

State Of U.P. & Ors vs Ajay Kumar Sharma & Anr on 13 November, 2013

Equivalent citations: AIR 2014 SUPREME COURT 352, 2014 (3) SCC 568, 2013 AIR SCW 6529, 2014 (1) ALJ 313, (2014) 2 RECCRIR 111, 2014 CRILR(SC MAH GUJ) 1 72, (2014) 1 CRILR(RAJ) 72, (2014) 1 JCR 249 (SC), (2014) 1 ALL WC 33, 2014 CRILR(SC&MP) 72, 2014 (1) SERVLR 195, (2013) 132 ALLINDCAS 17 (SC), 2013 (13) SCALE 711, (2014) 2 RECCIVR 164, 2013 (132) ALLINDCAS 17, (2014) 2 SCT 10, (2013) 101 ALL LR 744, (2014) 1 CURCRIR 350, (2013) 13 SCALE 711

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Bench: C. Nagappan, G.S. Singhvi

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.10290 OF 2013
(Arising out of SLP(C) No. 11834 of 2013)

State of U.P. and others
....Appellants

versus

Ajay Kumar Sharma and another

....Respondents

J U D G M E N T

G.S. SINGHVI, J.

1. Leave granted.

2. Legal Remembrancer's Manual (for short, 'LR Manual') framed by the Government of Uttar Pradesh and Section 24 of the Code of Criminal Procedure (Cr.P.C.) contain a comprehensive mechanism for appointment of District Government Counsel for Civil, Criminal and Revenue Courts in the State and renewal of their term. However, from 1990 onwards these provisions have become victim of the spoil system and have been misused by the party in power for conferring favours upon chosen advocates. In last 21/2 decades the appointments and renewal or non-renewal of the term of

District Government Counsel and termination of their services generated huge litigation, the disposal of which has consumed substantial time of the Allahabad High Court and this Court.

3. In *Kumari Shrilekha Vidyarthi v. State of U.P.* (1991) 1 SCC 212, this Court declared as arbitrary and unconstitutional the State Government's decision to en masse terminate the appointment of District Government Counsel in all the districts as a prelude to fresh appointments.

4. In *State of U.P. v. Ramesh Chandra Sharma* (1995) 6 SCC 527, this Court interpreted paragraph 7.06(3) of the LR Manual and observed:

“In view of the clear provision in clause (3) of para 7.06 that the ‘appointment of any legal practitioner as a District Government Counsel is only professional engagement’, it is difficult to appreciate the submission for which sustenance is sought from the provisions contained in the same Manual. The appointment being for a fixed term and requiring express renewal in the manner provided in the Manual, there is no basis to contend that it is not a professional engagement of a legal practitioner but appointment to a post in government service which continues till attaining the age of superannuation. In the earlier decisions of this Court including *Shrilekha Vidyarthi*, the appointment of District Government Counsel under the Manual has been understood only as a professional engagement of a legal practitioner. This contention is, therefore, rejected.”

5. In *Harpal Singh Chauhan v. State of U.P.* (1993) 3 SCC 552, this Court analysed the provisions of LR Manual and observed:

“As already mentioned above, Section 24 of the Code does not speak about the extension or renewal of the term of the Public Prosecutor or Additional Public Prosecutor. But after the expiry of the term of the appointment of persons concerned, it requires the same statutory exercise, in which either new persons are appointed or those who have been working as Public Prosecutor or Additional Public Prosecutor, are again appointed by the State Government, for a fresh term. The procedure prescribed in the Manual — to the extent it is not in conflict with the provisions of Section 24 — shall be deemed to be supplementing the statutory provisions. But merely because there is a provision for extension or renewal of the term, the same cannot be claimed as a matter of right.

It is true that none of the appellants can claim, as a matter of right, that their terms should have been extended or that they should be appointed against the existing vacancies, but, certainly, they can make a grievance that either they have not received a fair treatment by the appointing authority or that the procedure prescribed in the Code and in the Manual aforesaid, has not been followed. While exercising the power of judicial review even in respect of appointment of members of the legal profession as District Government Counsel, the Court can examine whether there was any infirmity in the ‘decision- making process’. Of course, while doing so, the Court

cannot substitute its own judgment over the final decision taken in respect of selection of persons for those posts.”

6. In *State of U.P. v. Johri Mal* (2004) 4 SCC 714, this Court (three Judge Bench) considered the question whether the respondent who had been appointed as District Government Counsel (Criminal) at Meerut in January, 1993 was entitled to have the term of his appointment renewed. The Division Bench of the High Court allowed the writ petition filed by the respondent and directed the State Government to renew the term of his appointment. This Court referred to the provisions of Section 24 of the Code of Criminal Procedure and amendment made therein by the Government of Uttar Pradesh as also LR Manual, some judicial precedents including *Kumari Shrilekha Vidyarthi v. State of U.P.* (supra), *Harpal Singh Chauhan v. State of U.P.* (supra), *State of U.P. v. U.P. State Law Officers Association* (1994) 2 SCC 204, *State of U.P. v. Ramesh Chandra Sharma* (supra) and made the following significant observations about the nature of the office held by District Government Counsel:

“The District Government Counsel appointed for conducting civil as also criminal cases hold offices of great importance. They are not only officers of the court but also the representatives of the State. The court reposes a great deal of confidence in them. Their opinion in a matter carries great weight. They are supposed to render independent, fearless and non-partisan views before the court irrespective of the result of litigation which may ensue.

The Public Prosecutors have greater responsibility. They are required to perform statutory duties independently having regard to various provisions contained in the Code of Criminal Procedure and in particular Section 320 thereof.

The Public Prosecutors and the Government Counsel play an important role in administration of justice. Efforts are required to be made to improve the management of prosecution in order to increase the certainty of conviction and punishment for most serious offenders and repeaters. The prosecutors should not be overburdened with too many cases of widely varying degrees of seriousness with too few assistants and inadequate financial resources. The prosecutors are required to play a significant role in the administration of justice by prosecuting only those who should be prosecuted and releasing or directing the use of non-punitive methods of treatment of those whose cases would best be processed.

The District Government Counsel represent the State. They, thus, represent the interest of the general public before a court of law. The Public Prosecutors while presenting the prosecution case have a duty to see that innocent persons may not be convicted as well as an accused guilty of commission of crime does not go unpunished. Maintenance of law and order in the society and, thus, to some extent maintenance of rule of law which is the basic fibre for upholding the rule of democracy lies in their hands. The Government Counsel, thus, must have character, competence, sufficient experience as also standing at the Bar. The need for employing

meritorious and competent persons to keep the standard of the high offices cannot be minimised. The holders of the post have a public duty to perform. Public element is, thus, involved therein.

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.” The Court then considered whether the High Court was right in issuing a mandamus for renewal of the term of the respondent as District Government Counsel (Criminal):

“The age-old tradition on the part of the State in appointing the District Government Counsel on the basis of the recommendations of the District Collector in consultation with the District Judge is based on certain principles. Whereas the District Judge is supposed to know the merit, competence and capability of the lawyers concerned for discharging their duties, the District Magistrate is supposed to know their conduct outside the court vis-à-vis the victims of offences, public officers, witnesses, etc. The District Magistrate is also supposed to know about the conduct of the Government Counsel as also their integrity.

We are also pained to see that the State of Uttar Pradesh alone had amended sub-section (1) of Section 24 and deleted sub-sections (4), (5) and (6) of Section 24 of the Code of Criminal Procedure.

Evidently, the said legislative step had been taken to overcome the decision of this Court in Kumari Shrilekha Vidyarthi. We do not see any rationale in the said action. The learned counsel appearing for the State, when questioned, submitted that such a step had been taken having regard to the fact that exhaustive provisions are laid down in the Legal Remembrancer’s Manual which is a complete code in itself. We see no force in the said submission as a law cannot be substituted by executive instructions which may be subjected to administrative vagaries. The executive instructions can be amended, altered or withdrawn at the whims and caprice of the executive for the party in power. Executive instructions, it is beyond any cavil, do not carry the same status as of a statute.

The State should bear in mind the dicta of this Court in Mundrika Prasad Singh as regards the necessity to consult the District Judge. While making appointments of District Government Counsel, therefore, the State should give primacy to the opinion of the District Judge. Such a course

of action would demonstrate fairness and reasonableness of action and, furthermore, to a large extent the action of the State would not be dubbed as politically motivated or otherwise arbitrary. As noticed hereinbefore, there also does not exist any rationale behind deletion of the provision relating to consultation with the High Court in the matter of appointment of the Public Prosecutors in the High Court. The said provision being a salutary one, it is expected that the State of U.P. either would suitably amend the same or despite deletion shall consult the High Court with a view to ensure fairness in action.”

7. The aforesaid judgment was followed by a two Judge Bench in State of U.P. v. Rakesh Kumar Keshari (2011) 5 SCC 341 and it was held that the respondent was not entitled to claim renewal of his term as of right. Paragraphs 32 to 36 of that judgment read as under:

“32. This Court in Johri Mal case further held that the L.R. Manual contains executive instructions and is not law within the meaning of Article 13. After emphasising that a Public Prosecutor is not only required to show his professional competence but is also required to discharge certain administrative functions, it is held that the respondent therein had no effective control over ADGCs for taking steps and therefore action on the part of the State was not wholly without jurisdiction requiring interference by the High Court in exercise of its power of judicial review while setting aside the direction given by the High Court to constitute the five-member collegium headed by the District Judge to make recommendation for appointment to the post of DGC (Criminal), this Court had to take pains to explain to all concerned that the appointment of the District Government Counsel cannot be equated with the appointments of the High Court and the Supreme Court Judges and a distinction must be made between professional engagement and a holder of high public office.

33. This Court has explained that various doctrines and the provisions of the Constitution which impelled the Supreme Court in Special Reference case, to give the meaning of “consultation” as “concurrence” and wherein the Chief Justice of India will have a primacy, cannot be held to be applicable in the matter of consultation between the District Magistrate and the District Judge for the purpose of preparation of a panel of the District Government Counsel.

34. Applying the principles of law laid down by this Court in the abovequoted decision, this Court finds that the decision of the State Government not to accept the recommendation made by the District Magistrate cannot be said to be arbitrary. There is no manner of doubt that the ADGC (Criminal) are not only officers of the court but also the representatives of the State. They represent the interest of the general public before a court of law. The holders of the post have a public duty to perform. However, in the matter of engagement of ADGC (Criminal) the concept of public office does not come into play. The choice is that of the Government and none can claim a right to be appointed because it is a position of great trust and confidence.

Article 14, however, in a given case, may be attracted to a limited extent if the State fails to discharge its public duty or acts in defiance, deviation and departure of the principles of law.

35. This position is again made clear in an unreported decision of this Court dated 11-11-2010 rendered in Civil Appeal No. 3785 of 2003. In the said case the State of U.P. by its order dated 3-6-2002 had rejected the request of the respondent Satyavrat Singh for renewal of the extension of his term as a District Government Counsel (Criminal). The respondent had challenged the same in the writ petition. The Allahabad High Court had quashed the order 3-6-2002 refusing renewal of the term of the respondent as a District Government Counsel (Criminal) and had directed the State Government to renew the term of the respondent as Government Counsel. While allowing the appeal filed by the State Government this Court has held as under:

“It is difficult to discern as to how the High Court has upheld the unstatable proposition advanced by the respondent for extension of his term as Government Counsel. We wish to say no more in this matter since the subject-matter that arises for our consideration is squarely covered by the decision of this Court in State of U.P. v. Johri Mal. This Court took the view that in the matter of engagement of a District Government Counsel, a concept of public office does not come into play. The choice of a counsel is for the Government and none can claim a right to be a counsel. There is no right for appointment of a Government Counsel.

The High Court has committed a grave error in renewing the appointment of the respondent as Government Counsel.

Needless to state that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot compel the State to utilise the services of an advocate irrespective of its choice. It is for the State to select its own counsel.

The impugned order of the High Court is set aside. The appeal is accordingly, allowed.”

36. Thus it was not open to the respondents to file writ petition under Article 226 of the Constitution for compelling the appellants to utilise their services as advocates irrespective of choice of the State. It was for the State to select its own counsel. In view of the poor performance of the respondents in handling/conducting criminal cases, this Court is of the opinion that the High Court committed a grave error in giving direction to the District Magistrate to forward better particulars of 10 candidates whose names were included in the two panels prepared pursuant to the advertisement dated 16-1-2004 and in setting aside the order dated 7-9-2004 of the Principal Secretary to the Chief Minister, U.P. calling upon the District Magistrate to send another panel/list for appointment to the two posts of ADGC (Criminal).” (emphasis added)

8. In the meanwhile, the State Government issued order dated 13.8.2008 by which LR Manual was amended and the requirement of consultation with District Judge in the matter of appointment of District Government Counsel was deleted. That order was challenged before the High Court in W.P.

(C) No.7851/2008 and a batch of more than 100 writ petitions. The same were disposed of by a Division Bench of the High Court vide order dated 6.1.2012, the operative portion of which reads as under:

“253. (1) In view of above, the writ petitions are allowed and a writ in the nature of certiorari is issued quashing the impugned Government Order dated 13.8.2008 contained in Annexure No.1 to writ petition No.7851(M/B) of 2008 to the extent of the amendment made in the L.R. Manual deleting the consultation process with the District Judge with consequential benefits, (2) A further writ, order or direction in the nature of certiorari is issued quashing the orders dated 17.4.2011 and 20.4.2011, contained as Annexures 1 and 2 respectively to writ petition No.3922(M/B) of 2011, order dated 28.4.2011, followed by order dated 30.4.2011 contained as Annexures 26 and 27 respectively in writ petition No.4817(M/B) of 2011, order dated 17.4.2011 and order dated 19.4.2011, contained as Annexures 1 and 2 respectively in writ petition No.4084(M/B) of 2011 and the impugned order dated 18.4.2011, passed in Writ Petition No.3860(M/B) of 2011 contained in Annexure No.1 with costs, Cost is quantified to Rs.2 lacs for each of the petitioners of the aforesaid four writ petitions, out of which, the petitioners shall be entitled to withdraw an amount of Rs. 1,50,000/- and the rest Rs.50,000/- shall be transmitted to the Mediation Centre of this Court at Lucknow. Let the cost be deposited within two months from today. In the event of default to deposit the cost, it shall be recovered as arrears of land revenue by the District Magistrate concerned and thereafter be remitted to this Court. Registry to take follow-up action.

(3) A further writ, order or direction in the nature of mandamus is issued directing the State Government to remove all those District Government Counsel or Addl. District Government Counsel who have been involved in criminal case or against whom an investigation of criminal case is pending after serving a show cause notice within a period of two months.

(4) A further writ, order or direction in the nature of mandamus is issued commanding the State of U.P to re-advertise the posts in question keeping in view the observation made in the body of judgment and take a fresh decision strictly in accordance with L.R. Manual expeditiously, say within a period of three months. The petitioners, who were working at the time of filing of the writ petitions shall be permitted to continue to discharge their obligation till their case is reconsidered in accordance with the provisions contained in L.R. Manual after fresh advertisement of the vacancies in the newspaper.

Let a copy of the judgment be sent to Hon'ble the Chief Justice of this Court, the Chief Secretary of the State Government and the Principal Secretary, Law forthwith by the registry.” Similar writ petitions were disposed of by the High Court vide orders dated 11.1.2012, 12.1.2012 and 9.2.2012 by adopting the reasons contained in order dated 6.1.2012.

9. The State of Uttar Pradesh challenged the aforesaid orders in SLP(C) Nos.4042-4043/2012 – State of U.P. and others v. Sadhna Sharma and batch matters. At the hearing of the special leave petitions, a statement was made on behalf of the State Government that it has taken a policy decision to implement the High Court’s order and not to press the matter pending before this Court. In view of the statement made on behalf of the State Government, this Court disposed of the special leave petitions vide order dated 17.7.2012 (revised), the relevant portions of which are reproduced below:

“We may notice that the primary contention raised before us is not with regard to the constitutional validity or otherwise of the amended provisions of the Criminal Procedure Code but the contention is that the State Government despite its policy decision is not implementing the judgment of the High Court in its true spirit and substance. To substantiate such a plea, the argument is that the High Court had specifically directed in Clause (15) in para 248 as well as Clauses (2) & (4) in para 253 (operative part of the judgment) that the cases of the persons in position should be reconsidered in accordance with the provisions contained in the L.R. Manual as well as that the District Government Counsel could not be removed even under existing L.R. Manual without considering their case for renewal.

To the contra, the argument raised before the High Court is that this clause is applicable only to that class of persons and not to the private respondents before the High Courts and appellants herein.

Since there is unanimity of the view that the judgment of the High Court is required to be implemented in true spirit and substance, we consider it necessary to issue certain clarifications with regard to the judgment in question and despite the fact that the State Government has chosen to withdraw the Special Leave Petition against the judgment and has taken a policy decision to implement the same. The directions are:-

(1) In terms of the above referred clauses of the judgment of the High Court, the vacancies which have already been filled in accordance with Section 24 of the Criminal Procedure Code and certain provisions of the L.R. Manual and unamended provisions of the Criminal Procedure Code. To be more specific, i.e., the appointments which have been made in consultation with the High Court and/or the District and Sessions Judge of the respective district and who continue to function in the respective posts shall not be disturbed.

(2) Against the existing vacancies the cases of all the appellants herein, who are in service or are out of service as well as any of the petitioners before the High Courts, whose services were terminated at any point of time including the persons who had filed writ petitions in the High Court during the pendency of the writ petition and/or the present civil appeals shall be considered for renewal / reconsideration in accordance with the judgment of this Court within a period of three months from today.

(3) For implementation of these directions the Secretary, Department of Law and Justice, State Government, shall be personally responsible and should complete the exercise within the stipulated period to ensure that required number of public prosecutors are present in the Courts for expeditious disposal of cases.

The renewal/reconsideration/appointment shall be done by the concerned authority in the above manner. We would clarify that all the appointments either directly or by way of renewal / reconsideration shall only be made in consultation with the High Court and/or the District and Sessions Judges as the case may be. All concerned shall duly abide, and without default, with the process of selection and appointment, as afore-stated.”

10. Some of the existing incumbents, whose appointments were not renewed, filed Writ Petition Nos. 6069/2012 and 6233/2012 before the High Court. The same were disposed of in terms of order dated 17.7.2012 passed by this Court in SLP(C) Nos.4042-4043/2012 and batch matters.

11. In *State of Uttar Pradesh v. Ashok Kumar Nigam* (2013) 3 SCC 372, a two Judge Bench of this Court referred to paragraphs 7.06 and 7.08 of LR Manual and held that order dated 3.4.2008 passed by the State Government refusing to renew the appointment of the respondent was vitiated due to non- application of mind. At the same time, the two Judge Bench made it clear that the High Court could not have directed appointment while regulating the age of the appointees. Paragraphs 20 and 21 of that judgment are as under:

“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.

21. Thus, for the above-recorded reasons, while declining to interfere with the judgment of the High Court, we direct that the Government shall consider cases of the respondents in these petitions for renewal in accordance with the procedure prescribed and criteria laid down under Paras 7.06 to 7.08 of the LR Manual. The consideration shall be completed as expeditiously as possible and, in any case, not later than three months from today.” (emphasis added)

12. In the purported compliance of the directions given by the High Court and this Court, the State Government considered the cases of respondent Nos.1 and 2 and others for renewal of their appointments as District Government Counsel but rejected the same vide orders dated 22.10.2012 and 26.10.2012. Respondent Nos.1 and 2 challenged those orders in Writ Petition (M/B) No.9127/2012 filed before the High Court. They also prayed for issue of a mandamus commanding the opposite parties (the appellants herein) to allow them to continue as District Government Counsel and renew the term of their appointment as per the recommendations of District Judges. Similar writ petitions were filed by others whose appointments had not been renewed.

13. On 7.12.2012, the Division Bench of the High Court passed the following order:

“We have heard learned counsel for parties and perused the pleadings of writ petition.

Learned Advocate General, State of U.P. submitted that he will personally look into the files of all the orders which are impugned in this Bunch of writ petitions.

According to learned Advocate General the legal position as decipherable from the judgments of Hon'ble the Apex Court in such cases as the one in hand of the bunch is that there is a duty cast upon the State to examine and assess the performance and records of candidates dispassionately but there is no corresponding right in their favour to claim appointments or renewal of appointments. Thus, according to him there would be no ambiguity in dealing with these matters during the course of exercise to be undertaken by the Administrative Department.

It would not be out of place to observe that in the order passed earlier, this Court has only reiterated the directions as given by the Hon'ble Apex Court.

Besides, the State must also remember that the Special Leave Petition filed by it against the judgment of coordinate Bench has been withdrawn and thus the State has accepted the verdict, which, inter- alia, provides for the primacy of opinion of learned District Judge. None-the-less, District Judges are also expected not to record their opinions without obtaining opinions of courts where the candidates have worked as Government pleaders and so should also be in the case of District Magistrates concerned in order to provide independent views on the basis of materials on record.

At this stage, learned Advocate General prays for and is granted adjournment till 16.01.2013 to ensure exercise in terms of the judgments and orders of Hon'ble the Apex Court as well as this High Court before the next date of hearing.

List this matters on 16.01.2013 along with Writ Petition Nos. 9992 (M/B) of 2012, 10134 (M/B) of 2012, 10144 (M/B) of 2012, 10152 (M/B) of 2012, 10153 (M/B) of 2012, 10154 (M/B) of 2012, 10155 (M/B) of 2012, 10156 (M/B) of 2012, 10157 (M/B) of 2012, 10169 (M/B) of 2012, 10178 (M/B) of 2012, 10179 (M/B) of 2012, 10185

(M/B) of 2012, 10188 (M/B) of 2012, 9970 (M/B) of 2012, 10040 (M/B) of 2012, 10054 (M/B) of 2012, 10055 (M/B) of 2012, 10064 (M/B) of 2012, 10069 (M/B) of 2012, 10074 (M/B) of 2012, 10075 (M/B) of 2012, 10077 (M/B) of 2012, 10078 (M/B) of 2012, 10083 (M/B) of 2012, 10085 (M/B) of 2012, 10088 (M/B) of 2012, 10089 (M/B) of 2012, 10106 (M/B) of 2012, 10107 (M/B) of 2012, 10120 (M/B) of 2012, 10127 (M/B) of 2012, 10128 (M/B) of 2012, 10130 (M/B) of 2012, 10133 (M/B) of 2012 and 10999 (M/B) of 2012.

In the meantime, the Department of Law may also complete the exercise by undertaking independent examination of records as required of it in such cases where independent views of District Judges and District Magistrates are available, in the light of observations made hereinabove in order to expedite the process of renewal and appointment but it shall not issue any fresh appointment letter.” (reproduced from the appeal paper book)

14. In compliance of the direction contained in the aforesaid order of the High Court, the State Government is said to have scrutinized some records and filed status report. On the next date of hearing, i.e., 7.3.2013, the Additional Advocate General appearing for the appellants herein informed the High Court that complete status report could not be filed due to non-availability of documents. The Division Bench of the High Court accepted her request for adjournment and posted the matter for 20.3.2013. Simultaneously, the appellants were directed to issue orders for renewal in the cases where the details of the applicants were available.

15. The appellants have questioned the High Court’s order primarily on the ground that the same is contrary to the law laid down by the larger Bench in State of U.P. v. Johri Mal (supra). According to the appellants, order passed by this Court in SLP(C) Nos. 4042-4043/2012 is per incuriam because the same is contrary to the ratio of the judgment of the larger Bench. Another contention of the appellants is that appointment of District Government Counsel and Additional District Government Counsel and renewal of their term can be made only after making evaluation of their work and conduct keeping in view their past performance and the High Court could not have issued an interim mandamus for renewal of the term of the private respondents.

16. Before proceeding further, we may mention that in compliance of the directions given by this Court on 26.8.2013, 2.9.2013 and 5.9.2013, Shri S.K. Pandey, Principal Secretary (Law)/Legal Remembrancer, Government of Uttar Pradesh filed affidavits dated 1.9.2013 and 8.9.2013. For the sake of reference, paragraphs 2 and 3 of the first affidavit and paragraph 2 of the second affidavit are extracted below:

“First Affidavit dated 1.9.2013

2. That the present petition arises out of the Writ Petition (Misc.

Bench) No. 9127 of 2012 along with which there are 248 petitions pending before the Lucknow Bench of the Allahabad High Court and in the said total 249 Writ Petitions, there are total 443

claimants for their renewal for the post of District Government Counsel / Additional District Government Counsel / Assistant District Government Counsel, etc. for three different categories (Criminal, Civil and Revenue). In addition to the above 443 claimants, after 16.01.2013 further about 85 Writ Petitions have been filed claiming renewals and reappointments on the basis of earlier appointments and in the said Writ Petitions also there are about 200 claimants there by making total about 643 claimant. Contrary to the said claim of renewals of so many candidates whose report of District Judge are favourable, the number of available vacancies are only 354. Most of the reports of the Districts Judges are stating that their work and conduct are good and they have knowledge of law. None of the reports say any adverse comment or anything which could be deemed to be dereliction of duty. There are many instances where the candidature for renewal have been recommended by the District judge with identically worded recommendations even when the record bears out that the candidate's performance has remained lacking.

3. That in the first batch of total 443 claimants, 430 writ petitioners are those who had been appointed at the time when the amendment to L.R. Manual had taken place on 13.08.2008. There are only 13 petitioners renewals who had been appointed in terms of the un- amended L.R. Manual (existing as on today).” Second Affidavit dated 8.9.2013 “2. It is submitted that the cases of all the eligible persons shall be considered against the available vacant posts strictly in consultation with the District Judge(s) and District Magistrate(s).”

17. Respondent Nos.1 and 2 have filed counter to the first affidavit to controvert the statement of the Law Secretary and accused the appellants of trying to mislead the Court. They have also relied upon the judgment of this Court in State of Uttar Pradesh v. Ashok Kumar Nigam (supra) and pleaded that in view of the favourable recommendations made by the District Judges and the District Magistrates, the State Government is obliged to renew their appointments.

18. While Shri Harish N. Salve, learned senior counsel appearing for the appellants argued that the order under challenge should be set aside being contrary to the law laid down by this Court in Johri Mal's case and Rakesh Kumar Keshari's case and the State Government should be allowed to consider the candidature of all eligible persons for appointment against the available vacancies in consultation with the District Judges and District Magistrates, Shri Aman Lekhi, learned senior counsel appearing for the respondent Nos. 1 and 2 argued that this Court should not interfere with the impugned order because the direction given by the High Court is in consonance with order dated 6.1.2012 passed by the High Court and the clarifications given by this Court on 17.7.2012. Shri Lekhi criticized the affidavits of the Law Secretary and submitted that the officer has tried to mislead this Court on the issue of number of available vacant posts. Learned senior counsel further argued that respondent Nos.1 and 2 and other similarly situated persons are entitled to have the term of their appointment renewed because the District Judge and the District Magistrate have not found anything adverse qua their conduct and performance.

19. We have given serious thought to the entire matter. About 100 writ petitions with prayer similar to those contained in Writ Petition No.9127/2012 are pending before the High Court. The question whether the existing District Government Counsel and Additional District Government Counsel are entitled to renewal of their term as of right or the State Government is required to act in consonance

with paragraph 7.08 of the LR Manual and the judgments of this Court in Johri Mal's case and Rakesh Kumar Keshari's case, is yet to be decided. Therefore, the Division Bench of the High Court was not at all justified in issuing an interim mandamus for renewal of the appointments of respondent Nos. 1 and 2. While doing so, the High Court ignored the law laid down in Ramesh Chandra Sharma's case, Harpal Singh Chauhan's case, Johri Mal's case and Rakesh Kumar Keshari's case as also Ashok Kumar Nigam's case, that appointment of District Government Counsel and renewal of their term is required to be made in accordance with the provisions of LR Manual read with Section 24 Cr.P.C.

20. While renewing the term of the appointment of the existing incumbents the State Government is required to consider their past performance and conduct in the light of the recommendations made by the District Judges and the District Magistrates. Therefore, the High Court could not have issued a mandamus for renewal of the term of respondent Nos. 1 and 2 and other similarly situated persons and thereby frustrated the provisions of LR Manual and Section 24 Cr.P.C.

21. In the premise aforesaid, the appeal is allowed and the impugned order is set aside. The State Government shall now fill up the existing vacant posts by considering the cases of all eligible persons strictly in accordance with the relevant provisions of LR Manual read with Section 24 Cr.P.C. and the judgments of this Court in Johri Mal's case and Rakesh Kumar Keshari's case. The District Judges and the District Magistrates, who are required to be consulted by the State Government, are expected to make objective assessment of the work, conduct and performance of the candidates and make recommendations keeping in view larger public interest in contradistinction to the interest of the particular political party.

22. The cases of renewal of appointment of the existing incumbent shall likewise be considered in accordance with the provisions contained in LR Manual and the judgments of this Court. This exercise shall be undertaken and completed within a period of four months from today.

23. The Registry is directed to send a copy of this order to the Registrar General of the Allahabad High Court who shall place the matter before the Chief Justice of the High Court. The learned Chief Justice may consider the desirability of posting all the matters before one Bench to facilitate expeditious adjudication of the pending matters.

.....J.
[G.S. SINGHVI]

New Delhi,
November 13, 2013.

.....J.
[C. NAGAPPAN]

