheld even assuming the security of tenure of the appointees to be minimal as claimed for and on behalf of the State of U.P. We shall, therefore, only refer to the rival contentions regarding the nature of appointments and then proceed on the basis of the minimum status attaching to these appointments to examine whether the ground of arbitrariness is available and vitiates the circular.





8. According to the learned Additional Advocate General of the State of U.P., the relationship of the appointees to these offices of Government Counsel in the districts is purely contractual depending on the terms of the contract and is in the nature of an engagement of a counsel by a private party who can be changed at any time at the will of the litigant, with there being no right in the counsel to insist on continuance of the engagement. The learned Additional Advocate General contended that for this reason, the relationship being purely contractual, which cannot be continued against the will of either party, there is no scope for the argument that the State does not have the right to change the Government Counsel at its will. It is common ground that the appointment, termination and renewal of tenure of all Government Counsel in the districts is governed by certain provisions contained in the Legal Remembrancer's Manual, in addition to Section 24 of the Code of Criminal Procedure, 1973, applicable in the case of Public Prosecutors. The learned Additional Advocate General did not dispute that if Article 14 of the Constitution of India is attracted to this case like all State actions, the impugned circular would be liable to be quashed if it suffers from the vice of arbitrariness. However, his argument is that there is no such vice. In the ultimate analysis, it is the challenge of arbitrariness which the circular must withstand in order to survive. This really is the main point involved for decision by us in the present case.

9. The nature of appointment of the Government Counsel in the districts on the civil, criminal and





revenue sides was hotly debated during the hearing. It was urged on behalf of the petitioners/appellants that the relationship of the Government Counsel with the government is not merely one of client and counsel as in the case of a private client, but one of status in the nature of public employment or appointment to a 'public office' so that termination of the appointment of a Government Counsel cannot be equated with the termination by a private litigant of his counsel's engagement, which is purely contractual, without any public element attaching to it. It was urged that appointment of Public Prosecutors has a statutory status also in view of such appointments being required to be made in accordance with Section 24 of the Code of Criminal Procedure, 1973. Reliance was also placed on certain provisions of the Legal Remembrancer's Manual, which admittedly govern and regulate the appointment of all Government Counsel in the districts as well as the termination of their appointment and renewal of their tenures. It was contended that the relationship between the government and the Government Counsel is, therefore, not purely contractual in nature as in the case of a private litigant and his counsel. An attempt was also made to urge that the appointment of Government Counsel is in the nature of a public employment with the attendant security of tenure of office and the necessary concomitants attaching to it. On the other hand, the learned Additional Advocate General appearing for the State of U.P. contended that the relationship between the government and the Government Counsel is purely contractual like





that of a private litigant and his counsel which enables the government to change its counsel at any time as may be done by a private litigant in the event of loss of confidence between them. He contended that there is no element of public employment in such appointments and the provisions in the Legal Remembrancer's Manual and Section 24 of and Code of Criminal Procedure are merely to provide for making a suitable choice. We shall briefly refer to some provisions which admittedly regulate and govern such appointments, termination and renewal of tenure of the appointees.

...

15. A brief reference to some decisions of this Court, in which the character of engagement of a Government Counsel was considered, may be made. In *Mahadeo v. Shantibhai* [(1969) 2 SCR 422 : 40 ELR 81] it was held that a lawyer engaged by the Railway Administration during the continuance of the engagement was holding an 'office of profit'. The engagement of the Railway counsel was similar to that of the Government Counsel in the present case. It was pointed out that by 'office' is meant the right and duty to exercise an employment or a position of authority and trust to which certain duties are attached; and such an engagement satisfied that test. Even though the decision was rendered in the context of disqualification under the Election Law by holding an 'office of profit', yet it is useful for appreciating the nature of such an engagement or appointment of a counsel by the government. In *Mundrika Prasad Singh v. State of Bihar* [(1979) 4 SCC 701 : (1980) 1 SCR 759] the nature of





appointment of Government Pleaders came up for consideration and it was said that the office of a Government Pleader, as defined in Section 2(7) of the Code of Civil Procedure, 1908, is a public office. Krishna Iyer, J., in that decision, also pointed out that the (SCC p. 707, para 16) "governments under our Constitution shall not play with Law Offices on political or other impertinent considerations as it may affect the legality of the action and subvert the rule of law itself". In that decision, an earlier Madras decision was quoted with approval, wherein, it was clearly held that the duties of the Government Pleader are of a public nature and that the office of a Government Pleader is a public office. The relevant extract is as under : (SCC pp. 706-07, para 15)

"... A Government Pleader is more than an advocate for a litigant. He holds a public office. We recall with approval the observations a Division Bench of the Madras High Court made in *Ramachandran v. Alagiriswami* [AIR 1961 Mad 450 : ILR 1961 Mad 553] and regard the view there, expressed about a Government Pleader's office, as broadly correct even in the Bihar set up.

... the duties of the Government Pleader, Madras are duties of a public nature. Besides, as already explained the public are genuinely concerned with the manner in which Government Pleader discharges his duties because, if he handles his cases badly, they have ultimately to foot the bill. ...

I consider that the most useful test to be applied to determine the question is that laid down by Erle, J. in (1851) 17 QB 149. The three criteria are, source of the office, the tenure and the duties. I have applied that test and I am of opinion that the conclusion that the office is a public office is irresistible."





Similarly, in *Mukul Dalal v. Union of India* [(1988) 3 SCC 144 : 1988 SCC (Cri) 566] , it was held that (SCC pp. 149 & 152, para 6 & 9) "the office of the Public Prosecutor is a public one" and "the primacy given to the Public Prosecutor under the Scheme of the Code (CrPC) has a social purpose".

...

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. This is sufficient to attract Article 14 of the Constitution and bring the question of validity of the impugned circular within the scope of judicial review.

18. The scope of judicial review permissible in the present case, does not require any elaborate consideration since even the minimum permitted scope of judicial review on the ground of arbitrariness or unreasonableness or irrationality, once Article 14 is attracted, is sufficient to invalidate the impugned circular as indicated later. We need not, therefore, deal at length with the scope of judicial review permissible in such cases since several nuances of





that ticklish question do not arise for consideration in the present case.

19. *Even otherwise and sans the public element so obvious in these appointments, the appointment and its concomitants viewed as purely contractual matters after the appointment is made, also attract Article 14 and exclude arbitrariness permitting judicial review of the impugned State action. This aspect is dealt with hereafter.*

...

22. *There is an obvious difference in the contracts between private parties and contracts to which the State is a party. Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual*





obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.

...

28. *Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Article 14 and permit judicial review, we have no hesitation in saying that the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. We, therefore, find it difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14.*

29. *It can no longer be doubted at this point of time that Article 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. (See *Ramana Dayaram Shetty v. International Airport Authority of India* [(1979) 3 SCC 489 : (1979) 3 SCR 1014] and *Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir* [(1980) 4 SCC 1 : (1980) 3 SCR*





1338]). In *Col. A.S. Sangwan v. Union of India* [1980 Supp SCC 559 : 1981 SCC (L&S) 378] while the discretion to change the policy in exercise of the executive power, when not trammelled by the statute or rule, was held to be wide, it was emphasised as imperative and implicit in Article 14 of the Constitution that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone, irrespective of the field of activity of the State, has long been settled. Later decisions of this Court have reinforced the foundation of this tenet and it would be sufficient to refer only to two recent decisions of this Court for this purpose.

...

34. In our opinion, the wide sweep of Article 14 undoubtedly takes within its fold the impugned circular issued by the State of U.P. in exercise of its executive power, irrespective of the precise nature of appointment of the Government Counsel in the districts and the other rights, contractual or statutory, which the appointees may have. It is for this reason that we base our decision on the ground that independent of any statutory right, available to the appointees, and assuming for the purpose of this case that the rights flow only from the contract of appointment, the impugned circular, issued in exercise of the executive power of the State, must satisfy Article 14 of the Constitution and if it is shown to be arbitrary, it must be struck down. However, we have referred to certain provisions relating to initial





appointment, termination or renewal of tenure to indicate that the action is controlled at least by settled guidelines, followed by the State of U.P., for a long time. This too is relevant for deciding the question of arbitrariness alleged in the present case.

...

39. *No doubt, it is for the person alleging arbitrariness who has to prove it. This can be done by showing in the first instance that the impugned State action is uninformed by reason inasmuch as there is no discernible principle on which it is based or it is contrary to the prescribed mode of exercise of the power or is unreasonable. If this is shown, then the burden is shifted to the State to repel the attack by disclosing the material and reasons which led to the action being taken in order to show that it was an informed decision which was reasonable. If after a prima facie case of arbitrariness is made out, the State is unable to show that the decision is an informed action which is reasonable, the State action must perish as arbitrary.*

40. *In the present case, the initial burden on the petition-ers/appellants has been discharged by showing that there is no discernible principle for the impugned action at the district level throughout the State of U.P. since there is nothing in the circular to indicate that such a sweeping action for all districts throughout the State was necessary which made it reasonable to change all Government Counsel in the districts throughout the State, even those whose tenure in office had not expired. Such a drastic action could be justified only on the basis of some*





extraordinary ground equally applicable to all Government Counsel in the districts throughout the State which is reasonable. No such reason appears in the circular.

41. *The impugned circular itself does not indicate the compelling reason, if any, for the drastic step of replacing all the Government Counsel in every branch at the district level throughout the State of U.P., irrespective of the fact whether the tenure of the incumbent had expired or not. The learned Additional Advocate General stated that the circular was issued because the existing panels were made in 1985, 1986 and 1987 and were considered to be not too proximate in point of time in the year 1990 for being continued. The reason, if any, for considering such en bloc change necessary has not been disclosed either in the circular or at the hearing in addition to what is said in para 29 of the counter-affidavit of A.K. Singh, which is referred to later. On behalf of the petitioners/appellants, it was alleged that the en masse change at the district level throughout the State of U.P. was made only for political reasons on account of the recent change in the State Government. We deem it unnecessary to go into this question for want of any specific material either way. Moreover, the arbitrariness, if any, of such an act, would be equally applicable irrespective of the change in the government, which, if at all, would only strengthen the argument in case arbitrariness is proved otherwise. The only reason given in the counter-affidavit of A.K. Singh, Joint Secretary and Joint Legal*





Remembrancer, Government of U.P., is in para 29 thereof which reads as under:

"That the contents of para 38 of the writ petition are not admitted. It is denied that the government took the present decision with a political motive and in an arbitrary manner. It is also submitted that the decision to terminate the professional engagement has been taken in order to streamline the conduct of the government cases and effective prosecution thereof."

...

47. *In view of the above conclusion, all the existing appointees to the posts of Government Counsel in the districts throughout the State of U.P., by whatever name called, governed by the impugned circular dated February 6, 1990, who were in position at the time of issuance of the circular, must continue in office and be dealt with in accordance with the procedure laid down in the L.R. Manual. Those Government Counsel, whose term had then expired or was to expire thereafter, would be considered for renewal of their tenure in the manner prescribed and steps for preparation of a fresh panel to replace them would be taken only if they are found unsuitable for renewal of their term as a result of an informed decision in the manner prescribed. The power of termination of any appointment during the subsistence of the term available to the State Government shall also be available for exercise only in the manner indicated, wherever considered necessary. In short, the status quo ante as on February 28, 1990, on which date the impugned circular dated February 6, 1990 was made effective, will be restored and be maintained till change in any appointment is found necessary and is made in the*





manner prescribed. The fresh appointments, if any, made by the State Government in implementation of the impugned circular dated February 6, 1990, being subject to the validity of the circular and the result of these matters, would stand superseded in this manner. The State Government will implement this direction within two weeks of the date of this order.

...

49. In view of the conclusion reached by us and the above direction restoring status quo ante as on February 28, 1990, we have not gone into individual matters brought before us. Some argument was advanced from both sides in W.P. No. 706 of 1990 (*Shrilekha Vidyarthi v. State of U.P. & Ors.*) wherein the fact of renewal of petitioner's tenure is disputed. It is unnecessary for us to go into that question also since the order we are making, governs the case of all Government Counsel in the districts throughout the State of U.P. including that of the petitioner in this writ petition. The subsequent rights of this petitioner also would be governed in the manner indicated above. If and when such a situation arises, it would be open to the parties to have the dispute, if any, adjudicated wherein the question of renewal of tenure, claimed by the petitioner, can also be gone into."

23. In the case of **Ashok Kumar Nigam (supra)**, the Hon'ble Apex Court in paras 4,5,6,18 and 20 has observed as under:-

"**4.** The order dated 3-4-2008 can usefully be reproduced at this stage:

"From





Acharya Suresh Babu,
Deputy Secretary
Government of Uttar Pradesh.
To,
The District Magistrate,
Lucknow.

Nyay-Anubhag-3-Appointment Lkw, dated 3-4-2008
Sub.: Renewal of tenure of engagement of District
Government Counsel at the district level.

Sir,

With reference to your Letter No. 855/JA(2)/Advocate-Renewal/07 dated 5-3-2007, I have been directed to say that after due consideration, the Hon'ble Governor had kindly ordered not to renew the tenure of engagement of Shri Ashok Kumar Nigam, as District Government Counsel (Criminal), Lucknow.

Accordingly, in the aforesaid background, the engagement order of Shri Ashok Kumar Nigam, as District Government Counsel is hereby terminated.

Please take necessary action at your end and forward your proposal from the panel of advocates for being engaged as District Government Counsel against the consequential vacancy."

5. *Aggrieved with the above order, the respondent filed writ petition before the High Court of Allahabad, Lucknow Bench. In the writ petition, the stand taken by the respondent was that in terms of the rule, the petitioner has a right to continue and in any case for consideration of renewal of his term, the impugned order does not state any reasons and, in fact, does not take into consideration the recommendations made by the District and Sessions Judge and the District Magistrate, who had recommended renewal of the term of the respondent. The High Court after hearing the counsel appearing for the parties, vide its judgment dated 14-10-2009 [Ashok Kumar Nigam v.*





State of U.P., WP (MB) No. 3208 of 2008, order dated 14-10-2009 (All)] , allowed the writ petition, setting aside the order dated 3-4-2008 and even granting further relief to the appellant.

6. *The operative part of the High Court judgment reads as under:*

"For the reasons stated above, the order impugned dated 3-4-2008 is hereby set aside.

We are informed that no person has yet been appointed or engaged in place of the petitioner, in view of the interim order passed by this Court, we, therefore, further provide that the petitioner shall be allowed to continue to discharge the functions and duties of the District Government Counsel till the consideration of the renewal of his term in accordance with law.

We may further clarify that the renewal of the petitioner's term shall be considered in accordance with the relevant provisions of LR Manual [unamended Para 7.08 as the amendments made in LR Manual are subject-matter of challenge in WP No. 7851 (M/B) of 2008 wherein the implementation of the amended provisions stand stayed] if he has not crossed the age of 60 years but if he has already attained the age of 60 years, but has not yet reached the age of 62 years then his case will be considered for extension of his term up to the age of 62 years and for that consideration, if any further formalities are to be completed or some certificates are needed, he shall be given an opportunity to furnish the same, so that his case may be considered in accordance with the relevant rules. Writ petition is allowed. Costs made easy."

...

18. *The order dated 3-4-2008 is even liable to be quashed on another ground, that it is a non-speaking order also suffering from the vice of non-application of mind. As already discussed, the Government has taken an en bloc decision, without recording any*





reason, not to renew the term of any of the Government Counsel. That itself shows that there is no application of mind. In Shrilekha [(1991) 1 SCC 212 : 1991 SCC (L&S) 742] , this Court expressed the opinion that it would be alien to the constitutional scheme to accept the argument of exclusion of Article 14 in contractual matters. The arbitrary act of the State cannot be excluded from the ambit of judicial review merely on the ground that it is a contractual matter. The expression "at any time without assigning any cause", can be divided into two portions, one "at any time", which merely means the termination may be made even during the subsistence of the term of appointment and second, "without assigning any cause" which means without communicating any cause to the appointee whose appointment is terminated. However, "without assigning any cause" is not to be equated with "without existence of any cause".

...

20. *The order dated 3-4-2008, which we have reproduced above, clearly shows non-application of mind and non-recording of reasons, which leads only to one conclusion, that the said order was an arbitrary exercise of power by the State. We cannot find any fault with the reasoning of the High Court in that behalf. But we do find some merit in the contention raised on behalf of the appellant State that the High Court should not have directed appointments while regulating the age, as has been done by the High Court in operative part of its judgment. There is a right of consideration, but none can claim right to appointment. Para 7.06 states that*





renewal beyond 60 years shall depend upon continuous good work, sound integrity and physical fitness of the counsel. These are the considerations which have been weighed by the competent authority in the State Government to examine whether renewal/extension beyond 60 years should be granted or not. That does not ipso facto means that there is a right to appointment up to the age of 60 years irrespective of work, conduct and integrity of the counsel. The rule provides due safeguards as it calls for the report of the District Judge and the District Officer granting renewal."

24. In the case of **Johri Mal (supra)**, the Hon'ble Apex court in paras 30,35,51,59,60,85 and 89 has observed as under:-

"**30.** It is well settled that while exercising the power of judicial review the court is more concerned with the decision-making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the court is not competent to exercise its power when there are serious disputed questions of facts; when the decision of the Tribunal or the decision of the fact-finding body or the arbitrator is given finality by the statute which governs a given situation or which, by nature of the activity the decision-maker's opinion on facts is final. But while examining and scrutinising the decision-making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the court of judicial review can reappreciate the





findings of facts depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well-nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touchstone of the tests laid down by the court with special reference to a given case. This position is well settled in the Indian administrative law. Therefore, to a limited extent of scrutinising the decision-making process, it is always open to the court to review the evaluation of facts by the decision-maker.

...

35. *In Wade's Administrative Law, 8th Edn., at p. 551-552, the author states:*

"Rights and remedies: Rights depend upon remedies. Legal history is rich in examples of rules of law which have been distilled from the system of remedies, as the remedies have been extended and adapted from one class of case to another. There is no better example than habeas corpus. This remedy, since the sixteenth century the chief cornerstone of personal liberty, grew out of a medieval writ which at first played an inconspicuous part in the law of procedure: it was used to secure the appearance of a party, in particular where he was in detention by some inferior court. It was later invoked to challenge detention by the King and by the Council; and finally it became the standard procedure by which the legality of any imprisonment could be tested. The right to personal freedom was almost a by-product of the procedural rules.

This tendency has both good and bad effects. It is good in that the emphasis falls on the practical methods of enforcing any right. Efficient remedies are of the utmost importance, and the remedies provided by English administrative law are notably





efficient. But sometimes the remedy comes to be looked upon as a thing in itself, divorced from the legal policy to which it ought to give expression. In the past this has led to gaps and anomalies, and to a confusion of doctrine to which the courts have sometimes seemed strangely indifferent."

...

51. A Public Prosecutor is not only required to show his professional competence but is also required to discharge certain administrative functions. The District Officer was of the opinion that in a district like Meerut the term of the appointment should not be extended as he has no effective control over the other ADGCs for "taking steps". The approach of the District Officer cannot be said to be wholly irrational. As noticed hereinbefore, the District Judge, Meerut has also agreed thereto. The action on the part of the State, therefore, cannot be said to be wholly without jurisdiction requiring interference by the High Court in exercise of its power of judicial review.

...

59. This Court in *Kumari Shrilekha Vidyarthi v. State of U.P.* [(1991) 1 SCC 212 : 1991 SCC (L&S) 742] opined that the appointment made in the post of District Government Counsel is not contractual in nature. It was held that the Government Law Officers including the Public Prosecutors are holders of public offices. It was further opined that even in a case of contract the State cannot act arbitrarily and such arbitrary action is liable to be set aside as violative of Article 14 of the Constitution of India.

60. In *Kumari Shrilekha Vidyarthi* [(1991) 1 SCC 212 : 1991 SCC (L&S) 742], the Court sought to draw a distinction between the powers of public authorities





vis-à-vis the private authorities referring to Wade's Administrative Law, 6th Edn., p. 401 to the following effect and stating: (SCC p. 238, para 25)

"For the same reasons there should in principle be no such thing as unreviewable administrative discretion, which should be just as much a contradiction in terms as unfettered discretion. The question which has to be asked is what is the scope of judicial review, and in a few special cases the scope for the review of discretionary decisions may be minimal. It remains axiomatic that all discretion is capable of abuse, and that legal limits to every power are to be found somewhere."

...

85. *Keeping in mind the aforementioned legal principles the question which arises for consideration in these appeals is the nature and extent of consultation a Collector is required to make with the District Judge.*

...

89. *For the aforementioned reasons, we are of the opinion that the impugned judgment cannot be sustained which is set aside accordingly. The appeals are allowed but in the facts and circumstances of the case, there shall be no order as to costs."*

The view of this Court finds support from the judgments in case of ***Kumari Shrilekha Vidyaarathi (surpa), Johri Mal (supra) and Ashok Kumar Nigam (supra)***.

25. In the case of ***Anita & anr. (supra)***, relied upon by the counsel appearing for the JDA, the Hon'ble Apex Court in paras 15, 16 and 17 has observed as under:-





15. *It is relevant to note that the respondents at the time of appointment have accepted an agreement in accordance with Appendix 'B' attached to the Government Resolution dated 15-9-2006. The terms of the agreement specifically lay down that the appointment is purely contractual and that the respondents will not be entitled to claim any rights, interest and benefits whatsoever of the permanent service in the Government. We may usefully refer to the relevant clauses in the format of the agreement which read as under:*

"1. The First Party hereby agrees to appoint Shri/Smt _____ (Party II) as a _____ on contract basis for a period of 11 months commencing from _____ to _____ (mention date) on consolidated remuneration of Rs _____ (Rupees _____ only) per month, and said remuneration will be payable at the end of each calendar month according to British Calendar. It is agreed that IInd party shall not be entitled for separate T.A. and D.A. during the contract period....

2.

3.

4.

5. Assignment of 11 months' contract is renewable for a further two terms of 11 months (i.e. total 3 terms), subject to the satisfaction of the competent authority, and on its recommendations.

6. Party II will not be entitled to claim any rights, interest, benefits whatsoever of the permanent service in the Government."

16. *The above terms of the agreement further reiterate the stand of the State that the appointments were purely contractual and that the respondents shall not be entitled to claim any right or*





interest of permanent service in the Government. The appointments of the respondents were made initially for eleven months but were renewed twice and after serving the maximum contractual period, the services of the respondents came to an end and the Government initiated a fresh process of selection. The conditions of the respondents' engagement are governed by the terms of agreement. After having accepted the contractual appointment, the respondents are estopped from challenging the terms of their appointment. Furthermore, the respondents are not precluded from applying for the said posts afresh subject to the satisfaction of other eligibility criteria.

17. *The High Court did not keep in view the various clauses in the Government Resolutions dated 21-8-2006 and 15-9-2006 and also the terms of the agreement entered into by the respondents with the Government. Creation of posts was only for administrative purposes for sanction of the amount towards expenditure incurred but merely because the posts were created, they cannot be held to be permanent in nature. When the Government has taken a policy decision to fill up 471 posts of Legal Advisors, Law Officers and Law Instructors on contractual basis, the Tribunal and the High Court ought not to have interfered with the policy decision to hold that the appointments are permanent in nature."*





26. In the aforesaid judgment the Hon'ble Apex Court has relied upon the conditions of the engagement as incorporated in the agreement. In the present case, the conditions of engagement also include that the persons engaged as Assistant Advocates can be removed if their work performance is not found to be satisfactory but the respondents have not adhered to the said condition as they have not been able to point out that the work performance of the petitioners is not satisfactory.

27. In the case of **Om Prakash Joshi (supra)**, relied upon by the counsel appearing for the respondent – JDA, the Hon'ble Division Bench of the Rajasthan High Court, has held as under:-

"36. Shri Dalpat Raj Bhandari, learned counsel appearing for the petitioners has not cited a single example of arbitrariness in any of the appointment. Mere levelling of allegations is not sufficient. The petitioners will have to prove the same by cogent and convincing evidence/documents. In the absence of which, the same simply deserves to be ignored. As already noticed, so far the posts of Advocate General and Additional Advocate General are concerned, they are the constitutional posts and appointments on these posts are made in accordance with the provisions contained in the Constitution of India. These posts are not the posts under the government service and it is nowhere laid-down that such posts should be advertised. So far as the





posts of Government Advocate and Public Prosecutors are concerned, these posts are filled up in accordance with the Rajasthan Judicial Manual read with Sec. 24 of the Code of Criminal Procedure. As rightly pointed out by Mr. Mehta, learned Advocate General for the State of Rajasthan, that the State Government has liberty to appoint Advocates of its choice and confidence in the interest of State litigation. We have already referred to the appropriate rules which are in existence and regulate appointment, termination etc. of the Government Advocates, Public Prosecutors etc. The State Government may or may not ascertain the view of the Advocate General or the Chief Justice or any Judges of the High Court or to take strict view of any committee that may be constituted for the purpose. It may or may not ascertain the view of any of them while making such appointments. Even where it chooses to consult them their views are not binding on it. It is for the State Government to select its own Advocates to conduct cases on behalf of the State in the High Court and in the courts subordinate to it. Change of Ministry and political party has nothing to do in the matter because, it is the State Government who makes appointment/termination etc.

...

38. *The Advocates are enrolled by the Rajasthan Bar Council and it is nowhere provided under any law that the State has to provide room for their work, nor it is possible for the State Government to do so, because, litigation in the State is not*





dependent upon working of the Government, nor this Hon'ble Court can justifiably issue any direction to the State Government to provide avenues for their works. Likewise, the Constitution of India nowhere provides that there must be equal distribution of works and equal opportunity to seek work and compete for the persons like the petitioners, namely, the Advocates. This Court will not be justified to interfere in the matter of engagement of Lawyers by the State Government and that too, in the manner as suggested by the petitioners. It is nowhere enjoined upon the State Government to make equal distribution of the State litigation amongst the Lawyers who want to serve. It is well settled law that the State is free to appoint Advocates of its own choice and confidence. There is no requirement of law to advertise posts of Advocate General and the petitioner are free to apply for the posts which are advertised. The posts of Advocate General/Addl. Advocate General are not the posts under the Government service and therefore, they are not advertised. It is settled law that no one has a vested right to claim appointment even if he is selected by any Committee/Board or Agency. Besides, for the posts in question, no one can claim a right even for consideration because, these posts need not be advertised as State Government is empowered to make such professional appointments as per its requirement and to appoint the Advocates of its own choice and confidence."





28. The said case is also of no help to the respondents as therein the issue was as regards appointment of Government Counsels and the Court did not interfere in the matter of engagement of lawyers by the State Government saying that it is a settled law that the State is free to appoint the Advocates of its own choice and confidence. This Court is also of the view that the State has an authority to engage the lawyers of its own choice and confidence, however, any action for engagement or their removal should be reasonable and not arbitrary. When the terms and conditions of engagements of Assistant Advocates like the petitioners provide for their removal only on count of work performance then the respondents could not disengage or cancel their engagements at their whims.

29. In the case of **Sushi Kumar Gupta (supra)**, delivered by the Allahabad High Court and relied upon by the counsel appearing for the JDA, the Allahabad High Court held that the words "appointment" and "engagement" have different connotation. The word "appointment" is related to permanent post whereas the word "engagement" is related to temporary post. This Court also does not dispute these observations of the Allahabad High Court. However, this Court is of the view that though the engagements of the petitioners as Assistant Advocates may not be permanent in nature or their appointment is like a servant, however, their





engagement and removal should be reasonable and as per the terms and conditions provided by the respondent JDA themselves.

30. The Hon'ble Apex Court in the case of **R. Muthukrishnan v. The Registrar General of the High Court of Judicature at Madras, in Writ Petition (C) No.612 of 2012, decided on January 28, 2019** has observed that the nobility of the legal system is to be ensured at all costs so that the Constitution remains vibrant and to expand its interpretation so as to meet new challenges. The Hon'ble Apex Court in the aforesaid case has observed in paras 14, 22 and 23 as under:-

"14. The legal profession cannot be equated with any other traditional professions. It is not commercial in nature and is a noble one considering the nature of duties to be performed and its impact on the society. The independence of the Bar and autonomy of the Bar Council has been ensured statutorily in order to preserve the very democracy itself and to ensure that judiciary remains strong. Where the Bar has not performed the duty independently and has become a sycophant that ultimately results in the denigrating of the judicial system and judiciary itself. There cannot be existence of a strong judicial system without an independent Bar.

...

22. The Bar is the mother of the judiciary and consists of great jurists. The Bar has produced great Judges, they have adorned the judiciary and





rendered the real justice, which is essential for the society.

23. *The role of a lawyer is indispensable in the system of delivery of justice. He is bound by the professional ethics and to maintain the high standard. His duty is to the court, to his own client, to the opposite side, and to maintain the respect of opposite party counsel also. What may be proper to others in the society, may be improper for him to do as he belongs to a respected intellectual class of the society and a member of the noble profession, the expectation from him is higher. Advocates are treated with respect in society. People repose immense faith in the judiciary and judicial system and the first person who deals with them is a lawyer. Litigants repose faith in a lawyer and share with them privileged information. They put their signatures wherever asked by a lawyer. An advocate is supposed to protect their rights and to ensure that untainted justice is delivered to his cause."*

31. In view of the observations of the Hon'ble Apex Court, as quoted above, this Court is of the opinion that the lawyers have some dignity and they cannot be treated like a servant. Their engagement or disengagement has to be as per the reasonable terms and conditions. The dignity of a lawyer cannot be put to compromise. The respondents-authorities cannot be allowed to engage or disengage a lawyer for a legal work at their whims. The engagement or





disengagement has to be in accordance with some procedure and terms and conditions.

32. In the present case, the respondents neglected the terms and conditions incorporated by them in the orders issued by them and therefore the act of disengagement or cancellation of the engagement of the petitioners from being Assistant Advocates, is held to be an arbitrary act of the respondents and that deserves to be quashed and set aside.

33. Accordingly, the writ petitions are allowed. The orders of cancellation of engagement of the petitioners as Assistant Advocates are quashed and set aside. The respondent- JDA is directed to continue the petitioners as Assistant Advocates on the terms and conditions and remuneration as applicable in present.

34. Looking to the controversy and the dispute agitated before this Court, this Court would also like to direct the respondent- JDA as under:-

(i) The respondents shall frame a comprehensive policy/ guidelines / instructions as regards the eligibility, tenure and procedure regarding engagement and removal / disengagement for Assistant Advocates;

(ii) The petitioners whose writ petitions are allowed by this order shall be allowed to continue as Assistant Advocates till their work is found to be qualitative and satisfactory or any such policy/ guidelines/ instructions are framed as





directed in above para (i), and fresh engagements are made as per such policy; and

(iii) The respondents shall also incorporate provision in the policy / guidelines/ instructions so that while engaging the Assistant Advocates and also panel Advocates, the representation of women lawyers and lawyers from scheduled caste/ tribe, backward classes and weaker sections of the society can be ensured as remuneration is being paid from public exchequer and the JDA is an instrumentality of the Government of Rajasthan.

35. In view of the order passed in the main petitions, the stay applications and pending applications, if any also stand disposed of.

36. The Registry is directed to place a copy of this order in other connected petitions.

(GANESH RAM MEENA),J

Sharma NK/Dy. Registrar