

(2010) 05 P&H CK 0301

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 15372 of 1989

A.K. Ahlawat and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: May 26, 2010**Acts Referred:**

- Constitution of India, 1950 - Article 309, 311
- Criminal Procedure Code, 1973 (CrPC) - Section 24, 24(3), 24(4), 24(6), 24(9)
- Haryana State Prosecution Legal Service (Group A) Rules, 1979 - Rule 19, 9, 9(2)
- Haryana State Prosecution Legal Service (Group B) Rules, 1979 - Rule 9
- Motor Vehicles Act, 1939 - Section 96(2)
- Preventive Detention Act, 1950 - Section 3(3), 7(1)

Citation: (2010) 2 ILR (P&H) 932 : (2010) 159 PLR 703**Hon'ble Judges:** Mukul Mudgal, C.J; Surya Kant, J; M.M. Kumar, J; Jitendra Chauhan, J;
Jasbir Singh, J**Bench:** Full Bench

Judgement

Surya Kant, J.

By this order we shall dispose of CWPs No. 2599 of 1984; 15372 of 1989; 5545 of 1994; 8466 of 1999 and 7076 of 2007 as these cases involve common legal issues for adjudication.

2. A three-Judge Bench of this Court, vide an order dated May 24, 1995, made the following reference for consideration by a larger Bench:

The basic point involved in the present writ petition is about the vires of Rule 9 of the Haryana State Prosecution Legal Service (Group "A") Rules 1979 as also Rule 9 of the Haryana State Prosecution Legal Service (Group "B") Rules, 1979 which provide for filling up of 25 per cent of the vacancies to the posts of District Attorneys and Deputy District Attorneys by direct recruitment. In view of the detailed narration of

facts and the law point in the order of reference dated August 5, 1993, it is not considered appropriate to repeat the entire factual position. It has been canvassed by the counsel for the petitioners that Rule 9 of 1979 Rules being in sharp contrast to the provisions of Section 24 of the Code of Criminal Procedure is ultra vires. The case was referred to the Full Bench on account of some observations made in the Division Bench judgement of this Court in D.D. Vasudev v. The State of Haryana and Ors. 1981(2) S.L.R. 735. Before us the counsel for the State has sought the help of Gulab Singh Deputy District Attorney and Ors. v. State of Haryana and Ors. 1980(2) S.L.R. 561 for upholding the vires of Rule 9 of 1979 Rules. There is no doubt that Rule 9 was held to be intra vires but in our considered view the vires of Rules 9 were tested in Gulab Singh's case (supra) on altogether different grounds than the one being pressed before us as also the same were challenged half-heartedly as has been observed by their Lordships of the Full Bench. In our considered view Gulab Singh's case (supra) deserves re-consideration and this Bench being of co-ordinate jurisdiction having equal strength, it would be more appropriate that the matter is placed before the Larger Bench. We, therefore, direct the Registry to place the papers of the case before Hon"ble the Chief Justice for constituting a Larger Bench.

3. Though the three-Judges Bench did not frame any specific questions of law inviting decision by this five-Judges Bench, however, the reference order explicitly indicates that the Bench while considering the vires of Rule 9 of the Haryana State Prosecution Legal Services (Group "A") Rules, 1979 (in short, the Group "A" Rules) as also Rule 9 of the Haryana State Prosecution Legal Services (Group "B") Rules, 1979 (in short, the Group "B" Rules) perceived some conflict between these Rules and Section 24 of the Code of Criminal Procedure, 1973. Since the "Rules" had already been held intra vires in two decisions of this Court in Gulab Singh v. State of Haryana 1980(2) SLR 561 and DD Vasudeva v. State of Haryana 1981(2) S.L.R. 735 and Gulab Singh's case (supra) having been decided by a co-ordinate Bench, that the matter were directed to be placed before a larger Bench.

4. In essence, we have been called upon to determine as to (i) whether appointment by way of "direct recruitment" against the posts of Public Prosecutor is in derogation of Section 24 (6) & (9) of the Code of Criminal Procedure? and (ii) whether Rule 9 of Haryana State Prosecution Legal Services (Group "A") Services Rules, 1979 and the Haryana State Prosecution Legal Services (Group "B") Services Rules, 1979 are liable to be struck down being in direct conflict with Section 24 of the Code of Criminal Procedure?

5. For better appreciation of the issues involved, a brief reference to the facts extracted from CWP No. 15372 of 1989, along with relevant Rules and the Statues may be made.

6. Petitioners No. 1 to 7 have been working as Deputy District Attorneys whereas petitioners No. 8 to 26 have been working as Assistant District Attorneys in the Prosecution Department, Government of Haryana. They seek to strike down the

provisions contained in Rule 9 of Group "A" as well as Group "B" Rules which provide for filling up 25 per cent posts of District Attorneys and Deputy District Attorneys, respectively, by direct recruitment reasoning that the appointment by "direct recruitment" against these posts of "Public Prosecutors" and "Additional Public Prosecutors" is directly in contravention of Section 24 of the Code of Criminal Procedure (in short, "the Code").

7. Before the new Code of Criminal Procedure came into force w.e.f. 01.04.1974, the Criminal Prosecuting Agency in the State was divided into two Wings - one comprising the District Attorneys, Deputy District Attorneys and Assistant District Attorneys and the other consisting of Prosecuting Deputy Superintendent of Police, Prosecuting Inspectors and Prosecuting Sub Inspectors etc. On the recommendations of the Law Commission, Sections 24 and 25 were incorporated in the Code to keep the Prosecuting Agency independent and free from the administrative and disciplinary control of Police.

8. Section 24 of the Code as it stood prior to its amendment w.e.f. 18.12.1978, enabled the State Government to appoint a Public Prosecutor and one or more Additional Public Prosecutors for every District out of the panel of Advocates, having not less than seven-years" practice, prepared by the District Magistrate in consultation with the Sessions Judge.

9. Sections 24 & 25 of the Code were thereafter amended w.e.f 18.12.1978 vide Act No. 45 of 1978 and the substituted Section 24 reads as follows:

24. Public Prosecutors- (1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.

(2) The Central Government may appoint one or more Public Prosecutors, for the purpose of conducting any case or class of cases in any district or local area.

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district:

Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion, fit to be appointed as Public Prosecutors or Additional Public Prosecutor for the district.

(5) 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).

(6) Notwithstanding anything contained in Sub-section (5), where, in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such cadre:

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for Such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under Sub-section (4).

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under Sub-section (1) or Sub-section (2) or Sub-section (3) or Sub-section (6), only if he has been in practice as an advocate for not less than seven years.

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.

(9) For the purposes of Sub-section (7) and Sub-section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate.

10. The Statement of Objects and Reasons of the Act No. 45 of 1978 suggests that the newly-added sub- Section (6) of Section 24 of the Code was brought into force as an enabling provision for the appointment of Public Prosecutors or Additional Public Prosecutors from amongst the "regular cadre" of such officers wherever it had been so constituted by the State Government and it was only on the non-availability of suitable persons from the "regular cadre" that the procedure of preparing a panel by the District Magistrate under Sub-section (4) of Section 24 Cr.P.C. was to be invoked.

11. The State of Haryana in exercise of its powers under proviso to Article 309 of the Constitution framed the Rules known as the Haryana State Prosecution Legal Services (Group "A") Services Rules, 1979. These Rules govern the recruitment and other conditions of service of Group "A" Service comprising the post of "District Attorney" only. The State of Haryana also framed the Haryana State Prosecution Legal Services Group "B" Rules, 1979 to govern recruitment and other service conditions of Group "B" Service consisting of the Assistant District Attorneys, Additional Public Prosecutors and Deputy District Attorneys. The relevant parts of Rule 9 of both Group "A" and "B" Rules prescribing the mode of recruitment read as

follows:

Haryana State Prosecution Legal Service (Group "A") Rules, 1979

9. Method of recruitment - (1) Recruitment to the Service shall be made:

- (i) by promotion from amongst Deputy District Attorneys and Additional Public Prosecutors in accordance with the slab mentioned in Appendix-C to these rules; or
- (ii) by direct recruitment.

Note - When there are no Additional Public Prosecutors, promotion shall be made from amongst Deputy District Attorneys.

(2) Of the total number of posts, three-fourths shall be manned by promoted officers and one-fourth by direct recruits:

Provided that nothing in this sub-rule shall prevent the officiating appointment of a member of the Haryana Prosecution Group "B" Service on any post which is to be filled up by direct recruitment, till a direct recruit is appointed.

Haryana State Prosecution Legal Service (Group "B") Rules, 1979

9. Method of recruitment - (1) Recruitment to the Service shall be made:

- (i) by direct recruitment
- (ii) by promotion from amongst the Assistant District Attorneys;
- (iii) by transfer of any official already in the service of any State Government or the Government of India;

(2) One-fourth of the total number of posts shall be filled in by direct recruitment.

12. The State of Haryana has subsequently vide Act No. 14 of 1985 published on September 26, 1985, added the following Explanation to Sub-section (6) of Section 24 of the Code:

Explanation - For the purpose of Sub-section (6), the persons constituting the Haryana State Prosecution Legal Service (Group-A) or Haryana State Prosecution Legal Service (Group-B), shall be deemed to be a regular cadre of Prosecuting Officers.

13. The Parliament also by Act No. 25 of 2005 has further amended Sub-section (6) of Section 24 of the Code w.e.f. 18.12.1978 and thereafter the said provision coupled with the Explanation added thereto by the State of Haryana, reads as follows:

24. Public Prosecutors:

1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court,

any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.

2) The Central Government may appoint one or more Public Prosecutors, for the purpose of conducting any case or class of cases in any district, or local area.

3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district:

Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion, fit to be appointed as Public Prosecutor or Additional Public Prosecutors for the district.

5) 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).

6) Notwithstanding anything contained in sub-section

5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre:

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under Sub-section (4).

[Explanation - For the purposes of this subsection;- a. "regular Cadre of Prosecuting Officers" means a Cadre of Prosecuting Officers which includes therein the post of a Public Prosecutor, by whatever name called, and which provides for promotion of Assistant Public Prosecutors, by whatever name called, to that post;

b. "Prosecuting Officer" means a person, by whatever name called, appointed to perform the functions of a Public Prosecutor, an Additional Public Prosecutor or an Assistant Public Prosecutor under this Code.]

Explanation - For the purpose of Sub-section (6), the persons constituting the Haryana State Prosecution legal Service (Group-A) or Haryana State Prosecution Legal Service (Group-B), shall be deemed to be a regular cadre of Prosecuting Officers.

7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under Sub-section (1) or Sub-section (2) or Sub-section (3) or Sub-section (6), only if he has been in practice as an Advocate for not less than seven

years.

8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.

9) For the purposes of Sub-section (7) and Sub-section (8), the period during which a person has been in practice as a Pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an Advocate.

(added or amended part emphasized)

14. Though in terms of Section 24 of the Code as applicable to the State of Haryana, the "Services" constituted under Group "A" & Group "B" Rules are deemed to be "regular cadres of Prosecuting Officers", nevertheless the petitioners while relying upon Sub-section (6) read with Explanation (a) would urge that appointment to the posts of Public Prosecutors (District Attorneys) or Additional Public Prosecutors (Deputy District Attorneys) can be made by way of "promotion" only from amongst the persons constituting such "regular cadres" of "Prosecuting Officers" and that appointment by direct recruitment is impermissible against these posts.

15. The petitioners while labouring the point, reiterated that the "regular cadre" of "Prosecuting Officers" in the State of Haryana comprises the posts of Assistant District Attorneys, Deputy District Attorneys and District Attorneys who are duly notified as Assistant Public Prosecutors, Additional Public Prosecutors and Public Prosecutors respectively therefore, in view of sub- Section (6) of Section 24 of the Code coupled with Explanation (a) attached thereto, the posts in the regular Cadre of "Prosecuting Officers", irrespective of their nomenclature, can be filled in by promotion only from amongst the Deputy District Attorneys-cum- Additional Public Prosecutors and the Assistant District Attorneys-cum-Assistant Public Prosecutors, as the case may be. It is argued that Rule 9 of the Group "A" and Group "B" Rules to the extent they provide "direct recruitment" as one of the mode of recruitment against these posts, being in direct conflict with the mandate contained in the Central legislation (the Code), are liable to be struck down.

16. Learned State counsel on the other hand maintained that Group "A" and "B" Services in the State of Haryana are "deemed to be regular cadres of Prosecuting Officers" and the State Government is competent to appoint members of these Services as Public Prosecutors or Additional Public Prosecutors in terms of Sub-section (6) of Section 24 Cr.PC.

17. We have heard learned Counsel for the parties at some length and gone through the records including various decisions and the Notifications cited at the bar.

18. In Gulab Singh's case (supra), the constitutional validity of Rules 9 & 19 of the Group "A" Rules, 1979 was unsuccessfully assailed predominantly on the ground that these provisions were inconsistent with the Punjab District Attorneys Service Rules, 1960 whereunder the Prosecuting Officers were entitled to be promoted as District Attorneys. The retrospectivity clause contained in Rule 19 of the 1979 Rules was also questioned. Both these contentions did not find favour with a three-Judge Bench who held that the Rules were competently framed by the State in exercise of its powers conferred under proviso to Article 309 of the Constitution and such statutory Rules could be brought into force retrospectively.

19. In D.D. Vasudeva's case (supra), the writ petitioners were serving as Deputy District Attorneys in the State of Haryana and had challenged the Government's decision to fill up 25% posts of District Attorneys by way of direct recruitment for which the advertisement dated September 15, 1979 was issued. They took shelter behind Section 24 of the Code and argued that the State Government could not appoint the Public Prosecutors except out of the panel of Advocates prepared by the District Magistrate and/or from amongst the "regular cadre" comprising the Deputy District Attorneys. The State of Haryana opposed their claim and pressed the Group "A" Rules into aid, besides maintaining that there was no existing "regular cadre" of the Prosecuting Officers at the level of "District Attorneys". Following the Full Bench decision in Gulab Singh's case (supra) wherein Rules 9 & 19 of the Group "A" Service Rules were held intra vires, the Division Bench dismissed the writ petition.

20. The decision in Gulab Singh's case (supra), thus, renders no help to resolve the issues involved in these cases, whereas in D.D. Vasudeva's case (supra) also, the Bench did not advert to the vexed question though raised before it and upheld the Group "A" Rules solely on the dictum of Gulab Singh's case (supra).

21. We may now refer to the decision of the Supreme Court in [K.J. John, Assistant Public Prosecutor, Grade-I, Palai Vs. The State of Kerala and others](#), which in fact has been relied upon by both the parties. In that case, the Public Prosecutors/Assistant Public Prosecutors from the States of Kerala and Uttar Pradesh asserted that there existed the "regular cadre" of "Prosecuting Officers" in their respective States and in view of Section 24(6) of the Code, the State Governments were obligated to appoint Public Prosecutors or Additional Public Prosecutors only from amongst the persons constituting such cadre(s).

22. The facts of K.J. John's case (supra) do reveal that there was a regular cadre at the level of Assistant Prosecuting Officers both in the States of Kerala and Uttar Pradesh but appointments to the posts of Public Prosecutors and Additional Public Prosecutors used to be made on contractual basis for a specified tenure out of the panel of Advocates prepared in that regard. The Assistant Prosecuting Officers/Assistant Public Prosecutors in both the States challenged these contractual appointments on an identical plea that such appointments could be made from amongst the members of the "regular cadre" only as mandated by Section 24(6) of

the Code. In the light of these facts and after considering the scope of Sub-section (6) of Section 24 Cr.P.C., not least the expression "regular cadre of Prosecuting Officers", It was ruled that:

In this background we have to understand the scope of Sub-section (6) of Section 24 which gives a clear mandate to appoint a Public Prosecutor or an Additional Public Prosecutor only from amongst the persons constituting a regular cadre of Prosecuting Officers. According to this provision any person from the advocates or from any other source cannot be appointed as a Public Prosecutor or an Additional Public Prosecutor if there already exists a regular cadre of Prosecuting Officers in a State.

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Admittedly the regular cadre of Prosecuting Officers in the State of Kerala as well as in the State of U.P. does not include Public Prosecutors or Additional Public Prosecutors.

23. On a conjoint reading of Sub-sections (6) & (9) of Section 24 Cr.P.C., the Supreme Court further held that:

The intention of introducing Sub-section (6) and the deeming fiction in Sub-section (9) was in order to safeguard the promotional rights of Prosecuting Officers in such of the States where there is already in existence regular cadre consisting of a hierarchy of Prosecuting Officers going to the top level of Additional Public Prosecutors and Public Prosecutors. In Sub-section (9) the expression "Prosecuting Officers" has been used as taking in any persons holding the post of Public Prosecutor, Assistant Public Prosecutor or any other Prosecuting Officer by whatever name called. Sub-section (6) independently can grant no benefit to the Prosecuting Officers unless the clause of deeming fiction contained in Sub-section (9) makes them eligible for appointment as a Public Prosecutor or Additional Public Prosecutor.

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Thus we are clearly of the view that the expression "regular cadre of Prosecuting Officers" contained in Sub-section (6) of Section 24 must comprise a regular cadre of Prosecuting Officers going up to the level of Additional Public Prosecutor and Public Prosecutor.

(Emphasis Supplied)

24. It was then observed that "the basic intention of the Legislature was to appoint Public Prosecutors and Additional Public Prosecutors from the advocates having at

least seven years practice. Section 24 as initially contained in Section 24 of the Code did not make any Prosecuting Officer even of the cadre of Public Prosecutor prior to 1973 as eligible for being appointed as Public Prosecutor or Additional Public Prosecutors, they were made eligible by substituting Section 24 by the Amending Act of 1978 by introducing a new provision under Sub-section (9) of Section 24. In this background when we consider the provision of Sub-section (6) of Section 24 which makes it incumbent to appoint Public Prosecutor and Additional Public Prosecutors only from a regular cadre of Prosecuting Officers, it can only be applied in case of such regular cadre which may go upto the level of Public Prosecutor."

25. The Hon"ble Supreme Court in the final analysis concluded that:

In view of these circumstances we find that the Kerala High Court is right in taking the view that the expression "regular cadre of Prosecuting Officers" comprised a service with Assistant Public Prosecutor at the lowest level and Public Prosecutors at the top. In case a regular cadre of Prosecuting Officers did not go up to Public Prosecutor at the top, the State Government cannot be considered as bound to appoint Public Prosecutor or Additional Public Prosecutor only from among the persons constituting such cadre under the Code of Criminal Procedure for conducting cases in the Sessions Court.

26. The above cited pronouncement crystallizes that in case there already exists a regular cadre of Prosecuting Officers in a State upto the top level, the State Government cannot appoint a Public Prosecutor or Additional Public Prosecutor from amongst the empanelled Advocates under subsections (3) & (4) of Section 24 of the Code. The proviso to Sub-section (6) of Section 24 too cannot be invoked unless the competent authority forms an opinion that no suitable person is available for such appointment in the "regular cadre" of Prosecuting Officers. Similarly, Sub-section (6) along with the deeming fiction contained in sub- Section (9) of Section 24 of the Code, safeguards the promotional rights of the existing members of the cadre of the Prosecuting Officers wherever such "regular Cadre" comprised of the hierarchy upto the highest post, whether designated as Prosecuting Officer or known by any other nomenclature. Further, the protection of these promotional rights or precedence in appointments as Public Prosecutors was not a part of the original legislative scheme when Section 24 was codified but came to be introduced later by way of an amendment in the year 1978.

27. The dissectional interpretation given to the different provisions contained in Section 24 of the Code may, further, be understood to mean that wherever a "regular cadre" of Public Prosecutors has been constituted by the State Government comprising the lowest to the top level, the State Government cannot resort to any other alternative mode of appointing a Public Prosecutor in the same and/or equivalent rank or status which is already a constituent of the regular cadre. To be more specific, the decision in K.G. John's case (supra) holds that the protection or privilege conferred under Sub-sections (6) & (9) of Section 24 of the Code cannot be

denied so long as a Public Prosecutor of the equivalent rank or status is available in the "regular cadre".

28. It necessarily means that if the post of Public Prosecutor in a particular rank or equivalent thereto does not exist in the "regular cadre", then alone the State Government can appoint the Public Prosecutor in such rank out of the panel of Advocates prepared under Sub-sections (3) & (4) of Section 24 of the Code. The understanding of sub- Sections (6) & (9) of Section 24 in the manner given above leads us to understand and appreciate the "Explanation" added to Sub-section (6) by the State of Haryana vide Act No. 14 of 1985, whereby, all the members of Haryana State Prosecution Legal Services (Group-A) or Haryana State Prosecution Legal Services (Group-B) are deemed to be constituting the "regular cadre" of Prosecuting Officers.

29. The Haryana Act of 1985, referred to above, is not under challenge before us for want of any legislative competence nor such a plea can possibly be entertained as the enactment is referable to Item 2 of List III - Concurrent List and has come into force after receiving the assent of the President of India. The Explanation added pursuant thereto, is, thus, an integral part of the principal Act w.e.f. November 29, 1985.

30. The only irresistible conclusion would be that a person appointed to Group "A" or Group "B" Service, notwithstanding the mode of his recruitment, is a constituent and component of the "regular cadre" of Prosecuting Officers and that person is equally entitled to the protection of Sub-section (6) read with Sub-section (9) of Section 24 of the Code, to pre-empt the State Government from appointing an empanelled Advocate as a Prosecuting Officer in a rank or equivalent thereto held by such member of the Group "A" or Group "B" Services, as the case may be. It is obvious that the overriding effect of Sub-section (6) in limiting the appointment of a Public Prosecutor or Additional Public Prosecutor to that from amongst the members of the "regular cadre" is neither dependent nor qualified by the condition as to from which source the incumbent came to be appointed to such "regular cadre".

31. Let us try to elucidate the point from another angle and examine the scope of the expression "appointment" which finds mention in Section 24 of the Code. Is this expression synonymous with somewhat similar phrase engraved in Article 309 of the Constitution whereunder the State Legislature is competent to legislate for regulating the recruitment and conditions of service of persons appointed to the public services and posts in connection with the affairs of the State?

32. It is trite that even in the absence of any legislation enacted under Article 309, the State Government is competent to make Rules to regulate the recruitment and conditions of service of the persons appointed to the posts or public services, as enabled in this regard by the proviso to Article 309 of the Constitution, which is a

transitional provision empowering the executive to make Rules having the force of law until the appropriate Legislature legislates on the same subject matter. [Shri A.B. Krishna and Others Vs. The State of Karnataka and Others,](#) . The Group "A" and Group "B" Rules have also been framed by the Government of Haryana in purported exercise of its above-stated powers, to regulate recruitment and other conditions of service of the appointees to the posts of District Attorneys, Additional Public Prosecutors, Deputy District Attorneys and Assistant District Attorneys etc.

33. Article 309 of the Constitution does not stand in the way of an appropriate Legislature nor is it coextensive for laying down the conditions of service for appointment to the public services under any general law enacted by it. Item 41 of the State " List-II expressly empowers the State to legislate in respect of its public services. Since the posts of District Attorneys or Deputy District Attorneys are State services created by the Government of Haryana, only the State Legislature is competent to regulate recruitment and conditions of service for appointment to these posts, whether by way of a legislation under Article 309 of the Constitution or under Item 41 of the State List-II. In the absence of any such legislation, the Government of Haryana is competent to invoke its powers under the proviso to Article 309 of the Constitution and frame Rules for the said purpose. We have no doubt in our minds that Groups "A" and "B" Rules cannot be annulled for lack of competence of the State Government to make these Rules. It is well-settled in a catena of decisions that a Rule framed in exercise of powers under the proviso to Article 309 constitutes "law" and such a Rule, also known as subordinate piece of legislation, can be struck down only on such grounds as may invalidate a legislative measure. We may hasten to add that the petitioners have neither pleaded nor urged that the impugned Rules do not stand on the touchstone of the provisions contained in Part-III or other parts of our Constitution.

34. Having said so we now attempt to answer the question posed by us in para 31 above. The general principle that

where the draftsman uses the same word or phrase in similar contexts, he must be presumed to intend it in each place to bear the same meaning", was not approved by the Supreme Court in [Shamrao Vishnu Parulekar Vs. The District Magistrate, Thana,](#) , wherein while interpreting the words "the grounds on which the order has been made" as they occur in Section 3(3) and Section 7(1) of the Preventive Detention Act, 1950, it was held that the words do not bear the same meaning in these two provisions as while communicating the grounds of detention to the detenu, u/s 7(1), the authority can withhold facts which it considers against the public interest to disclose, whereas in reporting to the State Government the grounds of detention u/s 3(3) those very facts are likely to figure more prominently. It was observed that "the rule of construction contended for is well- settled but that is only one element in deciding what the true import of enactment is, to ascertain which it is necessary to have regard to the purpose behind the particular provision

and its setting in the scheme of the statute.

35. As regards the use of same word or phrase in two different legislations, it is well known that the same word when used in two different Statutes dealing with distinct subjects, may carry different meanings. It has been so held by the Supreme Court in [Sri Jagatram Ahuja Vs. The Commissioner of Gift Tax, Hyderabad](#), wherein it said that

we may state here itself that the words and expressions defined in one statute as judicially interpreted do not afford a guide to construction of the same words or expressions in another statute unless both the statutes are *pari materia* legislations or it is specifically so provided in one Statute to give the same meaning to the words as defined in other statute.

This principle of construction has been reiterated in [Lalit Mohan Pandey Vs. Pooran Singh and Others](#), also.

36. The expression "appointment" in Section 24 of the Code, in our considered view, does not denote the same meaning as is understood in the context of an appointment against a post or in public service within the meaning of Article 309 of the Constitution. The provision merely enables the State Government to "engage" and "notify" a "Government Pleader" from amongst the prescribed sources to represent the State and/or prosecute on its behalf before the Court of Law. Such assignments are distinguishable from an appointment to a post or public office which ripens into a lien and/or may attract the protection given under Article 311 of the Constitution.

37. Though in [Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others](#), the Hon"ble Supreme Court opined that the post of District Government Counsel (who is deemed to be a Public Prosecutor u/s 24 of the Code) is not contractual in nature and such appointees are holders of public office, the said opinion was diluted in a later decision in [State of U.P. Vs. Ramesh Chandra Sharma and others](#), which held that the "appointment of any legal practitioner as a District Government Counsel is only a professional engagement...." and

that appointment being for a fixed term and requiring express renewal in the manner provided in the Manual, there is no basis to contend that it is not a professional engagement of a legal practitioner but appointment to post in Government service which continue till attaining the age of superannuation...

38. In [Harpal Singh Chauhan and others Vs. State of U.P.](#), also it was observed that Section 24 of the Code does not speak about the extension or renewal of the term of the Public Prosecutor or Additional Public Prosecutor which is only a contractual appointment.

39. In [State of U.P. and Another Vs. Johri Mal](#), the Hon"ble Supreme Court while expressing reservations against the principles of law opined in Kumari Shrilekha

Vidyarathi's case (supra) and after considering Section 24 of the Code read with the Legal Remembrancers Manual as applicable in the State of Uttar Pradesh, ruled that:

The appointment of Public Prosecutors, on the other hand, are governed by the Code of Criminal Procedure and/or the executive instructions framed by the State governing the terms of their appointment. Proviso appended to Article 309 of the Constitution of India is not applicable in their case. Their appointment is a tenure appointment. Public Prosecutors, furthermore, retain the character of legal practitioners for all intent and purport. They, of course, discharge public functions and certain statutory powers are also conferred upon them. Their duties and functions are onerous but the same would not mean that their conditions of appointment are governed by any statute or statutory rule.

40. It was further laid down that

the Code of Criminal Procedure does not provide for renewal or extension of a term. Evidently, the Legislature thought it fit to leave such matters at the discretion of the State

41. We may gainfully refer to the distinction between the appointment of a Public Prosecutor u/s 24 of the Code and that of the Assistant Public Prosecutors under the statutory Service Rules framed under the proviso to Article 309 of the Constitution drawn by the Hon'ble Supreme Court in Johri Mal's case (supra) in the following passage:

a distinction is to be borne in mind between appointment of a Public Prosecutor or Additional Public Prosecutor, on the one hand, and Assistant Public Prosecutor, on the other. So far as Assistant Public Prosecutors are concerned, they are employees of the State. They hold Civil posts. They are answerable for their conduct to higher statutory authority. Their appointment is governed by the service rules framed by the respective State Government...

42. Having held that the appointment of a Public Prosecutor u/s 24 of the Code is distinguishable from an appointment made against a post or public office within the meaning of Article 309 of the Constitution, the very contention of the petitioners that there is an apparent cleavage between Section 24 of the Code and the Group "A" & Group "B" Rules is reduced to a mere armedchair criticism, without any legal or factual support.

43. Similarly, the repeated reference made by the petitioners to Clause (a) of the Explanation to Sub-section (6) of Section 24 of the Code defining "regular Cadre of Prosecuting Officers" which includes the post of a Public Prosecutor and also provides for promotion of Assistant Public Prosecutors to that post, to contend that the post of a Public Prosecutor must always be filled in by promotion only, appears to be founded upon an erroneous understanding and mis-construction of the said provision. The subject clause simply defines the characteristics and ingredients of

the Cadre of Prosecuting Officers inclusive of (i) all types of posts of Public Prosecutors, may be called by whatever name; and that (ii) the cadre composition must provide a channel of promotion to the post of Public Prosecutor from amongst the Assistant Public Prosecutors, by whatever name they are called.

44. Clause (b) of Explanation to Sub-section (6) defines "Prosecuting Officers" to mean hierarchy of the Public Prosecutors from the lowest rank of Assistant Public Prosecutor to the highest rank of Public Prosecutor. Instead of reading these provisions in isolation, Clauses (a) & (b) need to be read in tandem to arrive at a plausible, rationale and meaningful construction of these provisions, namely, that the Statute, Rules or the Executive Order, as the case may be, which regulates recruitment to the "regular cadre of Prosecuting Officers" must provide promotional avenues from the lowest rank of Assistant Prosecuting Officers to the highest rank of Prosecuting Officers.

45. We may, accordingly, examine as to whether the Group "A" & Group "B" Rules satisfy the abovereferred legislative object or that the Explanation added by Haryana Act No. 14 of 1985, is a mere camouflage to defeat the purposive construction given by us to Clause (a) of Explanation to Sub-section (6) added by Central Act No. 25 of 2005 but retrospectively w.e.f. 18.12.1978?

46. It has already been noticed that Rule 9(2) of the Group "A" Rules unequivocally provides that 3/4th of the total number of posts shall be manned by promotee Officers, namely, the Additional Public Prosecutors or Deputy District Attorneys and only 1/4th shall be filled in by the direct recruits. Similarly, in view of Rule 9(2) of the Group "B" Rules only 1/4th of the total number of posts of the Deputy District Attorneys can be filled in by direct recruitment and rest are required to be filled in by promotion from amongst the Assistant District Attorneys or by way of transfer of any Government official in the equivalent rank. The two sets of Rules once read in unison, provide sufficient and reasonable space to an Assistant Prosecuting Officers-cum-Assistant District Attorney (i.e. lowest rank) to rise upto the highest rank of Public Prosecutor-cum-District Attorney.

47. Clause (a) of the Explanation to Sub-section (6) of Section 24 of the Code added retrospectively vide Central Act No. 25 of 2005 cannot be construed to mean that all the posts of Public Prosecutors above the rank of Assistant Public Prosecutor need to be filled through promotion "only" or that every Assistant Public Prosecutor must get an opportunity for his promotion to the highest post in hierarchy, namely, the Public Prosecutor -cum- District Attorney. Such an interpretation would amount to re-writing Section 24(6) of the Code and the Explanation appended thereto.

48. It is well known that the Court cannot read, by addition or deletion of words, anything in a Statute which was neither intended or provided by the Legislature as it amounts to unwittingly usurping the legislative function under the guise of interpretation. The legislative casus omissus cannot be supplied by interpreting a

Statute except in the case of clear necessity for the reasons which are traceable to the Statute itself nor can the Court read something more into a plain and unambiguous language of a Statute. (49. While observing that Section 96(2) of the Motor Vehicles Act, 1939, is exhaustive of defences open to an insurer, the Supreme Court refused to add word "also" after the words "on any of the following grounds" in [British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others](#), and held that "the rules of interpretation, do not permit us to do unless the section as it stands is meaningless or of doubtful meaning." Similar views were expressed in (i) [The Jumma Masjid, Mercara Vs. Kodimaniandra Deviah](#), ; and (ii) [P.K. Unni Vs. Nirmala Industries and others \[OVERRULED\]](#), .

50. These settled principles have been re-stated by the Hon"ble Supreme Court in [Padmasundara Rao and Others Vs. State of Tamil Nadu and Others](#), , saying that

the rival pleas regarding re-writing of statute and casus omissus need careful consideration. It is well-settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said.

51. For the reasons afore-stated, we answer the reference by holding that (i) appointment to the posts of Public Prosecutor by direct recruitment is permissible in law; and that (ii) Rule 9 of the Group "A" & Group "B" Rules do not ultra vires Section 24 of the Code of Criminal Procedure and these Rules have been framed by the Competent Authority in valid exercise of its powers under the proviso to Article 309 of the Constitution of India.

52. Since no other plea has been taken by the petitioners to assail the validity of the Rules or the appointments of the private respondents, we do not deem it necessary to place these writ petitions before the appropriate Bench for disposal, rather in the light of our answer to the reference, dismiss the same, however, without any order as to costs.