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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) Nos.37768 of 2025 & W.P.(C) Nos.202,553,1587,1588,1832,4598,4719,4841, 5477 & 8725 of 2026

In the matter of an application under Article 226 & 227 of the Constitution of India.

.....

Chintamani Mekap & Others .... **Petitioners**

-versus-

State of Odisha & Others .... **Opposite Parties**

For Petitioner : M/s. Milan Kanungo, Sr. Adv. along with Mr. S.R. Mohanty, Adv.

For Opp. Parties : M/s. P. Acharya, Advocate General along with Mr. C.K. Pradhan, Addl. Govt. Adv, Mr. A. Tripathy, Addl. Govt. Adv., Mr. P.K. Panda, Addl. Standing Counsel and Ms.A. Das, Addl.Standing Counsel

PRESENT:

THE HONBLE MR. JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:15.04.2026 and Date of Judgment: 24.06.2026

Biraja Prasanna Satapathy, J.

1. Since the issue involved in the present batch of Writ Petitions is identical, all the matters were heard

analogously and disposed of by the present common order. However, for the sake of convenience and brevity, W.P.(C) No.37768 of 2025 is taken as the leading case.

2. W.P.(C) No.37768 of 2025 has been filed inter alia with the following prayer:

> *In the light of the aforesaid facts and circumstances, this Hon'ble Court may be graciously pleased to admit the writ application and after hearing the parties be pleased to quash the notification no.21315 dated 24.12.2025 as under Annexure-5 and the notification no.21321 dated 24.12.2025 as under Annexure-6 in the interest of Justice, Equity and Fairplay;*
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> *And; be further pleased to direct the Opp. Parties to not to interfere in the engagement of the Petitioners in the respective posts.*
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> *And; be further pleased to pass any other order(s)/Direction(s) as this Hon'ble Court thinks fit and proper;*
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> *And; for this act of kindness the Petitioner as in duty bound shall ever pray.*

3. Mr. Milan Kanungo, learned Senior Counsel appearing for the Petitioners along with Mr. S.R. Mohanty, learned counsel contended that Petitioners on being found eligible, were appointed as Law Officers in the district of Ganjam vide notification dtd.08.01.2024, so issued by the Government in the Law Department-

Opp. Party No.1. Such order of appointment was issued vide notification dtd.08.01.2024, in terms of the provisions contained under the Orissa Law Officers Rules, 1971 (in short, "Rules").

3.1. Learned Sr. Counsel vehemently contended that as provided under Rule-6 of the said Rules, the term of office of a Law Officer, who is so appointed is for a period of three years, subject to any other direction by the State Government. Rule-6 of the Rules reads as follows:

> *"6. **Term of Office**- The Law Officers shall ordinarily hold office for a term of three years, subject to any other direction by the State Government. He shall be eligible for re-appointment on the expiry of such term."*

3.2. It is contended that since all the Petitioners were appointed as Law Officer vide notification dtd.08.01.2024, in view of the provisions contained under Rule-6 of the Rules, they were required to continue till completion of a period of three years, i.e. 07.01.2027. But while continuing as such and without issuing any show-cause and/or prior notice, all the Petitioners were terminated

with immediate effect vide the impugned notification dtd.24.12.2025 under Annexure-5. Not only that, vide another notification issued on the self-same date under Annexure-6, a fresh set of Law Officers were appointed in the district of Ganjam.

3.3. It is vehemently contended that since the Petitioners were all appointed as Law Officers vide notification dt.08.01.2024 and they were required to continue for a period of three years in terms of the provisions contained under Rule-6 of the Rules, prior to completion of the aforesaid period of three years, Petitioners could not have been terminated vide notification dtd.24.12.2025 under Annexure-5 with appointment of a fresh set of Law Officers vide another notification issued on 24.12.2025 under Annexure-6.

3.4. It is contended that since prior to such termination of the Petitioners, principle of natural justice was never followed nor any notice was issued to them, such order of termination is not legal and justified and liable for interference of this Court.

3.5. It is also contended that after such appointment of the Petitioners vide notification dtd.08.01.2024 vide order dt.31.01.2024, so issued by Opp. Party No.2 under Annexure-1, Petitioners were posted to different Courts functioning in the district of Ganjam. But after the new Government assumed office in the State, pursuant to the letter issued by the Law Department on 14.10.2025, Opp. Party No.2 vide letter dt.25.10.2025 under Annexure-3 requested the Sub-Collector, Berhampur/ Bhanjanagar/ Chhatrapur to sponsor the names of Advocates for their appointment as Law Officers in the district of Ganjam. Basing on such request made by the Law Department and submission of the list of Advocates by Opp. Party No.2, Petitioners were terminated vide notification dtd.24.12.2025 under Annexure-5 and a new set of Advocates were appointed as Law Officers vide notification dtd.24.12.2025 under Annexure-6.

3.6. Learned Sr. Counsel appearing for the Petitioners further contended that such notification issued under Annexures-5 & 6 in terminating the Petitioners as Law Officers in the district of Ganjam with appointment of a

fresh set of Law Officers under Annexure-6, is prima facie illegal, being contrary to the decision of the Hon'ble Apex Court reported in ***AIR (1991) 1 SCC 212, Kumari Shrilekha Vidyarthi & Others Vs. State of U.P and Others*** and ***State of U.P. and Another Vs. Johri Mal, AIR 2004 SC 3800.***

3.7. Hon'ble Apex Court in the case of ***Shrilekha Vidyarthi*** in Paragraphs-19,20,21,24,26,27,28,34,35,38 & 44 of the judgment has held as follows.

> *19. Even otherwise and sans the public element so obvious in these appointments, the appointment and its concomitants viewed as purely contractual matters after the appointment is made, also attract Article 14 and exclude arbitrariness permitting judicial review of the impugned State action. This aspect is dealt with hereafter.*
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> *20. Even apart from the premise that the `office' or `post' of D.G.Cs. has a public element which alone is sufficient to attract the power of judicial review for testing validity of the impugned circular on the anvil of Article 14, we are also clearly of the view that this power is available even without that element on the premise that after the initial appointment. the matter is purely contractual. Applicability of Article 14 to all executive actions of the State being settled and for the same reason its applicability at the threshold to the making of a contract in exercise of the executive power being beyond dispute, can it be said that the State can thereafter cast off its personality and exercise unbridled power unfettered by the requirements of Article 14 in*

the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more? We have no hesitation in saying that the personality of the State, requiring regulation of its conduct in all spheres by requirements of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirements of Article 14 and contractual obligations are alien concepts. which cannot co-exist.

21. The Preamble of the Constitution of India resolves to secure to all its citizens Justice, social. economic and political; and Equality of status and opportunity. Every State action must be aimed at achieving this goal. Part IV of the Constitution contains `Directives Principles of State Policy which are fundamental in the governance of the country and are aimed at securing social and economic freedoms by appropriate State action which is complementary to individual fundamental rights guaranteed in Part III for protection against excesses of State action to realise the vision in the Preamble. This being the philoso- phy of the Constitution, can it be said that it contemplates exclusion of Article 14--non-arbitrariness which is basic to rule of law--from State actions in contractual field when all actions of the State are meant for public good and expected to be fair and just? We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. In our opinion, it would be alien to the Constitutional Scheme to accept the argument of exclusion of Article 14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts

where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.

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24. *The State cannot be attributed the sprit 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 con- tract 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 what- ever 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 inter- est 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 regu- lating the conduct of the State activity.*

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26. A useful treatment of the subject is to be found in (1990) 106 L.Q.R. at pages 277 to 292 in an article `Judicial Review and Contractual Powers of Public Authorities'. The conclusion drawn in the article on the basis of recent English decisions is that `public law principles designed to protect the citizens should apply because of the public nature

of the body, and they may have some role in protect- ing the public interest'. The trend now is towards judicial re,dew of contractual powers and the other activities of the Government. Reference is made also to the recent decision of the Court of Appeal in Jones v. Swansea City Council, [1990] 1 W.L.R. 54, where the Court's clear inclination to the view that contractual powers should generally be reviewable is indicated, even though the Court of Appeal faltered at the last step and refrained from saying so. It is significant to note that emphasis now is on reviewability of every State action because it stems not from the nature of function, but from the public nature of the body exercising that function; and all powers possessed by a public authority, howsoever conferred, are possessed `solely in order that it may use them for the public good'. The only exception limiting the same is to be found in specific cases where such exclusion may be desirable for strong reasons of public policy. This, however, does not justify exclusion of reviewability in the contractual field involving the State since it is no longer a mele private activity to be excluded from public view or scrutiny.

27. Unlike a private party whose acts uninformed by reason and influenced by personal predilections in contractual matters may result in adverse consequences to it alone without affecting the public interest, any such act of the State or a public body even in this field would adversely affect the public interest. Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. This is equally true of all actions even in the field of contract. Thus, every holder of a public office is a trustee whose highest duty is to the people of the country and, therefore, every act of the holder of a public office, irrespective of the label classifying that act, is in discharge of public duty meant ultimately for public good. With the diversification of State activity in a Wel- fare State requiring the State to discharge its wide-ranging

functions even through its several instrumentalities, which requires entering into contracts also, it would be unreal and not pragmatic, apart from being unjustified to exclude contractual matters from the sphere of State actions re- quired to be non-arbitrary and justified on the touchstone of Article 14.

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

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34. In our opinion, the wide sweep of Article 14 undoubtedly takes within its fold the impugned circular issued by the State of U.P. in exercise of its executive power, irrespec- tive of the precise nature of appointment of the Government Counsel in the districts and the other rights, contractual or statutory, which the appointees may have. It is for this reason that we base our decision on the ground that inde- pendent of any statutory right, available to the appointees, and assuming for the purpose of this case that the rights flow only from the contract of appointment, the impugned circular, issued in exercise of the executive power of the State, must satisfy Article 14 of the Constitution and if it is shown to be arbitrary, it must be struck down. However, we have referred to certain provisions relating to initial appointment, termination or renewal of tenure to indicate that the action is controlled at least by settled guide- lines, followed by the State of U.P., for a long time. This too is relevant for deciding the question of arbitrariness alleged in the present case.

35. 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 Consti- tution and basic to the rule of law, the system which gov- erns us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua lion 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.

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38. After Jaisinghani case, long strides have been taken in several well-known decisions of this Court expand- ing the scope of judicial review in such matters. It has been emphasized time and again that arbitrariness is anathe- ma to State action in every sphere and wherever the vice percolates, this Court would not be impeded by technicalities to trace it and strike it down. This is the surest way to ensure the majesty of rule of law guaranteed by the Constitution of India. It is, therefore, obvious that irrespective of the nature of appointment of the Government Counsel in the districts in the State of U.P. and the security of tenure being even minimal as claimed by the State, the impugned circular, in order to survive, must withstand the attack of arbitrariness and be supported as an informed decision which is reasonable.

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44. Conferment of the power together with the discretion which goes with it to enable proper exercise of the power is coupled with the duty to shun arbitrariness in its exercise and to promote the object for which the power is conferred, which undoubtedly is public interest and not individual or private gain, whim or caprice of any individual. All persons entrusted with any such power have to bear in mind its necessary concomitant which alone justified con ferment of power under the rule of law. This was apparently lost sight of in the present case while issuing the impugned circular.

3.8. It is also contended that following the decision in the case of Shrilekha Vidyaarthi, Hon'ble Apex Court in the case of ***Johri Mal*** in para-78 of the judgment has held as follows:

> *78. The State, therefore, is not expected to rescind the appointments with the change in the Government. The existing panel of the District Government Counsel may not be disturbed and a fresh panel come into being only because a new party has taken over charge of the Government.*

3.9. Making all these submissions and relying on the decisions in the case of ***Shrilekha Vidyarthi*** as well as ***Johri Mal*** so cited supra, learned Sr. Counsel appearing for the Petitioners contended that since the Petitioners prior to completion of their term, have been terminated and without following the principle of natural justice and because of the change of Government in the State, not only the order of termination is bad in the eye of law, but also unsustainable in the eye of law. It is accordingly contended that with staying of the operation of the impugned notification dtd.24.12.2025 so issued under Annexure-5, status quo ante be maintained and the matter be adjudicated on merit.

4. Mr. P. Acharya, learned Advocate General appearing for the State-Opp. Parties along with Mr. C.K. Pradhan, learned Addl. Govt. Advocate, Mr. A. Tripathy, learned Addl. Govt. Advocate, Mr. P.K. Panda, learned Addl. Standing Counsel and Ms. A. Dash, learned Addl. Standing Counsel, on the other hand made his submission contending inter alia that all the Petitioners were appointed as Law Officers in the district of Ganjam vide notification dtd.08.01.2024 and in the notification, it was clearly indicated that such appointment is until further orders. It is also contended that even though as provided under Rule-6 of the 1971 Rules, the term of office of a Law Officer so appointed is ordinarily for a period of three years, but the aforesaid provision so contained under Rule-6, was amended vide notification dtd.05.08.2025 of the Law Department. The amended Rule-6 of the Rules reads as follows:

> *"The Law Officer shall ordinarily hold office for a term of three years. He shall be eligible for re-appointment on the expiry of such term. However, the State Government may terminate any law officer before the expiry of normal tenure of three years."*

4.1. Placing reliance on the amended Rule-6 of the Rules, learned Advocate General first of all contended that since the appointment is ordinarily for a term of three years, it cannot be held that the Petitioners are eligible to continue till completion of the period of three years. It is also contended that since the State Government has the power to terminate any Law Officer before the expiry of the normal tenure of three years as per the amended provision, the action taken by the State in terminating the Petitioners as Law Officers in the district of Ganjam, vide notification dtd.24.12.2025 under Annexure-5 cannot be found fault with. It is also contended that even as per the pre-amended provision of Rule-6, the appointment of a Law Officer is with the condition that the Law Officer shall ordinarily hold Office for a term of three years, subject to any other direction by the State Government.

4.2. It is contended that since the word "ordinarily" is used with regard to continuance of a Law Officer, it cannot be held that such an appointment is till completion of the period of three years. It is accordingly contended that since the appointment of the Petitioners as Law Officers is

ordinarily for a term of three years, the stand taken by the Petitioners that they are eligible to continue till completion of the period of three years cannot be accepted.

4.3. It is accordingly contended that taking recourse to the amended Rule-6 of the Rules, Government-Opp. Party No.1 requested Opp. Party No.2, to furnish a list of fresh Advocates for their appointment as Law Officers in the district of Ganjam vide letter dt.14.10.2025 under Anenxure-4. After receipt of the list from the Office of Opp. Party No.2, Petitioners while on the one hand were terminated vide notification dtd.24.12.2025 under Annexure-5, vide another notification issued on the self-same date under Annexure-6, a fresh set of Law Officers were appointed in the district of Ganjam. It is also contended that in terms of the notification issued under Anenxure-6, all the Law Officers so appointed have assumed their office in different Courts, in the meantime.

4.4. It is also contended that since as per the amended provisions contained under Rule-6 of the Rules, State Government was vested with the power to terminate a Law

Officer before the expiry of the normal tenure of three years, there was no requirement to issue a prior show-cause or notice to the Petitioners and it cannot be held as a pre-condition, prior to such termination of the Petitioners. It is also contended that since no such provision is there under the 1971 Rules, to issue any show-cause or prior notice, taking into account the nature of appointment issued in favour of the Petitioners vide notification dtd.08.01.2024, they were terminated vide notification dtd.24.12.2025 under Annexure-5.

4.5. It is also contended that as provided under Rule-34 of the Rules, the administrative control and supervision vests with the Collector of the District, subject to overall control of the State Government. It is also contended that 1971 Rules being not a Rule framed under Article-309 of the Constitution of India, it has got no statutory power and instead the Rules are procedural in nature, which only provides the guideline for appointment of a Law Officer and the mode in which they will work.

4.6. In support of the submission that 1971 Rules are not statutory Rules, reliance was placed to a decision of this Court in the case of ***Sudhansu Sekhar Misra Vs. State of Orissa and others, OJC 1486 of 1975***, decided on 04.12.1975. This Court in para-8 & 10 of the said order has held as follows:

> *8. It would also be relevant in this context to notice that the Law Officer appointed under the rules still remains an advocate of the Court even after appointment. The relationship between him and the State after appointment continues to be that of a counsel and a client. The relationship of mast and servant is not brought about by this appointment. The appointee is engaged on certain terms to do duties assigned to him. In other words his appointment by the State, therefore, is not an appointment to a post. This view finds support by the decision in State v. Bholanath [A.I.R. 1972 All. 460]. In this case appointments of three Government advocates were challenged on the ground that the same were made in violation of Art. 16 (1) of the Constitution inasmuch as no advertisement or notice was issued before making the appointments inviting applications from eligible members of the Bar. The writ petitions were allowed by the learned single Judge, but on appeal the contention was not accepted. In Para 14 while dealing with the nature of appointment of a Law Offices the Division Bench of the Court said:*
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> *"It must be remembered that, even after appointment as a Law Officer, the advocate so appointed continues in the legal profession and appears as an advocate before the High Court on behalf of the State. The relationship between him and the State is still essentially that of counsel and client."*
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> *In Balakrushna Sahu v. Executive Engineer, G.E.D., and another [1975-1 L.L.N. 66]. the question arose in*

a slightly different context. The contention of the State was that in a dispute between the management and the workmen before the Labour Court the Govern ment Pleader was competent to appear for the management as he was an officer of the Government. The Court after noticing deci sions on the subject said at page 68:

".....All the judicial pronouncements noticed above emphasize that even in spite of the fact that a Government Pleader or a Government Advocate is appointed by the State, so far as the duties to be performed by him are concerned, they are the same as required to be performed by a legal practi tioner and in spite of the appointment the relationship between the State and either the Government Pleader or the Government Advocate is the same as between a client and his counsel.....

If such an appointment is not an appoint-ment to a post, the rule making power conferred by Art. 309 of the Constitution which empowers the framing of the rules in regard to "posts in connection with the affairs of the Union or of any State"

will not be attracted. It is not possible therefore, to relate these rules to Article 309 at all.

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10. *In the instant case after the learned Advocate-General had concluded his argument, an application for production of certain documents was moved on behalf of the Petitioner. The learned Advocate General placed before us the entire file relating to the framing of these rules. The application was, therefore, not pressed and accordingly dismissed. The file produced before us showed that the rules were not framed by the Governor in exercise of his power under Art. 309.*

Before the framing of these rules the Bihar and Orissa Practice and Procedure Manual was in force in the State. It was conceded before us that this was not statutory manual, but purely administrative instructions. The file contained a memorandum signed by Additional Joint Secretary to Government of Orissa. Law Department. in which he stated that the

question of revision of rules of the Bihar and Orissa Practice and Procedure Manual was under consideration of Govern ment for a long time past and that after examining the broad schemes of the rules on the subject in force in different States it had been considered suitable to replace the Bihar and Orissa Practice and Procedure Manual by the fresh rules instead of incorporating piecemeal amendments and that is how the draft of these fresh rules came into being. The memorandum recommended that the draft rules be placed before the cabinet for favour of approval. But it appears that the ministry thereafter left office and they were never placed before the Cabinet. In these circum-stances they were placed before the Governor and he approved them. There can, therefore, be no doubt that the Governor never invoked his powers under Art. 309 of the Constitution in framing these rules as indeed for reasons we have already stated the same could not have been invoked because the subject was not covered by Art. 309. In our view, therefore, these rules are purely administrative and have no legal sanction.

4.7. Placing reliance on the aforesaid decision, it is contended that since the 1971 Rules are purely administrative in nature and have no legal sanction, stand taken in the Writ Petition that in view of the provision contained under Rule-6 of the Rules, Petitioners could not have been terminated prior to completion of the period of three years, cannot be accepted.

4.8. It is also contended that on the face of the decision rendered by the Apex Court in the case of ***Shrilekha Vidyarthi,*** so relied on by the learned Sr. Counsel appearing for the Petitioners, Hon'ble Apex Court in the

case of ***Johri Mal*** so cited (supra), in para-59,60,61,67,68 & 75 has held as follows:

> *59. This Court in Kumari Shrilekha Vidyarthi and Others vs. State of U.P. and Others [(1991) 1 SCC 212] opined that the appointment made in the post of District Government Counsel is not contractual in nature. It was held that the Government Law Officers including the Public Prosecutors are holders of public offices. It was further opined that even in a case of contract the State cannot act arbitrarily and such arbitrary action is liable to be set aside as violative of Article 14 of the Constitution of India.*
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> *60. In Kumari Shrilekha Vidyarthi(supra), the Court sought to draw a distinction between the powers of public authorities vis-`-vis the private authorities referring to Wade's Administrative Law, 6th Edition, page 401 to the following effect and stating:*
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> > *"For the same reasons there should in principle be no such thing as unreviewable administrative discretion, which should be just as much a contradiction in terms as unfettered discretion. The question which has to be asked is what is the scope of judicial review, and in a few special cases the scope for the review of discretionary decisions may be minimal. It remains axiomatic that all discretion is capable of abuse, and that legal limits to every power are to be found somewhere."*
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> *61. We have our own reservations about the aforementioned principles of law, but for the purpose of this case, it is not necessary to advert thereto.*
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> *67. Another Bench of this Court in Harpal Singh Chauhan and Others etc. vs. State of U.P. [(1993) 3 SCC 552] upon a detailed discussion of the relevant provisions of the Legal Remembrancer Manual as also sub-sections (4),(5) and (6) of the Code of Criminal Procedure opined :*
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> > *"16. As already mentioned above, Section 24 of the Code does not speak about the extension or*

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

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

68. The Court emphasized that the members of the legal profession are required to maintain high standard of legal ethics and dignity of profession and further they are not supposed to solicit work or seek mandamus from courts in matters of professional engagements.

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75. In the matter of engagement of a District Government Counsel, however, a concept of public office does not come into play. However, it is true that in the matter of Counsel, the choice is that of the Government and none can claim a right to be appointed. That must necessarily be so because it is a position of great trust and confidence. The provision of Article 14, however, will be attracted to a limited extent as the functionaries named in

> *the Code of Criminal Procedure are public functionaries. They also have a public duty to perform. If the State fails to discharge its public duty or act in defiance, deviation and departure of the principles of law, the court may interfere. The court may also interfere when the legal policy laid down by the Government for the purpose of such appointments is departed from or mandatory provisions of law are not complied with. Judicial review can also be resorted to, if a holder of a public office is sought to be removed for reason de'hors the statute.*

4.9. It is contended that since decision in the case of Johri Mall is a decision rendered by a three Judge Bench and in the said decision, Hon'ble Apex Court came to a definite conclusion that with regard to engagement of a District Government Counsel, concept of public office does not come into play and Hon'ble Apex Court also has its own reservation with regard to the principle decided in the case of ***Shrilekha Vidyarthi***, on the face of the decision in the case of Johri Mal, the decision in the case of Shrilekha Vidyarthi cannot be made applicable to the facts of the present case.

4.10. It is also contended that following the decision in the case of Johri Mal so cited (supra), Hon'ble Apex Court in the case of ***State of U.P and Others Vs. Rakesh Kumar***

Keshari and ***another, (2011) 5 SCC 341*** held as follows in para-31,32,35 & 36.

> *31. This Court in the said case has further ruled that so long as in appointing a Counsel, the procedure laid down in L.R. Manual is followed and a reasonable or fair procedure is adopted, the Court would normally not interfere with the decision. What is emphasized by this Court is that the nature of the office held by a lawyer vis-a-vis, the State being in the nature of professional engagement, the Courts are normally chary to overturn any decision unless an exceptional case is made out.*
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> *According to this Court the question as to whether the State is satisfied with the performance of its Counsel or not is primarily a matter between it and the Counsel and the extension of tenure of Public Prosecutor or the District Counsel should not be compared with the right of renewal under a licence or permit granted under a statute. What is laid down as firm proposition of law is that an incumbent has no legally enforceable right as such and the action of the State in not renewing the tenure can be subjected to judicial scrutiny inter alia only on the ground that the same was arbitrary. It is also held that the Court normally would not delve into the records with a view to ascertain as to what impelled the State not to renew the tenure of the Public Prosecutor or a District Counsel and the Jurisdiction of the Courts in a case of this nature would be to invoke the doctrine of "Wednesburry unreasonableness".*
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> 32. *This Court in Johri Mal case further held that L.R. Manual contains executive instructions and is not law within the meaning of Article 13. After emphasizing that a Public Prosecutor is not only required to show his professional competence but is also required to discharge certain administrative functions, it is held that the respondent therein had no effective control over A.D.G.C.s for taking steps and*

therefore action on the part of the State was not wholly without jurisdiction requiring interference by the High Court in exercise of its power of judicial review while setting aside the direction given by the High Court to constitute the five member Collegium headed by the District Judge to make recommendation for appointment to the post of D.G.C. (Criminal), this Court had to take pains to explain to all concerned that the appointment of District Government Counsel cannot be equated with the appointments of the High Court and Supreme Court Judges and a distinction must be made between professional engagement and a holder of high public office.

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35. This position is again made clear in an unreported decision of this Court dated November 11, 2010 rendered in Civil Appeal No. 3785 of 2003. In the said case the State of U.P. by its order dated 03.06.2002 had rejected the request of the respondent Satyavrat Singh for renewal of the extension of his term as District Government Counsel (Criminal). The respondent had challenged the same in the Writ Petition. The Allahabad High Court had quashed the order 03.06.2002 refusing renewal of the term of the respondent as District Government Counsel (Criminal) and had directed the State Government to renew the term of the respondent as Government Counsel. While allowing the appeal filed by the State Government this Court has held as under:-

> *"It is difficult to discern as to how the High Court has upheld the unstatable proposition advanced by the respondent for extension of his term as Government Counsel. We wish to say no more in this matter since the subject matter that arises for our consideration is squarely covered by the decision of this Court in State of U.P. and another Vs. Johri Mal 2004 (4) SCC 714. This Court took the view that in the matter of engagement of a District Government Counsel, a concept of public office does not come into play. The choice of a counsel is for the Government and none can claim a right to be a counsel. There is no right for appointment of a Government Counsel.*

The High Court has committed a grave error in renewing the appointment of the respondent as Government Counsel.
Needless to state that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot compel the State to utilize the services of an advocate irrespective of its choice. It is for the State to select its own counsel.
The impugned order of the High Court is set aside. The appeal is accordingly, allowed."

36. Thus it was not open to the respondents to file Writ Petition under Article 226 of the Constitution for compelling the appellants to utilize their services as Advocates irrespective of choice of the State. It was for the State to select its own Counsel. In view of the poor performance of the respondents in handling/conducting criminal cases, this Court is of the opinion that the High Court committed a grave error in giving direction to the District Magistrate to forward better particulars of 10 candidates whose names were included in the two panels prepared pursuant to advertisement dated 16.01.2004 and in setting aside order dated 07-09-2004 of the Principal Secretary to the Chief Minister, U.P. calling upon the District Magistrate to send another panel/list for appointment to the two posts of A.D.G.C. (Criminal).

4.11. Placing reliance on the decision in the case of ***Rakesh Kumar Keshari*** so cited (supra), it is contended that since the State has got the power to select its own Counsel, it is not open for the Petitioners to file a Writ Petition under Article-226 of the Constitution of India for compelling the State to utilize their services, irrespective of the choice of the State. It is contended that relationship in

between the Petitioners and the State Government is purely that of an Advocate and client, arising out of a professional engagement and Petitioners are not holding any statutory or public office. It is accordingly contended that since Petitioners were all appointed as Law Officers, in view of the decision in the case of ***Johri Mal,*** so followed in the case of ***Rakesh Kumar Keshari***, it cannot be held that Petitioners have got any vested right to continue till completion of the term of three years. It is accordingly contended that no illegality or irregularity can be found with the impugned notification dtd.24.12.2025 under Annexure-5, wherein Petitioners were terminated and so also notification issued on 24.12.2025 under Annexure-6 in appointing a fresh set of Advocates as Law Officers for the district of Ganjam.

4.12.It is accordingly contended that the Writ Petition with the pleadings made sans any merit and it is liable for dismissal at the stage of admission itself.

5. To the submission made by the learned Advocate General, Mr. Milan Kanungo, learned Sr. Counsel appearing for the Petitioners made further submission

contending inter alia that since the normal tenure of a Law Officer so appointed as like the Petitioners, is for a period of three years, the amendment carried to Rule-6 of the Rules, does not authorize illegal termination. As while terminating the Petitioners as Law Officers in the district of Ganjam vide the impugned notification dtd.24.12.2025 under Annexure-5, no reason has been assigned and the same is a cryptic one, such a notification is non-est in the eye of law.

5.1. It is also contended that decision relied in the case of ***Sudhansu Sekhar Misra*** as well as ***Rakesh Kumar Keshari*** are on a different context and the ratio so decided in the above-noted two judgments, cannot be made applicable to the facts of the present case. It is also contended that since prior to termination of the Petitioners vide the impugned notification, provisions contained under Article-14 of the Constitution of India has not been followed, the impugned notification dtd.24.12.2025 so issued under Annexures-5 & 6 are liable for interference of this Court.

6. Having heard learned counsel appearing for the parities and considering the submission made, this Court finds that all the Petitioners were appointed as Law Officers in the district of Ganjam vide notification dtd.08.01.2024. Pursuant to such appointment vide notification dt.08.01.2024, all the Petitioners were attached to different Courts vide order dtd.31.01.2024 of Opp. party No.2 under Annexure-1. However, vide the impugned notification dtd.24.12.2025 so issued by Opp. Party No.1 under Annexure-5, all the Petitioners were terminated with immediate effect. Vide another notification issued on the same date under Annexure-6, a fresh set of Law Officers were appointed for the district of Ganjam.

6.1. It is not disputed that such appointment of the Petitioners as Law Officers in the district of Ganjam was made in terms of the provisions contained under the 1971 Rules.

This Court after going through the provisions contained under the pre-amended and amended Rule-6 of the Rules, finds that appointment of a Law Officer is

ordinarily made for a period of three years. In the order of appointment issued vide notification dtd.08.01.2024, it has been clearly indicated that such appointment is made until further orders.

6.2. Placing reliance on the pre-amended as well as amended provisions of Rule-6 of the Rules, this Court is of the view that Petitioners have got no vested right of continuance for a period of three (3) years. Since the order of appointment issued in favour of the Petitioners vide notification dtd.08.01.2024 is until further orders, Placing reliance on the provisions contained under Rule-6 of the Rules, both pre-amended and the amended, it is the view of this Court that the Petitioners were never appointed with the condition that they will continue for a term of three years.

6.3. Since Petitioners' appointment as Law Officers is ordinarily for a terms of three years and as per the amended provisions contained under Rule-6 of the Rules, the State Government has got the power to terminate any Law Officer before the expiry of the normal tenure of three

years, this Court is of the view that no illegality or irregularity has been committed by Opp. Party No.1 in terminating the Petitioners vide the impugned notification dtd.24.12.2025 under Annexure-5.

6.4. Placing reliance on the decision in the case of ***Johri Mal*** and subsequent decision in the case of ***Rakesh Kumar Keshar*** so cited supra, it is also the view of this Court that decision in the case of ***Shrilekha Vidyarthi*** cannot be made applicable to the case of the Petitioners on the face of the decision in the case of ***Johri Mal and Rakesh Kumar Keshari.***

6.5. Since Petitioners were all appointed as Law Officers by the State Government with the condition that it is until further orders and 1971 Rule is not a statutory Rule, save and except, a set of guideline for appointment of Law Officer in the State, it is the view of this Court that no such formal notice was required to be issued to the Petitioners, prior to their termination.

6.6. It is also the view of this Court that since Petitioners were never holding any statutory public office nor post of

Law Officer is a civil post, no illegality or irregularity can be found with the action of the State in terminating their services vide the impugned notification dtd.24.12.2025 under Annexure-5 and appointment of a fresh set of Law Officers vide notification dtd.24.12.2025 under Annexure-6.

6.7. In any view of the matter, this Court finds no illegality or irregularity with the impugned notification dtd.24.12.2025 so issued under Annexure-5 and the appointment of the fresh Law Officers vide notification dtd.24.12.2025 under Annexure-6. Accordingly, this Court is not inclined to entertain the Writ Petition and dismiss the same at the stage of admission itself.

Photocopy of the order be placed in the connected cases.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 24th June, 2026/Sangita

Signature Not Verified
Digitally Signed
Signed by: SANGITA PATRA
Reason: authentication of order
Location: high court of orissa, cuttack
Date: 24-Jun-2026 18:34:51