IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.02.2015
PRONOUNCED ON : 26.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

W.P.No.35015 of 2014

V.Narayanasamy,
Work Inspector (Seniority No.490)
Sub Division - II
Special Buildings Divsion - I
PWD, U.T. of Puducherry ... Petitioner

Vs.

1. Union of India
   Represented by the Secretary (Works)
   Chief Secretariat
   U.T. of Puducherry

2. The Deputy Secretary (Works)
   Chief Secretariat
   Union Territory of Puducherry

3. The Chief Engineer
   PWD, Union Territory of Puducherry

4. The Engineer Assistant
   PWD, Union Territory of Puducherry

5. R.Kaliappan
   Work Inspector (Seniority No.491)
   Buildings and Roads Division
   Karaikal, PWD, U.T of Puducherry

6. V.Muthukrishnan,
   Work Inspector (Seniority No.492)
   Irrigation and Public Health
   Karaikal, PWD, U.T. of Puducherry

7. P.Jayabalan, Work Inspector (Seniority No.494)
   Buildings and Roads Division
   Karaikal, PWD, U.T. Of Puducherry

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8. R.Devadass, Work Inspector (Seniority No.503)
   Buildings and Roads (North Division)
   PWD, U.T of Puducherry

9. K.Deivasigamani, Work Inspector (Seniority No.510)
   Special Buildings Division -I
   PWD, U.T of Puducherry

10. R.Subramaniyan, Work Inspector (Seniority No.519)
    Buildings and Roads (North) Division
    PWD, U.T of Puducherry

11. R.Shankar, Work Inspector (Seniority No.527)
    Public Health Division
    PWD, U.T. Of Puducherry

12. K.Govindarasu, Work Inspector (Seniority No.535)
    Buildings and Roads Division, Karaikal
    PWD, U.T. Of Puducherry

13. V.Velmurugan, Work Inspector (Seniority No.543)
    Buildings and Roads (North) Division
    PWD, U.T. Of Puducherry

14. K.Dhanigavel, Work Inspector (Seniority No.546)
    Special Buildings Division - I
    PWD, U.T. Of Puducherry

15. A.Loganadane, Work Inspector (Seniority No.550)
    Buildings and Roads (South) Division
    PWD, U.T. Of Puducherry

16. T.Rajasekaran, Work Inspector (Seniority No.552)
    Irrigation and Public Health
    Karaikal, PWD, U.T. Of Puducherry

17. E.Murugan, Work Inspector, (Seniority No.553)
    Public Health Division
    PWD, U.T of Puducherry

18. L.Sengathir, Work Inspector (Seniority No.554)
    Public Health Division
    PWD, U.T of Puducherry

19. T.Thanasilane, Work Inspector (Seniority No.559)
    Public Health Division
    PWD, U.T. Of Puducherry

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20.V.Thirumalai, Work Inspector (Seniority No.562)
National Highways Division
PWD, U.T. Of Puducherry

21.K.Perumal, Work Inspector (Seniority No.571)
Buildings and Roads Division
Karaikal PWD, U.T. Of Puducherry

22.P.V.Subramanian, Work Inspector (Seniority No.577)
Irrigation and Public Health Division
Karaikal, PWD, U.T of Puducherry

23.C.Coumaravel, Work Inspector (Seniority No.586)
Public Health Division
PWD, U.T of Puducherry

24.G.Sivaselvane, Work Inspector (Seniority No.589)
Irrigation Division
PWD, U.T of Puducherry

25.R.Djeacoumare, Work Inspector (Seniority No.592)
Special Buildings Division - I
PWD, U.T of Puducherry

26.C.Sugumaran, Work Inspector (Seniority No.595)
Buildings and Roads (Central) Division
PWD, U.T of Puducherry

27.A.Premila, Work Inspector (Seniority No. 596)
Special Buildings Division - I
PWD, U.T of Puducherry

28.M.Kumar, Work Inspector (Seniority No.597)
Special Buildings Division - I
P.W.D, U.T of Puducherry

29.D.Ravikumar, Work Inspector (Seniority No.598)
Buildings and Roads Division
Karaikal, PWD, U.T of Puducherry

30.M.Thamizharassan, Work Inspector (Seniority No.599)
Irrigation & Public Health
Karaikal, PWD U.T of Puducherry

31.J.Sankar, Work Inspector (Seniority No.601)
Irrigation & Public Health
Karaikal, PWD, U.T of Puducherry

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32.S.Raman, Work Inspector (Seniority No.602)
Special Buildings Division – II
PWD, U.T.of Puducherry

33.R.Sarasvady, Work Inspector (Seniority No.603)
Public Health Division
PWD, U.T of Puducherry

34.V.Govindaraju, Work Inspector (Seniority No.604)
Buildings and Roads Division
Karaikal, PWD, U.T of Puducherry

35.S.Selvam, Work Inspector (Seniority No.605)
Public Health Division
PWD, U.T of Puducherry

36.T.Djeamarane Redjy, Work Inspector (Seniority No.606)
Buildings and Roads (Central) Division
PWD, U.T of Puducherry

37.E.Djeabarady, Work Inspector (Seniority No.607)
Public Health Division
PWD, U.T of Puducherry

38.N.Radhakrishnan, Work Inspector (Seniority No.608)
Special Buildings Division – II
PWD, U.T of Puducherry

39.K.Gnanavel, Work Inspector (Seniority No.609)
Special Buildings Division – II
PWD, U.T of Puducherry

40.P.M.Sreejesh, Work Inspector (Seniority No.610)
Mahe, PWD, U.T of Puducherry

41.T.Suganthi, Work Inspector (Seniority No.611)
Public Health Division
PWD, U.T of Puducherry

42.S.Patcheappan, Work Inspector (Seniority No.612)
Buildings and Roads (Central) Division
PWD, U.T of Puducherry

43.P.Ilango, Work Inspector (Seniority No.613)
Public Health Division
PWD, U.T of Pudhucherry

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44.The Registrar
The Central Administrative Tribunal
Madras Bench
Chennai ... Respondents

Writ petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the 44th respondent dated 29.04.2014 made in O.A.No.67 of 2012 and quash the same as highly illegal, violative of Article 14 and 16 of the Constitution of India and violative of doctrine of equality and consequently direct the third respondent to promote the petitioner as Overseer as per the seniority list dated 15.10.2008.

For Petitioner : Mr.K.S.Ilangovan
for M/s.Achari & Antoni Associates

For Respondents : Mr.R.Syed Mustafa,
Spl. Govt Pleader (Puducherry)
for R1 to R4

ORDER

P.R.SHIVAKUMAR, J.

This writ petition arises out of a common order of the Central Administrative Tribunal called in short CAT, Madras Bench, Chennai dated 29.04.2014 made in O.A.No.1487 of 2010, O.A.No.67 of 2012 with Contempt Application No.310/00010 of 2014. The writ petitioner and two others who are employed as Work Inspectors in the Public Works Department of Union Territory of Puducherry and similarly placed Work Inspectors, filed O.A.No.67/2012 for setting aside the order of the 4th respondent in his Order No.1-2/PW/CE/AC3/Pro/2008-11 dated 11.01.2012 as highly illegal, violative of Articles 14 and 16 of the Constitution India and violative of the doctrine of equality and to direct the respondents 1 to 4 to promote them as Overseers in accordance with their seniorty in the post of Work Inspectors. The Tribunal disposed of the application with the following directions:

> "32. In the interest of justice, as a special dispensation in the peculiar circumstances of the case, a possible way of redressing the grievance of the Applicants as indicated by the Puducherry PWD Work Inspectors Association in their representation dated 16.06.2010, is to bring them to the pre-revised scale of Rs.4000 - 6000, for which the replacement scale prescribed is Rs.5200 - 20200 with Grade Pay Rs.2400 in the VI CPC pay scale, or in the

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replacement pay-scale in the VI CPC corresponding to that of Overseer (Junior Grade)(without taking into consideration the effect of amalgamation) and not the higher pay scale recommended by the VI CPC for the amalgamated post. The designation/nomenclature of the post is left to the Respondents to decide. This will be without prejudice to the grant of higher pay-scale (recommended by VI CPC) for the amalgamated post of Overseer to those who possess the higher qualifications indicated by VI CPC or in the draft revised RRs. Such a differential treatment on the basis of qualification of the employees, the assumption being that it would translate eventually into higher quality of work/output by those with better qualification, is a reasonable one and is justified on the touchstone of Article 14. It would not be offensive to the philosophy of equality enshrined in the Constitution.

33. The Respondents are accordingly directed to re-examine the case of the Appellants in the two OAs on the above basis and take a decision preferably within a period of 4 months from the date of receipt/production of a copy of this order. With this both the OAs with the contempt petition No.310/00010/2014 filed by the Applicants in OA No.67 of 2012 submitting that despite the interim order of status quo dated 19.01.2012 in the OA in regard to promotion of Work Inspectors to the post of Overseer, the Respondents were taking steps to promote some more persons as per Annexure A/1 which was in willful disobedience of the order of this Tribunal, as well as MA (unnumbered) filed in the aforesaid CA seeking a stay to all further promotions, stand disposed of. The Registry is directed to number the MA. The parties will suffer their own costs."

2. Aggrieved by the same and praying for the issue of a writ of certiorarified Mandamus for quashing the said order of the Tribunal dated 29.04.2014 made in O.A.No.67 of 2012 and for a consequential direction to the third respondent to promote the petitioner as Overseer as per the seniority list published on 15.10.2008, the petitioner is before this court.

3. We have heard the arguments of Mr.K.S.Ilangovan, learned counsel representing M/s.Achari & Antoni Associates, counsel on record for the petitioner and by Mr.R.Syed Mustafa, learned Special Government Pleader (Puducherry) appearing for the respondents 1 to 4 were heard. The materials produced in the form of typed set of papers were also perused.

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4. In exercise of powers conferred by the proviso to Article 309 of the Constitution of India, the Government of Pondicherry [Overseer (Senior Grade), Overseer (Junior Grade) and Work Inspector] Recruitment Rules, 1991, came to be framed and notified in G.O.Ms.No.24 dated 13.05.1991 in the Land Administration and Public Works Department of Union Territory of Puducherry. Schedules 1 to 3 of the said rules prescribe the qualifications, method of recruitment and scales of pay for the posts of Overseer (Senior Grade), Overseer (Junior Grade) and Work Inspector respectively. The educational and other qualifications for the post of Work Inspector in case of direct recruitment shall be possession of an ITI Certificate in Building Construction or its equivalent. In case of promotion, they should have passed the prescribed test before being appointed as Work Inspector. The method of recruitment to the post of Overseer (Junior Grade) was by promotion, failing which direct recruitment would be resorted to. The cadre of Work Inspector was feeder category for promotion to the cadre of Overseer (Junior Grade). The qualification for being promoted as Overseer (Junior Grade) was that one should have worked as Work Inspector for five years in regular service and should possess an educational qualification of 8th standard pass and a pass in the prescribed test. So far as promotion to the post of Overseer (Senior Grade) was concerned, in addition to the experience prescribed to the post of Overseer (Junior Grade), a further requirement of putting in regular service for two years as Overseer (Junior Grade) had been prescribed.

5. It is an admitted fact that the petitioner had passed 8th standard and he also passed the Trade test and thus he had become eligible to be promoted as Overseer (Junior Grade). Meanwhile, by G.O.Ms.No.18 dated 22.05.2009, the posts of Overseer (Senior Grade) and Overseer (Junior Grade) came to be amalgamated into a single cadre with the pay band of Rs.4,000 - 6,000/-. Prior to the implementation of the 5th Central Pay Commission recommendation, the scale of pay for Overseer (Senior Grade) was Rs.1,320 - 2,040 and for Overseer (Junior Grade) the scale of pay was Rs.1,200 - 2,040. On the implementation of the recommendations of the 5th Central Pay Commission prescribing same scale of pay for Overseer (Senior Grade) and Overseer (Junior Grade), namely of Rs.4,000 - 6,000/-, the amalgamation of those two posts into a single cadre 'Overseer' came to be made by virtue of G.O.Ms.No.18 of the Chief Secretariat (Works), Government of Puducherry, dated 22.05.2009. The pay scale came to be revised pursuant to the acceptance of the recommendations of the VI Central Pay Commission with effect from 01.06.2006 and the pay band thus prescribed became Pay Band 2 Rs.9,300 - Rs.24,800/- with a Grade pay of Rs.4,200/-. Consequently the post of Overseer was sought to be classified as a Group 'B' (non-gazetted) as per the orders issued in SO dated 09.04.2009 communicated vide order on classification of posts in OM

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No.11012/7/2008-Estt/A dated 17.04.2009 of DOPT, GOI which was communicated by the Government of Puducherry. Draft Recruitment Rules for the post of Overseer in Group 'B' were prepared and forwarded to the Central Government for its consideration and for obtaining the concurrence of the Union Public Service Commission. As per the proposed Recruitment Rules (draft), the educational qualification for promotees has been prescribed as a pass in S.S.L.C or Matriculation of a recognised institution and a pass in the prescribed Trade Certificate or a pass in the ITI in the trade of Mason (Building Construction) of a recognised institution.

6. Pending approval of the draft Recruitment Rules, in view of the alarming vacancy position in the amalgamated post of Overseer, as a one time measure, the Departmental Promotion Committe approved the decision of the Government to fill up 50% of the vacant posts on the basis of seniority and other normal clearance and adopting the educational qualification prescribed as per the revised draft Recruitment Rules, by giving ad hoc promotion for a period of one year with a condition supra added that such an ad hoc promotion would be reviewed within three months after the notification of the revised Recruitment Rules to the post of Overseer. Accordingly 49 Work Inspectors, who satisfied the eligibility criterion as per the draft (revised) Recruitment Rules, namely having passed S.S.L.C. or its equivalent and ITI certificate in the trade of Mason (Building Construction) of a recognised institution were given promotion. As the petitioner was not having the requisite educational qualification as per the draft (revised) Recruitment Rules for the amalgamated post of Overseer, even though he was not out of the zone of consideration as per the seniority fixed in the cadre of Work Inspector, he was not given promotion either regular or ad hoc to the post of Overseer and his juniors in the cadre of Work Inspector, who satisfied the eligibility criterion came to be given ad hoc promotion.

7. Aggrieved by the same and seeking quashing of the order of the 4th respondent in Order No.1-2/PW/CE/EC3/Pro/2008-11 dated 11.01.2012, he along with two other similarly placed persons by names A.Jean Pierre and S.Madanabalan, filed O.A.No.67 of 2012 before the Central Administrative Tribunal. Similar applications were also filed by other Work Inspectors who were denied promotion on the ground that they did not possess the general educational qualification of S.S.L.C. whereas the juniors did satisfy the conditions regarding the educational qualification. While giving such an ad hoc promotion, inadvertently, two Work Inspectors by names R.Subramanian and C.Sugumaran were promoted on ad hoc basis and when orders for cancellation of their promotion were about to be issued, they approached the Central Administrative Tribunal and obtained orders of status quo.

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8. The Central Administrative Tribunal opining that by virtue of the amalgamation of the posts of Overseer (Senior Grade) and Overseer (Junior Grade) into a single category of overseer, the Recruitment Rules, which were holding the field for the erstwhile post of Overseer (Senior Grade) and Overseer (Junior Grade), became inoperative and redundant and that in the void created by such introduction of the draft Recruitment Rules, the Government did exercise its power of issuing administative instructions pending approval of notification of draft Recruitment Rules. The observations made by the Tribunal in the said order are as follows:

> "31. Thus in the facts and circumstances of the case, the Respondents were justified in taking into account the higher qualifications proposed in the revised draft RRs formulated consequent on the VI CPC and in the issue of orders on amalgamation of the posts of Overseer (Jr. Gr.) and Overseer (Sr. Grade) as Overseer with higher pay scale recommended by VI CPC, for giving ad hoc promotions in anticipation of approval and issue of the revised RRs by Government of Puducherry. Though this affected those Work Inspectors who did not possess the higher qualification, this was only incidental. Fortuitous events are part of life.

However, in the penultimate and concluding paragraphs, the Tribunal took an 'U' turn and directed that the petitioner and the similarly situated Work Inspectors should be accommodated in the pay band prescribed for the unamalgamated Overseer (Junior Grade) in accordance with their seniority without taking into account the effect of amalgamation and designate the post with a separate nomenclature.

9. It is the contention of Mr.K.S.Elangovan, learned counsel for the petitioner that the Tribunal committed an error in holding that 1991 Recruitment Rules had become redundant and inoperative so far as the posts of Overseer is concerned, pursuant to the amalgamation of Senior and Junior grades into a single grade Overseer and that the implementation of the recommendations of the 5th Pay Commission prescribing uniform scale of pay for overseer (senior grade) and overseer (junior grade), namely Rs.4,000 - 6,000, will not have the effect of depriving the right of the petitioner to get promotions to the post of overseer in accordance with the general educational qualification prescribed in the Recruitment Rules of 1991, unless and until the draft Recruitment Rules are approved and notified. The learned counsel for the petitioner further contends that there is no clear intention on the part of the Government to implement the draft Recruitment Rules on approval paving the way for notification in the near future; that therefore the Government cannot be justified in ignoring the

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previous rule, which was not specifically repealed by a subsequent rule and that therefore the impugned order giving promotion to the juniors of the petitioners in the guise of giving effect to the draft Recruitment Rules should be held to be illegal and violation of the equality clause enshrined under Article 14 and 16 of the Constitution of India.

10. On the contrary, Mr.R.Syed Mustafa, learned Special Government Pleader (Pondicherry) appearing for the respondents 1 to 4 would submit that when matters not governed by statutory provision or rules made under the Constitution of India, pending approval and pending notification of the draft rules, the Government shall be justified in issuing administrative directions indicating its desire to implement the draft rules on its notification and that what the official respondents did was to make such an indication that administrative directions in line with the draft rules were issued to tackle the alarming situation of large number of posts of Overseer becoming vacant, by giving ad hoc promotions towards 50% of the vacancies earmarked for promotion on the basis of the general educational and other qualifications prescribed in the draft Recruitment Rules.

11. In this regard, the learned counsel for the petitioner relies on the following judgments:

1) U.O.I Through Govt. Of Pondicherry and another v. V.Ramakrishnan and Others reported in AIR 2005 Supreme Court 4295;
2) Union of India and Another Vs. Central Electrical & Mechanical Engineering Service (CE & MES) Group 'A' (Direct Recuits) Assn., CPWD and others reported in (2008) 1 Supreme Court Cases 354; and

4) High Court of Delhi and another vs. A.K.Mahajan and Others and J.P.Aggarwal and Others vs. A.K.Mahajan and Others reported in (2009) 12 Supreme Court Cases 62.

11.1) In U.O.I Through Govt. Of Pondicherry and another v. V.Ramakrishnan and Others reported in AIR 2005 Supreme Court 4295, the Supreme Court observed as follows:

> "Valid rules made under proviso appended to Art. 309 of the Constitution of India operate so long the said rules are not repealed and replaced. The draft rules, therefore, could not form the basis for grant of promotion, when Rules to the contrary is holding the field. It can safely be assumed that the principle in Abraham Jacob (supra), Vimal Kumari (supra) and Gujarat Kisan Mazdoor Panchayat (supra) that draft Rules can be acted upon, will apply where the are no rules governing the matter and where recruitment is governed by departmental instructions or executive

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orders under Article 162 of the Constitution of India."

11.2) In Union of India and Another Vs. Central Electrical & Mechanical Engineering Service (CE & MES) Group 'A' (Direct Recuits) Assn., CPWD and others reported in (2008) 1 Supreme Court Cases 354, the Supreme Court observed as follows:

"10. It is now a well-settled principle of law that an executive order must be passed in conformity with the rules. Power of the State Government to issue executive instructions is confined to filing up of the gaps or covering the area which otherwise has not been covered by the existing rules."

11.3) In High Court of Delhi and another vs. A.K.Mahajan and Others and J.P.Aggarwal and Others vs. A.K.Mahajan and Others reported in (2009) 12 Supreme Court Cases 62., the Supreme Court considered the effect of a retrospective amendment of a Recruitment Rule and expressed the view holding that a recruitment rule can be given retrospective effect without taking away the vested interest or accrued right. The following are the observations made by the Supreme Court:

"... it is not as if Writ Petitioner 8 concerned was altogether denied the benefit of consideration for ever. He was undoubtedly considered later on and was promoted also. Therefore, it is incorrect to say that the amendment had the effect of denying him the benefit of consideration, which was available to him. He did continue with that benefit and was actually benefitted under the same. This is apart from the fact that the concept of consideration is an uncertain concept. One can understand a pension amount which is already decided or the promotion which is already granted or the seniority which is already conferred upon or the substantive appointment which is already made. If the amendment has the effect of denying this crystallised promotion, seniority or substantive appointment, then certainly the amendment could be held as arbitrary. But that has not happened in the present case. Here, no promotion was already granted or seniority already fixed, or any substantive appointment already made which were affected by the retrospective amendment."

It was further observed by the Supreme Court as below:

"... that a rule, which seeks to reverse from an anterior date a benefit which has been granted or availed of e.g. promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of

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the Constitution to the extent it operates retrospectively. We have already pointed out that it is only to this extent that the retrospectivity can be challenged.

A reading of the said judgment would show that a benefit already crystallised or granted cannot be denied or taken away by a subsequent rule or administrative instruction in the absence of a rule with retrospective effect.

12. In support of his contention, the learned Special Government Pleader (Pondicherry) relied on the following judgments:

1) P.U.Joshi and Others Vs. Accountant General, Ahmedabad and Others with Union of India and Others Vs. Basudeba Dora and Others reported in (2003) 2 Supreme Court Cases 632; and
2) Chandigarh Administration Vs. Usha Kheterpal Waie and Others reported in (2011) 9 Supreme Court Cases 645.

12.1) The first judgment cited by the learned Special Government Pleader, namely P.U.Joshi and Others Vs. Accountant General, Ahmedabad and Others with Union of India and Others Vs. Basudeba Dora and Others reported in (2003) 2 Supreme Court Cases 632, was decided by a Larger Bench consisting of three Hon'ble Judges of the Supreme Court. The following are the observations made in the said judgment:

"Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification,

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bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.

12.2) In Chandigarh Administration Vs. Usha Kheterpal Waie and Others reported in (2011) 9 Supreme Court Cases 645, Chandigarh Educational Service (Group A Gazetted) Government Arts and Science College Rules, 2000 (framed in consultation with the UPSC) published vide notification dated 29.03.2000 had been sent to the Government of India for being issued in the name of the President of India which prescribed a Doctorate degree or equivalent with at least 55% marks at the Master's Degree level from a recognised university and 12 years teaching experience for direct recruitment to the post of Principal. When a notification came to be issued for filling up the post of Principal, the serving Lecturers of Government Arts and Science College, who did not possess Ph.D degree, challenged the recruitment rules and the advertisement calling for applications on the premise that the Chandigarh Administration was not competent to notify the rules and the power to notify the Recruitment Rules for Class - 1 posts vested with the President of India. It was contended on behalf of the administration that the Recruitment Rules had been forwarded to the Government of India for being notified in the name of President of India and that pending issuance of such notification, the Government was competent to apply the draft rules of recruiting to the post of Principal in terms of Chandigarh Educational Service (Group A Gazetted) Government Arts and Science College Rules, 2000 which was framed in consultation with UPSC. The challenge made to the notification inviting applications for filling up the post of Principal was successful before the High Court. On appeal to the Supreme Court, judgment of the High Court was reversed and the notification was upheld. In doing so, the Supreme Court made the following observations:

> "... what is relevant to test the validity of the advertisement, was the intention of the appellant when the advertisement was issued. At that time, the appellant had the clear intention to enforce the Recruitment Rules in future as they had been made in consultation with UPSC, in accordance with the UGC

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guidelines and the Rules had been sent to the Central Government for being modified by the President and the matter was pending consideration for a few months when the advertisement was issued. The appellant at that time had no inkling that there would be inordinate delay or the Rules may not be notified by the President. Therefore, the advertisement in terms of the 2000 Recruitment Rules was valid."

Besides holding that the advertisement was issued in terms of the draft rules and in expectation of their approval and notification, the Supreme Court went further to hold that even in the absence of valid rules, the advertisement was valid. The following are the observations made therein.

"19. Even in the absence of valid rules, it cannot be said that the advertisement was invalid. In exercise of its executive power, the appellant could issue administrative instructions from time to time in regard to all matters which were not governed by any statute or rules made under the Constitution or a statute. In fact it is the case of the respondents that the appellant had issued such instructions on 20-8-1987 directing that the lecturers from UT cadre should be promoted as Principals."

13. A consideration of the above said judgments relied on by the learned counsel appearing on both sides, will give rise to the following propositions:

1. So long as the Service Rules framed under Article 309 proviso and notified by the Government are not repealed or replaced by new rules amending or repealing the same, the draft rules cannot form the basis of grant of promotion or refusal of promotion when such draft rules are contrary to rules holding the field.

2. The State has the power to retrospectively amend the Recruitment Rules, but such retrospectivity shall not have the effect of taking away the crystallised promotion, seniority or substantive appointment already availed.

3. Gaps in the statutory rules can be filled up by executive instructions, which shall be in conformity with the rules.

4. In an area which is not covered by existing rules, executive instructions can be issued, which in turn, shall not be inconsistent with the statutory provisions or the statutory rules.

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5. When due to bifurcation, amalgamation or creation of new posts, the existing recruitment rules become inapplicable to such posts, the Government can apply draft rules indicating clear intention to implement the rule on its notification.

14. In the case on hand, the questions that loom are:

1) whether on the amalgamation of overseer (senior grade) and overseer (junior grade) into a single category 'overseer', the Recruitment Rules 1991 became redundant and inapplicable so far as the post of overseer is concerned?

2) In case the said rules become inapplicable on the premise that the Overseer post is a new cadre regarding which Recruitment Rules are yet to be notified, whether the Government has no power to apply executive instructions in tune with the draft Recruitment Rules sent for the approval of the Central Government and for notification in the name of the President of India?

3) Whether the Tribunal was justified in directing placement of the petitioner and similarly situated persons in the non-existing post of overseer (Junior grade) with a further direction to assign any other nomenclature at the choice of the Government?

15. The Tribunal rendered a finding that the erstwhile rules had become redundant and inoperative so far as the amalgamated post of Overseer is concerned, implying that there is a vacuum in the recruitment rules concerning the amalgamated post of overseer. The Tribunal also held that till the draft Recruitment Rules are adopted and notified, executive instructions could be issued. Having come to such a conclusion, the Tribunal could not have directed placement of the petitioner and the similarly situated persons by way of promotion in the non-existent scale of pay of Overseer (Junior Grade) and assign a nomenclature for the same.

16. We are not able to give our approval to the above said conflicting and contradictory views taken by the Tribunal. In view of the same, we are of the considered view that the order of the Tribunal dated 29.04.2014 is liable to be set aside and the matter shall be remitted back to the Tribunal for a fresh disposal in the light of our observations appearing supra.

In the result, the writ petition is allowed. The order of the Tribunal dated 29.04.2014 is set aside and O.A.No.67 of 2012 is remitted back to the Tribunal for a fresh disposal in the light of

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the observations appearing supra. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

asr

To

1. The Secretary,
   Union of India
   Chief Secretariat
   U.T. of Puducherry

2. The Deputy Secretary (Works)
   Chief Secretariat
   Union Territory of Puducherry

3. The Chief Engineer
   PWD, Union Territory of Puducherry

4. The Engineer Assistant
   PWD, Union Territory of Puducherry

5. The Registrar
   Central Administrative Tribuna
   Madras Bench
   Chennai

+1cc to M/s.Achari & Antoni Associates, Advocate, S.R.No.16947
+1cc to the Public Prosecutor(Pondy), S.R.No.17127

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TEJ(CO)
CA(07/04/2015)

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