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**THE HIGH COURT OF MADHYA PRADESH**

**W.P. No.529/2013(PIL)**

(GYAN PRAKASH Vs. GOVERNMENT OF MADHYA PRADESH *AND*  
*OTHERS*)

*with*

**W.P. No.18800/2013, W.P. No.11962/2015 & W.P. No.15139/2017**

**Jabalpur, Dated: 22.06.2021**

**Hearing Convened Through Video Conferencing:**

Mr. Aditya Sanghi, Advocate appears as *amicus curiae* in W.P. No.529/2013 (PIL).

Mr. Anshul Tiwari, Advocate for the petitioner in W.P. No.18800/2013.

Mr. Vikram Singh, Advocate for the Union of India.

Mr. Swapnil Ganguly, Deputy Advocate General for the respondents/State.

Mr. Siddharth R. Gupta, Advocate appears for the High Court of M.P. in W.P. No.529/2013 (PIL).

Mr. Harpreet Singh Ruprah, Advocate for the intervenors in W.P. No.15139/2017 (PIL).

Mr. Anshuman Singh, Advocate for the intervenors in W.P. No.15139/2017 (PIL).

Mr. Mahendra Pateriya, Advocate for the intervenors in W.P. No.15139/2017 (PIL).

**W.P. No.529/2013:**

The matter was heard at some length.

This Court on 10.01.2014 passed a detailed order for creation of the Directorate of Prosecution in terms of Section 25-A of the Code of Criminal Procedure. Thereafter, on 23.08.2017 this Court has disapproved the practice of appointment of Public Prosecutors on contract basis and categorically held that it cannot be a post for appointment on contract basis as such the post is pivot for the administration of justice. There has to be a regular cadre of the Public Prosecutors to be filled up on the basis of selection and in terms of the rules of recruitment and service conditions.

On 28.08.2019, the learned Government Advocate, on his request, was granted a week's time to seek instructions and apprise the Court of the steps taken by the Government to fill up the posts of Public Prosecutors and Assistant Public Prosecutors. It was thereafter that on 31.10.2019 further time of a week was granted followed by another order passed on 15.11.2019 when seven days' further time was granted on payment of cost of Rs.25,000/- to report compliance of orders dated 23.08.2017 and 31.10.2019.

When the matter was listed before this Court on 29.11.2019, the then learned Advocate General appeared and submitted that on 07.01.2019 a Gazette notification has been published in terms of Section 24 sub-section (1) of the Code of Criminal Procedure. Petitioner prays for time to examine the same.

On 10.02.2020 petitioner - Mr. Gyan Prakash appeared in person and controverted the statement of the Advocate General made on 29.11.2019 that a gazette notification has been published on 7<sup>th</sup> January, 2019 in terms of Section 24 sub-section (1) of the Code of Criminal Procedure. The Government Advocate was, therefore, required to place on record the copy of the aforesaid notification.

Mr. Siddharth R. Gupta, Advocate appearing for the High Court submits that this matter is remained pending before this Court for quite some time and the practice of engaging Panel Lawyers to appear before the High Court in criminal matters even without experience of seven years is being wrongly followed. The State Government should comply the requirement of Section 24(1) and Section 24 (7) of Cr.P.C. before authorizing any Advocate to appear as Public Prosecutor before the High Court.

Mr. Swapnil Ganguly, learned Deputy Advocate General submits that after change of regime, a new notification under Section 24(1) of Cr.P.C. was issued on 18.05.2020 which he shall file along with up-to-date details and further progress in the matter.

Having regard to earlier orders passed by this Court and various issues raised, this Court deems it appropriate to direct the respondent-State to clarify its stand on the following:-

- (1) Whether one Public Prosecutor is appointed for each Court in all districts of the State to attend the Criminal matters and if not whether

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multiple number of Courts are assigned to one available Public Prosecutor and if yes, give the details thereabout?

- (2) As to how many posts in the cadre of Additional District Prosecution Officers, District Prosecution Officers and Deputy Director (Prosecution) are lying vacant in the State?
- (3) Whether the promotions may not be granted against the unfilled posts of the quota of promotion in the cadre of the District Prosecution Officers and Deputy Director (Prosecution) to the extent not affected by order of the Hon'ble Supreme Court, with regard to which there is no dispute?
- (4) Can the State Government not consider appointing Additional District Prosecution Officers/District Prosecution Officers on retainer basis for fixed duration against unfilled posts of Public Prosecutors?
- (5) Whether a Panel Lawyer may appear in the Court before the High Court in criminal matters like Criminal Appeals, Bail Applications, Criminal Revisions, application for suspension of sentence, MCRCs etc. even without having practice of minimum of seven years and without the consultation with the High Court as required under Section 24(1) of Cr.P.C.?
- (6) How can appointment on contract basis without recourse to Section 24(4) of Cr.P.C. on the basis of panel proposed by the District Magistrate in consultation with the Sessions Judge particularly when Section 24(5) of Cr.P.C. provides that no person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub-section (4) of Section 24 of Cr.P.C.?

The Central Government shall also file the report with regard to compliance of Section 24(1) and Section 24(4) of Cr.P.C. as to whether the Advocates who appear on behalf of the agencies like Central Bureau of Investigation, Enforcement Directorate etc. before High Court and courts subordinate thereto, are appointed by process of consultation with the High Court or Sessions Judge, as the case may be, in terms of Section 24(1) and 24(4) of Cr.P.C. respectively.

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Mr. Swapnil Ganguly, learned Deputy Advocate General and Mr. Vikram Singh, learned Standing Counsel for Union of India pray for and are granted time to file the reports.

**Mater to come up on 26.07.2021.**

**W.P. No.18800/2013:**

Mr. Swapnil Ganguly, learned Deputy Advocate General prays for time to seek instructions in the matter.

**List on 26.07.2021.**

**W.P. No.11962/2015 & W.P. No.15139/2017 (PIL):**

**List on 26.07.2021.**

(MOHAMMAD RAFIQ)

**CHIEF JUSTICE**

(VIJAY KUMAR SHUKLA)

**J U D G E**

*psm*

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