REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3194 OF 2016
(Arising out of SLP(C) No.8416/2016 @ CC No.5470 of 2014)

State of Punjab & Anr. …Appellants

Versus

Brijeshwar Singh Chahal & Anr. …Respondents

WITH

T.P. (C) NO.1073 OF 2015

Pardeep Kumar Rapria …Appellant

Versus

State of Haryana and Ors. …Respondents

J U D G M E N T

T.S. THAKUR, CJI.

1. Leave granted.

2. This appeal and the accompanying transferred petition raise a question of considerable public importance. The question precisely is whether appointment of law officers by

the State Governments can be questioned or the process by which such appointments are made, can be assailed on the ground that the same are arbitrary, hence, violative of the provisions of Article 14 of the Constitution of India. Before we advert to the juristic dimensions of that question, we may briefly set out the factual backdrop in which the same falls for our consideration.

3. Petitioner No.1 to the writ petition was initially appointed as an Assistant Advocate General in terms of an order dated 23rd April, 2002. The appointment was on contractual basis valid upto 31st March, 2003, but the same was continued by an order dated 19th July 2003 upto 31st March, 2004. He was four years later appointed as Deputy Advocate General in the pay scale of Rs.18,400–22,400/- by an order dated 11th January, 2008. His tenure was later extended upto the year 2011-2012 in terms of a memo dated 19th April, 2011.

4. Petitioner No.2 to the writ petition was similarly appointed as an Assistant Advocate General on contract basis and then to the post of Deputy Advocate General by

orders issued in his favour from time to time. In Civil Writ Petition No.2000 of 2011 filed by the respondents before the High Court of Punjab and Haryana at Chandigarh they made a grievance against their non-absorption on regular basis while Smt. Sonu Chahal-respondent No.3 in the writ petition was appointed as Senior Deputy Advocate General on contract basis in the pay scale of Rs.37,400-67,000/- and a grade pay of Rs.10,000/-. The writ petitioner/respondent No.1 herein questioned the fairness and legality of the approach adopted by the appellant herein/State in picking and choosing candidates for regular appointment and/or for absorption. It was contended that while respondent No.1 herein had started his career as an Assistant Advocate General and was re-designated as Deputy Advocate General in the year 2008 in which capacity he was working for the past nearly eight years, petitioner No.2 in the writ petition had just about six years of such experience while respondent No.2 herein had no more than four years and five months experience before she was absorbed as Senior Deputy Advocate General in the office of the Advocate General. The grievance of the writ petitioners/respondent

No.1 herein was that the State Government had formulated no criterion and followed no norms for absorption on a non-discriminatory basis of those working as Law Officers of the State. The absorption of petitioner No.2 and respondent No.3 was dubbed as illegal, arbitrary and discriminatory in the writ petition; and a direction to the appellant to frame a policy, laying down guidelines for making appointment/absorption/re-designation in the office of the Advocate General and to evolve and prescribe suitable criterion for regularisation or absorption of those working in that office prayed for. A certiorari quashing order dated 23rd September 2011 by which respondent No.3 was absorbed on the post of Senior Deputy Advocate General was also prayed for, besides a mandamus directing the State to consider the case of the writ petitioners for absorption.

5. A Single Judge of the High Court before whom the writ petition came up for hearing, issued notice to the respondent in the writ petition and stayed the termination of the services of petitioner No.1 in the meantime. The State Government appeared in response to the notice to contest

the writ petition, *inter alia,* on the ground that the appointment of petitioner No.1 was contractual in nature terminable at any point of time. It was also urged that petitioner No.2 in the writ petition had been absorbed considering her good performance.

6. By an order dated 18th October, 2012 the writ petition filed by the respondent was admitted to hearing and the interim direction restraining the State Government from terminating the services of the writ petitioner-respondent No.1 continued. With the contractual tenure of respondent No.1 as Deputy Advocate General coming to an end on 31st October, 2012 his name does not appear to have figured in the list of Deputy Advocates General appointed by an order dated 31st October, 2012. Petitioner No.1/Respondent No.1 herein alleged this to be a breach of the order passed by the High Court restraining the termination of his services and filed contempt petition No.3421 of 2012. The State also filed CM No.17076 of 2012 for clarification of the interim orders dated 21st October, 2011 and 18th October, 2012, *inter alia,* contending that the contract period of respondent No.1's

appointment having expired, he was not entitled to the benefit of the interim orders passed by the Court. That application was dismissed by the learned Single Judge in terms of an order dated 1st December, 2012 as misconceived for in the opinion of the Court no clarification of interim order dated 21st October, 2011 restraining termination was necessary. Aggrieved by order dated 1st December, 2012 passed by the Single Judge, the State preferred LPA No.1458 of 2013 which was dismissed by a Division Bench of the High Court by its order dated 25th September, 2013 impugned in the present appeal.

7. In transferred writ petition No.247 of 2015 *(renumbered as T.P (C) No.1073 of 2015)*, the petitioner had prayed for quashing of certain State Government orders besides a mandamus directing the State of Haryana to engage him as a Law Officer. The petitioner has, however, given up his challenge to the orders impugned in the writ petition and confined his prayer to a direction for consideration of his case. It was submitted that the issues raised in the writ petition were generally the same as have

been raised in connected SLP (C) No. (CC) No.5470 of 2014 and the writ petition out of which the said appeal arises. Those submissions were recorded and Writ Petition No.247 of 2015 transferred from the High Court of Punjab and Haryana at Chandigarh to this Court for final disposal. That is precisely how the appeal and the writ petition have been heard together for disposal by this common order. The following questions fall for our determination *:*

> *(1) Whether the States of Punjab and Haryana have made any realistic assessment of their requirement before making appointments of Law Officers.*
>
> *(2) Whether the States of Punjab and Haryana have formulated any scheme, policy, norms or standards for appointing Law Officers.*
>
> *(3) Whether appointment of Law Officers by the State Governments need to be made on a fair, reasonable, non-discriminatory and objective basis; and*
>
> *(4) If answer to question Nos.1, 2 and 3 are found in the negative, what is the way forward?*

Re: Question No.1

8. A realistic assessment of the requirement is the first and foremost step that one would expect the State to take for any prudent exercise of the power of appointment of law

officers. No such assessment has been made nor any material disclosed by the State Governments to demonstrate that they were sensitive to the need for any such assessment. Power to appoint Law Officers was all the same exercised on what appears to us to be a totally ad hoc basis without any co-relation between the work load in the Courts and the number of Law Officers appointed to handle the same. There is no gainsaid that if the power to appoint is exercised not because such exercise is called for but because of some extraneous or other reason the legitimacy of the exercise will itself become questionable. That is precisely what has been brought out by the Comptroller and Auditor General in his report of Social, General and Economic sectors (non PSUs) for the year ended 31-03-2012 for the State of Haryana. The report is a telling indictment of the system of appointment followed in the State of Haryana which does not provide for assessment of the manpower requirement leave alone any worthwhile process of selection of those appointed. The result is that more than half of those appointed were without any work during the test check period resulting in payment of idle salary in crores.

The CAG has while finding fault with the entire process recommended a realistic assessment of the number of law officers required on the basis of the workload and selection of the appointees in a transparent manner. The report also found the explanation offered by the State Government to be unacceptable keeping in view the daily duty roster regarding the Law Officer's work and performance. The report of the CAG makes interesting reading and may be extracted at this stage :

"***4.2.2 Faulty selection of Law Officers***

Engagement of Law Officers without assessing workload and without inviting applications resulted in payment of idle wages of ` 2.22 crore.

In order to deal with legal cases on behalf of Haryana Government in various Courts of Law, Tribunals and Commissions, the Additional Chief Secretary to Haryana Government, Administration of Justice Department engages Law Officers in various capacities on contract basis as per terms and conditions prescribed by the State Government.

With a view to verify the work assigned to these law officers and work actually performed by them, the complete records relating to daily duty rosters, vetting registers and cause lists of Courts for six months between December 2009 and January 2012 maintained in the office of the Advocate General, Haryana selected randomly was test checked (May 2012) and following irregularities were noticed:

- *There was no prescribed procedure for assessment of work for engagement of Law Officers on contract. The number of Law Officers on roll to plead legal cases in*

various courts at Chandigarh increased from 98 in December 2009 to 179 in January 2012 although the number of courts where they were to defend the cases remained the same during the above period.

- *The Law Officers were engaged without giving any advertisement or wide publicity.*

- *In the test-checked months, on an average, more than 50 per cent Law Officers remained without work. As detailed in **Table 2**, on an average the percentage of idle Law Officers with total available strength had arisen from 54 in December 2009 to 78 in January 2012. There was no monitoring of work assigned to these Law Officers by the Department.*

Table 2: Detail of Law Officers (LOs) without work and payment of idle salary

	Number of LOs on rolls	*Working days available in the month (excluding Court holidays and vacations)*	*Average number of Los without any work on particular days of the month*	*Percentage of LOs who remained without any work*	*Number of Los work for complete month*	*Idle salary paid to LOs without work for wholesale month (in)*
December 2009	***98***	***11***	***54***	***55***	***20***	***10,33,872***
August 2010	***137***	***21***	***70***	***51***	***27***	***19,40,983***
November 2010	***151***	***18***	***100***	***66***	***42***	***30,88,534***
March 2011	***153***	***22***	***97***	***63***	***58***	***42,21,554***
November 2011	***169***	***21***	***123***	***73***	***63***	***49,51,868***
January 2012	***179***	***20***	***140***	***78***	***87***	***69,48,786***
Total Idle salary paid to Law Officers without assigning any work						

- *In the test-checked months, the number of Law Officers ranging between 20 and 87 had not been allotted any work for whole of the month resulting in idle salary payment of 2.22 crore to these Law Officers for six months as detailed above.*

  In January 2012, out of 179 Law Officers on the roll on an average, 140 Law Officers had not been allotted any work and 87 Law Officers were without work for whole of the month. However, later on the Department discontinued the services of 26 Law Officers in June 2012. This shows that Law Officers were engaged without assessing the requirement on the basis of work

or work norms or workload prevailing in the Department. No such exercise was found to be done while engaging such Law Officers.

The matter was discussed in detail with the Additional Chief Secretary to Government of Haryana, Administration of Justice Department in an exit conference held on 23 October 2012. During the meeting it was stated that some guidelines should be in place to assess the vacancies on the basis of workload and selection of Law Officers should be made in a transparent manner. The Department was doubtful about the high percentage of Law officers without assigning any work and stated (November 2012) that though the work was generally assigned to a team comprising more than one Law Officer but in the daily duty roster name of only one Law Officer was mentioned. It was further added that these Law Officers perform multifarious duties/functions such as research of law for particular pending cases, for general updating of latest case law, preparing factual and legal notes, preparing compendium or judgments, etc. However, no requirement or need was felt to keep record of such assignments as the concerned Law Officers were responsible to deal with the cases entrusted to them.
The contention of the Department that the names of all team members were not mentioned in daily duty roster was not acceptable as during re-verification of daily duty rosters, after the exit conference, it was found that wherever a team was deputed for a specific work, names of all the team members were mentioned therein.

Thus, the engagement of excess Law Officers without assessing the quantum of work and without resorting to fair and transparent selection method, resulted in allowing more than 50 per cent Law Officers without work and payment of idle salary of 2.22 crore."

9. We are not sure whether a similar study has been conducted *qua* the State of Punjab, but given the fact that the number of law officers appointed by that State is also fairly large, we will not be surprised if any such study would

lead to similar or even more startling results. The upshot of the above discussion is that for a fair and objective system of appointment, there ought to be a fair and realistic assessment of the requirement, for otherwise the appointments may be made not because they are required but because they come handy for political aggrandisement, appeasement or personal benevolence of those in power towards those appointed. The dangers of such an uncanalised & unregulated system of appointment, it is evident are multi-dimensional resulting in erosion of the rule of law, public faith in the fairness of the system and injury to public interest and administration of justice. It is high time to call a halt to this process lest even the right thinking become cynical about our capacity to correct what needs to be corrected.

10. Question No.1 is accordingly answered in the negative.

Re: Question No.2

11. The question whether the States of Punjab and Haryana follow any procedure for selecting practising advocates for appointment as law officers have troubled us

throughout the hearing. We had, therefore, solicited information from the State of Punjab on certain specific questions that we formulated in terms of our order dated 11th April, 2014 and asked the State to file an affidavit indicating the following:-

1) *What is the procedure followed by the State Government for selecting practising Advocates for appointment as Law Officers for the State of Punjab?*

2) *Is there any selection or Search Committee constituted for the purpose of making such selections? If so, what is the composition of the Committee?*

3) *If a Selection/Search Committee has been constituted, the proceedings of the Committee regarding any appointment of Law Officers from time to time be filed along with the affidavit.*

4) *Does the Government consult the High Court before finalizing the list of appointments? If the High Court is not consulted, what is other method by which the Government ensures that those picked up are the best at the Bar?*

5) *Total number of Law Officers appointed and currently working and the terms on which the*

appointments are made shall also be filed along with the affidavit.

12. We had, by a subsequent order dated 2nd September, 2015 passed in Transferred Petition No.1073 of 2015, asked the State of Haryana also to file an affidavit answering the above queries. Both the States have in compliance with the said orders filed their respective affidavits. In the affidavit filed on behalf of the State of Punjab it is, *inter alia*, stated that there is no definite procedure statutory or otherwise governing the selection and appointment of advocates practising as law officers in the State of Punjab. Conventionally, these officers are engaged on contractual basis on the recommendations of the Advocate General or in consultation with him. At times, even the Government engages law officers after making "discreet enquiries" about their suitability for such engagements. A sizeable number of law officers so engaged are designated as Public Prosecutors in consultation with the High Court of Punjab and Haryana. The affidavit sets out in paragraph 4 answers to the questions on which the State was required to respond. For

the sake of convenience we may extract verbatim the questions and the replies to the same:

> " ***1) What is the procedure followed by the State Government for selecting practicing Advocates for appointment as Law Officers for the State of Punjab.***
>
> As stated hereinabove, the engagement of law officers to defend the State Government in cases assigned to them cannot be regulated by Statute or policy. Law officers are engaged on the recommendation of the Advocate General of the State, based, inter alia, on the assessment of individuals by the Advocate General as well as on recommendations made by colleagues, peers and others. In some cases, the State Government engages law officers after making discreet inquiries as to the suitability of the individual as a law officer.
>
> ***2) Is there any selection or search Committee constituted for the purpose of making such selections. If so, what is the composition of the Committee.***
>
> There is no selection or search committee constituted for making such selections.
>
> ***3) If a Selection/Search Committee has been constituted, the proceedings of the Committee regarding any appointment of Law Officers from time to time be filed along with the affidavit.***
>
> Not applicable, in view of response to item 2 above.
>
> ***4) Does the Government consult the High Court before finalizing the list of appointments. If the High Court is not consulted, what is other method by which the Government ensures that those picked up are the best at the Bar.***
>
> It is submitted that the Government does not consult the Hon'ble High Court before finalizing the list of appointments, except in the case of

public prosecutors appointed under Section 24 of Code of Criminal Procedure, 1973. It is submitted that this practice has continued over the years by convention and is also followed by other State Governments. It is further submitted that "best at the bar" is a subjective concept. In any event, as is commonly known, most "successful" lawyers are unwilling to take-up the responsibilities of holding such a position and make sacrifices since it impinges of their private practice.

5) Total number of Law Officers appointed and currently working and the terms on which the appointments are made shall also be filed along with the affidavit.

(i) In reply to above, Point No. 5, the details of total numbers of Law Officers currently working is given below:

Sr. No.	Designation	No. of Law Officers
1.	Additional Advocate General, Punjab	74
2.	Senior Deputy Advocate General, Punjab	05
3.	Deputy Advocate General, Punjab	40
4.	Assistant Advocate General, Punjab	55
5.	Advocate-on-Record	02

The terms and conditions of engagement of the above Law Officers, who have been engaged on contract basis on year to year basis, are yet to be finalized by the Government as is clear from their sample

> engagement letters and copies of sample engagement letters issued in respect of each category of posts are attached herewith as Annexure P-16 to P-19 (Page Nos. 136 to 142).
>
> (ii) It is stated that in four cases an exception was made and persons were absorbed as Sr. DAG/DAG. With regard to these four cases it is submitted that it would be wholly illogical to suggest that other advocates engaged by the State as law officers, (who are required to work under the Advocate General and to be guided in the discharge of their professional duties as per the instructions and guidance of the Advocate General) should be treated as "regular" employees of the Government merely because they are paid a fixed fee or on a monthly basis calculated with reference to a pay scale."

13. The State of Haryana has also filed an affidavit in compliance with the directions issued by us. In answer to question no.1 the State of Haryana has stated that the appointments are made on contractual basis on the recommendations of the learned Advocate General and that it is the Advocate General who assesses their suitability for such appointments. Neither a Selection nor Search Committee is constituted for the purpose nor is the High Court consulted before the names are finalised.

14. From the two affidavits filed by the States it is manifest that no procedure for selecting practising advocates for

appointment as law officers has been prescribed in the States of Punjab and Haryana. No Selection or Search Committee is constituted or is even envisaged. It is also clear that the two Governments do not consult the High Court before finalizing the list of appointees. The affidavits do not at the same time indicate as to how in the absence of any Selection or Search Committee the State Government ensures a fair selection in which they pick-up the best available and willing to accept the assignment as State counsel. The affidavits place the burden of making the process of fair selection upon the wisdom of the Advocates General of the two States. The affidavits do not state whether the Advocate General, has, in turn, constituted a Committee or followed any procedure or prescribed or formulated any norms for assessing the merit of those willing to work as State counsel. The affidavits do not even say if any applications are invited for appointment as State counsel. All told, the appointments are based entirely on how the Advocate General advises the State Government on the subject without the Advocate General in turn conducting a selection process, assessing *inter se* merit on an objective

basis or maintaining any record of any such process having been undertaken. The affidavits also do not rule out the possibility of the Governments themselves appointing persons over and above those recommended by the Advocate General on the basis of what the Affidavit of the State of Punjab describes as *"discreet enquiries".* The affidavits suggest that the process has been going on for past many years. The States also claim that the engagement of State counsel is a professional engagement meaning thereby that the States have no obligation either to prescribe a procedure or follow any definite method while making such appointments. State of Punjab has asserted that the process of selection and appointment cannot be regulated either by policy or by any statute.

15. We have not been able to persuade ourselves to accept the view that even when the appointments are made to offices heavily remunerated from the public exchequer the same can or ought to remain unregulated. That is particularly so when those appointed are expected by the very nature of their appointment to discharge important

public function affecting not only State interest but the quality of justice which the courts administer. There is in the case of Punjab and Haryana not even a semblance of any selection process in the matter of appointment of those chosen for the job leave alone a process that is credible in terms of its fairness and objectivity. The practice of making appointments in disregard of what is expected of a functionary sensitive to the demands of fairness and equality of opportunity even when in vogue for long, runs contrary to the true legal position settled by a long line of decisions to which we shall presently refer. The dominant purpose which ought to permeate any process of selection and appointment namely *"protection of public interest"* in courts by availing services of the most meritorious is clearly defeated by the method that the States have been following and continue to follow. What is regrettable is that even after the pronouncements of this Court have settled the principles on which public authorities are required to act while discharging their functions, the States continue to harp on the theory that in the matter of engagement of State counsel they are not accountable and that the engagement is only

professional and/or contractual hence unquestionable. It is, in our view, too late in the day for any public functionary or Government to advance such a contention leave alone expect this Court to accept the same. If a Government counsel discharges an important public function and if it is the primary duty of those running the affairs of the Government to act fairly, objectively and on a non-discriminatory basis, there is no option for them except to choose the best at the bar out of those who are willing and at times keen to work as State counsel. It is also their duty to ensure that the process by which the best are selected is transparent and credible. Abdicating that important function in favour of the Advocate General of the State who, in turn, has neither the assistance of norms or procedure to follow nor a mechanism for assessment of merit will be self-defeating. We regret to say that in the matter of appointment of State Counsel, the States of Punjab and Haryana have much to do to reform the prevalent system which reform is in our opinion long overdue. Question No.2 is also answered in the negative.

Re: Question No.3

16. It is by now, fairly well settled that not only the Government but all public bodies are trustees of the power vested in them and custodians of public interest. Discharge of that trust in the best possible manner is the primary duty of those in charge of the affairs of the State or public body. This necessarily implies that the nature of functions and duties including the power to engage, employ or recruit servants, agents, advisors and representatives must be exercised in a fair, reasonable, non-discriminatory and objective manner. It is also fairly well settled that duty to act fairly and reasonably is a facet of 'Rule of Law' in a constitutional democracy like ours. A long line of decisions of this Court over the past five decades or so have ruled that arbitrariness has no place in a polity governed by rule of law and that Article 14 of the Constitution of India strikes at arbitrariness in every State action. We may gainfully refer to some of these decisions, not so much to add to their content as to remind ourselves that we have come a long

way in the matter of settling the contours of the doctrine of Rule of Law of which equality is one significant feature.

17. In ***S G Jaisinghani v. Union of India AIR 1967 SC 1427***, this Court held that absence of arbitrary power is the first essential of "Rule of Law" upon which rests our Constitutional system. This Court ruled that in a system governed by rule of law, any discretion conferred upon the executive authorities must be confined within clearly defined limits. This Court quoted with approval, the following observations of Douglas J. in United States vs. Wunderlick 1951 342 US 98:96 Law Ed 113:

> *"Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler… Where discretion is absolute, man has always suffered."*

18. A similar sentiment was expressed by this Court in ***E P Royappa v. State of Tamil Nadu and Anr. (1974) 4 SCC 3*** where this Court declared that Article 14 is the genus while Article 16 is a specie and the basic principle which informs both these Articles is equality and inhibition against discrimination. Equality, declared this Court, was antithetic

to arbitrariness. The Court described equality and arbitrariness as sworn enemies, one belonging to the rule of law in a republic and the other to the whims and caprice of an absolute monarch. Resultantly if an act is found to be arbitrary, it is implicit that it is unequal both according to political logic and constitutional law, hence violative of Article 14 and if it affects any matter of public employment it is also violative of Article 16. This Court reiterated that Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and inequality of treatment.

19. Then came the decision of this Court in ***Maneka Gandhi v. Union of India (1978) 2 SCR 621,*** where this Court held that the principle of reasonableness both legally and philosophically is an essential element of equality and that non-arbitrariness pervades Article 14 with brooding omnipresence. This implies that wherever there is arbitrariness in State action whether, it be legislative or executive Article 14 would spring into action and strike the same down. This Court held, that the concept of reasonableness and non-arbitrariness pervades the

constitutional scheme and is a golden thread, which runs through the entire Constitution.

20. In ***Ramana Shetty v. International Airport Authority 1979 AIR (SC) 1628***, this Court relying upon the pronouncements of ***E.P. Royappa*** and ***Maneka Gandhi*** (supra) once again declared that state action must not be guided by extraneous or irrelevant considerations because that would be denial of equality. This Court recognized that principles of reasonableness and rationality are legally as well as philosophically essential elements of equality and non-arbitrariness as projected by Article 14, whether it be authority of law or exercise of executive power without the making of a law. This Court held that State cannot act arbitrarily in the matter of entering into relationships be it contractual or otherwise with a third party and its action must conform to some standard or norm, which is in itself rational and non-discriminatory.

21. In ***D.S. Nakra v. Union of India 1983 (1) SCC 305***, this Court reviewed the earlier pronouncements and while affirming and explaining the same held that it must now be taken to be settled that what Article 14 strikes at is

arbitrariness and that any action that is arbitrary must necessarily involve negation of equality.

22. In ***Dwarkadas Marfatia v. Board of Trustees of the port of Bombay 1989 (3) SCC 293***, this Court had an occasion to examine whether Article 14 had any application to contractual matters. This court declared that every action of the state or an instrumentality of the State must be informed by reason and actions that are not so informed can be questioned under Articles 226 and 32 of the Constitution.

23. Subsequent decisions of this Court in ***Som Raj & Ors. v. State of Haryana & Ors. (1990) 2 SCC 653, Neelima Misra v. Harinder Kaur Paintal & Ors. (1990) 2 SCC 746*** and ***Sharma Transport v. Government of A.P & Ors. (2002) 2 SCC 188*** have simply followed, reiterated and applied the principles settled by the pronouncements in the earlier mentioned cases.

24. We have thus far referred to decisions that are not subject specific and settle the legal position in the context of varied fact situations. The case at hand attracts the

application of the principles that are authoritatively settled by the decisions to which we have referred above. Application of those principles, apart from the question, is whether appointment of lawyers by the State Government simply signifies professional engagement of those appointed or has any public element also and if such appointments have a public element, whether the making of the same can itself be the subject matter of judicial review. The extent and nature of such review is an incidental question that would fall for determination in the facts of the case before us. We shall presently advert to those questions but before we do so we must state that we are not on virgin ground. A few decisions to which we shall presently refer have examined at considerable length, the very same questions and answered them with considerable aplomb. We may gainfully refer to some of those pronouncements if not all.

25. In ***Shrilekha Vidyarthi v. State of U.P. 1991 (1) SCC 212***, which happens to be the first of these decisions, this Court had an occasion to examine whether Government Counsel in the districts are holders of an '*office or post*' or

such appointments are no more than professional engagements like the one between a private client and his lawyer. That case arose out of a challenge mounted by Government Counsel who were engaged throughout the State of Uttar Pradesh to handle civil, revenue or criminal cases and whose services were en masse terminated by the State only to be replaced by fresh appointments on the basis of a new panel prepared for that purpose and communicated to the District Magistrates concerned. On behalf of the State, it was argued that the engagement of Government Counsel was nothing but a professional engagement between a client and his lawyer with no public element attached to it.

26. Rejecting that contention, this Court held that the appointment of the District Government Counsel by the State Government was not merely a professional engagement but had a public element attached to it. This Court noted that Government Counsel were paid remuneration out of the public exchequer and that having regard to Sections 24, 25 and 321 of the Code of Criminal Procedure, the public prosecutors were entrusted the

responsibility of acting only in the interest of administration of justice. In the case of Public Prosecutors, declared this Court, the additional public element flowing from the statutory provisions in the Code of Criminal Procedure, clothed the public prosecutors with the attribute of the holders of a public office which cannot be whittled down by the assertion that their engagement is purely professional between a client and his lawyer with no public element attached to it. This was according to this Court, sufficient to attract Article 14 and bring the question of validity of the impugned circular within the scope of judicial review.

27. The decision in ***Shrilekha's*** case (supra) is noteworthy for the additional reason that the same held judicial review of State action permissible even when the engagement of the Government counsel may be contractual in nature. This Court observed :

> *"The State cannot be attributed the split personality of Dr. Jekyll and Mr. Hyde in the contractual field so as to impress on it all the characteristics of the State at the threshold while making a contract requiring it to fulfil the obligation of Article 14 of the Constitution and thereafter permitting it to cast off its garb of State to adorn the new robe of a private body during the subsistence of the contract enabling it to act arbitrarily subject only to the contractual obligations and remedies flowing from it. It is really the nature*

of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. There is a basic difference between the acts of the State which must invariably be in public interest and those of a private individual, engaged in similar activities, being primarily for personal gain, which may or may not promote public interest. Viewed in this manner, in which we find no conceptual difficulty or anachronism, we find no reason why the requirement of Article 14 should not extend even in the sphere of contractual matters for regulating the conduct of the State activity."

28. Relying upon the decisions of this Court in ***Ramana Dayaram Shetty v. International Airport Authority of India (1979) 3 SCC 489; Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir (1980) 4 SCC 1; Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay (1989) 3 SCC 293 and Mahabir Auto Stores and Others v. Indian Oil Corporation and others (1990) 3 SCC 752,*** this Court held that the power of judicial review and the sweep of Article 14 was wide enough to take within its fold the impugned circular issued by the State in exercise of its executive powers irrespective of the

precise nature of appointment of the Government Counsel in the districts or the rights, contractual or statutory, which the appointees may have. This Court reiterated the well settled principle that State action can survive only if it does not suffer from the vice of arbitrariness which is the very essence of Article 14 of the Constitution and Rule of law. This Court observed :

> *"It is now too well-settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind."*

29. Applying the above principle to the circular under challenge, this Court held that arbitrariness was writ large on the same as it gave an impression as if the State action was taken under a mistaken belief of applicability of "spoils system" under our constitution. This Court held that even though in the case of State, public interest should be the

guiding consideration while considering the suitability of the appointees yet the impugned State action appeared to have been taken with the sole object of terminating all existing appointments irrespective of the subsistence or expiry of the tenure or the suitability of the incumbents. The following passage from the judgment sums up the trend of the judicial pronouncements which increasingly favour State activity even in contractual matter being brought within the purview of judicial review:

> *"In our view, bringing the State activity in contractual matters also within the purview of judicial review is inevitable and is a logical corollary to the stage already reached in the decisions of this Court so far. Having fortunately reached this point, we should not now turn back or take a turn in a different direction or merely stop there.*
> *In our opinion, two recent decisions in M/s Dwarkadas Marfatia and Sons, (supra) and Mahabir Auto Stores & Ors.,(supra) also lead in the same direction without saying so in clear terms. This appears to be also the trend of the recent English decisions. It is in consonance with our commitment to openness which implies scrutiny of every State action to provide an effective check against arbitrariness and abuse of power. We would much rather be wrong in saying so rather than be wrong in not saying so. Non-arbitrariness, being a necessary concomitant of the rule of law, it is imperative that all actions of every public functionary, in whatever sphere, must be guided by reason and not humour, whim, caprice or personal predilections of the persons entrusted with the task on behalf of the State and exercise of all power must be for public good instead of being an abuse of the power."*
>
> (emphasis supplied)

30. In ***State of U.P. and Ors. etc. v. U.P. State Law Officers Association and Ors. etc. (1994) 2 SCC 204***, also law officers were removed by the State Government, aggrieved whereof, the affected officers approached the High Court contending, *inter alia,* that their removal was against the principles of natural justice and that they could be removed from their offices only for valid reasons. The High Court agreed with that contention, allowed the petition and quashed the orders of removal. The State assailed that order before this Court in which this Court examined the issue from three different dimensions viz., (i) *the nature of the legal profession*; (ii) *the interest of public*; and (iii) *the modes of appointment and removal.*

31. While dealing with the *nature of the legal profession,* this Court observed that legal profession was essentially a service-oriented profession and that the relationship between the lawyer and his client is one of trust and confidence. As a responsible officer of the court and an important adjunct of the administration of justice, the lawyer also owes a duty to the court as well as to the opposite side.

He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client. Having said that, this Court noted the changed profile of the legal profession because of the expansion of public sector activities necessitating maintenance of a common panel of lawyers, some of whom are in full-time employment of the government or public institutions as their law officers.

32. On the question of *public interest involved in the appointment of lawyers,* this Court unequivocally declared that the government or the public body represents public interest and whoever is in charge of running their affairs is no more than a trustee or a custodian of public interest. Protection of public interests in the best possible manner is their primary duty. It follows that public bodies are under an obligation to the society to take the best possible steps to safeguard such interests. That obligation in turn casts on them the duty to engage the most competent servants, agents, advisers etc. Even in the matter of selection of lawyers, those who are running the government or the public bodies are under an obligation to make earnest efforts

to select the best from the available lot. This is more so because the claims made by and/or against the public bodies are monetarily substantial and socially crucial with far-reaching consequences.

33. This Court while dealing with the third dimension touching the mode of *appointment of lawyers* declared that in conformity with the obligation cast upon them those handling the affairs of the State are duty bound to select the most meritorious, whatever the method adopted for such selection and appointment may be. It must be shown that a search for the meritorious was undertaken and that appointments were made only on the basis of the merit and not for any other consideration. The following passage is in this regard apposite.

> *"18. The mode of appointment of lawyers for the public bodies, therefore, has to be in conformity with the obligation cast on them to select the most meritorious. An open invitation to the lawyers to compete for the posts is by far the best mode of such selection. But sometimes the best may not compete or a competent candidate may not be available from among the competitors. In such circumstances, the public bodies may resort to other methods such as inviting and appointing the best available, although he may not have applied for the post. Whatever the method adopted, it must be shown that the search for the meritorious was*

undertaken and the appointments were made only on the basis of the merit and not for any other consideration."

(emphasis supplied)

34. In ***State of U.P. and Anr. v Johri Mal (2004) 4 SCC 714*** a three-Judge Bench of this Court had an occasion to deal with somewhat similar question that arose once again in relation to appointment of government lawyers in the State of U.P. This Court reviewed the decisions earlier delivered and ruled that public interest would be safeguarded only when good and competent counsel are appointed by the State. No such appointments should, declared this Court, be made for pursuing a political purpose or for giving some undue advantage to any particular section. The State should replace an efficient, honest and competent lawyer only when it is in a position to appoint a more competent lawyer in his place, observed this Court. The following passage is apposite in this regard:

44. Only when good and competent counsel are appointed by the State, the public interest would be safeguarded. The State while appointing the public prosecutors must bear in mind that for the purpose of upholding the rule of law, good administration of justice is imperative which in turn would have a direct impact on sustenance of democracy. No

appointment of Public Prosecutors or District Counsel should, thus, be made either for pursuing a political purpose or for giving some undue advantage to a section of people. Retention of its counsel by the State must be weighed on the scale of public interest. The State should replace an efficient, honest and competent lawyer, inter alia, when it is in a position to appoint a more competent lawyer. In such an event, even a good performance by a lawyer may not be of much importance."

(emphasis supplied)

35. While dealing with the nature of office the government counsel hold, this Court declared that the State Government Counsel holds an office of great importance. They are not only officers of the court but also the representatives of the State and that courts repose a great deal of confidence in them. They are supposed to render independent, fearless and non-partisan views before the court irrespective of the result of litigation which may ensue. So also the public prosecutors have great responsibility. They are required to perform statutory duties independently having regard to various provisions contained in the Code of Criminal Procedure. The State Government counsel represents the State and thereby the interest of the general public before a court of law. This requires that government counsel have

character, competence, sufficient experience as also standing at the Bar. The need for employing meritorious and competent persons to maintain the standard of the high office cannot be minimized, observed the court, particularly, when the holders of the post have a public duty to perform. The Court also expressed anguish over the fact that in certain cases the recommendations are made by the District Magistrate having regard to the political affinity of the lawyers to the party in power and that State is not expected to rescind the appointments with the change in the government because a new party has taken over charge of the Government. This Court also recognized the age-old tradition of appointing the District Government Counsel on the basis of the recommendations of the District Collector in consultation with the District Judge. The fact that the District Judge, who is consulted while making such appointment knows the merit, competence and capability of the lawyer concerned, was also recognized by the Court.

36. The development of law in this country has taken strides when it comes to interpreting Articles 14 and 16 and

their sweep. Recognition of power exercisable by the functionaries of the State as a trust which will stand discharged only if the power is exercised in public interest is an important milestone just as recognition of the Court's power of judicial review to be wide enough to strike at and annul any State action that is arbitrary, unguided, whimsical, unfair or discriminatory. Seen as important dimensions of the rule of law by which we swear the law as it stands today has banished from our system unguided and uncanalised or arbitrary discretion even in matters that were till recently considered to be within the legitimate sphere of a public functionary as a repository of Executive Power. Those exercising power for public good are now accountable for their action, which must survive scrutiny or be annulled on the first principle that the exercise was not for public good in that the same was either malafide, unfair, unreasonable or discriminatory. Extension of the principle even to contractual matters or matters like engagement of law officers is symbolic of the lowering of the threshold of tolerance for what is unfair, unreasonable or arbitrary. The expanding horizons of the jurisprudence on the subject both

in terms of interpretation of Article 14 of the Constitution as also the court's willingness to entertain pleas for judicial review is a heartening development on the judicial landscape that will disentitle exercise of power by those vested with it as also empower those affected by such power to have it reversed if such reversal is otherwise merited.

37. The question whether a fair, reasonable and non-discriminatory method of selection should or should not be adopted can be viewed from another angle also equally if not more important than the need for preventing any infringement of Article 14. The State counsel appears for the State Government or for public bodies who together constitute the single largest litigant in our Court system. Statistics show that nearly 80% of litigation pending in the courts today has State or one of its instrumentalities as a party to it. State Counsel/counsel appointed by public bodies thus represent the largest single litigant or group engaged in litigation. It is also undeniable that for a fair, quick and satisfactory adjudication of a cause, the assistance which the Court gets from the Bar is extremely important. It is at

times said that the quality of judgment or justice administered by the courts is directly proportionate to the quality of assistance that the courts get from the Counsel appearing in a case. Our system of administration of justice is so modelled that the ability of the lawyers appearing in the cause to present the cases of their respective clients assumes considerable importance. Poor assistance at the Bar by counsel who are either not sufficiently equipped in scholarship, experience or commitment is bound to adversely affect the task of administration of justice by the Court. Apart from adversely affecting the public interest which State counsel are supposed to protect, poor quality of assistance rendered to the courts by State Counsel can affect the higher value of justice itself. A fair, reasonable or non-discriminatory process of appointment of State Counsel is not thus demanded only by the rule of law and its intolerance towards arbitrariness but also by reason of the compelling need for doing complete justice which the Courts are obliged to do in each and every cause. The States cannot in the discharge of their public duty and power to select and appoint State counsel disregard either the

guarantee contained in Article 14 against non-arbitrariness or the duty to protect public interest by picking up the best among those available and willing to work nor can the States by their action frustrate, delay or negate the judicial process of administration of justice which so heavily banks upon the assistance rendered by the members of the Bar.

38. To sum up, the following propositions are legally unexceptionable:

(i) *The Government and so also all public bodies are trustees of the power vested in them.*

(ii) *Discharge of the trust reposed in them in the best possible manner is their primary duty.*

(iii) *The power to engage, employ or recruit servants, agents, advisors and representatives must like any other power be exercised in a fair, reasonable, non-discriminatory and objective manner.*

(iv) *The duty to act in a fair, reasonable, non-discriminatory and objective manner is a facet of the Rule of Law in a constitutional democracy like ours.*

(v) *An action that is arbitrary has no place in a polity governed by Rule of Law apart from being offensive to the equality clause guaranteed by Article 14 of the Constitution of India.*

(vi) *Appointment of Government counsel at the district level and equally so at the High Court level, is not just a professional engagement, but such appointments have a "public element" attached to them.*

(vii) *Appointment of Government Counsel must like the discharge of any other function by the Government and public bodies, be only in public interest unaffected by any political or other extraneous considerations.*

(viii) *The government and public bodies are under an obligation to engage the most competent of the lawyers to represent them in the Courts for it is only when those appointed are professionally competent that public interest can be protected in the Courts.*

(ix) *The Government and public bodies are free to choose the method for selecting the best lawyers but any such selection and appointment process must demonstrate that a search for the meritorious was undertaken and that the process was unaffected by any extraneous considerations.*

(x) *No lawyer has a right to be appointed as a State/Government counsel or as Public Prosecutor at any level, nor is there any vested right to claim an extension in the term for which he/she is initially appointed. But all such candidates can offer themselves for appointment, re-appointment or extension in which event their claims can and ought to be considered on their merit, uninfluenced by any political or other extraneous considerations.*

(xi) *Appointments made in an arbitrary fashion, without any transparent method of selection or for political considerations will be amenable to judicial review and liable to be quashed.*

(xii) *Judicial review of any such appointments will, however, be limited to examining whether the process is affected by any illegality, irregularity or perversity/irrationality. The Court exercising the power of judicial review will not sit in appeal to reassess the merit of the candidates, so long as the method of appointment adopted by the competent authority does not suffer from any infirmity.*

39. Question No.3 is accordingly answered in the affirmative.

Re: Question No.4

40. What then are the ways out of the situation which has been as a governmental fiefdom that is immune to judicial review and correction? The Law Commission has, it is heartening to note, addressed a similar question at some length and made meaningful recommendations in its 197th Report. The Commission while examining issues concerning appointment of public prosecutors observed:

> *"The Sessions Judge who has knowledge of the caliber, experience and character of lawyers practicing in the Sessions Courts is well suited to suggest the best names of lawyers so that the interests of prosecution, the interests of the accused are fully taken care of. This being the logic behind the provision for consultation, any amendment by the States deleting the check on arbitrary appointments of Public Prosecutors, will be violative of Art. 14 of the Constitution. The fundamental point - which has to be remembered – is that any law made by the Centre or State Legislature in regard to appointment of Public Prosecutors must conform to the principles governing administration of criminal justice in which the public prosecutor has an independent and special role as stated in Chapter II . In as much as the Public Prosecutor is a 'limb of the judicial process' and 'an officer of Court' as stated by the 18 Supreme Court (see Chapter II), any method of appointment which sacrifices the quality of the prosecution or which enables State Governments to make appointments at their choice without proper screening, proper assessment of the qualifications, experience or integrity of the individuals, be they the Public Prosecutors selected from the Bar or appointed from among the Prosecuting Officers, will not stand the test of non-arbitrariness under Art. 14*

of the Constitution of India. The scheme must provide for appointing Public Prosecutors who shall bear all the qualities mentioned in Chapter II".

(emphasis supplied)

41. Dealing with the appointment procedure of Public Prosecutors and the need to provide for proper checks as also the validity of any state amendment to section 24, removing these checks from the scheme of Section 24, the Commission observed:

"Appointment procedure laid down in any legislation cannot give arbitrary discretion to State Governments. There must be proper checks in the matter of appointment of Public Prosecutors/Addl. Public Prosecutors in 22 the Sessions Court so that they can be efficient in their functioning, objective and independent of the Police and the Executive. Any scheme of appointments without proper checks will be violative of Art. 14 of the Constitution of India. If the central legislation expressly requires consultation with Sessions Judge and that he should assess merit, experience and good character as a necessary condition for appointment as Public Prosecutors under sec. 24(4), then any State Amendment which deletes the provision relating to consultation with the Sessions Judge and to the above qualities required of the appointee, then such deletion by the State Legislature amounts giving a licence for arbitrary appointments and will violate Art. 14. In such cases, assent of the President to the State Amendment can be justifiably refused."

(emphasis supplied)

42. The Commission unequivocally supported the need for consultation with the Sessions Judge and with the High Court, as the case may be, for appointment of the public prosecutors for those Courts in the following words:

> *"We may reiterate that, so far as sec. 24(4) is concerned, the Public Prosecutor's selection and appointment at the level of the Districts and the High Court cannot be left to the sweet will of the Government. Such a procedure has the danger of persons without adequate experience of conducting Sessions cases, or who lack in adequate knowledge of criminal law being appointed. There is even the likelihood of some of such appointees not maintaining the highest standards of conduct expected of a Public Prosecutor. Thus, while consultation under sec. 24(4) with the Sessions Judge cannot be dispensed with, we propose some extra provisions in sec. 24(4) requiring that the Session Judge must give importance to experience in Sessions cases, merit and integrity. If such a provision is dispensed with by State Legislatures, obviously such amendments will violate Art. 14. This is so far as the posts of Public Prosecutor and 50% of posts of Addl. Public Prosecutor in the District are concerned."*
>
> *(emphasis supplied)*

43. Consultation with the Sessions Judge for a Public Prosecutor in the District judiciary and with the High Court for one in the High Court is statutorily prescribed because of the importance of the appointment and the significance of the opinion of the Courts where the appointee has to work,

as to his or her capacity and professional ability. The statute does not admit of an appointment in disregard of the requirement of consultation. The Law Commission has, therefore, rightly held the consultative process to be a check on the power of appointment which cannot be left unregulated or uncontrolled, lest a person not suited or competent enough gets appointed to the position for other reasons or considerations. Consultation, in that sense, lends reassurance as to the professional ability and suitability of the appointee. The Commission has on that premise placed a question mark on the validity of State amendment that deletes from Section 24 of the Code of Criminal Procedure Code the need for consultation with the Sessions Judge or the High Court.

44. Taking a cue from the provisions of Section 24, we are inclined to hold that what serves as a check on the power of the Government to appoint a Public Prosecutor can as well be a check on the appointment of the State Counsel also. That is because, while the Public Prosecutor's power under the Code of Criminal Procedure Code gives him a distinctive

position, the office of a State Counsel, in matters other than criminal, are no less important. A State Counsel by whatever designation called, appears in important civil and constitutional matters, service and tax matters and every other matter where substantial stakes are involved or matters of grave and substantial importance at times touching public policy and security of State are involved. To treat such matters to be inconsequential or insignificant is to trivialise the role and position of a State Counsel at times described as additional and even Senior Additional Advocate General. What holds good for appointment of a Public Prosecutor as a check on arbitrary exercise of power must, therefore, act as a check on the State's power to appoint a State Counsel as well especially in situations where the appointment is unregulated by any constitutional or statutory provision. Such a requirement is implicit in the appointing power of the State which power is in trust with the government or the public body to be exercised only to promote public interest. The power cannot be exercised arbitrarily, whimsically or in an un-canalised manner for any such exercise will fall foul of Article 14 of the Constitution of

India and resultantly Rule of law to which the country is committed.

45. We have while dealing with question No.1 held that no lawyer has a right to be appointed as State Government counsel or as public prosecutor at any level nor does he have a vested right to claim extension in the term for which he/she is initially appointed. We have also held that all candidates who are eligible for any such appointment can offer themselves for re-appointment or extension in which event their claims can and ought to be considered on their merit uninfluenced by any political or other extraneous consideration. It follows that even the writ-petitioners cannot claim appointment or extension as a matter of right. They can at best claim consideration for any such appointment or extension upon expiry of their respective terms. Such consideration shall, however, have to be in accordance with the norms settled for such appointments and on the basis of their *inter se* merit, suitability and performance if they have already worked as State counsel. To that extent, therefore, there is no difficulty. The question

is what should be the mechanism for such consideration. There are in that regard two major aspects that need to be kept in mind. The first is the need for assessment and requirement of the State Governments having regard to the workload in different courts. As noticed earlier, appointments appear to have been made without any realistic assessment of the need for State counsel at different levels. Absence of a proper assessment of the requirement for State counsel leads to situations that have been adversely commented upon by the CAG in his report to which we have made a reference in the earlier part of this judgment. The problem gets compounded by those in power adding to the strength of government advocates not because they are required but because such appointments serve the object of appeasement or private benevolence shown to those who qualify for the same. The CAG has in that view rightly observed that there ought to be a proper assessment of the need before such appointments are made.

46. The second aspect is about the process of selection and assessment of merit of the candidates by a credible process.

This process can be primarily left to the State Government who can appoint a Committee of officers to carry out the same. It will be useful if the Committee of officers has the Secretary to Government, Law Department, who is generally a judicial officer on deputation with the Government as its Member-Secretary. The Committee can even invite applications from eligible candidates for different positions. The conditions of eligibility for appointment can be left to the Government or the Committee depending upon the nature and the extent of work which the appointees may be effected to handle. The process and selection of appointment would be fair and reasonable, transparent and credible if the Government or the Committee as the case may be also stipulates the norms for assessment of merit and suitability.

47. The third stage of the process of selection and appointment shall in the absence of any statutory provisions regulating such appointments involve consultation with the District & Sessions Judge if the appointment is at the district

level and the High Court if the appointment is for cases conducted before the High Court. It would, in our opinion, be appropriate and in keeping with the demands of transparency, objectivity and fairness if after assessment and finalisation of the selection process a panel is sent to the Chief Justice of the High Court concerned for his views on the subject. The Chief Justice could constitute a Committee of Judges to review the names recommended for appointment and offer his views in regard to professional competence and suitability of candidates for such appointments. Appointments made after such a consultative process would inspire confidence and prevent any arbitrariness. The same procedure could be followed where candidates are granted extension in their terms of appointment in which case the Committee appointed by the government and that constituted by the Chief Justice could also look into the performance of the candidates during the period they have worked as State counsel.

48. In the result, therefore, we dispose of Transfer Petition No.1073 of 2014 and Civil Appeal arising out of SLP(C)

No.8416/2016 (CC No.5470 of 2014) with the following directions:

(1) The States of Punjab and Haryana shall undertake a realistic assessment of their need in each category in which State counsel are proposed to be appointed.

(2) Based on the assessment so made, the States shall constitute a Selection Committee with such number of officers as the State Government may determine to select suitable candidates for appointment as State counsel. The Secretary, Department of Law in each State shall be the Member-Secretary of the Selection Committee.

(3) The Committee shall on the basis of norms and criteria which the Government concerned may formulate and in the absence of any such norms, on the basis of norms and criteria which the Committee may themselves formulate conduct selection of law officers for the State and submit a panel of names to the Chief Justice of Punjab and Haryana who may set up a Committee of Judges to review the panel and make recommendations to the Chief Justice. The Chief Justice may based on any such recommendations record his views regarding

suitability of the candidates included in the panel. The Government shall then be free to appoint the candidates having regard to the views expressed by the Chief Justice regarding their merit and suitability. The procedure for assessment of merit of the candidates and consideration by the High Court will apply in all cases where the candidates are already working as State counsel but are being given an extension in the term of their appointment. Having said that we must hasten to add that we are not interfering with the appointments already made in the States of Punjab and Haryana which can continue to remain valid for the period the same has been made but any extension or re-appointment shall go through the process indicated by us in the foregoing paragraphs.

(4) The writ-petitioners shall also be free to offer themselves for consideration before the Committee appointed by the State Government in which event their claims may also be considered having regard to their merits, suitability and performance as State counsel for the period they have worked as State counsel.

(5) We make it clear that nothing said by us in the foregoing paragraphs of this judgment shall affect

the right of the State Governments to appoint any person eligible for such appointment as the Advocate General of the State in terms of Article 165 of the Constitution of India.

(6) We further clarify that although we are primarily concerned with the procedure regarding selection and appointment of law officers in the States of Punjab and Haryana and although we have confined our directions to the said two States only yet other States would do well to reform their system of selection and appointment to make the same more transparent, fair and objective if necessary by amending the relevant LR Manuals/Rules and Regulations on the subject.

49. Since the issues that fell for determination in the Writ Petition No.2000 of 2011 also stand comprehensively determined by this order, the said petition shall also stand disposed of in the above terms. The parties are left to bear their own costs.

..... CJI.
(T.S. THAKUR)

.....J.
(KURIAN JOSEPH)

New Delhi
March 30, 2016