

(2005) 04 AHC CK 0214

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 2357 (S/S) of 2005

U.P. Jal Nigam Karmchari
Mahasangh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: April 28, 2005

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 162, 309
- Uttar Pradesh Jal Nigam Ministerial Establishment Services Regulations, 1981 - Regulation 4, 4(A)(1)
- Uttar Pradesh Jal Nigam Ministerial Establishment Services Rules, 1981 - Rule 4
- Uttar Pradesh Water Supply and Sewerage Act, 1975 - Section 15, 15(1), 4(A), 46, 9

Citation: (2005) 6 AWC 5590

Hon'ble Judges: Rajiv Sharma, J

Bench: Single Bench

Advocate: S.K. Kalia, Upendra Nath Misra, for the Appellant; L.P. Misra, C.S.C., for the Respondent

Final Decision: Allowed

Judgement

Rajiv Sharma, J.

Heard Sri S.K. Kalia, senior advocate assisted by Sri Upendra Nath Misra, learned Counsel for the Petitioner as well as learned standing counsel, who appears on behalf of opposite party No. 1 and Dr. L.P. Misra, learned Counsel for the opposite parties No. 2 to, 6 and perused the record.

2. By means of the instant writ petition, the Petitioners are assailing the resolution of Board of Director, in so far it authorized the chairman to introduce inter cadre transfer of ministerial staff dated 17.12.2004, order dated 26.2.2005, passed by opposite party No. 3 and the consequential order transferring the office bearers of the Petitioners' association as well as other members of the employees association

from headoffice cadre to field cadre.

3. Petitioner No. 1 is the employees association of all Class-II employees of U.P. Jal Nigam working throughout the State of U.P. Petitioner No. 2 is its State President. Petitioner No. 3 is employees association of all Class-III employees working at Head Office of Jal Nigam. Petitioner No. 4 is its President. Petitioner Nos. 5 and 6 are members of the Employees Association of head office. It has been stated in the writ petition that ever since the incorporation of U.P. Jal Nigam in the year 1975, there have been two separate cadre of Ministerial staff, i.e. the Headquarters Cadre and the Field Cadre. Prior to the incorporation of U.P. Jal Nigam Water Supply and Sewerage Works were being looked after by a Government department namely, Local Self Government Engineering Department (L.S.G.E.D). For the first time, the Service Rules of the ministerial cadre known as local self Government Engineering Department. Ministerial Establishment Rules, 1965 were enacted whereby it was provided that there shall be two cadres namely the ministerial cadre of Chief Engineer Office and Circle Office/Divisional Office and same is continued as such even after the incorporation of the U.P. Jal Nigam in the year 1981, new Service Rules of Ministerial cadre were framed known as U.P. Jal Nigam Ministerial Establishment Services Rules, 1981 and Rule 4 of the said Rules of 1981 provides that there shall be two different cadres of ministerial staff, i.e. Head Office Cadre and Field Cadre. Rule 4 further provides that in normal circumstances transfer from one cadre to another cadre shall not be made. However, the Chief Engineer was authorized to transfer from one cadre to another in exceptional circumstances but the seniority of the said employee shall be protected in his parent cadre. Thus, inter cadre transfer is not a rule but an exception, according to the "Service Rules of 1981" also. It has also been stated in the writ petition that till date there has been no incidence of transfer of ministerial staff belonging to headquarters cadre to any place in the field. The seniority of the employees of different cadres is to be maintained separately. The employees of the Head Office Cadre has also forgone their promotions which they were offered provided they accept to go to the field cadre.

4. The Petitioners who are working as Senior Noter Drafter at head office were offered promotion on the post of Divisional Accountant in the State Cadre. And in case he had accepted the promotion on the post of Divisional Accountant in State Cadre, he would have atleast four opportunities of further promotions, i.e. from Divisional Accountant-Assistant Accounts Officer-Accounts Officer-Senior Accounts Officer-Chief Accounts Officer, whereas he had only one promotional avenue available from the post of Section Officer to the post of Personal Assistant (Non-Technical).

5. Prior to November, 2003, the administrative and financial Management of U.P. Jal Nigam was apparently running smoothly and salaries and pensions were being distributed to its current staff as well as retired staff in time but thereafter acute

financial problems were created apparently on account of maladministration and various other reasons not attributable to the Petitioners which resulted in irregular payment of salary and by August, 2004, the situation worsened so much so that salary of the staff was not paid for four months and as such Petitioners associations representing the ministerial staff of the head office as well as of the field was repeatedly requesting the Management to improve the worsening financial position and to ensure payment of salary every month to its employees, however, no action was being taken by the Respondents in that regard. On the contrary, the GPF of the employees maintained by the Management was being consistently reduced. All these grievances relating to members of the Petitioners associations were being raised by the office bearers of the employees associations but no heed was paid on the said requests of the office bearers and further the employees of the Jal Nigam were getting restless day-by-day as it has become absolutely impossible for them to run their family without getting salary from the Jal Nigam. It has also further been stated that on 6.12.2004, the Respondent No. 3, i.e. the Chairman of the Jal Nigam, who is Hon"ble Minister of the department as well, visited the head office at Lucknow whereby the employees through their office bearers insisted for solving of their problems specially with respect to payment of their salary regularly but without giving any assurance about the payment of salary in future or near future opposite party No. 3 hurriedly departed while saying that the State Government is contemplating to wind up the Corporation itself which amounted to making the wounds more painful instead of providing any relief to the aggrieved employees and since then "dharna pradarshan" has been launched by the employees. The employees associations, however, had prepared a minutes of meeting on 6.12.2004 between the members of the employees associations and the Chairman of the Nigam and the same was sent to the Respondents. Thereafter, the Chairman of the Jal Nigam apparently got annoyed by the aforesaid meeting of the members of employees associations including the Petitioners whereby the grievances of the employees were strongly put-forth before the Chairman and with this background, the Chairman of the Jal Nigam called an emergency meeting on 17.12.2004 in spite of the fact no agenda of 142nd meeting was placed before the Board regarding restructuring of the ministerial cadre, however it was resolved that no fresh appointments shall be made at the lowest ministerial post of the head office cadre and it was further resolved that after the post of head office cadre getting vacant on account of retirement of its employees the same shall not be filled up and equal numbers of lowest ministerial posts shall be deemed to be cancelled. By means of the aforesaid resolution, the Board had authorized the Chairman of Jal Nigam to look after the procedure for transfer of employees from head office cadre to field and vice versa. Resolution for constitution of high powered committee was also passed.

6. In pursuance of the resolution No. 142.09.05 of the Board of Directors dated 17.12.2004, the Chairman of the Jal Nigam passed the order on 2.2.2005, whereby

high powered Committee of five members headed by Sri V.K. Deewan, a retired Chief Secretary of the State of U.P. was constituted. The object of the said committee was to make recommendation for reorganization of U.P. Jal Nigam including proposal for changes in the administrative set up, technical and non-technical cadre strength and management of staff and other administrative matters and further the Chairman in exercise of the authorization vide Resolution No. 142.09.03 passed the order dated 26.2.2003 and thereafter consequential orders were passed by opposite party No. 6.

7. On the aforesaid facts, Sri S.K. Kalia, senior advocate, learned Counsel for the Petitioners has formulated the following propositions :

(I) Jurisdiction error and lack of competence to pass the impugned orders ;

(II) Statutory Service rules or regulations cannot be supplanted by means of administrative instructions ;

(III) Colourable, mala fide and malicious exercise of power ;

(IV) Arbitrariness and unreasonableness of the impugned orders making it violative of Articles 14 and 16 of the Constitution of India ; and (V) Violation of principles of legitimate expectation.

8. In support of the aforesaid propositions, Sri S.K. Kalia, learned Counsel for the Petitioners submits that the amendment incorporated by the Board of Directors of Jal Nigam in Service Regulations, 1981, cannot be affected because as the same has not been approved by the State Government as per the provisions of Section 97 of the U.P. Water Supply and Sewerage Act, 1975 and in so far as Rule 4 specifically authorizes the Chief Engineer to make inter-cadre transfer only in an exceptional cases. He further submits that in the Board of Directors meeting held on 17.12.2004, no such resolution was passed by the Board authorizing the Chairman to make inter-cadre transfer but only authorizes the Chairman to look after the procedure of inter-cadre transfer. He further submits that neither the provisions of Regulation 4 have been amended by the Board nor any approval has been given by the State Government for change in the same. Therefore, the said provisions of the service regulations are still in force and no alteration, amendment or modification could have legally been effected by the Chairman, U.P. Jal Nigam on his own, which has been done in the instant case and therefore, the same cannot be sustained in the eyes of law. He further submits that it is settled position of law that statutory rules or regulations can only be supplemented by the administrative instructions or Government order, but cannot be supplanted. In the instant case, the provisions of Regulation 4 have not been altered or modified by the Board of Directors with the prior approval of the State Government and the Chairman, U.P. Jal Nigam, while assuming the said power himself has passed the impugned orders dated 26.2.2005 cancelling the previous arrangement of inter-cadre transfer and introduced the scheme of general inter-cadre transfer hence the Respondent No. 3 has tried to

supersede the provisions of Service Regulations by means of administrative instructions, which is impermissible in law. In support of the above argument, Sri S.K. Kalia, learned Counsel for the Petitioners has relied upon the following decisions :

- (1) [Union of India and Another Vs. Charanjit S. Gill and Others,](#)
- (2) [State of Madhya Pradesh and another Vs. G.S. Dall and Flour Mills and Others,](#)
- (3) [J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc.,](#)
- (4) [K. Kuppusamy and Another Vs. State of T.N. and Others,](#)
- (5) [Himachal Pradesh State Electricity Board Vs. Somdutt Uppal and another,](#)
- (6) [E.P. Royappa Vs. State of Tamil Nadu and Another,](#) and
- (7) [Vidya Dhar Pande Vs. Vidyut Grih Siksha Samiti and Others,](#)

9. Sri S.K. Kalia, senior advocate, further submits that the entire exercise is colourable, mala fide and malicious. The Petitioner's employees associations have been demanding the payment of wages, which have not been paid since November, 2004 to the employees of the U.P. Jal Nigam and as such it has become unbearable for employees to sustain their families. A meeting was held by the office bearers of the employees associations with the Chairman, U.P. Jal Nigam on 6.12.2004. However, no solution to the present predicament was offered by the Management, but the Minutes of Meeting was prepared and submitted by the office bearers on 14.12.2004 so as to bring on record the discussions held with authorities. This action got annoyed the Chairman and with an intention to quell the lawful activities of legally created employees associations, the impugned resolution dated 17.12.2004 was passed by the Board of Directors of Jal Nigam and in pursuance thereof the Chairman has passed an order on 26.2.2005 and the consequential orders thereof passed by opposite party No. 4 (Superintendent Engineer) in spite of the fact that there was no agenda for the said purpose. Thus, the impugned transfer order was passed for extraneous reasons and considerations and ulterior motive. He further submits that the Respondents have followed the policy of pick and choose in effecting the transfer orders whereby some of the office bearers of the Employees Associations including its President (Petitioner No. 2) and General Secretary as well as some other members have been hand-picked by the Respondent No. 3 and were transferred from headquarters to field and as such the impugned orders of transfer are discriminatory in nature and violative of Articles 14 and 16 of the Constitution of India.

10. Sri Kalia further submits that members of the employees associations specially those working in headquarters have forgone the better promotional avenues offered to them in the State cadre and have also accepted the delayed promotions

in the headquarters cadre. However, they stuck to the headquarters cadre while relying on the assurances given to them that they shall not be transferred to the field, therefore, the action of the Respondents in introducing the impugned scheme of inter-cadre transfer without getting amendments in the service regulations is not only beyond jurisdiction, but the same is also violative of principles of legitimate expectation of the employees and doctrine of promissory estoppels.

11. In rebuttal to the submission of Sri S.K. Kalia, senior advocate, Dr. L. P. Misra, learned Counsel for the opposite parties, states that the Service Regulation, which have been framed in 1981 have not been approved by the Government as required u/s 97 of the U.P. Water Supply & Sewerage Act, 1975 and as such the said regulations have no statutory force and not yet attain finality. Dr. Misra further states that u/s 9 of the Act, the Board and Chairman shall have the competent general control over all the employees of the Nigam and further the Board have power u/s 15 (1) of the Act to do anything which may be necessary or expedient for carrying out its functions under this Act. He further states that it is in exercise of the power conferred u/s 9 of the Act, 1975, the Chairman by means of order dated 26.2.2005, cancelled the previous arrangement of inter-cadre transfer and introduced the Scheme of general inter-cadre of transfer.

12. Dr. Misra has also produced the record for perusal of the Court and submits that transfer list have been prepared by the competent authority and sent the same to the Chairman for its approval, which was approved by the Chairman in pursuance of the powers conferred vide resolution Nos. 142.09.03. He further submits that a high power committee has also been constituted as resolved vide resolution Nos. 142.05 and 142.08 for restructuring of the organization. Dr. Misra further states that the transfer contemplated in the proposed regulation u/s 4 (A) 2 of the Act could be said to be the individual transfer and, therefore, it was found necessary that as a matter of policy, some policy decision be taken in the matter of transfer by the Nigam itself so that there may be an uniformity and, therefore, the matter was placed before the Nigam and a resolution No. 142.09.03 dated 17.12.2004 was adopted. Sri Misra further submits that the Board in exercise of its general power u/s 15 of the Act is competent and has resolved for cancelling the previous existing arrangement of inter-cadre transfer and introduced the scheme of general inter-cadre transfer and the orders passed thereof does not suffer from any illegality or infirmity in law. He further submits that on account of the financial constraints, which the Nigam is suffering, the work load at the head quarter was much less than the available strength and looking to all these circumstances, a policy decision has been taken for transfer of the ministerial staff from head quarter to field. He further states that the decisions to transfer some of the ministerial staff from the head quarter to the field has been taken with a view to ensure that timely salary is paid to the employees and the Nigam also be not subjected to any further loss and unnecessary financial burden. He further submits that as already resolved that there is restructuring in the organization and further a resolution has already been passed that no fresh

appointments shall be made at the lowest ministerial post of the head office cadre and it was further resolved that after the post of head office cadre getting vacant on account of retirement of its employees the same shall not be filled up and equal numbers of lowest ministerial posts shall be deemed to be cancelled.

13. In rebuttal the submission advanced by Dr. L. P. Misra, Sri S.K. Kalia reiterate the submission already made by him and he further submits that as regards the service regulations referred by the Respondents as draft service regulations, have been consistently acted upon and followed by the U.P. Jal Nigam for the last about 24 years and all the transfers, postings and promotions, etc. have been made on the basis of said "Service Regulations" only and as such it is not open to the Respondents to state that the said service regulations have no force.

14. Sri Kalia further submits that there were inherent contradiction in the impugned resolution of the Board dated 17.12.2004, inasmuch as the Board vide Resolution No. 148.05 and 142.08 referred the matter regarding reorganization of Jal Nigam including the Management of employees to a High Power Committee, which is to look after the said matter and whose recommendations were to be accepted with prior approval of the State Government, however, the Board of the Jal Nigam at the same time, while showing undue haste, passed the impugned Resolution No. 142.09.03 authorizing the Chairman. He further submits that on perusal of the resolution No. 142.09.03, the Chairman was only authorized to look after the procedure of inter-cadre transfer. He has not been authorized to pass the order of transfer. Sri Kalia further submits that in pursuance of the impugned resolution dated 17.12.2004, a proposal was sent by the Superintending Engineer on 25.2.2005 to the Chairman, U.P. Jal Nigam, recommending for introduction of a new procedure of inter-cadre transfer whereby it was suggested that appointing authority, before resorting to inter-cadre transfer, i.e. Transfer from field to headquarters and vice-versa, shall take prior approval of the Chairman of U.P. Jal Nigam. Thus, the new procedure, which also does not authorize the general introduction of inter-cadre transfer, provided a rider of "prior approval of Chairman" before resorting to inter-cadre transfer by the appointing authority, that too, in special circumstances only and as such the said proposal was submitted for approval of the Chairman on 25.2.2005. The Chairman of U.P. Jal Nigam has approved the said proposal. However, while granting the said approval, the Chairman also assumed the power to effect upon the transfer of individual employees and he himself issued the orders of transfer of the Petitioner from the headquarters to different areas in the field. Thereafter, the Superintending Engineer, U.P. Jal Nigam issued consequential transfer order on 26.2.2005. The entire action was only informed to the appointing authority as late as 2.3.2005. Thus, the entire exercise of power is based on mala fide and malicious conditions and as such the impugned order of transfer are liable to be quashed.

15. Sri Kalia further submits that out of the total post sanctioned in the head quarter cadre is 397 out of which only 351 persons are working as on 1.7.2004. Thus, there are 46 posts still vacant, whereas in the field cadre out of the total sanctioned post is 7700, out of which only 8172 persons are working in the regular establishment, 201 in work charge establishment, 3225 in muster roll. Thus, there were surplus staff in the field cadre to the tune of 3898 persons and if transfer is to be made, the same is to be made from the field cadre to the head quarter cadre and not vice-versa as done by the impugned order dated 26.2.2005.

16. After hearing the rival submissions advanced by learned Counsel for the parties as well as on perusal of the record, in order to determine as to whether prior approval of the Government has been accorded to under the U.P. Ministerial Establishment Service Rules, 1981 or not. The relevant extract of the opening paragraph of the aforesaid rules is reproduced as under :

17. An emphasis has been laid on the word (in English, prior approval has been taken) during the course of the submissions made by learned Counsel for the Petitioner that on the basis of the drafting of the aforesaid paragraph inference can be drawn that prior approval has been obtained from the Government. Learned standing counsel was required to obtain instructions as to whether prior approval has been taken or not but he fails to seek instructions from the State Government. However, without going into the fact as to whether prior approval has been obtained as envisaged u/s 97 of the Act or not but it is admitted by the parties that the provisions of the aforesaid regulations of 1981 have been acted upon by the parties for the last twenty-four years and in accordance with the provisions of the service regulations, transfers, postings, promotions, preparation of seniority list etc. have been made.

18. Hon"ble the Supreme Court in the case of [British India Corporation Ltd. Vs. Industrial Tribunal, Punjab and Others](#), , it has been held that :

The next question that arises for consideration is whether the appointment of Respondent No. 4 as Director of Respondent No. 1 is illegal because of non-compliance with bye-law 2. Bye-law 2 does require that before appointment, the vacancy in the post of Director be suitably publicized. In the instant case, it is admitted on both sides that no publicity whatsoever was given in respect of the vacancy. The contention of Shri Garg, however, is that the bye-law having no force of statute, non-compliance with its requirement cannot in any way affect the appointment of Respondent No. 4 as Director of Respondent No. 1. Shri Tarkunde, however, contended that assuming that the bye-law is not statutory, even so Respondent No. 1 was bound to comply with it. In support of his contention he strongly relied upon [Ramana Dayaram Shetty Vs. International Airport Authority of India and Others](#), The Court in that case held (at p. 1635 of AIR) :

It is a well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in *Viterelli v. Seaton* (1959) 359 US 535 : 3 L Ed 1012, where the learned Judge said :

An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword. " The aforesaid principle laid down by Mr. Justice Frankfurter in *Vitarelli v. Seaton* (1959) 3 L Ed 1012 , has been accepted as applicable in India by this Court in [Dr. Amarjit Singh Ahluwalia Vs. The State of Punjab and Others](#), and in subsequent decision given in [Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation](#), Mathew J. quoted the above-referred observation of Mr. Justice Frankfurter with approval.

19. I am, therefore, of the opinion that the Service Regulation, 1981 by efflux of time assumes the status of law and as such the authorities are bound to comply with it.

20. The relevant extract of the resolution No. 142.09.03 as resolved on 17.12.2004 by the Board of Director and in pursuance thereof order passed by the authorities, respectively, are reproduced as under :

Extract of Resolution No. 142.09.03 :

Extract of order dated 26.2.2005 passed by the Chairman :

Extract of Order dated 26.2.2005 passed by the Superintending Engineer :

21. On perusal of the language of the resolution as adopted by the Board of Director, it is abundant clear that the Chairman was only authorized to look into the procedure for transferring the persons from head quarter cadre to field cadre and vice-versa, he was not authorized to pass order for transfer, as he has passed in the instant case. On perusal of the order dated 26.2.2005, passed by opposite party No. 3, it is abundant clear that the Chairman has passed the aforesaid order in pursuance of the resolution No. 142.09.03, dated 17.12.2004 resolved in emergency meeting of the Board of Director, whereby he cancelled the previous arrangement of inter-cadre transfer and introduced the Scheme of general inter-cadre transfer, whereas on perusal of the resolution stated hereinabove, the Chairman was not authorized by the Board of Directors to cancel the existing arrangement for inter-cadre transfer which is prevalent and as provided under Regulation 4 (A) (1) of the Service Regulations, 1981. Consequently, the order passed by the

Superintending Engineer reveals that a reference has been made of the authorization which is conferred on the Chairman and the directions issued by the Chairman for transfer of the Petitioners, the Petitioner No. 2 was transferred.

22. On bare reading of the provision of Section 9 of the Act, it is abundant clear that the Managing Director is the competent authority to have control over employees of the Nigam, whereas the Chairman has the general control and directions over, subject to the directions of the Nigam. Section 9 of the Act is reproduced as under :

Subject to the superintendence of the Nigam, the Chairman shall have the general control and direction over, and subject thereto, the Managing Director shall have control over, all other employees of the Nigam.

23. Section 15 of the Act deals with the powers of the Jal Nigam and it only provides that the Nigam shall, subject to the provision of this Act have power to do anything which may be necessary or expedient for carrying out its functions under this Act. Thus, the Nigam also not vested with the power of transfer of any employee from head quarter cadre to field cadre and vice versa. Relevant extract of the provision of Section 15 of the Act is reproduced as under :

(1) The Nigam shall, subject to the provision of this Act have power to do anything which may be necessary or expedient for carrying out its functions under this Act.

(2) Without prejudice to the generality of the foregoing provision, such power shall include the power:

(i) to inspect all water supply and sewerage facilities in the State by whomsoever they are operated ;

(ii) to obtain such periodic or specific information from any local body and operative agency as it may deem necessary ;

(iii) to provide training for its own personnel as well as employees of the local bodies ;

(iv) to prepare and carry out schemes for water supply and sewerage ;

(v) to lay down the schedule of fees of all services rendered by the Nigam to the State Government, local bodies, institutions or individuals ;

(vi) to enter into contract or agreement with any person, firm or institution, as the Nigam may deem necessary, for performing its function under this Act ;

(vii) to adopt its own budget annually ;

(viii) to approve tariffs for water supply and sewerage services applicable to respective local areas comprised within the jurisdiction of Jal Sansthan and such local bodies as have entered into an agreement with the Nigam u/s 46 ;

(ix) to borrow money, issue debentures to obtain subventions and grants and manage its own funds ;

(x) to disburse loans to local bodies for their water supply and sewerage schemes ;

(xi) to incur expenditure and to grant loans and advances to such persons or authorities as the Nigam may deem necessary for performing the functions under this Act.

24. Hon"ble the Supreme Court in the case of [Union of India and Another Vs. Charanjit S. Gill and Others](#), has held that the administrative instructions issued or the notes attached to the rules which are not referable to any Statutory authority cannot be permitted to bring about a result which may take away the rights vested in a person governed by the Act. The Government, however, has the power to fill up the gaps in supplementing the rules by issuing instructions if the rules are silent on the subject provided the instructions issued are not inconsistent with the rules already framed.

25. Hon"ble the Supreme Court in the case of [State of Madhya Pradesh and another Vs. G.S. Dall and Flour Mills and Others](#), has held that "Executive instructions can supplement a statute or cover areas to which the statute does not extend. But they cannot run contrary to statutory provisions or whittle down their effect". The instructions, it is said, have been issued to fill in this lacuna."

26. Hon"ble the Supreme Court in the case of [J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc.](#), has held that Existence of statutory rules is not a condition precedent to appoint an eligible and fit person to a post. The executive power is co-extensive with legislative power of the State and under Article 162, the State can create civil posts and fill them up according to executive instructions consistent with Articles 14 and 16 of the Constitution. It is settled law that once statutory rules have been made, the appointment shall be only in accordance with the rules. The executive power could be exercised only to fill in the gaps but the instructions cannot and should not supplant the law, but only supplement the law♦♦ Having made the rules the executive cannot fall back upon its general power under Article 162 to regularise the ad hoc appointments under the Rules."

27. Hon"ble the Supreme Court in the case of [K. Kuppusamy and Another Vs. State of T.N. and Others](#), has held that The short point on which these appeals must succeed is that the Tribunal fell into an error in taking the view that since the Government had indicated its intention to amend the relevant rules, its action in proceeding on the assumption of such amendment could not be said to be irrational or arbitrary and, therefore, the consequential orders passed have to be upheld. We are afraid this line of approach cannot be countenanced. The relevant rules, it is admitted, were framed under the proviso to Article 309 of the Constitution. They are statutory rules. Statutory rules cannot be overridden by executive orders or

executive practice. Merely because the Government had taken a decision to amend the rules does not mean that the rule stood obliterated. Till the rule is amended, the rule applies". Sri Kalia states that similarly in the instant case also the amendment has not been made under Rule 4 of the Act.

28. Hon"ble the Supreme Court in the case of [Himachal Pradesh State Electricity Board Vs. Somdutt Uppal and another](#), has held that "internal communications from one officer to another and their contents cannot override the express provisions of the regulations made under the Act".

29. Hon"ble the Supreme Court in the case of [E.P. Royappa Vs. State of Tamil Nadu and Another](#), has held that ""...where it appears to the Court that the declaration of equivalence is made without application of mind to the nature and responsibilities of the functions and duties attached to the non-Cadre post or extraneous or irrelevant factors are taken into account in determining the equivalence or the nature and responsibilities of the functions and duties of the two posts are so dis-similar that no reasonable man can possibly say that they are equivalent in status and responsibility or the declaration of equivalence is mala fide or in colourable exercise of power or it is a cloak for displacing a member of the Indian Administrative Service from a Cadre post which he is occupying, the Court can and certainly would set at naught the declaration of equivalence and afford protection to the civil servant.""

30. Hon"ble the Supreme Court in the case of [Vidya Dhar Pande Vs. Vidyut Grih Siksha Samiti and Others](#), has held that "whether the regulations framed pursuant to a statute can be said to have statutory force the breach of which will entitle the aggrieved employee to get a declaration that the impugned order was invalid and illegal and the employee should be allowed to continue in service or should be reinstated in service...."

31. In the case of Sukhdev Singh and Ors. v. Bhagatram Sardar Singh Raghuvanshi and Anr. 1975 SCC 101, a Constitution Bench of Hon"ble the Supreme Court comprising of Hon"ble Per Ray, C.J. Chandrachud and Gupta, JJ. (as they then were) has held that The regulations partake the characteristics of law in manner, procedure and content. The authority making rules and regulations must specify the source of the rule and regulation making authority. The vires of law is capable to being challenged if the power is absent or has been exceeded by the authority making rules or regulations. And law is a rule of general conduct while administrative instruction relates to particular person. The Regulations framed by the different corporations containing the terms and conditions of appointment are imperative. The administrative instruction is the entering into contract with a particular person but the form and content of the contract is prescriptive and statutory. The corporations have no free hand in framing the conditions and terms of service of their employees. These statutory bodies are bound to apply the terms and conditions as laid down in the regulations. There is a legal compulsion to

comply with the regulations. Any breach of such compliance would be a breach of the regulations which are statutory provisions.

32. Considering the aforesaid facts and circumstances, I am of the opinion that the order dated 26.2.2005, passed by the Chairman and the consequential orders passed by the Superintending Engineer in pursuance of the order of the Chairman are not in exigency of the service but the same has been passed in colourable, mala fide and malicious exercise of power and are beyond the jurisdiction of the Chairman.

33. On a conspectus of whatever has been stated hereinabove the irresistible conclusion follows that the impugned order of transfer dated 26.2.2005, passed by the opposite party No. 3 and consequential order of transfer passed by the Superintending Engineer (opposite party No. 6) of even date, i.e. 26.2.2005, are liable to be quashed and accordingly hereby quashed. The writ petition is allowed. Costs made easy.