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STATE OF U.P. AND ORS. ETC.

v.

U.P. STATE LAW OFFICERS ASSOCIATION AND ORS. ETC.

JANUARY 25, 1994

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[P.B. SAWANT AND N. VENKATACHALA, JJ.]

Constitution of India, 1950: Article 14—Law Officers and Brief Holders appointed by State Government to conduct its cases in High Court—Removal of—Held, valid and proper as their appointment was itself arbitrary and was made in disregard of the Article—The mode of appointment of lawyers for public bodies has to be in conformity with the obligation cast on them to select the most meritorious.

Legal Remembrancer's Manual: Chapters V and VI—Law Officers and Brief Holders for conducting cases in High Court—Appointment of—Terms of contract stipulating that appointment could be terminated at any time without assigning reason—Held, such appointments are made, accepted and understood by both sides to be purely professional engagements till they last.

Professional Engagement: Legal profession—Nature of—Appointment of Law Officers for public bodies—Modes of appointment and removal—Obligation cast on public bodies to select the most meritorious—Held, an open invitation to lawyers to compete is by far the best mode of selection—In certain circumstances method of inviting and appointing the best available may be adopted—Whatever the method adopted, it must be shown that search for meritorious was undertaken and appointments were made only on the basis of merit and not for any other consideration.

G The State Government of Uttar Pradesh engaged lawyers as Chief Standing Counsel, Standing Counsel on the civil side and Government Advocate, Additional Government Advocate, Deputy Government Advocate and Assistant Government Advocate on the Criminal side, to attend to the Government work in the High Court of Allahabad and its Lucknow Bench. The terms of appointment of these Law Officers contained a condition that notwithstanding the period for which they were appointed, they could be removed at any time without giving any reason whatsoever. The Government also appointed Brief Holders from amongst the practising advocates

H to conduct such civil and criminal cases in the High Court as would be

entrusted to them, with the stipulation that such appointment would not be deemed to be appointment to any office or post but only professional engagement to be terminated on either side at will. A

The State Government by its order dated 26.5.1990 abolished the system of engaging Brief Holders in the High Court with immediate effect and by order dated 23.7.1990 removed 26 out of its 64 Law Officer working in the High Court. By yet another order dated 28.6.1990 the Government authorised the Legal Remembrancer to appoint special counsel and gave him financial and administrative powers which were earlier exercised by the Chief Standing Counsel and the Public Prosecutor. He was also given power to distribute the work to various Standing Counsel and Additional Public Prosecutors. B

The Law Officers and the Brief Holders filed a Writ Petition before the High Court contending that their removal was against the principles of natural justice and that they could be removed from their officer only for valid reasons. C

The High Court allowed the Writ Petition and quashed the orders dated 25.5.1990 and 23.7.1990 as also all the fresh appointments made by the State Government, and directed payment of remuneration to the Law Officers who were removed. It also made observations against the Legal Remembrancer. D

The State and the newly appointed Law Officer filed appeals, by special leave, before the Court, E

Allowing the appeals, this Court F

HELD : 1. Both the orders dated 23.7.1990 and 26.5.1990 passed by the State Government terminating the appointment of the respondent-Law Officers and abolishing the system of Brief Holders respectively are valid and proper. The High Court committed a patent error of law in setting aside the two orders. The judgment of the High Court is set aside. Consequently, the order of the High Court quashing the fresh appointments and directing payment to officers whose appointments were terminated is set aside, and its direction to the Government to continue the system of the Brief Holders stands quashed. [367-D-E] G

2.1. Chapter V of the Legal Remembrancer's Manual indicates that H

- A to appoint the Chief Standing Counsel, Standing Counsel and the Government Advocate, Additional Government Advocate, Deputy Government Advocate and Assistant Government Advocate, the State Government is under no obligation to consult even its Advocate General much less the Chief Justice or any Judges of the High Court or to take into consideration, the views of any Committee that 'may' be constituted for the purpose. Even where it chooses to consult them, their views are not binding on it. The method of appointment is indeed not calculated to ensure that the meritorious alone will always be appointed or that the appointments made will not be on considerations other than merit. In the absence of guidelines, the appointments may be made purely on personal or political considerations, and be arbitrary. This being so, those who come to be appointed by such arbitrary procedure, can hardly complain of termination of their appointment, particularly, when the order of appointment itself stipulates that the appointment is terminable at any time without assigning any reason. Such appointments are made, accepted and understood by both sides to be purely professional engagements till they last. [364-B-E]

- 2.2. In the instant case, out of 26 respondent-Law Officers, the period of contract of nine of them had expired and they were continued till further orders. The remaining 17 had continued after the expiry of their initial term without even formal orders of extention. None of the 26 officers had any right to hold the office on the date of their removal, even under the initial terms of appointment which stipulated the contractual period. The terms of the contracts also provided that the appointment could be terminated at any time without assigning any reason. Besides, the appointment of these Law Officers itself was arbitrary and was made in disregard of Article 14 of the Constitution. [364-H; 365-A-G]

Kumari Shrilekha Vidyarthi & Ors. v. State of Uttar Pradesh and Ors.,
[1991] 1 S.C.C. 212, inapplicable.

- G 2.3. The fact that the appointment of Law Officers are made by public bodies cannot vest them with additional sanctity. Every appointment made to a public office, howsoever made, is not necessarily vested with public sanctity. There is, therefore, no public interest involved in saving all appointments irrespective of their mode. From the inception some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them. [364-G]

2.4. The District Government Counsel being selected strictly on merit and for no other consideration, and after screening at different levels, as envisaged by Chapter VII of the Legal Remembrancer's Manual, are entitled to continue in their officer for the period of the contract of their engagement and they can be removed only for valid reasons. Termination of their services otherwise is not consistent with the public interest. The people are interested in their continuance for the period of their contracts and in their non-substitution by those who may come through the spoils system. [365-F-G]

Kumari Shrilekha Vidyarthi and Ors. v. State of Uttar Pradesh and Ors., [1991] 1 S.C.C. 212, reiterated.

3. The Government cannot be said to have erred in abolishing the system of brief holders and in taking a decision to appoint each time special counsel for special cases in their place. The Brief Holders, being advocates of the High Court, are empanelled by the State Government, as envisaged by Chapter VI of the Manual only in consultation with the Advocate General. Their selection is not made after open competition. Their appointment is in supernumerary capacity, purely at the discretion of the State Govt. They are appointed to handle the work that may be surplus with the Government Advocate and Chief Standing Counsel. No salary or any other kind of monthly remuneration is payable to them. They are paid per brief handled by them. They are not barred from private practice or from accepting cases against the Government. They are like *ad hoc* counsel engaged for doing a particular work when available. [366-D-F]

4.1. The appointment of lawyers by the Government and the public bodies to conduct work on their behalf and their subsequent removal from such appointment involves the nature of the legal profession, the interest of the public and the mode of appointment and removal. [362-B]

4.2. Legal profession is essentially a service oriented profession. Though the lawyers on the full-time rolls of the Government or the public bodies are described as their Law Officers, the Government and public bodies engage their services purely on a contractual basis either for a specified case or for a specified or unspecified period. Although the contract in some cases prohibits the lawyers from accepting private briefs, the nature of the contract does not alter from one of professional engagement to that of employment. The lawyer of the Government or a public

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A body is not its employee but is a professional practitioner engaged to do the specified work. It is precisely for this reason that in the case of such Law Officers, the saving clause of Rule 49 of the Bar Council of India Rules waives the prohibition imposed by the said rule against the acceptance by a lawyer of a full-time employment. [362-C-F]

B 4.3. The relationship between the lawyer and his client is one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave him also, for the same reasons. He is under no obligation to give reasons for withdrawing his brief from his lawyer. The Lawyer in turn is not an agent of his client but his dignified responsible spokesman. He is essentially an advisor to his client and is rightly called a counsel in some jurisdictions. [362-G-H]

C 4.4. Being 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. This relationship between the lawyer and the private client is equally valid between him and the public bodies. [363-B]

D 4.5. The mode of appointment of lawyers for the public bodies 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. [363-G-H; 364-A]

E 5. The judgment of the High Court ignores that, as envisaged by Chapters V, VI and VII of the Manual of Legal Remembrancer, the Legal Remembrancer, being a responsible officer and part of the Government, always had a role to play in the appointments of the counsel, in the distribution of the work among them and also in supervising their work and in sanctioning their bills. No material additional power has been vested in him by the Government by orders dated 25.5.1990, 28.6.1990 and

23.7.1990. In any case, if the Government has chosen to do so, the Legal Remembrancer can hardly be blamed for the same. The comments and observations made by the High Court against the Legal Remembrancer are both unjustified and unfortunate. [367-A-C] A

CIVIL APPELLATE JURISDICTION: Civil Appeals No. 662-68 of 1991 etc. etc. B

From the Judgment and Order dated 12.11.1990 of the Allahabad High Court in W.P. No. 22578, 12942, 24928/89, 19731, 20188, 20183, 20182 of 1990. C

D.V. Sehgal, B.S. Chauhan, Ms. Alka Agrawal, A.K. Goel, R.B. Misra, Manoj Swarup and Ms. Lalitha Kohli for the Appellants. C

G.L. Sanghi, K.K. Venugopal, Mohan Pandey, R.D. Upadhyay, Subhash Chandra Jain, S.K. Misra, Sunil Ambwani, M.V. Goswami, N. Kaushik and S. Razvi for the Respondents. D

The Judgment of the Court was delivered by

SAWANT, J. Leave granted in S.L.P. Nos. 14525 and 4912 of 1991. E

1. This group of appeals raises an important question with regard to the status of the law officers engaged by the State Government to conduct the cases on its behalf in the High Court. Incidentally, questions bearing on the profession of the lawyer, his relationship with his client, and the relationship of the Government and for that matter of all the public bodies with the lawyers they engage for conducting their matters, also fall for consideration. F

2. At the relevant time, there were 64 law officers working for the Uttar Pradesh State Government in the High Court of Allahabad including its Lucknow Bench. By an order dated 23.7.1990, the State Government removed 26 of the said law officers. Out of these, 9 law officers had been working for a long time, some of them for more than 15 years. Their continuation as law officers was till further orders. Another 11 officers of the removed officers had been appointed in 1982-83 and they continued to work till the date of their removal without renewal of their term. The remaining six law officers were appointed variously in March and May, 1989 for a period of one year only with a stipulation that they could be G H

- A removed any time without giving any reason whatsoever. Their term had also not been renewed after the expiry of the initial period of their appointment. There is no dispute that in cases of all these 26 officers and indeed in cases of all the law officers appointed in the High Court, the terms of appointment contained a condition that notwithstanding the period for which they were appointed, they could be removed at any time without giving any reason whatsoever.
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3. It appears that before issuance of the aforesaid order of removal dated 23.7.1990, the State Government had issued another order on 26.5.1990 by which the system of engaging Brief Holders in the High Court

- C was abolished with immediate effect. By yet another order of 28.6.1990, the Government had authorised the Legal Remembrancer to appoint Special Counsel for any special matter before the High Court. The order also gave him financial and administrative powers which were earlier exercised by the Chief Standing Counsel and the Public Prosecutor. He was further given power to distribute the work to the various Standing Counsel and the Additional Public Prosecutors.
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4. Aggrieved by the order dated 23.7.1990, the law officers who were removed from their posts, and aggrieved by the order of 26.5.1990, the then Brief Holders approached the High Court by a writ petition contending,

- E among other things, that their removal was against the principles of natural justice and that they could be removed from their officers only for valid reasons. The High Court accepted the contention of the law officers and by its impugned judgment, quashed the orders removing them from their offices. The High Court also quashed the order dated 26.5.1990 passed by
- F the State Government by which the Government had abolished the system of the engagement of Brief Holders and directed the respondents to continue the said system. The High Court further quashed all the fresh appointments made by the State Government and directed the payment of remuneration to the officers who were removed, from the date of their removal. In the course of the judgment, the High Court has also made observations against the Legal Remembrancer. These appeals are, therefore, preferred by the State as well as those who were newly appointed by the State Government as its law officers.
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- H 5. Before we refer to the contentions advanced on both sides, it would be worthwhile to explain the system which was prevalent in the State

for engaging lawyers to attend to the Government-work in the High Court and also the role assigned to the Legal Remembrancer *vis-a-vis* the Government lawyers. Chapter V of the Legal Remembrancer's Manual (hereinafter referred to as the 'Manual') deals with the Chief Standing Counsel and the Standing Counsel in the High Court and Chapter VI of the said Manual deals with Brief Holders in the High Court. Chapter VII deals with District Government Counsel with whom we are not concerned in the present appeals. However, that chapter has a bearing on the contentions advanced before us and we will deal with the same while discussing the contentions. Suffice it for the present to bear in mind that the appointment and conditions of engagement of District Government Counsel have been dealt with in the said Manual separately from the appointment of the Chief Standing Counsel, Standing Counsel and Brief Holders in the High Court.

6. Paragraph 5.01 of Chapter V states that there shall be one Chief Standing Counsel for the High Court at Allahabad and another for its Lucknow Bench and such number of Standing Counsel at both the said Benches as the State Government may from time to time appoint. Paragraph 5.02 states that in making the appointments of the Chief Standing Counsel as well as the Standing Counsel, the State Government "may, if considered necessary" take into consideration the views of the Advocate General *or* the Chief Justice *or* any Judges of the High Court or of any Committee that "may be" constituted for the purpose. Paragraph 5.03 then refers to the responsibility of the Chief Standing Counsel for conducting the cases. It states that he shall be responsible for the conduct of all civil cases in the High Court to which the State Government is a party except such cases or class of cases as are excluded by the State Government by general or special order. It further states that the Chief Standing Counsel shall work subject to such general or special directions as may be issued by the Advocate General or the Legal Remembrancer from time to time. Sub-paragraph (2) of the said paragraph states that the Government may entrust any case of special importance to the Advocate General or to a Special Counsel. Paragraph 5.04 refers to the duties of the Chief Standing Counsel. These duties include (i) representation of the State or of any authority within the State in such other civil cases in which he might be directed or required to appear by the Government, the Legal Remembrancer or the High Court; (ii) to present to the High Court under instructions from the Legal Remembrancer, appeals, or applications or petitions on

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- A behalf of the State; (iii) to advise the Government or the Legal Remembrancer when so required in any matter of a civil nature; (iv) to make suitable arrangements for the conduct of civil cases in the High Court in accordance with any general or special order of the Government or the Legal Remembrancer; (v) to assign cases to the Standing Counsel and then to the Brief Holders appointed by the Government; (vi) to report to the Legal Remembrancer the cases in which the State Counsel had been adversely commented upon by the High Court; (vii) to procure and submit to the legal Remembrancer copies of any judgment or order of the High Court that the Government may require or where immediate steps by the State Government are necessary; (viii) to ask for instructions from the
- B Legal Remembrancer in regard to the contest of the matters on behalf of the State Government; (ix) to report to the Legal Remembrancer the receipt of any process on behalf of the Government and to furnish to him with a copy of the memo of appeal, revision or application as the case may be; (x) to send his opinion to the Legal Remembrancer as to whether any case is fit for further appeal to the Supreme Court and to submit to the Legal Remembrancer such returns as the latter may from time to time prescribe or require.

7. Paragraph 5.05 refers to the duties of Standing Counsel and states that the Standing Counsel shall generally assist the Chief Standing Counsel in performing his duties and functions and shall perform such functions and conduct such cases as may be allotted to them by the Chief Standing Counsel or by any general or special order of the Government. Paragraph 5.07 places restriction on private practice of both the Chief Standing Counsel and Standing Counsel. It states that they shall not, save with the special permission, appear against the State in any civil case or proceeding nor shall they advise any private party regarding any civil case which might be pending or is likely to be instituted against the State or any State authority. It also states that they shall not, without the permission of the Legal Remembrancer communicate directly or indirectly to any person or authority the contents of any documents or convey any information which has come to their possession or knowledge in the course of their duties in any case in which they appear on behalf of the State Government. They shall also not accept any appointment as Director of any company without the previous sanction of the Government. Paragraph 5.08 requires the Chief Standing Counsel to arrange and regulate work in such a manner that an adequate number of Standing Counsel and/or Brief Holders are

present in the High Court on every day on which cases under his charge are fixed for hearing. Paragraph 5.10 gives power to the State Government to transfer the Chief Standing Counsel or any Standing Counsel from Allahabad to Lucknow and vice versa in consultation with the Advocate General for such period and on such terms as may be determined by the Government. They may also be asked by the Legal Remembrancer to appear on behalf of the State Government in any civil case in any Court in the State in or outside Allahabad or Lucknow. Paragraph 5.16 requires that except when otherwise expressly provided, all communications between the Government and the Chief Standing Counsel and the Standing Counsel shall be made through the Legal Remembrancer except in cases of urgency. But even in such cases, the copy of the communications shall invariably be sent to the Legal Remembrancer. It is not necessary to refer to the other provisions of this chapter.

8. Paragraph 6.02 of Chapter VI which deals with the Brief Holders in the High Court refers to the appointment of a panel of Brief Holders in the High Court. It states that the State Government may in consultation with the Advocate General appoint such number of Brief Holders from amongst the practicing advocates in the High Court as it may deem necessary from time to time to conduct such civil and criminal cases in the High Court as may be entrusted to them. The paragraph makes it clear that such appointments "shall not be deemed to be appointment to any office or post but only professional engagement which shall be terminable on either side at will." It requires a minimum of 5 years' practice at the bar for appointment as a Brief Holder. Paragraph 6.03 states that a Brief Holder shall ordinarily be appointed in the first instance for a period not exceeding one year and that the subsequent appointments may be for such number of years not exceeding three as the State Government may deem necessary from time to time. The remuneration of the Brief Holders is referred to at Paragraph 6.04. On the civil side, the Brief Holder is entitled to the same fee as would be payable to a Standing Counsel for doing similar work and on the criminal side, the remuneration is mentioned in terms of fee per day irrespective of the number of cases conducted and the hours of work put in by him. No salary or any other kind of monthly remuneration is payable to him. In case of dispute with regard to the fee, the decision of the Legal Remembrancer is to be final. Paragraph 6.05 states that it is the Government Advocate who shall allot criminal cases and the Chief Standing Counsel who shall allot civil cases to the Brief Holders and shall also

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- A exercise supervision and control over them. Paragraph 6.06 then states that the Government Advocate and the Chief Standing Counsel shall entrust only such cases to the Brief Holders which cannot be attended to by them or other law officers under them and which are not required to be conducted personally by them. It also details classes of cases which shall not, ordinarily, be entrusted to the Brief Holders. Paragraph 6.07 requires the entrustment of cases to the Brief Holders by rotation in a manner as may ensure an equitable distribution of work among all the of them except where the Government Advocate or the Chief Standing Counsel may in the interest of the better prosecution of cases think it necessary to depart from the rule. Paragraph 6.11 gives the Brief Holder, the right to private practice
- B and also for accepting cases against the Government. Paragraph 6.13 refers to the manner of removal of Brief Holder and states that the Government may at any time without prior notice and without assigning any reason whatsoever, remove the name of the Brief Holder from its panel. Paragraph 6.16 prohibits Brief Holders from participating in any political Brief Holders from participating in any political activity so long as they work as Brief Holders. The other provision of the chapter are not relevant for our purpose.

- 9. The conditions of service of the Government Advocate and Additional Government Advocate, Deputy Government Advocate or Assistant Government Advocate for conducting criminal matters in the High Court are the same as that of the Chief Standing Counsel and the Standing Counsel respectively.

- 10. Since the respondents have relied heavily on a judgment of this Court in *Kumari Shrilekha Vidyarthi and Others v. State of Uttar Pradesh others*, [1991] 1 S.C.C. 212, which deals specifically with appointments and removal of the District Government Counsel and the Additional/Assistant District Government Counsel, and the appellants have tried to distinguish the said judgment, it is necessary to examine the relevant conditions of service of the District Government Counsel as detailed in Chapter VII of the said Manual. The District Government Counsel are legal practitioners appointed by the State Government to conduct in any court other than the High Court such civil, criminal or revenue cases on behalf of the State Government as may be assigned to them either generally or specially (Paragraph 7.01). The Government have also the power to appoint Additional or Assistant District Government Counsel or Subordinate District

Government Counsel to assist the District Government Counsel (Paragraph 7.02). Paragraph 7.03 relates to the appointment of the District Government Counsel. Whenever the post of any of the District Government Counsel is likely to fall vacant or when a new post has been created, the concerned District Magistrate has to notify the vacancy to the members of the Bar. The qualification for appointment as a District Government Counsel, Assistant District Government Counsel and Sub-District Government Counsel is 10 years', 7 years', and 5 years' practice respectively. The District Magistrate shall also ask those who want to be considered for appointment to give their names to him with their particulars such as age, length of practice at the Bar, proficiency in Hindi, income tax paid by him on professional income during the last three years, details of the work handled by them during the preceding two years duly verified by the court and also to state whether they have practiced on the criminal, civil or revenue side. The District Government Counsel and the legal practitioners of the neighboring districts are also eligible to be considered for the said post and they have to forward their particulars through their District Magistrate who has to offer his own remarks on the particulars so given. When the names are so received, they have to be considered by the District Magistrate in consultation with the District Judge. The District Magistrate has to give due weight to the claim of the existing incumbents if any, and has to submit confidentially in the order of preference the names of the legal practitioners to the Legal Remembrancer. He has also to give his opinion, particularly, about the character, professional conduct and integrity of the candidate and forward to the Legal Remembrancer the opinion of the District Judge on the suitability and merits of each candidate. The District Magistrate has also to send to the Legal Remembrancer, the bio data submitted by other candidates with such comments that he and the District Judge may like to make. The District Magistrate is also required to recommend the name of any person who may be considered fit by him although he has not formally supplied has particulars. Paragraph 7.04 then states that on receipt of the recommendations of the District magistrate, the Legal Remembrancer may, if necessary, make such further inquiry about the candidate as he may deem necessary and then submit the recommendations of the District Magistrate along with his own opinion for the orders of the Government whose decision shall be final. Paragraph 7.06 states that the legal practitioners who are finally selected by the Government may be appointed District Government Counsel for one year. At the end

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- A of the period of one year, the District Magistrate after consulting the District Judge has to submit a report on his work and conduct to the Legal Remembrancer together with the statement of work done by him. If his work and conduct are found to be unsatisfactory, the matter has to be reported to the Government for orders. If the report on his work and conduct is satisfactory, the appointee may be furnished with a deed of engagement in Form No. 1 annexed to the manual and the engagement is to be for a term not exceeding three years. The said paragraph makes it explicitly clear that the appointment of a legal practitioner as District Government Counsel is only a professional engagement terminable at will on either side and is not an appointment to a post under the Government.
- B Accordingly, the Government reserves the power to terminate the appointment of any District Government Counsel at any time without assigning any reason. Para 7.07 bars the District Government Counsel from participating in political activities. Paragraph 7.08 deals with the renewal of the term of the District Government Counsel and states that at least three months before the expiry of the term, the District Magistrate shall after consulting the District Judge and considering the incumbent's past record of work and conduct and age, report to the Legal Remembrancer together with a statement of work done by him, whether in his opinion, the term of appointment of such counsel should be renewed or not. The District Magistrate has to send along with his own recommendations, the opinion of the District Judge. While giving his recommendations for renewal of the term, the District Judge has to give an estimate of the quality of the counsel's work from the judicial standpoint, his capacity as a lawyer and his professional conduct. Similarly, the District Magistrate while giving his report about the suitability of the District Government Counsel from the administrative point of view, has to report on the candidate's public reputation in general, his character, integrity and professional conduct. If the Government agrees with the recommendations of the District Magistrate for the renewal of the term of the Government Counsel, it may pass orders for reappointing him for a period not exceeding three years. If the Government decides not to reappoint any Government Counsel, the Legal Remembrancer may call upon the District Magistrate to forward fresh recommendations. This procedure is to be followed on the expiry of every successive period of renewed appointment. For the above purpose, the District Magistrate and the District Judge is required to keep a character roll and maintain a record of the work done by the District Government

Counsel and the capacity displayed by him in the discharge of his work. The Government (in Judicial Advice section) is also required to keep similar character roll based upon the copy of the confidential reports recorded by the District Magistrate and the District Judge, and forward it to the Legal Remembrancer. The shortcomings on the part of the District Government Counsel have all one to be brought to the notice of the Legal Remembrancer. The District Government Counsel (Civil), is prohibited altogether from advising or appearing against the State or Central Government in any civil case pertaining to the district or the local area to which he is appointed. However, he may appear against the State or the Central Government with the prior permission of the Legal Remembrancer in any civil case in which he has not been retained by the Government. Subject to this restriction, the District Government Counsel (Civil), has a right to private practice.

11. The District Government Counsel (Civil) is prohibited from becoming a counsel of any Municipality or Municipal Corporation or other local authorities of the area to which he is appointed. The Assistant District Government Counsel (Civil) is prohibited from appearing in suits instituted by private parties against the State or Union of India in courts in which according to the allocation or work, he is alone authorised to represent the State. He is, however, free to take up private cases against the State or Union of India in other courts. Similar restriction is placed on the Sub-District Government Counsel. As regards, the District Government Counsel (Criminal) and Additional District Government Counsel (Criminal), they are prohibited from appearing for any private party in any criminal case. However, with certain exceptions, with the prior approval of the Legal Remembrancer, they are allowed to appear. Similar restrictions are placed on District Government Counsel (Revenue). Para 7.18 states that the District Government Counsel in a district shall be subject to the supervision of the Legal Remembrancer as well as the District Magistrate. Their confidential reports are also to be submitted by the District Magistrate to the Government through the Legal Remembrancer. Paragraphs 7.19-7.22 deal with the duties of the District Government Counsel (Civil), (Criminal), (Revenue) respectively. Paragraphs 7.24 and paragraphs 7.26-7.45 deal with the fees payable to the District Government Counsel. Para 7.61 gives power to the Legal Remembrancer to forfeit the fees payable to the District Government Counsel in certain cases. The conditions of service of

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A the Additional/Assistant/Subordinate District Government Counsel are similar to those of the District Government Counsel *mutatis mutandis*.

12. The appointment of lawyers by the Government and the public bodies to conduct work on their behalf, and their subsequent removal from such appointment have to be examined from three different angles viz., the

B nature of the legal profession, the interests of the public and the modes of the appointment and removal.

13. Legal profession is essentially a service-oriented profession. The ancestor of to-day's lawyer was no more than a spokesman who rendered

C his services to the needy members of the society by articulating their case before the authorities that be. The services were rendered without regard to the remuneration received or to be received. With the growth of litigation, lawyering became a full-time occupation and most of the lawyers came to depend upon it as the sole source of livelihood. The nature of the service

D rendered by the lawyers was private till the government and the public bodies started engaging them to conduct cases on their behalf. The government, and the public bodies engaged the services of the lawyers purely on a contractual basis either for a specified case or for a specified or an unspecified period. Although the contract in some cases prohibited the lawyers from accepting private briefs, the nature of the contract did not

E alter from one of professional engagement to that of employment. The lawyer of the Government or a public body was not its employee but was professional practitioner engaged to do the specified work. This is so even to-day, though the lawyers on the full-time rolls of the government and the public bodies are described as their law officers. It is precisely for this

F reason that in the case of such law officers, the saving clause of Rule 49 of the Bar Council of India Rules, waives the prohibition imposed by the said rule against the acceptance by a lawyer of a full-time employment.

14. The relationship between the lawyer and his client is one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave his also, for the same reasons. He is under no obligation to

G give reasons for withdrawing his brief from his lawyer. The lawyer in turn is not an agent of his client but his dignified, responsible spokesman. He is not bound to tell the court every fact or urge every proposition of law which his client wants him to do, however irrelevant it may be. He is

H essentially an advisor to his client and is rightly called a counsel in some

jurisdictions. Once acquainted with the facts of the case, it is the lawyer's discretion to choose the facts and the points of law which he would advance. Being 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 was to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client. This relationship between the lawyer and the private client is equally valid between him and the public bodies.

15. Over the years, the public sector has grown considerably, and with its extension and expansion, the number of lawyers engaged in the public sector has increased noticeably, so much so, that it can truly be said that to-day there is a public sector in the legal profession as well. The expansion of the public sector activities has necessitated the maintenance of a permanent panel of lawyers. Some of the lawyers are also in full-time employment of the public institutions as their law officers. The profile of the legal profession has thus undergone a change.

16. The Government or the public body represents public interests, and whoever is in charge of running their affairs, is no more than a trustee or a custodian of the public interests. The protection of the public interests to the maximum extent and in the best possible manner is his primary duty. The public bodies are, therefore, under an obligation to the society to take the best possible steps to safeguard its interests. This obligation imposes on them the duty to engage the most competent servants, agents, advisors, spokesmen and representatives for conducting their affairs. Hence, in the selection of their lawyers, they are duty-bound to make earnest efforts to find the best from among those available at the particular time. This is more so because the claims of and against the public bodies are generally monetarily substantial and socially crucial with far-reaching consequences.

17. 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

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A 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.

18. It would be evident from Chapter V of the said Manual that to appoint the Chief Standing Counsel, the Standing Counsel and the Government Advocate, Additional Government Advocate, Deputy Government Advocate and Assistant Government Advocate, the State Government is under no obligation to consult even its Advocate General much less the Chief Justice or any judges of the High Court or to take into consideration, the views of any committee that "may" be constituted for the purpose. The State Government has a discretion. It may or may not ascertain the views of any of them while making the said appointments. Even where it chooses to consult them, their views are not binding on it. The appointments may, therefore, be made on considerations other than merit and there exists no provision to prevent such appointments. The method of appointment is indeed not calculated to ensure that the meritorious alone will always be appointed or that the appointments made will not be on considerations other than merit. In the absence of guidelines, the appointments may be made purely on personal or political considerations, and be arbitrary. This being so those who come to be appointed by such arbitrary procedure, can hardly complain if the termination of their appointment is equally arbitrary.

E Those who come by the backdoor have to go by the same door. This is more so when the order of appointment itself stipulates that the appointment is terminable at any time without assigning any reason. Such appointments are made, accepted and understood by both sides to be purely professional engagements till they last. The fact that they are made by public bodies cannot vest them with additional sanctity. Every appointment made to a public office, howsoever made, is not necessarily vested with public sanctity. There is, therefore, no public interest involved in saving all appointments irrespective of their mode. From the inception some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them.

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19. As the facts narrated earlier show, out of 26 respondent-law officers, the period of contract of nine of them had expired and they were continued till further orders. The remaining seventeen had continued after the expiry of their initial term without even formal orders of extension. In other words, none of the 26 officers had any right to hold the office on the

date to their removal, even under the initial terms of appointment which stipulated the contractual period. This is apart from the fact that the terms of the contracts also provided that the appointment could be terminated at any time without assigning reason. The reliance placed by the respondents in this behalf on *Kumari Shrilekha Vidyarthi and Ors. v. State of Uttar Pradesh and Ors.*, [1991] 1 S.C.C. 212, is misplaced for the obvious reason that the decision relates to the appointment of the District Government Counsel and the Additional/Assistant District Government Counsel who are the law officers appointed by the State Government to conduct civil, criminal and revenue cases in any court other than the High Court. Their appointments are made through open competition from among those who are eligible for appointment and strictly on the basis of merit as evidenced by the particulars of their practice, opinions of the District Magistrate and the District Judge and also after taking into consideration their character and conduct. Their appointment is in the first instance for one year. It is only after their satisfactory performance during that period that a deed of engagement is given to them, and even then the engagement is to be for a term not exceeding three years. The renewal of their further term again depends upon the quality of work and conduct, capacity as a lawyer, professional conduct, public reputation in general, and character and integrity as certified by the District Magistrate and the District Judge. For the said purpose, the District Magistrate and the District Judge is required to maintain a character roll and a record of the work done by the officer and the capacity displayed by him in discharge of the work. His work is also subject to strict supervision. The shortcomings in the work are required to be brought to the notice of the Legal Remembrancer. It will thus be seen that the appointment of the two sets of officers viz., the Government Counsel in the High Court with whom we are concerned, and the District Government Counsel with whom the said decision was concerned, are made by dissimilar procedures. The latter are not appointed as a part of the spoils system. Having been selected on merit and for no other consideration, they are entitled to continue in their office for the period of the contract of their engagement and they can be removed only for valid reasons. The people are interested in their continuance for the period of their contracts and in their non-substitution by those who may come in through the spoils system. It is in these circumstances that this Court held that the wholesale termination of their services was arbitrary and violative of Article 14 of the Constitution. The ratio of the said decision can hardly be applied to the appointments of the law officers in the High Court whose appointment itself was arbitrary and was made in disregard of Article 14

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A of the Constitution as pointed out above. What is further, since the appointment of District Government Counsel is made strictly on the basis of comparative merits and after screening at different levels, the termination of their services is not consistent with the public interests. We are, therefore of the view that the High Court committed a patent error of law in setting aside the order dated 23.7.1990 terminating the services of the

B respondent-law officers.

20. Coming now to the High Court's order setting aside the Government Order dated 26.5.1990 by which the Government had abolished the system of Brief Holders, and instead the power was given to the Legal

C Remembrancer to appoint special counsel for special matters, we are of the view that the High Court has committed a still graver error. As has been pointed out above, Chapter VI of the said Manual deals with the system of appointing a panel of Brief Holders in the High Court. The appointment of the lawyers on the panel of Brief Holders is made by the State Government only in consultation with the Advocate General who is

D its own officer and from among the advocates of the High Court who have completed a minimum of five years practice at the Bar. The selection of Brief Holders is not made after open competition. Their appointment is purely at the discretion of the State Government. The Brief Holders are further appointed to handle that work which cannot be attended to by the Government Advocate and Chief Standing Counsel. No salary or any other kind of monthly remuneration is payable to them. They are paid per brief handled by them. They are not barred from private practice or from accepting cases against the Government. It will thus be apparent that their appointment is in supernumerary capacity. It is necessitated because there may be work which cannot be attended to by the Government Advocate

E and the Chief Standing Counsel. They are not assured of any regular work much less any regular fee or remuneration. They get briefs only if the Government Advocate and Chief Standing Counsel are over worked and not otherwise. They are like *ad hoc* counsel engaged for doing a particular work when available. Their only qualification is that they are on the panel of the counsel to be so appointed for handling the surplus work. We are,

F therefore, at a loss to understand as to how any fault can be found with the Government if the Government has now thought it fit to abolish the said system and to appoint each time special counsel for special cases in their place.

H 21. It is evident from the tenor of the High Court judgment that the

Legal Remembrancer has been made a special target and has been treated A almost like the villain of the piece. The judgment ignores that the Legal Remembrancer as a responsible officer and part of the government always had a role to play in the appointments of the counsel, in the distribution of the work among them and also in supervising their work and in sanctioning their bills. For this purpose, we have referred to the relevant provisions of Chapters V, VI and VII of the Manual in extenso. Even a cursory reading of the said chapters, will show that no material additional power has been vested in him by the Government on account of the present measures. In any case, if the Government has chosen to do so, the Legal Remembrancer can hardly be blamed for the same. Certainly he does not deserve the kind of compliments which the High Court has chosen to pay him. The comments and observations made against him are, therefore, both unjustified and unfortunate. B C

22. In the result, we set aside the judgment of the High Court and declare that both the orders dated 23.7.1990 and 26.5.1990 are valid and proper. We further hold that the termination of the appointment of the respondent-law officers was valid and proper. We also hold that the direction given by the High Court to the Government to continue the system of Brief Holders is unjustified and the same stands quashed. We also set aside the order of the High Court quashing the fresh appointments and directing payments to the officers whose appointments were terminated. The appeals are allowed accordingly. However, in the circumstances of the case, there shall be no order as to costs. D E

R.P.

Appeals allowed.