REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 13727 OF 2015
[Arising out of SLP (C) No. 36166 of 2014]

State of U.P. & Ors. .. Appellants

Versus

Ajay Kumar Sharma & Anr. .. Respondents

WITH
C.A. No. 13728 of 2015 [arising out of SLP(C) No. 1425 of 2015]

J U D G M E N T

VIKRAMAJIT SEN, J.

1 Leave granted.

2 Applications for correcting the cause title and all the applications for impleadment as party respondent are allowed.

3 In these Appeals, we are concerned with the renewal as also the appointment of District Government Counsel (Civil and Criminal) in the Subordinate Courts across the State of Uttar Pradesh. The State as the Appellant, has assailed the final judgment and order dated 5.11.2014 in Writ Petition being Misc. Bench No. 9127 of 2012 passed by a Division Bench of the

High Court of Judicature at Allahabad, Lucknow Bench. The High Court in this impugned Order has quashed the Orders of the State Government terminating the appointment of District Government Counsel and has further directed the State Government to reconsider their renewal. Indubitably, the appointments as well as the renewals would have to be in consonance with Section 24 of the Code of Criminal Procedure (Cr.P.C. for brevity) and the Legal Remembrancer Manual (hereinafter referred to as the 'LR Manual') applicable throughout the State of U.P. The Manual which came into force in 1975 *inter alia* prescribes mandatory 'consultation' with the District Judge and the District Magistrate on the one side and the State on the other.

4 In August 2008, the then State Government, in terms of the Government Order dated 13.8.2008, had amended the LR Manual thereby removing the process of consultation with the District Judge for the appointment of District Government Counsel; effectively, thereafter the LR Manual required the State to only consult with the District Magistrate. It was on the basis of the LR Manual as amended that the Respondents before us came to be appointed as District Government Counsel across the length and breadth of the State of U.P. This is a noteworthy feature on which our decision will turn in some measure. The State Government's Order, which is dated 13.8.2008, came to be assailed before the High Court of Judicature at Allahabad, Lucknow Bench in a bunch of more than 100 writ petitions, including the lead petition **U.P. Shaskiya Adhivakta Kalyan Samiti** v. State of U.P. Writ Petition Misc. Bench No. 7851 of 2008

reported as (2012 (30) LCD 1066). By an Order dated 6.1.2012 passed in those proceedings, the High Court directed the State to make fresh appointments expeditiously, and in the interregnum permitted the existing empanelled Advocates to discharge their duties. Shortly thereafter, in Bishan Pal Saxena v. State of U.P. Writ Petition Misc. Bench No. 8246 of 2011, in terms of its Order dated 12.1.2012 the High Court directed the State of U.P. to reconsider the selection and appointment of Advocates to the "post of Additional District Government Counsel, Assistant District Government Counsel, Panel lawyers and Sub District Government Counsel"; that the persons appointed in pursuance of old provisions would continue till the completion of the reconsideration process; and, all fresh appointments would be carried out strictly in conformity with **U.P. Shaskiya Adhivakta Kalyan Samiti** and Sadhna Sharma v. State of U.P [Writ Petition Misc. Bench No. 7825 of 2011].

5 Aggrieved by the aforementioned Judgments, the State Government filed Special Leave Petitions No. 4042-4043 of 2012 titled State of U.P. & Ors. v. Sadhna Sharma, during the pendency of which there was a change in the State Government. Immediately thereupon, a prayer was made before this Court for withdrawal of the Special Leave Petitions on the predication that the newly elected State Government had accepted the assailed judgments of the High Court of Allahabad and accordingly intended to implement it in its entirety. In the course of disposing of these SLPs this Court pointedly and poignantly

observed that the constitutional validity of Section 24 Cr.P.C. had not been challenged. This Court noted the unanimity in the opinion that the assailed judgments of the High Court would be implemented. Nevertheless, three "clarifications" were recorded. Firstly, that the appointments made in consultation with the High Court and/or the District and Sessions Judge of the concerned district would not be disturbed. Secondly - "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 the Writ Petitions in the High Court during the pendency of 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....." Thirdly, personal responsibility was fastened on the Secretary, Department of Law and Justice, Government of U.P. to complete the above appointments. Writ Petition No. 6069 of 2012 filed by Harsh Gupta and Others [titled Harsh Gupta v. State of U.P.] was disposed of by the High Court on 25.7.2012 in terms of the aforementioned Order of this Court.

6 Consequent upon the passing of the above orders, the State Government issued a Government Order dated 11.6.2012 to the effect that the appointment of all District Government Counsels should be cancelled. However, the incumbents were permitted to continue to discharge their duties till fresh

appointments were made. The District Magistrates were to verify the number of vacancies on the Civil, Criminal and Revenue sides.

7 In terms of the Government Order dated 5.9.2012, pursuant to the Judgments of the Supreme Court dated 17.7.2012 and of the High Court on 25.7.2012, the engagement of the Respondents was put to an end and their renewal in the light of consultation reports was awaited. This lead to the filing of writ petitions, including Ajay Kumar Sharma & Anr. v. State of U.P. [Writ Petition Misc. Bench No. 9127 of 2012], terming the cessation of the appointment as arbitrary. However, this Court vide Order dated 13.11.2013 directed that "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." Eventually, in terms of the final Order dated 5.11.2014, which stands impugned before us, the High Court in Ajay Kumar Sharma & Anr. v. State of U.P. issued a Certiorari quashing the Orders declining renewal of the Respondents; a Mandamus directing the State Government to reconsider their candidature. The High Court had also issued a Mandamus directing the Government to set up a Directorate of Prosecution in pursuance of Section 25-A of Code of Criminal Procedure and lastly passed a direction to the District Judges and District Magistrates to ensure

that no person having criminal antecedents should be permitted to work as District Government Counsel.

8 The Learned Senior Counsel for Appellant/State, Mr. Kapil Sibal, submits that the impugned order of the High Court of Allahabad seeks to perpetuate an illegality. He relies heavily on the decision of a Three Judge Bench of this Court, namely, State of U.P. v. **Johri Mal** (2004) 4 SCC 714, to submit that an appointment to the post of a District Counsel is a professional appointment; no status of a public nature is conferred on the incumbent; as also that the LR Manual itself contains merely Executive instructions which do not contain the concomitants of Article 166(3); and therefore the LR Manual is not law under Article 13 of the Constitution of India; and that in **Johri Mal** this Court has expressed reservations against **Kumari Shrilekha Vidyarthi** v. State of UP (1991) 1 SCC 212. Mr Sibal has also differentiated the facts before us from those in **Kumari Shrilekha Vidyarthi**, where all government counsel were terminated *en masse* by a government order. On the question of maintainability of a writ of Mandamus issued against the State in the impugned order, Mr Sibal contends that the Respondents cannot lay claim to a legal right nor is the Government under a legal duty to continue their engagement, both essential elements for a mandamus. He rightly concedes that a particular Respondent may seek a Certiorari with respect to the cessation of his individual appointments contrary to the norms of 'Wednesbury reasonableness'. Mr. Sibal has drawn our

attention to State of UP v. State of UP Law Officers Association (1994) 2 SCC 204 wherein this Court, while considering the appointments of Chief Standing Counsel, Standing Counsel and Government Advocates, has held that those who are appointed under an arbitrary procedure ought not be heard to complain if the termination of their appointments is equally arbitrary. Mr. Sibal further submits that the order presently impugned before us is *per incuriam* for having not adhered to the judgments rendered by the co-ordinate benches of the High Court of Allahabad prior to the judgment impugned before us. He further submits that the aforesaid judgments of the co-ordinate benches, i.e., Ram Charan Singh Prajapati v. State of UP in writ petition (c) 46350 of 2014 and Guru Prasad v. State of UP in writ petition (c) 39935 of 2014 propound the correct view of law, *inter alia* that allowing renewals to appointments made null and void in law amount to perpetuating an illegality. In parting, learned Senior Counsel also contends that the argument on behalf of the Respondents predicated upon the applicability of *de facto* doctrine, is without merit.

9 Learned Senior Counsel for the Respondents, Mr. Aman Lekhi has submitted that the State is misguided in its approach, inasmuch as **Johri Mal** does not detract from **Kumari Shrilekha Vidyarthi** even on facts as renewal was a question before this Court even in the latter Two-Judge Bench judgment. The only reason why this Court intervened in **Johri Mal,** and later again in State of UP v. Rakesh Kumar Keshri (2011) 5 SCC 341, was because in the

former the recommendation was not in favour, and in the latter the incumbent was incompetent. Mr. Lekhi further submits that the State Government cannot rely upon the fact that the appointments were void because, firstly, the appointments were valid at that time and under extant Rules and also because the '*de facto* doctrine' comes to their rescue. He has placed reliance upon Dr. A. R. Sircar v. State of UP (1993) Supp 2 SCC 734 to substantiate this submission. Secondly, on the application of the doctrine of 'comity of instrumentalities', Mr. Lekhi learned Senior Counsel argues that the Executive cannot be permitted to overreach or nullify judicial pronouncements. Thirdly, that there is an element of continuity in these appointments as emphasised in **Kumari Shrilekha Vidyarthi**. Mr. Manoj Goel learned Counsel for some of the other Respondents further submits that on a proper perusal of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V. R. Rudani (1989) 2 SCC 691 and the Constitutional Bench in Zee Telefilms Ltd. v. Union of India (2005) 4 SCC 649, it is manifest that a mandamus cannot be denied on the ground that the duty to be enforced is not imposed by a statute and, in fact, may even be passed in order to enforce a contract. He has emphasised that a Mandamus is the appropriate remedy in light of **Kumari Shrilekha Vidyarthi** because a public element is involved in the appointment of DGCs and ADGCs which itself is ample reason to attract Article 14 and judicial review under the Constitution of India. Our attention has also been drawn to State of UP v. Ashok Kumar Nigam (2013) 3 SCC 372 where this

Court has reiterated that reasoning is the *sine qua non* for refusal under the concerned provisions of LR Manual which they claim is not a valid basis for *en masse* rejection. On the issue that the impugned Judgment of the Lucknow Bench is *per incuriam*, Mr Lekhi has submitted that the impugned Order has rightly ignored the decisions of the co-ordinate Bench at Allahabad in Ram Charan Singh Prajapati v. State of UP and Guru Prasad v. State of UP because the Allahabad Bench itself passed orders which are *per incuriam.* Learned Senior Counsel, Mr. Jitendra Mohan Sharma also submits that the State Government has already agreed to reconsider the case of renewal of government lawyers in SLP(C) 4042-43 of 2012, State of UP v. Sadhna Sharma, and the State cannot take a different stand now. However, it is to be noted that the State Government withdrew the appeal with a view to implement the judgment of the High Court in **UP Shaskiya Adhivakta Kayan Samiti** and had not agreed to reconsider the case of renewal of government lawyers as put forth by Mr. Sharma.

10 Time and again this Court has emphatically restated the essentials and principles of 'Precedent' and of *Stare Decisis* which are a cardinal feature of the hierarchical character of all Common Law judicial systems. The doctrine of Precedent mandates that an exposition of law must be followed and applied even by coordinate or co-equal Benches and certainly by all smaller Benches and subordinate courts. That is to say that a smaller and a later Bench has no

freedom other than to apply the law laid down by the earlier and larger Bench; that is the law which is said to hold the field. Apart from Article 141, it is a policy of the courts to stand by precedent and not to disturb a settled point. The purpose of precedents is to bestow predictability on judicial decisions and it is beyond cavil that certainty in law is an essential ingredient of rule of law. A departure may only be made when a coordinate or co-equal Bench finds the previous decision to be of doubtful logic or efficacy and consequentially, its judicial conscience is so perturbed and aroused that it finds it impossible to follow the existing ratio. The Bench must then comply with the discipline of requesting the Hon'ble Chief Justice to constitute a larger Bench.

11 If binding precedents even of co-ordinate strength are not followed, the roots of continuity and certainty of law which should be nurtured, strengthened perpetuated and proliferated will instead be deracinated. Although spoken in a totally different context, we are reminded of the opening stanza of the poem *'The Second Coming'* authored by William Butler Yeats. The lines obviously do not advert to the principle of precedent but they are apposite in bringing out the wisdom of this ancient and venerable principle.

> "Turning and turning in the widening gyre
> The falcon cannot hear the falconer;
>
> Things fall apart; the centre cannot hold;
> Mere anarchy is loosed upon the world."

12 In the context of interminably citing all decisions delivered by this Court, the Constitutional Bench in Union of India v. **Raghubir Singh** (1989) 2 SCC 754 has made the following enunciation of law:

> **"25.** It is not necessary to refer to all the cases on the point. The broad guidelines are easily deducible from what has gone before. The possibility of further defining these guiding principles can be envisaged with further juridical experience, and when common jurisprudential values linking different national systems of law may make a consensual pattern possible. But that lies in the future.
>
> **26.** There was some debate on the question whether a Division Bench of Judges is obliged to follow the law laid down by a Division Bench of a larger number of Judges. Doubt has arisen on the point because of certain observations made by Chinnappa Reddy, J. in *Javed Ahmed Abdul Hamid Pawala* v. *State of Maharashtra*. Earlier, a Division Bench of two Judges, of whom he was one, had expressed the view in *T.V. Vatheeswaran* v. *State of Tamil Nadu* that delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle a person under sentence of death to invoke Article 21 of the Constitution and demand the quashing of the sentence of death. This would be so, he observed, even if the delay in the execution was occasioned by the time necessary for filing an appeal or for considering the reprieve of the accused or some other cause for which the accused himself may be responsible. This view was found unacceptable by a Bench of three-Judges in *Sher Singh* v. *State of Punjab*, where the learned Judges observed that no hard and fast rule could be laid down in the matter. In direct disagreement with the view in *T.V. Vatheeswaran*, the learned Judges said that account had to be taken of the time occupied by proceedings in the High Court and in the Supreme Court and before the executive authorities, and it was relevant to consider whether the delay was attributable to the conduct of the accused. As a member of another Bench of two Judges, in *Javed Ahmed Abdul Hamid Pawala* Chinnapa Reddy, J. questioned the validity of the observations made in *Sher Singh* and went on to note,

without expressing any concluded opinion on the point, that it was a serious question:

"Whether a Division Bench of three-Judges could purport to overrule the judgment of a Division Bench of two Judges merely because three is larger than two. The Court sits in Divisions of two and three-Judges for the sake of convenience and it may be inappropriate for a Division Bench of three-Judges to purport to overrule the decision of a Division Bench of two Judges. (Vide *Young* v. *Bristol Aeroplane Co. Ltd.*) It may be otherwise where a Full Bench or a Constitution Bench does so."

It is pertinent to record here that because of the doubt cast on the validity of the opinion in *Sher Singh*, the question of the effect of delay on the execution of a death sentence was referred to a Division Bench of five Judges, and in *Triveniben* v. *State of Gujarat*, the Constitution Bench overruled *T.V. Vatheeswaran*.

27. What then should be the position in regard to the effect of the law pronounced by a Division Bench in relation to a case raising the same point subsequently before a Division Bench of a smaller number of Judges? There is no constitutional or statutory prescription in the matter, and the point is governed entirely by the practice in India of the courts sanctified by repeated affirmation over a century of time. It cannot be doubted that in order to promote consistency and certainty in the law laid down by a superior Court, the ideal condition would be that the entire Court should sit in all cases to decide questions of law, and for that reason the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in Divisions, each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the Rule has

been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges. We may refer to a few of the recent cases on the point. In *John Martin* v. *State of West Bengal*, a Division Bench of three-Judges found it right to follow the law declared in *Haradhan Saha* v. *State of West Bengal*, decided by a Division Bench of five Judges, in preference to *Bhut Nath Mate* v. *State of West Bengal* decided by a Division Bench of two Judges. Again in *Indira Nehru Gandhi* v. *Raj Narain*, Beg, J. held that the Constitution Bench of five Judges was bound by the Constitution Bench of thirteen Judges in *Kesavananda Bharati* v. *State of Kerala*. In *Ganapati Sitaram Balvalkar* v. *Waman Shripad Mage*, this Court expressly stated that the view taken on a point of law by a Division Bench of four Judges of this Court was binding on a Division Bench of three-Judges of the Court. And in *Mattulal* v. *Radhe Lal*, this Court specifically observed that where the view expressed by two different Division Benches of this Court could not be reconciled, the pronouncement of a Division Bench of a larger number of Judges had to be preferred over the decision of a Division Bench of a smaller number of Judges. This Court also laid down in *Acharya Maharajshri Narandraprasadji Anandprasadji Maharaj* v. *State of Gujarat* that even where the strength of two differing Division Benches consisted of the same number of Judges, it was not open to one Division Bench to decide the correctness or otherwise of the views of the other. The principle was reaffirmed in *Union of India* v. *Godfrey Philips India Ltd.* which noted that a Division Bench of two Judges of this Court in *Jit Ram Shiv Kumar* v. *State of Haryana* had differed from the view taken by an earlier Division Bench of two Judges in *Motilal Padampat Sugar Mills* v. *State of U.P.* on the point whether the doctrine of promissory estoppel could be defeated by invoking the defence of executive necessity, and holding that to do so was wholly unacceptable reference was made to the well accepted and desirable practice of the later Bench

referring the case to a larger Bench when the learned Judges found that the situation called for such reference.

28. We are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court. We would, however, like to think that for the purpose of imparting certainty and endowing due authority decisions of this Court in the future should be rendered by Division Benches of at least three-Judges unless, for compelling reasons, that is not conveniently possible."

13 In a more recent decision of this Court, a Bench of 5 Judges in **Chandra Prakash** v. State of UP (2002) 4 SCC 234 reaffirmed the principle enunciated above in **Raghubir Singh**'s case, and reference may be had to the following extract therefrom :

"22. A careful perusal of the above judgments shows that this Court took note of the hierarchical character of the judicial system in India. It also held that it is of paramount importance that the law declared by this Court should be certain, clear and consistent. As stated in the above judgments, it is of common knowledge that most of the decisions of this Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because in doing so they embody a declaration of law operating as a binding principle in future cases. The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court. It is in the above context, this Court in the case of *Raghubir Singh* held that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or smaller number of Judges. It is in furtherance of this

enunciation of law, this Court in the latter judgment of *Parija* held that: (SCC p. 4, para 6)

> "But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges *is so very incorrect that in no circumstances can it be followed*, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. If, then, the Bench of three learned Judges also comes to the conclusion that the earlier judgment of a Bench of three learned Judges is incorrect, reference to a Bench of five learned Judges is justified." "

Applying Sub-Inspector Rooplal v. Lt. Governor (2000) 1 SCC 644, this Court in Government of Andhra Pradesh v. A. P. Jaiswal, (2001) 1 SCC 748 has said that:

> "Consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the courts have evolved the rule of precedents, principle of stare decisis etc. These rules and principles are based on public policy and if these are not followed by courts then there will be chaos in the administration of justice, which we see in plenty in this case."

14 Sitting in a Division Bench of two, we at present can do no better than apply the rules of precedent as have been left for us to follow. The law pertaining to the appointment of Additional District Government Counsel, Assistant District Government Counsel, Panel lawyers and Sub District Government Counsel was directly in issue before the Three-Judge Bench in State of U.P. v. **Johri Mal** (2004) 4 SCC 714 where the law has been

comprehensively clarified. No purpose is served by discussing **Kumari Shrilekha Vidyarthi** or any judgments rendered thereafter.

15 In **Johri Mal**, this Court perused the LR Manual as also the Code of Criminal Procedure and reiterated that the District Counsel stood professionally engaged; that the State Government was free to determine the course of action after being satisfied of their performance, and that the Courts must be circumspect in the exercise of judicial review on matters which fell within the discretion of the State Government, i.e. appointment of their counsel or advocates. This Court reiterated that the District Counsels do not enjoy the statutory rights with respect to the renewals of tenures and the State Government enjoyed the discretionary powers in this respect. The curial performance of the advocates should not be the sole criterion for their re-appointment as District Counsel and that the State Government must be free to repose trust and confidence in the persons whom they choose to appoint as their advocates. We can do no better than reproduce the following paragraphs from this judgment which is binding on us as also on any and every other Two-Judges Bench:

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

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

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

...

44. Only when good and competent counsel are appointed by the State, the public interest would be safeguarded. The State while appointing the Public Prosecutors must bear in mind that for the purpose of upholding the rule of law, good administration of justice is imperative which in turn would have a direct impact on sustenance of democracy. No appointment of Public Prosecutors or District Counsel should, thus, be made either for pursuing a political purpose or for giving some undue advantage to a section of the people. Retention of its counsel by the State must be weighed on the scale of public interest. The State should replace an efficient, honest and competent lawyer, inter alia, when it is in a position to appoint a more competent lawyer. In such an event,

even a good performance by a lawyer may not be of much importance.

...

46. The Code of Criminal Procedure does not provide for renewal or extension of a term. Evidently, the legislature thought it fit to leave such matters at the discretion of the State. It is no doubt true that even in the matter of extension or renewal of the term of Public Prosecutors, the State is required to act fairly and reasonably. The State normally would be bound to follow the principles laid down in the Legal Remembrancer's Manual.

...

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

16 It is beyond cavil that it is in the interest of the dispensation of criminal justice that competent counsel possessing integrity should alone be appointed, since otherwise, there is a strong possibility of miscarriage of justice. In choosing them, the State will not only have to be satisfied of their forensic

competence, but also that they are bereft of any criminal antecedents. This, however, does not mean that the persons presently discharging the duties of Additional District Government Counsel, Assistant District Government Counsel, Panel lawyers and Sub District Government Counsel stand appointed to civil posts, thereby creating a right of continuity. In our opinion, which is an echo of that articulated in **Johri Mal**, the State, like any other litigant, must have the freedom to appoint counsel in whom they repose trust and confidence. The only expectation is that the choice made by the State should not be such as could defeat the sacred and onerous responsibility of ensuring that the justice is meted out to all citizens. In **Johri Mal**, this Court has categorically rejected the claim of an advocate to continuous renewal or re-appointment as a Government Advocate. We entirely agree with this exposition of the law. We think that the correct approach is to ensure the competency of advocates being considered for appointment of Additional District Government Counsel, Assistant District Government Counsel, Panel lawyers and Sub District Government Counsel. It seems to us that it would be an incorrect approach to start this process by considering the re-appointment or renewal of existing Government Counsels since that would dilute, nay, dissolve the discretion of the Government to appoint advocates whom they find trustworthy. The High Court has followed the second approach leading to the dissatisfaction of the State Government and their resentment that their realm of discretion has been eroded for no justifiable reason.

17 The Appeals are allowed. The impugned Judgment is set aside, but without imposition of costs. Fresh appointments to be made expeditiously.

.....J.
(VIKRAMAJIT SEN)

.....J.
(ABHAY MANOHAR SAPRE)

New Delhi,
November 26, 2015.

REPORTABLE

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VERSUS

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CIVIL APPEAL No. 13728 OF 2015

(ARISING OUT OF SLP (C) No.1425/2015)

J U D G M E N T

Abhay Manohar Sapre, J.

1. I have had the benefit of reading the scholarly judgment of my learned Brother Justice Vikramajit Sen and I am in respectful agreement with his opinion. I, however, add only few words of concurrence.

2. I entirely agree with my learned Brother that the issues which are the subject matter of these appeals such as issues relating to scope and interpretation of Section 24 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C."), the issues relating to appointment, renewal, extension of tenure of Public Prosecutor/District Government Counsel, their nature and lastly provisions of (UP Government) Legal Remembrance's Manual and, in particular, provisions dealing with such appointment/renewal/extension of tenure etc. remain no more ***res-integra*** and stand authoritatively decided by a Bench of three judges in **State of U.P. vs. Johri Mal** (2004) 4 SCC 714. This decision was followed consistently by this Court as and when these issues arose for consideration (see **State of U.P. & Ors. vs. Rakesh Kumar Keshari & Anr.** (2011) 5 SCC 341, **Centre for Public Interest Litigation & Ors. vs. Union of India & Ors.**, (2012) 3 SCC 117, **Deepak Aggarwal vs. Keshav Kaushik & Ors.** (2013) 5 SCC 277 and **State of U.P. & Ors. vs. Satyavrat Singh** (2014) 14 SCC 548).

3. In these circumstances and keeping in view the authoritative pronouncement rendered in **Johri Mal' case** (supra), there does not arise any occasion to again examine the same issues more so when in these very proceedings though at the instance of some other persons, these issues had reached to this Court on previous occasions as mentioned by my learned Brother in the main judgment which also came to be decided by this Court.

4. Indeed the principles of "*precedent*" and "*Stare Decisis*" command us to follow the law laid down by this Court and more so when it was rendered by a Bench consisted of three judges.

5. I am also of the view that the High Court though dealt with the issues but as aptly put by my learned Brother in paragraph 15 "incorrectly" thereby calling our interference.

6. In my considered opinion, therefore, the fresh appointments to be now made keeping in view the apt observations made especially in the case of **Johri Mal**

(supra) (paras 40 to 44) and what is held hereinabove in main judgment.

.....J.

[ABHAY MANOHAR SAPRE]

New Delhi;

November 26, 2015.