HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 14130/2024

Sunil Samdaria S/o Late Shri B. L. Samdaria, Aged About 50 Years, Resident Of C-235, Nirman Nagar, Lane Opp. Shyam Nagar Police Station, Kings Road, Jaipur

----Petitioner

Versus

1. State Of Rajasthan, Through Its Principal Secretary, Department Of Law And Legal Affairs, State Secretariat, Jaipur.
2. Shri Padmesh Mishra S/o Parentage Not Known To Petitioner, Resident Of C-3, LGF, Jangpura Extension, New Delhi- 110 014.

----Respondents

For Petitioner(s)	:	Mr. Sunil Samdaria, Petitioner-in-Person
For Respondent No.1	:	Mr. Bharat Vyas, AAG assisted by Mr. Jay Vardhan Joshi, Ms. Anima Chaturvedi, Ms. Niti Jain, Mr. Praveer Sharma & Mr. Harshwardhan Katara
For Respondent No.2	:	Mr. Gagan Gupta, Sr. Adv. assisted by Mr. Shashwat Purohit

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HON'BLE MR. JUSTICE SUDESH BANSAL

Order

04/02/2025

1. With the consent of both parties, the writ petition has been heard finally on merits at the admission stage.

2. Instant writ petition under Article 226 of the Constitution of India, has been preferred by the petitioner, who is a practicing Advocate, challenging the appointment of respondent No.2 as an Additional Advocate General for Government of Rajasthan to appear before the Hon'ble Supreme Court, made by respondent No.1 vide order dated 23rd August 2024. Petitioner has also

questioned the validity of Clause 14.8 incorporated in the State Litigation Policy of Rajasthan- 2018 on 23rd August 2024 itself, alleging that the State Litigation Policy-2018 has been amended in an arbitrary and hasty manner, by incorporating Clause 14.8 therein, just to grant appointment to respondent No.2 as Additional Advocate General, despite the fact that he lacks minimum experience of practice of 10 years' as an Advocate, which is a mandatory requirement as per Clause 14.4 of the Litigation Policy- 2018, for appointment of an advocate as Additional Advocate General.

3. For ready reference, prayer made in the writ petition is being reproduced hereunder:-

> "In conspectus of aforesaid state of facts, it is prayed to Honourable Court:-
> (i) To issue and appropriate writ, order or direction quashing and setting aside the order dated 23.8.2024 **(Annexure-1)** whereby Respondent No.2 have been appointed as an Additional Advocate General by the Respondent No. 1.
> (ii) To issue and appropriate writ, order or direction issuing a writ of *quo warranto* annulling the appointment of Respondent No.2 as an Additional Advocate General as he does not satisfy the eligibility criteria of '*minimum experience of practice for 10 years*' for appointment as Additional Advocate General for the Government of Rajasthan.
> (iii) To issue and appropriate writ, order or direction declaring Clause 14.8 of incorporated in the Litigation Policy of 2018 vide Annexure-3 as manifestly arbitrary, illegal and invalid or read down to mean that requirement of '*minimum experience of practice for 10 years*' for appointment of Additional Advocate General prescribed by Clause 14.4 remains unaffected, despite incorporation of Clause 14.8 in Litigation Policy of 2018, more so when Clause 14.4 of the Litigation Policy has not been amended.
> (iv) Any other appropriate writ, order, direction or declaration which this Honourable Court deem fit and proper in facts and circumstances of the case may also be granted.
> (v) Award cost of petition."

4. Petitioner has raised following contentions:-

i) Respondent No.2 does not have the minimum experience of practice as an Advocate for 10 years, which is mandatorily required as per Clause 14.4 of the State Litigation Policy- 2018 and Clause 14.4 has not been amended, rather same subsists in the Policy, even after insertion of Clause 14.8 in the policy.

(ii) The appointment of respondent No.2 was not made with effective consultation of the Advocate General, which is essentially required as per Clause 14.2 of the Litigation Policy- 2018;

(iii) The appointment of respondent No.2 stands contrary to the *ratio decidendi* expounded by the Hon'ble Supreme Court in case of **State of Punjab Vs. Brijeshwar Singh Chahal [(2016) 6 SCC 1]**.

(iv) The appointment of respondent No.2 as Additional Advocate General of the Government of Rajasthan, is in the nature of appointment on a Public Office and since, he lacks eligibility of required minimum experience of 10 years' practice as an Advocate (His Enrollment Number is D/5258/2019 in Bar Council), a writ of *quo warranto* be issued, annulling his appointment as Additional Advocate General.

(v) Incorporation of Clause 14.8 to the Rajasthan State Litigation Policy- 2018, is an arbitrary exercise on the part of Government of Rajasthan, carried out in a haste and in colourable exercise of power, just to extend favour to respondent No.2 for his appointment as Additional Advocate General in place of his previous appointment as Panel Lawyer in Hon'ble Supreme Court of India, that too, without possessing minimum experience of 10 years, as much as Clause 14.8, by bare perusal appears to be

vague and contradictory to previous other Clauses 14.2 & 14.4 and also renders the eligibility criteria of appointment of Government Law Officers, envisaged in the previous clause of Rajasthan State Litigation Policy- 2018 as redundant. Hence, newly inserted Clause 14.8 deserves to be declared arbitrary, illegal and invalid.

(vi) In rejoinder arguments, petitioner submitted that the post of Additional Advocate General is a public office and a public element is attached to it, as such, the writ of *quo warranto* to annul the appointment of respondent No.2 as AAG, being ineligible for that post, can be issued. Petitioner has also referred the Rajasthan Law and Legal Affairs Department Manual, 1999 (for short "the Law Department Manual 1999") to show that the Additional Advocate General possesses the status of a Government Law Officer and his appointment may not be treated to be a mere contractual assignment like an assignment, which exists between a private client and an Advocate. Petitioner's submission is that for appointment of AAGs by the Government of Rajasthan, the Government is bound to adhere to the State Litigation Policy-2018 and Clause 3.2 of the Policy, in categorical terms, also says that it is mandatory for all the Departments to follow this policy. Hence, appointment of respondent No.2 as Additional Advocate General made by Government of Rajasthan, being *de hors* to the State Litigation Policy- 2018, is not valid and is liable to be cancelled.

5. Petitioner, who is a practicing Advocate and alleges to have vast experience of about 26 years' of practice in the High Court of

Rajasthan, has referred and relied upon following judgments, in support of his contentions:-

(i) **State of Punjab Vs. Brijeshwar Singh Chahal [(2016) 6 SCC 1];**

(ii) **Mundrika Prasad Singh Vs. State of Bihar [(1979) 4 SCC 701];**

(iii) **Ramana Dayaram Shetty Vs. International Airport Authority of India [(1979) 3 SCC 489];**

(iv) **Shayara Bano Vs. Union of India [(2017) 9 SCC 1];**

(v) **Zenit Mataplast Private Limited Vs. State of Maharasthra [(2009) 10 SCC 388];**

(vi) **Sant Lal Gupta Vs. Modern Co-operative Group Housing Society Limited [(2010) 13 SCC 336];**

(vii) **State of Mysore Vs. S.R. Jayaram [AIR 1968 SC 346];**

(viii) **Mahabir Vs. State of Haryana [Criminal Appeal No.5560-55641/ 2024 Decided on 29.01.2025 (Supreme Court)];**

(ix) **Vishnu Kumar Saini Vs. State of Rajasthan [SB Civil Writ Petition No. 5992/2024 Decided on 25.07.2024 (Rajasthan High Court)];**

(x) **Supreme Court Advocates on Record Association & Ors. Vs. Union of India [(1993) 4 SCC 441]** &

(xi) **Re Special Reference No.1 of 1998 [(1998) 7 SCC 739].**

6. Per contra, respective learned counsels for respondents No.1 & 2 have vehemently repelled the contentions made by the petitioner and put forth following submissions:-

(i) Fundamentally, challenge made by the petitioner to the appointment of respondent No.2 as an Additional Advocate General, hinges upon the basic fact that for appointment of AAGs, minimum experience of practice in High Court/ Supreme Court for a period of ten years, is mandatorily required as per Clause 14.4 of the State Litigation Policy- 2018 and since, respondent No.2 does not posses such minimum experience of practice, hence he is not eligible to hold such post and further, his appointment has been made in breach of the conditions of the Policy.

(ii) It has been submitted that petitioner has misread/ misconstrued Clause 14.4 of the Policy, because possessing minimum experience of 10 years' practice in High Court/ Supreme Court is not a mandatory guiding factor for appointment of AAGs, but connotation "or" finds place in Clause 14.4, which makes it clear that the Government of Rajashan can appoint any aspirant on the post of AAG under three circumstances:-

> (a) possessing minimum experience of practice in High Court/ Supreme Court as laid down in the table hereinbelow; or
>
> (b) as prescribed by the State Government from time to time; or
>
> (c) any law for the time being in force.

Thus, the Government of Rajasthan is fully authorized and empowered to appoint any Advocate as an AAG, considering his/

her expertise in the respective fields and after having subjective satisfaction of the Authority of appropriate level.

(iii) It has been submitted that decision to add Clause 14.8 in the State Litigation Policy- 2018 has been taken by the Cabinet of State of Rajasthan, consisting of Chief Minister and its Council of Ministers, and Clause 14.8 begins with non-obstante clause. The insertion of such Clause to the Policy, underscores the importance of appointment of young, brilliant counsels, who may be better equipped to deal with cases concerned with advances in inter-sectional field of law, technology, science, arbitration and commercial disputes etc. and/ or any other emerging branches. Thus, insertion of Clause 14.8 is need of the hour and there can be no fetters on the powers of State Government to amend the State Litigation Policy- 2018, as regards to the criteria of eligibility of appointment in respect of relaxing minimum age or length of practice etc.

(iv) It has been submitted that it is not the case of petitioner that the amendment to the State Litigation Policy- 2018 by adding Clause 14.8, has been made without approval of the Cabinet of the State of Rajasthan or decision of Cabinet suffers from any lack of competence. Indeed, the amendment was proposed and approved by the Cabinet of Ministers in due diligence of their functionary.

(v) It has been submitted that the inserted Clause 14.8 may co-exist with Clauses 14.2 & 14.4 of the State Litigation Policy- 2018, yet the State Litigation Policy does not have the statutory force, but exists to follow in the nature of executive instructions for guidance, issued by the Government of Rajasthan. Nevertheless, it

has been submitted that the appointment of respondent No.2 is not in violation of the State Litigation Policy- 2018.

(vi) It has been submitted that the judgment delivered by the Apex Court in case of **Brijeshwar Singh Chahal** (*Supra*), is not applicable to the facts of present case and the resort taken by the petitioner to this judgment, is misplaced and does not render any support to the petitioner.

(vii) It has been submitted that the law recognizes freedom in the matter of engagement of professional services by the State Government and it is well settled that the suitability of counsel, engaged by the Government, is a matter of exclusive choice and decision of the State Government, and the Court cannot act like an Appellate Authority over such decision of the State Government, appointing respondent No.2 as AAG, that too, after having satisfied with his competence, expertise and suitability. As far as questioning the manner of his appointment and to say that Clause 14.8 was added by Government to favour respondent No.2 is concerned, it is a mere speculation and far fetched thoughtful imagination of petitioner created by concealing the factual events for the reasons best known to the petitioner himself. The challenge to the appointment of respondent No.2 as AAG made by the petitioner is unfounded, without any substance and lacks merit.

(viii) In addition to above, it has been argued that petitioner has no *locus standi* to maintain the writ of *quo warranto* because appointment of respondent No.2 on the post of Additional Advocate General, is not an appointment on a civil post or public post. Clause 14.2 of the State Litigation Policy- 2018 clearly

envisages that the Advocate General is appointed under Article 165 of the Constitution of India, whereas Additional Advocate Generals (AAGs) are appointed to help and share the responsibility of Advocate General. Thus, appointment of respondent No.2 on the post of AAG is only a contractual engagement, and same is not amenable to be challenged by way of filing a writ petition for issuance of writ of *quo warranto*. The contention of petitioner that the appointment of respondent No.2 as AAG was made without effective consultation of Advocate General, is baseless and imaginary, moreover same is not a mandatory requirement at all, hence does not vitiate the appointment of respondent No.2 as AAG.

7. Learned counsel for both the respondents have referred and relied upon following judgments, in support of their respective contentions:-

(i) **State of U.P. v. Johri Mal [(2004) 4 SCC 714];**

(ii) **State of U.P. v. Ajay Kumar Sharma [(2016) 15 SCC 289];**

(iii) **M.T. Khan v. Government of A.P. [(2004) 2 SCC 267];**

(iv) **State of U.P. v. U.P. State Law Officers' Association [(1994) 2 SCC 204]** &

(v) **Ishwar Prasad v. State of Rajasthan, dated 03.12.2024 in D.B. CWP No. 5313/2024, Hon'ble High Court of Rajasthan at Jodhpur**

8. Heard. Considered.

9. The contention of petitioner that the post of Additional Advocate General is a public office and public element is attached to it, appears to be appealing and the Division Bench of the Rajasthan High Court in **DB Civil Writ Petition No.2624/ 2014***; Sunil Samdaria Vs. State of Rajasthan & Anr.* vide judgment dated **23.04.2015** had also observed that the duties of Additional Advocate General and the Law Officers of Government are to share and shoulder the responsibility of Advocate General and further, under Rule 7 to 10 of the Law Department Manual of 1999 itself, the duties and liabilities of Additional Advocate General, are that of Advocate General. The Division Bench made observations that it cannot be denied that the Office of Advocate General as well as the Office of Additional Advocate General, considering the importance of nature of duties attached to their respective offices, in the matter of prosecuting or defending the State Government, is a public office.

Nonetheless, it is not in dispute that the aforesaid judgment passed by the Division Bench in DBCWP No. 2624/2014, including all the observations made therein, has been set aside by the Hon'ble Supreme Court in **Civil Appeal No.4501/2015**; *Dr. Abhinav Sharma Vs. Sunil Samdaria*, arising out of the aforesaid judgment, recording a statement of appellant *Dr. Abhinav Sharma,* for demitting the office of Advocate General voluntarily, therefore, in the opinion of this Court, it is not advisable and safe to place reliance on such observations of the Division Bench, which indeed have been set aside by the Apex Court, for one or another reason whatsoever may be.

10. It is noteworthy that this Court is not required to enter into discussion of this issue afresh extensively, in view of the recent judgment dated 03.12.2024 passed by the Division Bench of Rajasthan High Court at Principal Seat- Jodhpur in **DB Civil Writ Petition No.5313/2024**; *Shri Ishwar Prasad Vs. The State of Rajasthan*, wherein as well, challenge was made by petitioner-Ishwar Prasad to the appointment of Additional Advocate Generals (AAGs) and Law Officers appointed by the State Government through Circulars dated 12.02.2024 & 12.03.2024. Challenge was made fundamentally on the ground that such appointments have been made in utter ignorance and violation to the judgment delivered by the Hon'ble Supreme Court in case of **Brijeshwar Singh Chahal** (*Supra*). Hon'ble Division Bench, after sailing through and pondering over various judgments of the Apex Court (few of them have also been referred by the petitioner herein) including the judgment of **Brijeshwar Singh Chahal** (*Supra*), clearly observed that the posts of Additional Advocate General are not in the nature of civil or public post and while dismissing the civil writ petition, following findings in Para No.11 & 13 were recorded, which read as under:-

> *"11. In "Regional Transport Authority, Jodhpur v. Sitaram [1992 SCC OnLine Raj 36] a Division Bench of this Court held that the appointment of Additional Advocate General or Associate Advocate General is contemplated and governed under Article 165 of the Constitution of India. In "Om Prakash Joshi, Advocate v. State of Rajasthan & Ors." [2001 SCC OnLine Raj 101] this Court declined the prayer seeking appointment of Advocate General, Additional Advocate General, Government Advocates, Panel Lawyers, etc. through advertisement. This Court held that the State Government has every right to engage the Panel Lawyers/Government Advocates, Additional Advocate Generals, etc. of its own choice and confidence and to entrust them any case as deem proper by it. This Court*

further held that the writ Court shall not be justified in interfering in the matter of engagement of the lawyers by the State Government and the State Government may make appointment exercising the discretionary power vested in it. This is a requirement of the rule of law that we follow the decisions in "Regional Transport Authority" (Supra) and "Om Prakash Joshi" (Supra). The binding character of the judgments pronounced by a Court of competent jurisdiction is itself an essential part of the rule of law which is the basis of the administration of justice on which the Constitution lays so much emphasis. This rule of law is based on public policy and is necessary for continuity, certainty and productivity in the administration of justice. The decisions of a Court of law give a reasonable expectation to the people that similar decision shall be taken by the Courts in identical facts and, therefore, in a judicial system the Courts of coordinate jurisdiction must have consistent opinions in respect of an identical set of facts or on questions of law. In "Hari Singh v. State of Haryana" [(1993) 3 SCC 114] the Hon'ble Supreme Court observed that if the Courts start expressing different opinions on the identical set of facts or questions of law while exercising the same jurisdiction then instead of achieving harmony in the judicial system it will lead to judicial anarchy. In "Mahadeolal Kanodia v. The Administrator-General of West Bengal" [1960 SCC OnLine SC 47] the Hon'ble Supreme Court stressing the need for instilling certainty in the judicial system observed that if the Judges of coordinate jurisdiction in a High Court start over-ruling one another's decisions the certainty in the system shall disappear.

.....

13. In our opinion, the appointment of bright young advocates as the Law Officers has unnecessarily been dragged to the Court. An advocate carries an independent identity and he cannot be projected as a ward or relative of any person holding a high post to scandalize his appointment as the Additional Advocate General or a Law Officer. There can be no fetters on the power of the State Government and the administrative instructions in the Rajasthan Manual and State Litigation Policy as regards the criteria of eligibility for appointment such as age, length of practice, place of practice, etc. of the Additional Advocate General and Law Officers and the same can be superseded, modified or changed at any time by the State Government. Therefore, it must be declared that the State of Rajasthan can make its own decision as to the eligibility criteria which can be changed at any moment and its choice of the advocates for making appointment on the post of Additional Advocate General or other Law Officers cannot be challenged in the Court unless shown arbitrary. It is really very difficult to explain an arbitrary action and there is no easy way to make a catalogue of state action that can be characterized as arbitrary state action. In common parlance, an act which

seemingly is not based on any reason or plan or is unfair would be an arbitrary action. In this context, we need to indicate that the petitioner has miserably failed to demonstrate how the appointment of the Law Officers is arbitrary. Even if there was any infraction of the executive instructions in the Rajasthan Manual or the State Litigation Policy in making the appointments of the Law Officers that by itself cannot be a ground to scrutinize the individual cases. In "J.R. Raghupathy, etc. v. State of A. P. & Ors."[(1988) 4 SCC 364] a plea was raised that where guidelines were issued regulating the manner in which the discretionary power is to be exercised then the Government is bound by its own guidelines and if those guidelines were violated, it is for the Government to offer explanation as to why the guidelines were deviated from. The Hon'ble Supreme Court rejected the submission and held that there is no such inflexible rule of universal application and the guidelines issued by the State Government had no statutory force and were merely in the nature of executive instructions for the guidance. The Hon'ble Supreme Court further held that mandamus does not lie to enforce departmental manuals or instructions not having any statutory force and the provisions thereunder do not give any legal right to any person. This is quite well settled that the choice of eligibility criteria is left to the exclusive domain of the employer and the Courts do not examine the eligibility criteria for appointment to a post with a perspective that more suitable or better criteria could have been adopted by the employer. Therefore, if the State Government makes a conscious decision to appoint an advocate as its Law Officer that decision cannot be questioned on the basis of relationship. The suitability of a lawyer who is engaged by the Government is a matter exclusively within the domain of the executive decision and such a decision cannot be challenged on the ground that other suitable and more competent lawyers have been left out and by doing so the larger public interest has been overlooked."

Thus, in view of above, the issue requires no further discussion by this Court, keeping in mind the binding effect of the judgment of the Division Bench of this Court on the Single Bench. Accordingly, the contention of petitioner cannot be accepted in his favour.

11. Coming to the next issue of not possessing minimum experience of practice in High Court/ Supreme Court for a period of 10 years by the respondent No.2 and challenging his

appointment, on the ground that same has been made *de hors* to Clauses 14.2 & 14.4 of the State Litigation Policy- 2018, it would be apropos to reproduce Clause 14 as a whole, as under:-

"**14. APPOINTMENT OF COUNSEL FOR THE STATE**

14.1 The State litigation, apart from revenue matters, service matters, matters of public importance involves other variegation of cases also. It is important to select and appoint efficient Counsels to handle the State litigation and safeguard the State interest.
14.2 Advocate General is appointed under Article 165 of the Constitution of India and is a Constitutional Authority with a prime duty to advise on the legal matters. Additional Advocate Generals are appointed to help and share the responsibility of the Advocate General Appointment of Additional Advocate General as per the requirement should be made on the advice of and in General effective consultation with the Advocate General.
14.3 All other Counsels Advocates for efficient and effective discharge of the duties shall be selected by the State Level Empowered Committee.
14.4 The Committee shall screen the aspirants possessing minimum experience of practice in High Court/Supreme Court as laid down in the table herein below or as prescribed by the State Government from time to time or any law for the time being in force:-

S.No.	Post	Minimum experience of practice
1.	Additional Advocate General	10
2.	Government Counsel	07
3.	Additional Government Counsel	05
4.	Deputy Government Counsel	05
5.	Assistant Government Counsel	03
6.	Panel Lawyer, Hon’ble Supreme Court, New Delhi	05

14.5 For ascertaining effective experience and competence to handle State litigation in Courts the Committee shall be at liberty to formulate its own principles and procedure.
14.6 The State has multifarious type of litigation and services of Counsels competent to handle them are necessary. At the time of selection of the Law Officers to represent the State the specific requirements of expertise to cater to the need of different Administrative Departments shall be kept in consideration, so that State interest is safe guarded and the State may not have to look

around time and again to engage some expert Counsel on higher remuneration to conduct the case.
14.7 The Committee shall submit the list 14.7 of the selected Counsels to the Law Minister for further necessary action. The selection process shall be final only after the approval at the appropriate level."

Since, newly inserted Clause 14.8 to the State Litigation Policy- 2018 is also under challenge here, hence same is also being reproduced hereunder:-

> "14.8- Notwithstanding anything contained in the Policy, the authority of the appropriate level shall have power to appoint any counsel to any post after considering his expertise in the respective field."

12. At one hand, in the opinion of this Court, although the State Government is expected to follow the guidelines prescribed in the Litigation Policy- 2018 for appointment of counsel for the State, nevertheless it is also equally true that such policy is in the nature of executive instructions for guidance, which cannot be claimed to have a statutory force like a legislation/ legal statute before the Court of law. Further, this Court finds that perusal of Clause 14.4 itself as a whole indicates that this clause provides power to the State Government to appoint an Advocate on the post of Additional Advocate General, following the criteria prescribed by the State Government or as per law for the time being in force and the requirement of possessing minimum experience of 10 years' practice has not been held as an essential and mandatory pre-requisite for appointment of Addition Advocate Generals. Moreso, it appears that the State Government through proper channel and after approval by the Cabinet and Council for Ministers including the Chief Minister, has introduced the

amendment in the State Litigation Policy- 2018 by adding Clause 14.8 therein, reproduced hereinabove, which begins with non-obstante clause.

Hence, contention of the petitioner that experience of 10 years' practice in High Court/ Supreme Court, is a mandatory requirement for appointment of Additional Advocate General, does not worth merits acceptance, although the State Government may also consider and keep such factor in mind, while making appointment of Additional Advocate Generals.

13. As far as contention of the petitioner to the effect that insertion of Clause 14.8 in State Litigation Policy- 2018 itself suffers from vice of arbitrariness and colourable exercise of powers as also confers unfettered powers to the Authority at the appropriate level to appoint any counsel to any post, considering his/ her expertise in the respective field, this Court finds that the Cabinet of State of Rajasthan, consisting of Chief Minister and Council for Ministers, vide its decision dated 23.08.2024 took the executive decision to add Clause 14.8 to the State Litigation Policy- 2018. It is easier to put a blame of arbitrariness, biasness or colourable exercise of powers by the Cabinet, but same is not to be interfered unless established by producing convincing and strong evidence/ material to prove such allegations. This Court finds that the input for levelling such allegations of arbitrariness and colourable exercise of powers by the Government of Rajasthan in introducing Clause 14.8, are merely a sequel of events that prior to appointment of respondent No.2 as an Additional Advocate General, he was appointed as panel lawyer in the Hon'ble Supreme Court vide order dated 20.08.2024 (Ann.7),

however his appointment of panel lawyer was withdrawn and he was appointed as Additional Advocate General vide order dated 23.08.2024 (Ann.8) and simultaneously, on the same date i.e. 23.08.2024, Clause 14.8 has been added to the State Litigation Policy- 2018. The sequence of events may be a coincidence, but cannot be made a basis to draw an assumption of arbitrariness, biasness or colourable exercise of powers by the Cabinet. Merely, on the basis of such input, provided by the petitioner, Clause 14.8 may not be declared arbitrary, illegal and invalid, moreso when legislative competence to introduce such amendment in the policy, is unquestioned and beyond under challenge.

14. The Hon'ble Supreme Court in **Census Commr. v. R. Krishnamurthy [(2015) 2 SCC 796]**, after examining several judgments of the Hon'ble Supreme Court has held that the Courts ought not to venture into the question as to whether a particular public policy is wise and the Court should be loathe in interference with policy decisions. Relevant paragraphs of the judgment, wherein earlier decisions have been referred to are reproduced hereunder:

> "30. In Premium Granites v. State of T.N. [(1994) 2 SCC 691], while dealing with the power of the courts in interfering with the policy decision, the Court has ruled that:
>
> > "54. It is not the domain of the court to embark upon unchartered ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy could be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be. The court is called upon to consider the validity of a public policy only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution of India or any other statutory right.

31. In M.P. Oil Extraction v. State of M.P. [(1997) 7 SCC 592], a two-Judge Bench opined that:

> "41. .....The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State."

32. In State of M.P. v. Narmada Bachao Andolan [(2011) 7 SCC 639, after referring to the State of Punjab v. Ram Lubhaya Bagga [(1998) 4 SCC 117], the Court ruled thus:

> "36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power.

33. From the aforesaid pronouncement of law, it is clear as noon day that it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded ipse dixit offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions but the court is not expected to sit as an appellate authority on an opinion."

Therefore, challenge put by petitioner for insertion of Clause 14.8 to the State Litigation Policy- 2018 is hereby rejected.

15. As far as contention of petitioner that the appointment of respondent No.2 as AAG has been made without effective consultation of the Advocate General is concerned, same has been repelled by the respondent- State. The contention seems to have

been raised on the basis of assumptions & presumptions, moreso it has not been established that the consultation of the Advocate General is mandatory. This Court, in the foregoing paragraphs, has already observed that procedure of appointment of State Counsel, as envisaged under the State Litigation Policy- 2018, is in the nature of executive instructions for guidance and cannot be claimed as a legislation or law of statute. Thus, the contention of petitioner does not worth acceptance to declare the appointment of respondent No.2 as Additional Advocate General as illegal.

16. As far as resort taken by the petitioner to the judgment of the Apex Court in case of **Brijeshwar Singh Chahal** (*Supra*) is concerned, similar ground was raised by Sh. Ishwar Prasad, in **DB CWP No. 5313/2024** (Supra), wherein the Hon'ble Division Bench extensively discussed the backdrop of facts and ratio decidendi expounded by the Apex Court in case of **Brijeshwar Singh Chahal** (*Supra*) and finally held as under:-

> "*7. In "Brijeshwar Singh Chahal (Supra)" the absorption of Assistant Advocate General and Senior Deputy Advocate General who were appointed on contract basis was questioned on the ground that the State government did not formulate any criterion or followed any norm for their absorption in a non-discriminatory manner. There was a report of the Comptroller and Auditor General for the State of Haryana which found fault with the entire process of appointment of the Law Officers. The Hon'ble Supreme Court observed that the Law Officers were appointed on ad-hoc basis and without assessing the workloads in the Courts for deciding the number of Law Officers needed for handling the Court cases. The data produced before the Hon'ble Supreme Court disclosed that a number of the Law Officers were not assigned any work and were paid idle salary of Rs.2.22 crores for six months. For example, 140 Law Officers out of a total number of 179 were not allotted any work and thus about 87% Law Officers were without work for whole of the month in January 2012. In paragraph no.9 of the reported judgment, the Hon'ble Supreme Court observed that for a fair and objective system of appointment there ought to be a fair and realistic assessment of the requirement. Quite*

evidently, the decision in "Brijeshwar Singh Chahal (Supra)" was prompted by the fact that heavily remunerated quite a number of appointments were made which were found unnecessary and unrealistic and there was no credible process of appointment of the Law Officers in the States of Punjab and Haryana in terms of its fairness and objectivity. Whereas, no such data has been produced by the petitioner in the present Public Interest Litigation.

8. The petitioner relied heavily on the decision in "Kumari Shrilekha Vidyarthi & Ors. v. State of U.P. & Ors. [(1991) 1 SCC 212]" to contend that the Government Law Officers hold public office and even in the contractual matters the requirement of Article 14 must be imposed where the State's action is in question. But long before that, the Hon'ble Supreme Court had expressed some reservations in State of UP Vs. Johri Mal [(2004) 4 SCC 714] to the decision in "Kumari Shrilekha Vidyarthi (Supra)" insofar as it was held that the appointment of District Government counsel was not contractual in nature and the Government Law Officers including the Public Prosecutors were the holders of public offices. "Johri Mal (Supra)" held that performance of the District Government counsel is a matter for the State's satisfaction and the Court cannot examine the reason why their term was not renewed. It was further held that the appointment of District Government counsel would be in the nature of a professional engagement and not an appointment to a civil post. "Johri Mal (Supra)" was followed by State of UP Vs. Ajay Kumar Sharma [(2016) 15 SCC 289] wherein the Hon'ble Supreme Court observed that the Court can do no better than to apply and follow the rules of precedent as was left by "Johri Mal (Supra)". In "Sundeep Kumar Bafna v. State of Maharashtra & Anr. [(2014) 16 SCC 623]" the Hon'ble Supreme Court observed that a decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench. The Hon'ble Supreme Court taking note of the situation often encountered in the High Courts where two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar held that the inviolable recourse should be to apply the earliest view as the succeeding ones would fall in the category of per incuriam."

This Court cannot take a contrary view and is bound by the judgment delivered by the Division Bench in case of **Ishwar Prasad** (*Supra*), hence in view of above, resort taken by the petitioner to the judgment of **Brijeshwar Singh Chahal** (*Supra*), does not support him to establish his case to declare the

appointment of respondent No.2 as AAG, being illegal and violative to ratio decidendi expounded by the Apex Court in case of **Brijeshwar Singh Chahal** (*Supra*).

17. In view of above discussion, petitioner is not entitle for any relief from this Court and accordingly, his writ petition is liable to be dismissed.

18. It is hereby noted that a long list of judgments, has been referred by both the parties. This Court has gone through all the judgments referred by both the parties, mentioned hereinabove, and few of them have been discussed as well. This Court has kept in mind and considered the ratio decidendi expounded in the above referred judgments, relied upon by the respective parties, but does not deem it just and proper to discuss each and every judgment independently, as same would not make the case of petitioner better. The contentions raised by the petitioner have been considered on merits, following the ratio of law expounded in the above referred judgments and mere non-indication of each and every judgment under discussion, does not lead to any loss or prejudice to either of the parties. Hence, in order to maintain brevity of the present Order, dealing with each and every judgment out of the long list referred by both parties, has not been deemed necessary.

19. Before parting with, this Court thinks it proper to record appreciation of the conduct of petitioner and the manner in which he submitted his contentions in a pinpoint way. Although, on merits, petitioner has not succeeded in the present writ petition, yet this Court appreciates the attempt made by the petitioner to challenge the appointment of respondent No.2 as Additional

Advocate General. This Court does not find any malicious intention on part of petitioner to place the procedure of appointment of respondent No.2 as Additional Advocate General under scrutiny of judicial review and records a mark of appreciation for his *bona fide* attempt and efforts put herein.

20. As a result, the present writ petition fails and is hereby dismissed. No costs.

21. All pending application(s), if any, stand(s) disposed of.

(SUDESH BANSAL),J

Sachin Sharma/189-S