

(2011) 1 AWC 11
Allahabad High Court

Case No: None

Omvir Sharma

APPELLANT

Vs

State of U.P. and
Others
High Court
of Judicature Vs Satya
Prakash Sharma and
Others

RESPONDENT

Date of Decision: July 13, 2010

Acts Referred:

Constitution of India, 1950 " Article 158, 213, 235, 309#Government of India Act, 1935 " Section 241

Citation: (2011) 1 AWC 11

Hon'ble Judges: Virendra Singh, J; Ashok Bhushan, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Ashok Bhushan, J.

These two special appeals have been filed against the same judgment and order of Hon"ble Single Judge dated

9.1.2007, allowing the writ petition No. 47915 of 2006, filed by Satya Prakash Sharma. Appeal No. 147 of 2007 has been filed by Omvir

Sharma, who was the respondent No. 4 in the writ petition. By the impugned judgment and order, the selection of respondent No. 4 on the post of

Sadar Munsarim, which was impugned in the writ petition was quashed. The High Court also feeling aggrieved specially with the view of Hon"ble

Single Judge that seniority of ministerial staffs of the subordinate Courts shall be governed by U.P. Government Servants Seniority Rules, 1991 and

not by the Subordinate Civil Courts Ministerial Establishment Rules, 1947, has come up in the appeal.

2. We have heard Sri S.C. Dwivedi, learned Counsel for the appellant in Special Appeal No. 147 of 2007, Sri Ashok Khare, learned Senior

Advocate has appeared on behalf of respondent No. 4. Sri Amit Sthelkar has appeared for the appellant in Special Appeal No. 287 of 2007 on

behalf of High Court of Judicature at Allahabad.

3. The facts giving rise to the writ petition has been stated in the impugned judgment by Hon"ble Single Judge, which need no repetition except to

refer the basic facts to appreciate the issues raised in the present appeal. The appellant Omvir Sharma, who was respondent No. 4 in the writ

petition, was appointed as Clerk on 3.1.1973 whereas Satya Prakash Sharma, the respondent No. 4 in the appeal, who was petitioner in the

aforesaid writ petition was appointed as Clerk on 8.9.1971. Both the appellant and the respondent were promoted in the next higher grade of Rs.

1200- 2040 in the year 1994. The seniority list of the ministerial staffs was prepared on 1.6.1987, in which writ petitioner was at serial No. 22,

whereas the present appellant who was respondent No. 4 in the writ petition was shown at serial No. 25. The exercise for promotion in the next

higher grade of 1350-2200 was undertaken in 1994 at which time, the writ petitioner was the senior most in the lower grade. On 12.5.1994, the

writ petitioner moved an application, requesting the District Judge that he may not be considered for promotion in the next higher grade of Rs.

1350-2200 due to illness of spondylitis. He stated that he was under treatment and was not in a position to undertake the heavy work load. Again

on 13.5.1994 he made a request that he be allowed to permanently continue in scale of Rs. 1200-2040. The said request of the petitioner was

considered by a Committee, which submitted a report to the District Judge. The District Judge on 9.6.1994 accepted the request of the petitioner

and took a decision that the writ petitioner be debarred permanently for promotion in the next higher grade. The appellant was promoted in the

grade of 1350-2200 on 1.9.1995. It appears that subsequently in 1996, the Promotion Committee recommended writ petitioner for promotion in

the next higher grade but on an application moved by the writ petitioner that he was not willing to accept the higher grade, his case was deferred. A

report dated 16.7.1996 was submitted by the Committee constituted by the District Judge in which report, the case of promotion of the petitioner

was deferred till he made request for promotion in the higher grade. The writ petitioner on 30.11.1996 made an application that he be given the

higher grade of Rs. 1350-2200 but he be not given the work of Peshi. The Committee considered the case of all the employees including the writ

petitioner Satya Prakash Sharma and submitted its report dated 6.12.1996, recommending promotion of Satya Prakash Sharma in the grade of

1350-2200. The District Judge on 2.1.1997 approved the report and promoted the writ petitioner in the scale of 1350-2200. A seniority list was

also issued in 1995 as well as in the year 2005, in which the writ petitioner was shown senior. The appellant was promoted in the next higher grade

of Rs. 1400-2300 on 1.2.1997 which scale was later merged in the grade of Rs. 4500-7000. The writ petitioner was also promoted in the scale of

1400-2300 on 1.12.1997, which scale was later merged in the scale of 4500-7000. The representations were submitted by the appellant against

the seniority of the writ petitioner from time to time but seniority position was not altered till the impugned decision was taken. A post of Sadar

Munsarim fell vacant. The petitioner was also posted as Sadar Munsarim at family Court Meerut on 1.7.2003 till October, 2005. By order dated

21.8.2006, the appellant Om Veer Sharma was promoted in the pay scale of Rs. 5500-9000 and was posted as Sadar Munsarim and R.K. Goel,

who was working as Sadar Munsarim was posted as Sadar Munsarim in the Family Court and the petitioner was sent back as Munsarim Reader

in A.C.J.M Court No. 7. On representation submitted by the appellant against the seniority of the writ petitioner, a Committee was constituted,

which submitted a report on 7.8.2006. The District Judge by the impugned order dated 10.8.2006, approved the report accepting the

representation of Omvir Sharma regarding seniority and directed preparation of gradation list accordingly. The petitioner filed the writ petition

challenging the aforesaid order of the District Judge dated 10.8.2006.

4. Hon"ble Single Judge by the impugned judgment allowed the writ petition filed by Satya Prakash Sharma and quashed the orders promoting

Omvir Sharma as Sadar Munsarim and decision regarding determination of his seniority. Hon"ble Single Judge held that after enforcement of U.P.

Government Servants Seniority Rules, 1991, provisions of The Subordinate Civil Courts Ministerial Establishment Rules, 1947 (hereinafter

referred to as 1947 Rules) regarding seniority have been impliedly overruled and determination of seniority thereafter has to take place in

accordance with 1991 Rules. It has been held that writ petitioner having been subsequently promoted in the year 1996-97 in the higher grade shall

regain his seniority by virtue of 1991 Rules. It has been held that writ petitioner was throughout shown as senior to the appellant Omvir Sharma

and there was no valid reason for altering the seniority position as was done by the impugned decision. It has been held by Hon"ble Single Judge

that non consideration of the writ petitioner for promotion on the post of Sadar Munsarim vitiated the entire exercise.

5. Learned Counsel appearing for appellant Omvir Sharma challenging the impugned judgment of Hon"ble Single Judge contended that the view of

Hon"ble Single Judge that 1991 Rules are applicable with regard to determination of seniority of ministerial staffs of the subordinate Courts is

erroneous. It is contended that service conditions including determination of seniority of ministerial staffs of subordinate courts are governed by

1947 Rules and 1991 Rules being general rules applicable on the Government servants, have no application on the subordinate Courts staffs. It is

submitted that 1947 Rules are special rules hence, they cannot be overridden by general Rules of 1991. It is submitted that view of the Hon"ble

Single Judge that seniority shall be determined by 1991 Rules being erroneous, the entire decision is vitiated. It is further submitted that the writ

petitioner had declared in writing not to accept the promotion and District Judge having accepted the prayer of writ petitioner debarring him

permanently for promotion by order dated 9.6.1994, the subsequent promotion of the writ petitioner in 1997-98 are void and have to be ignored.

It is submitted that the writ petitioner having once declined to accept the promotion, had no right to claim promotion and Hon"ble Single Judge has

not correctly appreciated the consequence of declining promotion by the writ petitioner. Learned Counsel for the appellant further contended that

criteria for promotion on the post of Sadar Munsarim by virtue of Rule 20 of 1947 rules being merit and the committee having found the appellant

meritorious and granted him promotion did not commit any error.

6. Sri Amit Sthalekar, learned Counsel for the High Court in Appeal No. 287 of 2007 confined his submissions with regard to applicability of

relevant Rules for determination of seniority of ministerial staffs of the subordinate Courts. Sri Sthalekar submitted that determination of seniority of

the ministerial staffs of the subordinate court shall be governed by 1947 Rules and 1991 Rules have no application with regard to determination of

seniority. It is submitted that the High Court on administrative side has also taken the same view and had issued Circular dated 24.5.1996 that

seniority of the ministerial staffs of the subordinate courts shall be determined in accordance with 1947 Rules and not by 1991 Rules. Sri Sthalekar

submitted that the High Court having never approved the 1991 Rules, they are not applicable. Reliance has also been placed on provisions of

Article 235 of the Constitution of India by Sri Sthalekar.

7. Learned Counsel for the parties have also referred to and relied on various decisions of this Court and apex Court which shall be referred to,

while considering the respective submissions of the learned Counsel for the parties.

8. Sri Ashok Khare, learned Senior Advocate appearing for the respondent writ petitioner supporting the judgment of the Hon"ble Single Judge,

contended that Hon"ble Single Judge has taken correct view of the matter in holding that determination of seniority of the ministerial staffs of the

subordinate courts shall be governed by 1991 Rules. It is submitted that 1991 Rules have been framed under proviso to Article 309 of the

Constitution of India and the said Rules have been given overriding effect on all previous service Rules. It is submitted that applicability of rules

framed under proviso to Article 309 has already been upheld by the apex Court in Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others,

hence, the issue is already decided and is not open to be examined. It is further submitted that the judgment of the apex Court in B.S. Yadav and

Others Vs. State of Haryana and Others, clinches the issue. It is submitted that the apex court in the said judgment has taken the view that the

Governor has full jurisdiction to make rule for determination of seniority of District Judges under proviso to Article 309. There cannot be lack of

any jurisdiction with the Governor to frame rule for determining seniority of ministerial staffs of the subordinate Courts. It is further submitted by

learned Counsel for the respondents that writ petitioner was throughout shown senior in all seniority lists hence, it was not open for the District

Judge to alter the seniority by the impugned decision. It is submitted that although it is true that in 1994, the writ petitioner made a written request

for not being considered for promotion in the next higher grade but subsequently, he made a request in 1996 for consideration of his promotion in

the next higher grade, which was accorded and the petitioner was granted promotion in the next higher grade, which decision promoting the writ

petitioner, was not challenged and being still intact, the respondent appellant cannot be heard in challenging the said promotion granted to writ

petitioner as early as in 1997. It is submitted that the writ petitioner being senior to the appellant was entitled for promotion on the post of Sadar

Munsarim and from the materials brought on record, it is clear that the appellant was not even placed within first ten employees, hence the entire

exercise of promotion was erroneous and has rightly been set aside by Hon"ble Single Judge.

9. We have considered the submissions of learned Counsel for the parties and have perused the record.

10. The main thrust of submissions of learned Counsel for the appellant is that 1991 Rules have no application with regard to determination of

seniority of ministerial staffs of the subordinate courts and as the determination of seniority has been challenged by the writ petitioner only on the

ground that seniority will be determined in accordance with 1991 Rules, the judgment of the Hon"ble Single Judge deserves to be set aside. Thus,

the first issue which needs consideration in the appeal is as to whether for determination of seniority of ministerial staffs of subordinate courts, 1947

Rules are still applicable and whether 1991 Rules are not applicable.

11. The Subordinate Civil Courts Ministerial Establishment Rules, 1947 were framed in exercise of the provisions of Section 241 of the

Government of India Act, 1935. In supersession of all existing rules, the said Rules have been framed by the Governor of United Provinces for

regulating, appointment to the ministerial establishment of the civil courts and conditions of the service of the persons so appointed. Rule 19 of the

said Rules deals with seniority. Another set of Rules namely; U.P. Rules for the Recruitment of Ministerial Staff of the Subordinate Offices, 1950 in

U.P. were framed by the Governor of U.P. in exercise of the powers conferred by Article 309 of the Constitution of India on the subject for

recruitment to the Ministerial Establishment of subordinate offices under his control. In the schedule Judicial (A) Department was also mentioned.

Rule 2 defines ""subordinate office"" which is to the following effect:

2. Definition.- The term ""subordinate office"" shall include all offices under the control of the Governor of Uttar Pradesh other than those of the

Secretariat, the State Legislature, the High Court and the Public Service Commission.

12. A perusal of Rule 2 indicates that definition of subordinate office was inclusive definition and offices which were excluded were only

Secretariat, the State Legislature, the High Court and the Public Service Commission. The Legislature was very much aware of the offices of the

subordinate civil courts which find mention in the schedule. Rule 1950 thus, was fully attracted on the office of the subordinate civil Courts. The

question as to whether 1950 Rules are applicable or not on the offices of the subordinate civil Courts came up for consideration in the case of Om

Prakash Shukla (supra). The apex Court after considering the 1950 Rules and 1947 Rules, laid down that 1947 Rules in so far as they are

covered by 1950 rules shall be impliedly overruled. Paragraphs 7 and 22 which are relevant are quoted as below:

7. The 1950 Rules did not, however, expressly say that the 1947 Rules had been superseded by these Rules. But it is significant to note that the

1950 Rules clearly stated that the Governor had framed them in supersession of all existing rules and orders on the subject for recruitment to the

ministerial establishment of subordinate offices under his control. The clear effect of the 1950 Rules therefore was that the 1947 Rules stood

superseded by the 1950 Rules as regards the subjects prescribed for the test and the manner of the examination to be held for the purpose of

selecting candidates for the ministerial staff in the Civil Courts of the State of Uttar Pradesh. To be precise, Rules 9 to 12 and Appendix II of the

1947 Rules were superseded. The two reasons in support of the above view -are: (i) that in the definition of the expression "Subordinate Office"

only the offices of the Secretariat, the State Legislature, the High Court and the Public Service Commission stood excluded and (ii) the offices of

the Subordinate Civil Courts were included in the Schedule to those Rules. On its administrative side the High Court also understood that the 1950

Rules were applicable insofar as recruitment to the ministerial staff in the Civil Courts was concerned. This is evident from a letter written by Shri

M. P. Singh, Joint Registrar of the High Court of Allahabad to all the District Judges in the State of Uttar -Pradesh on February 12, 1973 which is

as under:

From

M.P. Singh, B.A., LLB.,

Joint Registrar,

High Court of Judicature at Allahabad.

To

All the District Judges,

Subordinate to the High Court of Judicature at Allahabad.

Circular Letter

No. 14/Ve-4 Dated Allahabad

February 12, 1973

Subject: Recruitment to the establishment of the Subordinate Civil Courts.

Sir,

It has been brought to the notice of the court that many District Judges face a lot of difficulties at the instance of Employment Exchange in making

recruitments to their establishments. Broadly speaking the difficulties pointed out by them are as under:

1. Quite often the District Judges, on the list of approved candidates having exhausted, have to recruit candidates directly without subjecting them

to a regular test prescribed under the rules for filling up casual vacancies and for meeting the requirements of newly created additional courts at

short notice and such candidates continue in the employment of the civil courts for a considerable time, but when a test is held for recruitment, the

Employment Exchange either refuses to sponsor the names of those candidates or withholds their applications for one reason or the other and

consequently such candidates are prevented from taking up the test.

2. Some times the Employment Exchange, while forwarding the applications of candidates, withholding applications of such candidates who appear

to be deserving and suitable to the District Judges without assigning any reason and this compel the District Judges to recruit candidates only from

amongst the candidates whose applications are forwarded by the Employment Exchange.

In order to obviate the difficulties, the court has examined the whole scheme and the rules and within frame work of the existing rules and

Government orders on the subject, the following procedure is laid down for our guidance:

While following the procedure laid down in existing rules, published under Government Notification No. O- 111/XI-8-50 dated July 11, 1950

(which was adopted in supersession of Rules 9 to 12 of the U.P. Subordinate Civil Courts Ministerial Establishment Rules 1947) and amplified in

G. O. No. O-2248/II8-III-1950 dated August 30, 1950 the District Judge should in addition himself advertise his requirement under intimation to

the Employment Exchange and while doing so he should take care to make it clear that all applications are to be addressed to him and routed

through the Employment Exchange. The District Judge should further require that candidates should send advance copies of their applications

direct to the District Judge which Would go to ascertain whether all applications have been forwarded to him by the Employment Exchange or not.

However, if on receiving the applications from the Employment Exchange, it is found that applications of certain suitable candidates have been

withheld by the Employment Exchange, the District Judge may in his discretion, permit such candidates to take the test as contemplated in

paragraph 7 of the G. O. dated August 30, 1950 referred to earlier.

In the case of candidates who are appointed to fill up casual vacancies without appearing in the regular test prescribed under the rules and are

already working on the staff of the Civil Court concerned, they should be treated as departmental candidates and should be allowed to take the

test without any reference to the Employment Exchange in order to enable them to qualify for regular appointment.

Yours faithfully,

Sd/

M.P. Singh

Joint Registrar

(Underlining by us)

22. We do not agree with the view of the High Court that the 1950 Rules have been repealed by the 1975 Rules insofar as the Subordinate Civil

Courts are concerned. It is true that Rule 20 of the 1975 Rules clearly stated that the 1950 Rules had been repealed. But the 1975 Rules did not.

apply to the subordinate courts under the control and superintendence of the High Court. Hence the 1950 Rules insofar as they applied to the

subordinate courts continued to be in force. The finding of the High Court on this question is erroneous and is liable to be set aside.

13. Subordinate offices of the civil courts are thus, clearly under the purview of rule making power of the Governor. The scheme of 1991 Rules

has now to be looked into. 1991 Rules have been framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution by

the Governor. Rule 2 provides for Application, Rule 3 provides for overriding effect. Rule 4 is definitions clause. Rules 2,3 and Rule 4 (g) are

quoted as below:

2. Application.- These rules shall apply to all Government servants in respect of whose recruitment and conditions of service, rules may be or have

been made by the Governor under the proviso to Article 309 of the Constitution.

3. Overriding effect.- These rules shall have the effect notwithstanding anything to the contrary contained in any other service rules made

heretobefore.

4. Definitions.- In these rules, unless there is anything repugnant in the subject or context, the expression:

(a)....

(b)....

(c)....

(d)....

(e)....

(f)....

(g) ""Service rules"" the rules made under the under the proviso to Article 309 of the Constitution, and where there are no such rules, the executive

instructions issued by the Government, regulating the requirement and conditions of service of persons appointed, to the relevant service;

14. The crucial words in the Rule 2 as quoted above is that rules shall apply to all Government servants in respect of whose recruitment and

conditions of service, rules may be or have been made by the Governor. The submission pressed by learned Counsel for the appellant is that since

no rules were framed under proviso to Article 309 of the Constitution of India regarding determination of seniority earlier and the Rules, 1991

supersedes the rules framed under provision to Article 309, it can have no effect on the 1947 Rules. The above submission is fallacious as noticed

above. The applicability of Rules can be judged on two scores. Firstly, if the rule under proviso to Article 309 may be framed by the Governor and

secondly the Rule under proviso to Article 309 have been made by the Governor. Non framing of any earlier rules under Article 309 is not

decisive. The competence of Governor to frame Rule under proviso to Article 309 is sufficient enough to apply the 1991 Rules. It cannot be

denied that ministerial staffs of the subordinate courts are within the rule making power of the Governor. 1950 Rules as noticed above have already

been held to be applicable to the ministerial staffs of the subordinate courts by the apex Court in O.P. Shukla case (supra). Thus when the

Governor is competent to frame rule under Article 309, the 1991 Rules shall be applicable. The word service rules have been defined under Rule 4

(g). Service rule under Rule 4(g) includes administrative instructions issued by the Governor regulating the recruitment and conditions of service of

persons, why statutory Rules framed u/s 241 of the Government of India Act can be held not to be service rules is not understandable. Rules

framed by the Governor prior to the Constitution of India u/s 241 of the Government of India Act are also service rules within the meaning of 1991

Rules which shall be overridden by 1991 Rules. Again the said issue has already been decided in O.P. Shukla's case (supra) which has held that

1947 Rules shall be impliedly overruled by 1950 Rules for the subject which has been covered by 1950 Rules.

15. Sri Amit Sthalekar, learned Counsel for the High Court has submitted that High Court always insisted that seniority of ministerial staffs of the

subordinate courts is to be determined by 1947 Rules and has issued Circular accordingly and the High Court never approved 1991 Rules.

Applying 1991 Rules is encroaching on the control which is vested in the High Court with regard to subordinate Courts under the Constitution of

India. The judgment of the apex Court in B.S. Yadav case (supra) is complete answer to the submission made by learned Counsel for the High

Court. In case of B.S. Yadav (supra), the apex Court was considering the rules made by the Governor in exercise of powers under proviso to

Article 309 with regard to determination of seniority of the judicial officers of the State. The submission was made that under Article 235 of the

Constitution of India, control vests in the High Court and holding that Governor has competence to make rules for determination of seniority is

encroachment on the rights which has been constitutionally granted to the High Court under Article 235 of the Constitution of India. The

submission raised in B.S. Yadav's case (supra) was repelled by the apex Court and it was held that Governor is fully competent to make rules

regarding determination of seniority of judicial officers under proviso to Article 309 of the Constitution of India and conceding the legislative power

of the Governor to frame appropriate rules, in no manner entrenches upon the rights of the High Court guaranteed under Article 235 of the

Constitution of India. Following was laid down in paragraphs 40,41,45 and 47 of the Constitution of India.

40 . On a plain reading of Articles 235 and 309 of the Constitution, it is clear that the power to frame rules regarding seniority of officers in the

judicial service of the State is vested in the Governor and not in the High Court. The first part of Article 235 vests the control over district courts

and courts subordinate thereto in the High Court. But the second part of that article says that nothing in the article shall be construed as taking

away from any person belonging to the judicial service of the State any right of appeal which he may have under the law regulating the conditions of

his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such

law. Thus, Article 235 itself defines the outer limits of the High Court's power of control over the district courts and courts subordinate thereto. In

the first place, In the exercise of its control over the district courts and subordinate courts, it is not open to the High Court to deny to a member of

the subordinate judicial service of the State the right of appeal given to him by the law which regulates the conditions of his service. Secondly, the

High Court cannot, in the exercise of its power of control, deal with such person otherwise than in accordance with the conditions of his service

which are prescribed by such law.

41. Who has the power to pass such a law? Obviously not the High Court because, there is no power in the High Court to pass a law. though

rules made by the High Court in the exercise of power conferred upon it in that behalf may have the force of law. There is a distinction between the

power to pass a law and the power to make rules, which by law, have the force of law. Besides, ""law"" which the second part of Article 235

speaks of, is law made by the legislature because, if it were not so, there was no purpose in saying that the High Court's power of control will not

be construed as taking away certain rights of certain persons under a law regulating their conditions of service. It could not have been possibly

intended to be provided that the High Court's power of control will be subject to the conditions of service prescribed by it. The clear meaning,

therefore, of the second part of Article 235 is that the power of control vested in the High Court by the first part will not deprive a judicial officer

of the rights conferred upon him by a law made by the legislature regulating his conditions of service.

45. That the Governor possesses legislative power under our Constitution is incontrovertible and, therefore, there is nothing unique about the

Governor's power under the proviso to Article 309 being in the nature of a legislative power. By Article 158, the Governor of a State is a part of

the legislature of the State. And the most obvious exercise of legislative power by the Governor is the power given to him by Article 213 to

promulgate Ordinances when the legislature is not in session. Under that Article, he exercises a power of the same kind which the legislature

normally exercises, the power to make laws. The heading of Chapter IV of Part VI of the Constitution, in which Article 213 occurs, is significant:

Legislative Power of the Governor"". The power of the Governor under the proviso to Article 309 to make appropriate rules is of the same kind. It

is legislative power. Under Article 213, he substitutes for the legislature because the legislature is in recess. Under the proviso to Article 309, he

substitutes for the legislature because the legislature has not yet exercised its power to pass an appropriate law on the subject.

47. We entertain no doubt that seniority is a condition of service and an important one at that. The control vested in the High Court by the first part

of Article 235 is therefore subject to any law regulating seniority as envisaged by the second part of that article. The power to make such law is

vested by Article 309 in the legislature, and until it acts, in the Governor. Whether it is the legislature which passes an Act or the Governor who

makes rules regulating seniority, the end product is "law" within the meaning of the second part of Article 235. The legislatures of Punjab and

Haryana not having passed an Act regulating seniority of the respective State Judicial officers, the Governors of the two States have the power to

frame rules for that purpose under the proviso to Article 309 of the Constitution. Such rules are, of course, subject to the provisions of the

Constitution and to the provisions of any Act which the appropriate legislature may pass on the subject.

16. The submission that 1947 Rules were special rules and the 1991 Rules are general rules and general rules cannot override the special rules is

now to be considered. It is true that 1947 rules are special rules which were framed for regulating, appointment to the ministerial establishment of

the civil courts and the conditions of the service of persons so appointed. Proviso to Article 309 of the Constitution of India empowers the

Governor to frame rule for governing the service conditions of the employees appointed in the affairs of the State. Whether the general rules shall

supersede the special rules is a question to be answered from the scheme and intendment of the rules. 1991 Rules specifically override any earlier

service rules in that regard. When the intention of 1991 Rules is specific having overriding effect on any earlier rules, the submission of learned

Counsel for the appellant has no substance. In view of the foregoing discussions, we are of the view that 1991 Rules are applicable with regard to

determination of seniority of ministerial staffs of the subordinate courts and from the enforcement of 1991 rules, the Rule 19 of 1947 Rules is no

longer in operation having been impliedly overruled by 1991 Rules. Hon"ble Single Judge did not commit any error in holding that 1991 Rules are

applicable for determination of seniority of the ministerial staffs of the subordinate courts and the aforesaid view of the Hon"ble Single Judge is

affirmed.

17. It is true that High court has issued circular in 1996 providing that determination of seniority be made in accordance with 1947 Rules on which

much reliance has been placed by Sri Amit Sthalekar. The said question has been dealt with by Hon"ble Single Judge in detail. The Division Bench

judgment of this Court in Mohd. Islam Siddiqui and another Vs. State of U.P. and others, has been relied by Hon"ble Single Judge, where the

Division Bench took the view that power under Article 235 of the Constitution of India by the High Court cannot be exercised in violation of the

Rules made under Article 309 of the Constitution of India. The judgment in the case of B.S. Yadav (supra) was also relied by the Division Bench.

In the case of Mohd Islam Siddiqi (supra), the circular dated 24.5.1996 was under consideration. The Division Bench took the view that circular

was issued by the Administrative Committee bypassing the statutory Rules framed under proviso to Article 309 of the Constitution of India by the

Governor. Paragraphs 4 to 11 of the judgment in the case of Mohammad Islam Siddiqi have been quoted by Hon"ble Single Judge. Hon"ble

Single Judge in the impugned judgment has taken the view that Administrative Committee, which is empowered to issue circular has no power or

jurisdiction to issue circular in violation of the statutory rules. We do not find any infirmity in the above view taken by the Hon"ble Single Judge.

The circular issued by the High court, which ignores the statutory Rules, 1991 cannot be upheld nor the said circular can override the 1991 Rules.

Thus, the submission of Sri Amit Sthalekar, learned Counsel for the High Court cannot be accepted.

18. Much emphasis has been laid down by learned Counsel for the appellant that writ petitioner having once expressly refused in writing to accept

promotion in the higher grade, it was not open for the writ petitioner to pray for promotion nor it was open for the District Judge to grant

promotion in the year 1997 or thereafter. From the materials brought on record, it is clear that on 12.5.1994 and 13.5.1994, the petitioner gave an

application that due to his suffering from spondylitis for which he is under treatment, he is unable to take heavy work and he be permitted to

continue in the scale of Rs. 1200-2040. The said request was accepted and his promotion was not considered for the higher grade in the year

1994. It is further clear that in 1996, he was considered for promotion and was recommended by the Committee but on 1.6.1996 he expressed

his unwillingness to work on higher higher post hence consideration for his promotion was deferred. it is useful to quote the relevant part of the

recommendation of the Committee dated 16.7.1996:

Sri Satya Prakash Sharma: He was recommended for promotion by the committee on 19.4.96 and promoted too in the aforesaid grade, but he

moved an application on 1.6.96 to the learned District Judge that he is not willing to be promoted in the higher grade until his further request. So his

case is being deferred till he makes a request for promotion in higher grade.

19. The petitioner has brought on record the application dated 30.11.1996 in which he has requested that he be considered for promotion in the

pay scale of 1350-2200 but he may not be assigned the work of Reader. The committee recommended promotions on 6.12.1996. The

Committee also noticed the fact that earlier Sri Satya Prakash Sharma did not opt for promotion. In the report dated 6. 12. 1996, copy of which

has been filed as Annexure7 to the writ petition, following was reported by the Committee:

As regards the promotion to the grade of Rs. 1350-22000, only three vacancies have been reported. This Committee, while considering the

promotion to said grade, considered the names of Sarv Shri Satya Prakash Sharma, Sri Bhupender Kumar, Ashok Kumar Sharma, Lalit Kumar

Agarwal, Krishna Gopal Saxena and Managar Rai Sharma, whose names find place in the seniority list. ""It is material to point out that Sri Satya

Prakash Sharma, who on the previous occasion did not opt for promotion, has now applied for being considered for promotion to the grade of Rs.

1350-2200 with condition that due to some physical infirmity and medical advice he may be deputed to work otherwise than Reader. On perusal

of character Roll and Service Book of Sri Satya Prakash Sharma, the Committee found that no adverse entry has been awarded to this employee

for the last five years, he has, therefore, been found by the Committee to be fit for promotion.

20. The report of the Committee dated 6.12.1996 was approved by the District Judge on 2.1.1997 and Satya Prakash Sharma was promoted in

the grade of Rs. 1350-2200. Subsequently, Satya Prakash Sharma was further promoted in the grade of Rs. 1400- 2300 and was granted pay

scale of Rs. 4500-7000 and was also posted as Sadar Munsarim in the Family Court Meerut. The promotions granted to Sri Satya Prakash

Sharma in 1997 and thereafter, cannot be permitted to be challenged in proceedings for determination of seniority as the benefits of promotions

have been extended to Satya Prakash Sharma for about a decade. Satya Prakash Sharma although had declined to accept promotion due to his

illness in the year 1994 but when subsequently the Committee in December, 1996 recommended him for promotion on his written request, which

was approved by the District Judge and the said promotion orders being still intact, we do not find any substance in the submissions of learned

Counsel for the appellant that said promotions are void and inoperative. The promotions were actually granted and were given effect to hence, we

do not find any infirmity in the impugned judgment on the above submission of the learned Counsel for the appellant.

21. In so far as consideration for promotion on the post of Sadar Munsarim is concerned, from the materials brought on record i.e. three members

committee report dated 7.8.2006 filed as Annexure13 to the affidavit in support of the stay application in the appeal, it is clear that case of Satya

Prakash Sharma was not considered as he was not treated within the zone of consideration. Name of Satya Prakash Sharma which was existing at

serial No. 1 in the gradation list was directed to be placed between the names of Ravinder Kumar Saxena and Sri Lalit Kumar Agarwal i.e.

between serial No. 17 and 19. Thus writ petitioner who was at serial No. 1 in the gradation list, which was existing at the relevant time, was

pushed down from serial No. 1 to serial No. 18. Having pushed down at serial No. 18, the Committee did not consider him for selection on the

post of Sadar Munsarim. The criteria for promotion on the post of Sadar Munsarim is merit with due regard to seniority as per Rule 20(3) of 1947

Rules, which is quoted below:

20. (3) Posts other than those mentioned in Clause (2) above, for persons in the pre-1931 scale on post 1931 scale respectively shall be treated

as selection posts, promotion to which shall be based on merit with the due regard to seniority.

22. The promotion in the higher grade of Rs. 1350-2200 both to appellant as well as writ petitioner was granted after enforcement of 1991 Rules.

Thus, the determination of seniority after promotion in the higher grade has to be determined in accordance with 1991 Rules. Prior to promotion in

the scale of Rs. 1350-2200, the writ petitioner was shown senior to appellant, who will regain his seniority on promotion in the higher grade, even

though the appellant in the higher grade received promotion earlier to the writ petitioner. In all the gradation list writ petitioner was shown senior,

which was interfered with by the Committee in its report dated 7.8.2006 without consideration of 1991 Rules.

23. In view of the aforesaid, we do not find any such ground in the appeal, which may warrant interference in the judgment of the Hon"ble Single

Judge. Substantial justice has been done by the Hon"ble Single Judge by maintaining the seniority of the writ petitioner, who was throughout shown

as senior to the appellant.

24. Both the appeals are dismissed.

25. Parties are directed to bear their own costs.