

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 8497/2020

1. Rajnikant S/o |

2. Seema Pal

3. Gulab Singh

-----Petitioners

Versus

1. The Secretary To His Excellency The Governor Of Rajasthan, Governors Secretariat, Raj Bhawan, Jaipur

2. State Of Rajasthan, Through Its Secretary, Department Of Personnel And Administration, Govt. Secretariat, Jaipur

3. Deputy Secretary, Department Of Administrative Reformation (Group-3), Government Of Rajasthan, Secretariat, Jaipur

4. Vishnu Sharma

5. Vinod Saini |

6. Rajesh Sharma

7. Aakash Agrawal |

8. Neha Sharma

9. Rajendra Prasad

10. Ashok Kumar Raiger

----Respondents

Connected With

S.B. Civil Writ Petition No. 15192/2017

1. Vishnu Sharma

2. Vinod Saini

3. Rajesh Sharma

4. Aakash Agrawal

5. Neha Sharma

6. Rajendra Prasad

7. Ashok Kumar Raiger

----Petitioners

सत्यमेव जयते
Versus

1. The Secretary To His Excellency The Governor Of Rajasthan, Governors Secretariat, Raj Bhawan, Jaipur
2. The Secretary, Department Of Personnel, Government Secretariat, Jaipur.
3. Shri Rajkumar Swarnkar
4. Smt. Seema Devi Pal
5. Shri Rajnikant
6. Shri Rajkumar Pareek
7. Shri Gulab Singh,

Private Respondents No. 3 to 7 are presently working on the Post of L.D.D., Governor House, Civil Lines, Jaipur Represented Through Secretary To His Excellency The Governor

----Respondents

S.B. Civil Writ Petition No. 10057/2020

1. Rajkumar Pareek

2. Rajkumar Swarnkar

----Petitioners

Versus

1. The Secretary To His Excellency The Governor Of Rajasthan, Governors Secretariat, Raj Bhawan, Jaipur.

2. State Of Rajasthan, Through Its Secretary, Department Of Personnel And Administration, Govt. Secretariat, Jaipur.

3. Deputy Secretary, Department Of Administrative Reform (Group-3), Government Of Rajasthan, Secretariat, Jaipur.

4. Vishnu Sharma

5. Vinod Saini

6. Rajesh Sharma

7. Aakash Agrawal

8. Neha Sharma

9. Rajendra Prasad

10. Ashok Kumar Raiger

-----Respondents

For Petitioner(s) : Mr. R.N. Mathur, Sr. Adv. assisted by
Mr. Shovit Jhajharia &
Mr. Hemant Singh Yadav (SB CWP
15192/2017)
Mr. Raghu Nandan Sharma
Mr. Harsh Goswami
Mr. Abhinav Shrivastava

For Respondent(s) : Mr. M.S. Singhvi, AG assisted by
Mr. Darsh Pareek
Mr. A.K. Sharma, Sr. Adv. assisted by
Mr. Prateek Khandelwal
Mr. Virendra Lodha, Sr. Adv. with
Mr. Rachit Sharma
Mr. Jai Lodha
Mr. Ganesh Meena, AAG with
Mr. Rupender Singh Rathore

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL

Judgment

22/09/2022

Since, these writ petitions share common facts and questions of law, they have been heard together and are being decided vide this common order.

In S.B. Civil Writ Petition No.8497/2020:Rajanikant & Ors. vs. The Secretary to His Excellency, the Governor of Rajasthan & Ors. and S.B. Civil Writ Petition No.10057/2020:Rajkumar Pareek & Anr. vs. The Secretary to His Excellency, the Governor of Rajasthan & Ors., the petitioners were initially appointed as Class-IV employees in the office of the Governor of Rajasthan and were later on promoted as LDC after being granted relaxation in the reservation quota for promotion. In S.B. Civil Writ Petition No.15192/2017:Vishnu Sharma & Ors. vs. The Secretary to His Excellency, the Governor of Rajasthan & Ors., the petitioners are

direct recruits on the post of LDC and were appointed in the office of the Governor of Rajasthan.

The facts necessary for disposal of these writ petitions are being referred from S.B. Civil Writ Petition No.8497/2020.

The facts in brief are that the petitioners were initially appointed as Class-IV employees on various dates in the office of the Governor of Rajasthan (for brevity- 'the Governor'). A file was initiated on 14.8.2012 with a note put up by the then Governor which stated that two of the Class-IV employees in the Raj Bhawan are graduates with Computer knowledge and have been working as such for over 12 years and their promotion against first vacancies available in the Governor Secretariat or residence was intended whereupon, a letter dated 17.9.2012 was sent by the Secretary to the Governor to the Principal Secretary, Department of Personnel (DoP) for increasing one time promotion quota from 15% to 33% on the post of LDC from Class-IV employees by granting relaxation under the relevant Rules. A reminder letter dated 8.10.2012 was again sent. Vide its letter dated 12.10.2012, the Deputy Secretary, DoP sought clarification from the Governor's office as to the Rules applicable for promotion of Class-IV employees to LDC. In pursuance thereof, the Secretary to the Governor clarified that services of the Class-IV employees working at Governor Secretariat are governed by the Rules of 1970. Request to grant one time relaxation to increase promotion quota was reiterated by the Secretary to the Governor vide its letter dated 27.11.2012. The DoP vide its order dated 20.12.2012 conveyed that there was no provision for relaxation and extending the quota from 15% to 33% for promotion under the Rules of 1970 and such amendment may affect other Service Rules also. It

was stated therein that the Rules of 1970 were inapplicable on the Governor Secretariat which was free to frame its own Rules or issue orders whereupon, the Governor Secretariat, vide order dated 29.1.2013 prescribed the Guidelines for promotion of working class-IV employees to the post of LDC in the Raj Bhawan (in short- 'the Guidelines'). Vide these Guidelines, promotion quota from Class-IV to LDC was prescribed as 33% of the sanctioned strength subject to fulfilment of the eligibility criteria as prescribed under Clause-2 of the Guidelines. The petitioners were promoted as LDC on the recommendations of the Departmental Promotion Committee vide order dated 7.2.2013. The Rajasthan Public Service Commission, Ajmer (for brevity- 'the RPSC'), vide its advertisement dated 17.5.2011, invited applications for appointment as LDC through LDC Combined Competitive Examination-2011 under the Rules of 1970 and Rajasthan Public Service Commission (Ministerial and Subordinate Service) Rules and Regulations, 1999 (for brevity- 'Rules and Regulations, 1999') for Government Secretariat and RPSC office. Vide corrigendum dated 14.9.2011, the RPSC increased the advertised posts by providing therein that the appointment on the vacant 1366 posts in the Subordinate Offices under the Rajasthan Subordinate and Ministerial Service Rules, 1999 (for brevity- 'the Rules of 1999'), was also to be made under the advertisement dated 17.5.2011. The private respondents no.4 to 10 (petitioners in S.B. Civil Writ Petition No.15192/2017), who were recruited in pursuance of the advertisement dated 17.5.2011, were allotted, vide order dated 4.1.2013, for appointment in the Governor Secretariat in pursuance whereof, five of them were appointed by the Governor Secretariat as LDC vide order dated 12.3.2013 and

rest two were appointed vide order dated 20.3.2013. Vide order dated 3.7.2017, the Governor Secretariat issued provisional seniority list of the Clerk Gr.II working as on 1.4.2017 inviting objections thereof. Rejecting the objections raised by the direct recruits to the provisional seniority list, the final seniority list was published on 11.8.2017 whereby, they were placed below the petitioners. This final seniority list along with the guidelines issued by the Governor office vide order dated 29.1.2013 is challenged by the direct recruits in the writ petition no.15192/2017. In their initial reply to the aforesaid writ petition, the official respondents admitted that since the Rules of 1970 are inapplicable on the Governor Secretariat, it was entitled to frame its own Rules to govern the service conditions of the staff. Subject to the decision in the writ petition no.15192/2017, the petitioners were further promoted as Clerk Gr.I on the recommendations of the Departmental Promotion Committee by the Governor Secretariat vide order dated 16.1.2019. Vide impugned order dated 30.7.2020, the Governor's Secretariat has, reckoning the order dated 29.1.2013 as bad in law, annulled and declared it void with consequences to follow, which would be reversal of the petitioners to Class-IV employees. Legality and validity of the order dated 30.7.2020 has been assailed primarily on the ground that since the Rules of 1970 are inapplicable on the Governor Secretariat, the Government has, vide its letter dated 20.12.2012, conveyed to the Governor's office to frame its own Rules to govern the service conditions of its staff in pursuance whereof, the guidelines were issued for promotion of Class IV employees to the post of LDC vide order dated 29.1.2013 which did not suffer from any

infirmity or illegality. Therefore, it is prayed in the writ petition that the order dated 30.7.2020 be quashed and set aside.

In its reply, the respondent no.1 has stated that the State Government has, vide its letter dated 20.12.2012, conveyed that relaxation in promotion quota was impermissible under the Rules of 1970 and such relaxation would also affect the other Service Rules. It is averred that the order dated 29.1.2013 is in the nature of executive instructions which could not override the statutory provisions and could not amend or supersede the statutory rules which do not provide for any relaxation in the promotion quota and therefore, the relaxation under the order dated 29.1.2013 is dehors the Service Rules which put a cap of 15% reservation in the promotion quota. It is further averred that if any amendment is to be made out in the Service Rules, it is to be proposed by the administrative department and thereupon, sent to the DoP which, in turn, after evaluation, sends it to the Law Department and, if the Cabinet and thereafter, if the Governor approves the same, the DoP issues a formal order for the amendment of the Rules; whereas, in the instant case, no such procedure has been followed before issuing the order dated 29.1.2013 which, undoubtedly, amends the Service Rules.

The private respondents have, in their reply to the writ petition, stated that increase in the quota from 15% to 33% vide order dated 29.1.2013 was contrary to all the Service Rules, i.e., Rules of 1970, the Rules of 1999 as also the Rajasthan Legislative Assembly Secretariat (Recruitment and Conditions of Service) Rules 1992 and the Rules and Regulations 1999 whereunder, a capping of 15% of promotional quota is provided. It is averred that all the instrumentalities of the State including the Governor

Secretariat are subject to the Rule of law and any administrative order contrary to the Rules applicable, is void ab initio. It is stated that in the flurry of letters/reminders issued by the Governor's office, the DoP, expressing its inability to relax the Rules enhancing the promotion quota, stated that the Governor office was free to frame its own Rules which could not have been interpreted in the manner that promotion quota could be enhanced by it dehors the statutory provisions.

The petitioners, in rejoinder to the reply filed by the respondent no.1, submitted that they were not only promoted as LDC vide order dated 7.2.2013; but, they have further been promoted as Clerk Gr.I vide order dated 16.1.2019 and it would not be in the interest of justice to revert them back to the post of Class-IV at such belated stage. It is averred that before issuing the order dated 30.7.2020, which takes away their substantial rights, no opportunity of hearing was afforded to them.

Shri Raghu Nandan Sharma, the learned counsel for the petitioners in S.B. Civil Writ Petition No.8497/2020, submitted that the Rules of 1970 are inapplicable on the Governor's Secretariat as is evident from the initial reply filed by the official respondents in the writ petition no.15192/2017 as also from the other material on record such as the letter dated 20.12.2012 issued by the DoP. Elaborating his submission and drawing attention of this Court towards the order dated 30.7.2020 issued by the Governor's Secretariat, learned counsel submitted that it is categorically mentioned therein that the Rules of 1970 are "practiced" in Governor's Secretariat and, therefore, it can safely be assumed that the same have not been adopted. He submitted that in view thereof, the DoP vide its letter dated 20.12.2012 conveyed to the

Governor's office that it was free to frame its own Rules/guidelines granting relaxation in the promotion quota. He argued that the DoP was competent authority to clarify the aforesaid position in view of Rule 37 of the Rules of 1970 which provides that if any doubt arises relating to the application and scope of these Rules, it shall be referred to the Government in the Department of Personnel whose decision shall be final. Learned counsel in this regard also relied upon the letter dated 2.7.2019 issued by the Council of Ministers' Secretariat to the Governor's Secretariat reiterating that the DoP has already conveyed that the Rules framed by the DoP were applicable only on the Government Department and the Governor's Secretariat was free to grant relaxation on its own. He also referred to a letter dated 2.9.2021 (Annexure-A/2 in S.B. Civil Writ Petition No.8497/2020) issued by the Governor's Secretariat stating therein that a draft of the Rules for the officers/employees working in the Governor's Secretariat and household governing their service conditions has been submitted with the DoP, State Government which was to be submitted to the Council of Ministers for approval. Referring to the various orders issued by the Governor's Secretariat from time to time such as, dated 17.2.2001 prescribing guidelines for recruitment on the post of Telephone Operators in Raj Bhawan, dated 28.6.2002 prescribing the guidelines for recruitment on the post of Drivers in Raj Bhawan, dated 10.12.2002 prescribing the guidelines for recruitment on the post of House Keeper in Raj Bhawan, dated 7.2.2004 prescribing the guidelines for recruitment on the post of Washer-man in Raj Bhawan and dated 24/28.1.2013 prescribing the guidelines for recruitment on the post of Drivers in Raj Bhawan, learned counsel submitted that in

past also, the Governor Secretariat has been prescribing guidelines governing service conditions of its staff. Shri Sharma submitted that in the aforesaid circumstances, there was no justification in withdrawing the guidelines framed vide order dated 29.1.2013 on the premise that it was issued without jurisdiction.

Learned counsel further submitted that impugned order dated 30.7.2020 has been passed with retrospective effect withdrawing the right vested in them with efflux of time without giving any opportunity of hearing and hence, is, therefore, null and void. Learned counsel submitted that in any case, since the petitioners were promoted without any fault/misrepresentation on their part and they have served on the promoted post for a considerable period of time, they cannot be and should not be demoted. He, in support of his submissions, relied upon following judgements:

- 1) Dr. M.S. Mudhol & Anr Vs. S.D Halekar & Ors, (1993) 3 SCC 591;
- 2) Hargovind Pant v. Dr. Raghukul Tilak & Ors.-(1979) 3 SCC 458;
- 3) Chandigarh Administration through the Director Public Instructions (Colleges), Chandigarh vs. Usha Kheterpal Waie & Ors.-(2011) 9 SCC 645;
- 4) Lal Mohammad vs. State of Rajasthan & Anr.-(2005) 4 RLW (Raj.) 2968.

Shri A.K. Sharma, learned senior counsel for the private respondents in S.B. Civil Writ Petition No.15192/2017, drawing attention of this Court towards the prayer made therein, submitted that no relief has been sought to quash and set aside the promotion order dated 12.3.2013. He submitted that initially the official respondents have submitted reply supporting their

case; but, it was withdrawn later on without any authority of law. He submitted that vide order dated 12.3.2013, the Government 'allotted' the candidates to the Raj Bhawan for appointment as LDC, rather than recommending them for appointment as is done in the offices subordinate to the Government. Learned senior counsel submitted that the guidelines dated 29.1.2013 prescribe the same eligibility criteria for promotion of Class-IV employees to LDC as were prescribed by the RPSC for direct recruitment on the post of LDC vide its advertisement dated 17.5.2011.

Learned senior counsel submitted that the Governors (Emoluments, Allowances and Privileges) Act, 1982 and Governors (Allowances and Privileges) Rules, 1987 provide that the Governor is authorised to frame its own Rules to govern the service conditions of the staff working in the Governor's Secretariat. He, in this regard, referred to the provisions of Sections 5, 6, 10 and 13 of the Act of 1982 and Rules 4 and 5 of the Rules of 1987. Learned senior counsel submitted that the employees working in the Governor's office are governed neither by the Rules of 1970, nor, by the Rules of 1999. He submitted that the DoP itself has clarified on various occasions that the Rules of 1970 are inapplicable on the Governor's office. Referring to Rule 2(i) of the Rules of 1999, learned senior counsel submitted that these Rules apply to the offices under control of the Government and the Governor's office not being under control of the Government, these Rules have no applicability. He, inviting attention of this Court towards the provisions of Article 158 read with Second Schedule and Article 163 of the Constitution, submits that the Governor enjoys a very high constitutional status and is

empowered to lay down service conditions of the staff working in its Secretariat/household.

Shri A.K. Sharma, learned senior counsel, defending the order dated 29.1.2013, submitted that in absence of statutory Rules governing the service condition of its staff, the guidelines/administrative instructions could have been issued by the Governor. He submitted that the Governor has taken a conscious decision after considering the entire material on record as is apparent from the note sheets no.266 and 270 of the Governor's Secretariat, Rajasthan available on page 65 in the file of S.B. Civil Writ Petition No.15192/2017. The learned senior counsel contended that the respondents were promoted as LDC as they possessed the requisite eligibility as per the guidelines dated 29.1.2013.

Learned senior counsel canvassed that since the private respondents were not promoted on account of any misrepresentation or fraud on their part, they could not be demoted. He also relied upon a judgement of the Hon'ble Supreme Court of India in case of **Dr. M.S. Mudhol** (supra) in support of his submission.

सत्यमेव जयते

Shri Mahendra Singh Singhvi, learned Advocate General, inviting attention of this Court towards the provisions of Articles 154, 162, 163 & 166 of the Indian Constitution, asserted that the Governor is the Executive Head of the State and, therefore, the Governor's Secretariat is a subordinate office under the control of the State Government and is, therefore, amenable to the Rules of 1999 which defines "subordinate office" as under:

"Rule 2(i) "Subordinate office" means any office under the control of Government other than the Secretariat or office of the State Legislature or High Court and the Courts subordinate there to or Public Service Commission."

Learned AG submitted that the guidelines dated 29.1.2013, being contrary to the Rules of 1999 which puts a cap of 15% on promotion quota from class-IV employees to LDC, are void ab initio. He further submitted that guidelines have also been issued in violation of Rules of Business framed by the Governor under clauses (2) and (3) of Article 166 of the Constitution of India, Rule 31 whereof, provides that the matters pertaining to the Governor's personal establishment and the Governor's house shall be submitted to the Chief Minister before the issuance of orders. He submitted that even otherwise also, it is a well established legal principle that administrative orders cannot run against the statutory Rules.

He submitted that the DoP's communication that Rules of 1970 are inapplicable to the Governor's Secretariat, is of no consequence as the source of power is derived from the Rules of 1999. Elaborating his submissions, learned AG submitted that mere mentioning of a wrong provision or no provision in the order does not invalidate it if the power can be traced to a valid statutory provision. He, in support of his submissions, placed reliance upon a judgment of Hon'ble Supreme Court of India in the case of State of Gujarat & Anr. vs. Justice R.A. Mehta (Retired) & Ors.-(2013) 3 SCC 1 and a judgment of this Court in the case of Bahujan Samaj Party vs. Hon'ble Speaker, S.B. Civil Writ Petition No.8056/2020 decided on 24.8.2020.

Learned AG submitted that wherever the Constitution required a separate and independent Secretarial service to any constitutional authority, appropriate provisions have been made in it. He, in this regard, referred to Article 187 which lays down provisions for Secretariat of State Legislature, Article 229 which provides for service conditions of the Officers and Servants of a High Court and Article 318 of the Constitution which provides for power to make Regulations as to conditions of service of members and staff of the Union Commission or the State Commission. Learned AG submitted that there is no independent provision under the Constitution of India providing for service conditions for the Governor's Secretariat inasmuch as the Governor being Executive Head of the State Government, it is also a part of the State Government and is governed by the Rules framed in this regard.

With regard to contention of the learned counsels for the promotee employees that in its initial reply to S.B. Civil Writ Petition No.15192/2017, the State Government has admitted that the Rules of 1970 are inapplicable on the Governor's Secretariat and the Governor was free to frame its own Rules, learned Advocate General asserted that there cannot be any estoppel against the law. Reliance, in this regard, has been made to the following judgement:

"State of Rajasthan & Anr. Vs. Surendra Mohnot-(2014) 14 SCC 77."

Shri Singhvi submitted that since the guidelines dated 29.1.2013 are void ab initio, the promotee employees did not have any right to claim any benefit thereunder and the principles

of natural justice were not required to be followed before setting aside the same. He, in this regard, placed reliance upon the following judgements:

1) Ashok Kumar Sonkar vs. Union of India & Ors.-(2007) 4 SCC 54;

2) Bannari Amman Sugars Ltd. vs. CTO-(2005) 1 SCC 625;

3) Aligarh Muslim University vs. Mansoor Ali Khan-(2000) 1 SCC 625.

Lastly, Shri Singhvi canvassed that from the material on record, it is apparent that whole exercise of relaxation was undertaken to benefit only a few, otherwise, there were other Class IV employees, at the relevant time, eligible and senior to the petitioners for promotion as LDC. He would submit that even otherwise also, this Court would not like to issue any writ which may tantamount to perpetuate illegality. He submitted that the guidelines dated 29.1.2013 being void ab initio, even if the order dated 30.7.2020 results into withdrawing the benefit of promotion without affording an opportunity of hearing to the promotee employees, this Court should not set it aside as it would amount to perpetuate illegality. He, in this regard, placed reliance upon the following judgements:

1) Mohd. Swalleh vs. IIIRD ADJ, AIR 1988 SC 94

2) Jagan Singh vs. State Transport Appellate Tribunal, Rajasthan- AIR 1980 Rajasthan 1

Shri Singhvi, learned AG would further submit that since the promotion of the petitioners was in violation of the statutory provisions has marred the promotional avenues of not only the

respondents, the direct recruits; but also of other eligible and senior Class-IV employees in the Governor's Secretariat at the relevant time, they have no right to continue "on the promoted post". He, in support of his submissions, relied upon following judgements:

- 1) Arbind Kumar vs. State of Jharkhand & Ors.-(2018) 17 SCC 762;
- 2) The State of Gujarat & Ors. Vs. R.J. Pathan & Ors., Civil Appeal No.1961 of 2022.

Learned senior counsel Shri Virendra Lodha for the respondent no.1 in S.B. Civil Writ Petition No.8497/2020, adopting the submissions made by learned AG, added that erroneous promotion granted against the Service Rules applicable, can be withdrawn/rectified at any moment. He, in support of his submission, placed reliance upon a judgment of the Hon'ble Supreme Court in the case of Indian Council of Agricultural Research & Anr. v. T.K. Suryanarayan & Ors.-(1997) 6 SCC 766.

Learned senior counsel Shri R.N. Mathur appearing for the private respondents in S.B. Civil Writ Petition No.8497/2020 and for the petitioners in S.B. Civil Writ Petition No.15192/2017 i.e., the direct recruits on the post of LDC, drawing attention of this Court towards the prayer made in the writ petition filed by the direct recruits, submitted that in view of challenge to the guidelines dated 29.1.2013, the basis of promotion of the promotee employees, they were not required to challenge the order dated 7.2.2013, the promotion order independently. Learned senior counsel submitted that under none of the Service Rules; be it the Rules of 1970, the Rules of 1999, the Rules and Regulations, 1999, the Rajasthan Legislative Assembly Secretariat

(Recruitment and Conditions of Service) Rules, 1992 or the Rajasthan Lokayukta Sachivalaya Ministerial Service (Conditions of Service) Rules, 2013, the promotion quota from Class-IV employees to the post of LDC exceeds 15%.

Shri Mathur submitted that no appointment in the public service can be discretionary and its authority has to be derived from a statutory provision. He submitted that issue as to whether Rules of 1970 or the Rules of 1999 are applicable, is not relevant. He further submitted that it is also irrelevant as to whether the Governor's Secretariat is a subordinate office or not. The employees working, whether in the Governor's Secretariat or in any other government offices, are indisputably employees of the State Government.

He submitted that office of the Governor is not separable from the State Government as he is its Executive Head. The office of the Governor and its status is not an issue and the issue in the writ is the status of the staff attached with the Governor's Secretariat.

Shri Mathur contended that the communication dated 20.12.2012 by the DoP could not be construed as authorising the Governor to frame its own Rules governing service conditions of the employees working in its Secretariat; rather, it was an opinion of an officer only. Learned senior counsel further submitted that the DoP has categorically informed the Governor's office that the Rules of 1970 do not envisage any relaxation in promotion quota and such relaxation may affect the other Service Rules also. He submitted that this fact was even acknowledged by the Governor's Secretariat, as is apparent from the note sheets no.213, 214 and

215 placed on record as Annexure-10 in the S.B. Civil Writ Petition No.15192/2017. Referring to the note sheet no.219, Shri Mathur submitted that the increase in promotion quota from Class-IV to LDC was proposed to 33% on the premise that it would bring it in line with the other promotion quota, such as, from the State Service to the All India Services which is pegged at 33% presently, which was a wholly misconceived parallel.

Learned senior counsel submitted that the Governor's Secretariat did not have its own independent Service Rules and it assumed itself to be governed by the Rules of 1970 as is apparent from clause (5) of the order dated 29.1.2013 which provides that other conditions shall be applicable as per the Rules of 1970.

Shri Mathur submitted that the Constitution of India does not envisage any separate or independent Secretariat of the Governor of a State as provided for a Legislative Assembly or the Public Service Commission; rather, under part VI of the Constitution of India, a Governor, being Executive Head of the State, is part of the Government.

Referring to the Entry No.56 of the Schedule appended to the Rajasthan Civil Services (CCA) Rules, 1958, Shri Mathur submitted that Secretary to the Governor is the head of the department, who is provided by the State Government and the appointment of ministerial staff in the Governor's Secretariat is also done by the State Government. The office of the Governor and the Secretariat to the office of the Governor are two different entities. Household and Governor's Secretariat are statutorily provided and the staff therein is provided by the State Government.

With regard to the Act of 1982 and the Rules of 1987 framed thereunder, learned senior counsel submitted they are totally on different subject. The Act of 1982 merely provides for the emoluments, allowances, medical treatment, conveyance, travelling allowance and other allowances to a Governor. Section 6 of the above Act provides that there shall be a household establishment which will be provided to the Governor. It does not say anything more than this and also does not say that the recruitment in the household establishment will be independent. Section 5 of the Act makes provision for a rent-free house.

He submitted that the Rules of 1987 are also with regard to the facilities provided to the Governor. Its Rule 4 provides that the number of officers and staff on household establishment shall be as prescribed by the President. However, it further provides that the emoluments and facilities of such staff shall be borne by the state government and shall be same as is admissible to the employees of the state government on the corresponding post. Rule 4(2) further provides that household establishment shall be entitled for rent free accommodation or the rent allowance. Rule 5 clinches the entire issue which provides that the secretarial staff of the Governor shall be provided by the State Government. Learned counsel submitted that the expression "shall be provided" in no uncertain terms make it clear that it is the responsibility of the state government to make available the staff. Thus, when the allotment of the LDC is made by the state government from the select list and the appointment is made by the Governor's Secretary, who is the head of department under the State Government, it leaves no room for any doubt that the service

condition of the employees in the Governor's Secretariat are governed by the Rules framed by the State Government. He, therefore, prayed that the order dated 29.1.2013 be quashed and set aside.

Heard. Considered.

First of all, this Court examines the status and position of a Governor under our Constitution, i.e., whether he is an independent entity from the State Government or a part of it.

Part VI Chapter II of the Constitution of India deals with the Executive.

"Article 154 Executive power of State:

(1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution

(2) Nothing in this article shall

(a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or

(b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

Article 162 Extent of executive power of State:

Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws. Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof Council of Ministers.

Article 163 Council of Ministers to aid and advise Governor:

(1) There shall be a council of Ministers with the chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this constitution required to exercise his functions or any of them in his discretion

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

Thus, under our constitutional scheme, a Governor is the Executive Head of the State and all transactions of the State Government are carried out under his authority and name. Thus, it is axiomatic that the office of the Governor is part and parcel of the State Government.

The next question which arises for consideration of this Court is about the status of the Governor's Secretariat. Logically, once the Governor is part of the State Government, as a natural corollary, its Secretariat must also be part of the State Government. However, this aspect is being examined as hereinunder in the light of the contentions advanced by learned counsel for the promotee-employees that the Governor Secretariat is an independent office and is not part of the State Government.

The Indian Constitution does not envisage a separate and independent secretarial service attached to a Governor office

inasmuch as wherever it is so required, specific provisions in this regard exist in it; such as, Article 98 provides that each house of Parliament shall have a separate Secretarial staff and the Parliament may, by law, regulate the recruitment and the conditions of service of persons appointed to the Secretarial staff of either house of Parliament, Article 146 lays down that appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India, or such Judge or Officer of the Court as he may direct, Article 187 provides for Secretariat of the State Legislature, Article 229 provides for service conditions of the officers and servants of a High Court and Article 218 provides for power to make regulations as to conditions of service of members or staff of the Union Commission or the State Commission. Thus, there is no constitutional provision providing for a separate and independent Governor Secretarial Service. However, Rule 4(1) of the Governors (Allowances and Privileges) Rules of 1987 provides that the total number of officers and other staff of household establishment at the official residence of a Governor shall be as the President may prescribe from time to time by an order and their scale or pay, allowances and other emoluments and facilities shall be such as are admissible to the State Government Officers and other employees of the corresponding posts in the concerned State Government from time to time. Its Rule 5 provides as under:

"5. Expenditure of Government Secretariat Etc.

(1) In addition to the household establishment, the **Governor shall be entitled to a separate Secretariat staff which shall be provided by the concerned State Government.**

(2) the expenditure incurred on the establishment of the Governor's Secretariat and the expenditure on pension and other retirement benefits including medical facilities of the household medical establishment staff shall be charged on the consolidated fund of the concerned State.

(3) the expenditure referred to in sub-rule (2) shall not form part of the Governor's allowance."

Thus, the Rules of 1987 clinches the entire issue which make a provision for a separate Secretarial staff for a Governor which shall be provided by the concerned State Government and the expenditure incurred on it shall be charged on the consolidated fund of the concerned State which shall not form part of the Governor's allowance. Further, as per the provisions of CCA Rules of 1958, Secretary to the Governor of Rajasthan is the Head of Department. Rule 15 of the Rules of 1958 provides that for the employees under Subordinate and Ministerial Services, the Head of the Department or the authority specially empowered with him with the approval of the Government, shall be the disciplinary authority. Under Rule 9 read with Schedule III appended with the Rules, the employees governed by the Rules of 1970 as also the Rules of 1999 are covered under the Ministerial Services. Thus, the employees working in the Governor Secretariat are being governed by the Rules of 1958 and the Secretary to the Governor is the Head of the Department for this purpose and by virtue of Rule 9 read with Schedule III and Rule 15 of the Rules of 1958, is the disciplinary authority for the Ministerial cadre employees in the Governor's Secretariat. From the conspectus of the aforesaid constitutional and legal provisions, it is established beyond any iota of doubt that the officers and staff in the Governor's

Secretariat, who are provided by the State Government, are part of the State Government.

The next germane question which falls for consideration is which Service Rules govern the recruitment and other service conditions of the staff working in the Governor's Secretariat; whether the Rules framed by the State Government under Article 309 of the Constitution of India or are there any independent Rules framed by the Governor's office which are applicable on such staff. Unquestionably, the State being governed by Rule of law, the public employment has to be governed by Rules/Regulations framed within the constitutional framework and cannot be left to unbridled discretion of any authority, be it the constitutional or the statutory. No independent Rules except the subject guidelines dated 29.1.2013, have been cited by the petitioners in support of their contention that the Rules framed by the State Government under Article 309 of the Constitution are inapplicable on the staff in the Governor Secretariat. However, in its letter dated 6.11.2012 written by the Governor's Secretariat to the DoP in response to their query as to which Service Rules govern the service conditions of the staff working therein, it is stated that the Rules of 1970 are applicable in the Governor Secretariat. Even under clause-5 of the guidelines dated 29.1.2013 whereby, 33% promotion quota has been prescribed, it is stipulated that other conditions shall be applicable as per the Rules of 1970. However, none of the parties is at variance on the aspect that the Rules of 1970 do not govern the service conditions of the staff working in the Governor Secretariat with which this court also concurs. This Court finds substantial force in the

submission of the learned Advocate General that the Governor's Secretariat is an office under the State Government and hence, the Rules of 1999 hold the field.

Rule 2(i) of the Rules of 1999 defines a "subordinate office" as an office under the control of Government other than the Secretariat or office of the State Legislature or High Court and the Courts subordinate thereto or Public Service Commission. So far as the offices of the State Legislature or the High Court/Subordinate Court and Public Service Commission are concerned, there are separate constitutional and statutory provisions dealing with the same and so far as Government Secretariat is concerned, it has its own independent Service Rules of 1970. In view thereof and especially in view of Rule 5 of the Rules of 1987, since, the staff of the Governor Secretariat is provided by the State Government with their salary payable out of the consolidated fund of the State, in the considered opinion of this Court, the Rules of 1999 apply to it. It is trite that mere reference of the Rules of 1970 in the order impugned dated 20.12.2012 or the impugned guidelines dated 29.1.2013, is of no significance as mere mentioning of a wrong provision or no provision is irrelevant, if the authority can be traced to a valid statutory provision. The Hon'ble Apex Court has, in **P.K. Palanisamy vs. Arumugham & Anr.- (2009) 9 SCC 173**, held as under:

"27. It is a well settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and/or statutory authority had the requisite jurisdiction therefor."

Similarly, in the case of **N. Mani vs. Sangeetha Theatre & Ors.-(2004) 12 SCC 278**, it was held:

"9. It is well settled that if an authority has a power under the law merely because while exercising that power, the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law."

Apprehension of the petitioners that holding the Governor's Secretariat to be an office subordinate to the State Government, may violate the inviolable independence and high constitutional status of the office of the Governor, is wholly misconceived and misplaced inasmuch as the Governor's office and its Secretariat are two separate and independent entities.

Now, this court considers the legal sanctity of the order/guidelines dated 29.1.2013, the basis of promotion of the petitioners-Class IV employees to the post of LDC relaxing the promotion quota from 15% to 33%.

The guidelines dated 29.1.2013 have been framed by the Governor's office relying upon the letter of the DoP dated 20.12.2012 whereby, it was conveyed that the Rules of 1970 were inapplicable on the Governor office and it was free to frame its own Rules/guidelines relaxing the promotion quota. This Court is not convinced that the DoP had authority to hold and convey that in absence of applicability of the Rules of 1970, the Governor office was free to frame its own Service Rules or lay down

guidelines governing promotion of the Class-IV employees to the post of LDC. Article 166 of the Constitution provides as under:

"Article 166 Conduct of business of the Government of a State:

- (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor
- (2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instruction which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor
- (3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion."

In pursuance of the aforesaid provisions, the Rajasthan Rules of Business have been framed by the Governor. Rule 4 of the Rules of Business provides that the business of the Government shall be transacted in the Secretariat Departments specified in the First Schedule and shall be classified and distributed between those departments as laid down therein. Clause I(A) of the First Schedule provides that the DoP shall deal with the Recruitment Rules for all services including qualifications, relaxation in qualifications, experience and age for various posts under the State Government. Rule 14 lays down that all cases referred to in the Second Schedule shall be submitted to the Chief Minister

through the Secretary to the Council (Chief Secretary) after consideration by the Minister-in-charge or the Minister of State-in-charge, as the case may be, with a view to obtaining his orders for circulation of the case under Rule 15 and for bringing it up for consideration at a meeting of the Council or a Sub-Committee thereof. The Second Schedule provides for proposals for the making or amending the Rules, regulating the recruitment and conditions of service of the persons appointed to the Public Services and posts in question with the State (proviso to Article 309) besides others. Rule 31(I) provides that before issuance of orders, including the proposals for appointment and posting of the Heads of the Departments, the cases pertaining to the Governor's personal establishment and the Governor's house matters, they shall be submitted to the Chief Minister.

Thus, before framing or amending any Service Rules regulating recruitment and conditions of service of persons appointed to the Public Services and posts, the procedure as prescribed under the Rules of Business has to be followed by the DoP.

The aforesaid proposition stands fortified from the letter dated 2.9.2021 (Annexure-A2) issued by the Governor Secretariat stating therein that a draft of the Rules for the officers and employees working in the Governor Secretariat or household governing their service conditions has been submitted to the DoP, the State Government which has to be submitted to the Council of Ministers for approval.

Indisputably, the procedure prescribed under the Rules of Business has not been followed either before issuance of the letter

dated 20.12.2012 or before issuing the order dated 29.1.2013 laying down the guidelines prescribing the promotion criteria.

Their Lordships have held in the case of **Justice R.A. Mehta** (supra) as under:

"41. Thus, where the Governor acts as the Head of the State, except in relation to areas which are earmarked under the Constitution as giving discretion to the Governor, the exercise of power by him must only be upon the aid and advice of the Council of Ministers, for the reason that the Governor being the custodian of all executive and other powers under various provisions of the Constitution is required to exercise his formal constitutional powers only upon and in accordance with the aid and advice of his Council of Ministers. He is, therefore, bound to act under the Rules of Business framed under Article 166(3) of the Constitution."

In view of the aforesaid analysis, this Court has no hesitation in holding that the letter dated 20.12.2012 issued by the DoP and the guidelines dated 29.1.2013 issued by the Governor's office dehors the statutory provisions are void ab initio & non-est.

Contention of the learned counsels for the petitioners that the State was estopped from changing its stand which it has taken in its initial reply to the writ petition no. 15192/2017 wherein, it has stated that since the Rules of 1970 were inapplicable on the Governor Secretariat, it was at liberty to frame its independent Rules to govern the service conditions of its staff, cannot be countenanced as it is trite law that there can be no estoppel against the law. It has been held by this Court that the Rules of 1970 are inapplicable on the Governor's Secretariat and also that it had no authority to frame guidelines vide its order dated

29.1.2013. In case of **Surendra Mohnot** (supra) it was held as under:

"17. It is well settled in law that there can be no estoppel against law. Consent given in a court that a controversy is covered by a judgment which has no applicability whatsoever and pertains to a different field, cannot estop the party from raising the point that the same was erroneously cited."

Another contention of the learned counsel for the petitioners that the order dated 30.7.2020 withdrawing the benefit of promotion granted to them being violative of principles of natural justice cannot be sustained in the eye of law, does not merit acceptance in view of finding of this Court whereby, the basis of promotion of the petitioners, the promotee-employees, i.e., the guidelines dated 29.1.2013 have been held to be void ab initio & non-est. It is also revealed from the material on record that at the relevant time, i.e. on 29.1.2013, when the impugned guidelines were issued prescribing the higher qualification than those prescribed for promotion from Class-IV to LDC under the Rule of 1999, there were eligible and senior Class IV employees in the Governor's Secretariat than the petitioners who otherwise could have been promoted but for the guidelines dated 29.1.2013. In these circumstances, the court is not persuaded to hold that merely because the petitioners (promotee employees) were not afforded an opportunity of hearing before passing the order on 30.7.2020, it needs to be quashed and set aside. The Hon'ble Apex Court has, in the case of **State of M.P. & Ors. vs. Shyama Pardhi & Ors.-(1996) 7 SCC 118**, held as under:

"5. It is now an admitted fact across the Bar that the respondents had not possessed the prerequisite qualification, namely, 10+2 with Physics, Chemistry and Biology as subjects. The Rules specifically provide that qualification as a condition for appointment to the post of ANM. Since prescribed qualifications had not been satisfied, the initial selection to undergo training is per se illegal. Later appointments thereof are in violation of the statutory rules. The Tribunal, therefore, was not right in directing the reinstatement of the respondents. The question of violation of the principles of natural justice does not arise. The ratio of Shrawan Kumar Jha v. State of Bihar AIR 1991 SC 309, strongly relied on, has no application to the facts of this case. That was a case where the appellants possessed initial qualifications but they did not undergo the training. Since the appointment was set aside on the ground of want of training, this Court interfered with, directed the Government to reinstate them into service and further directed them to send the appellants therein for training."

Their Lordships in **Ashok Kumar Sonkar Vs. Union of India; 2007 (4) SC 54**, held as under:-

"26. This brings us to the question as to whether the principles of natural justice were required to be complied with. There cannot be any doubt whatsoever that the audi alteram partem is one of the basic pillars of natural justice which means no one should be condemned unheard. However, whenever possible the principle of natural justice should be followed. Ordinarily in a case of this nature the same should be complied with. Visitor may in a given situation issue notice to the employee who would be effected by the ultimate order that may be passed. He may not be given

an oral hearing, but may be allowed to make a representation in writing.

27. It is also, however, well-settled that it cannot be put any straight jacket formula. It may not be in a given case applied unless a prejudice is shown. It is not necessary where it would be a futile exercise.

28. A court of law does not insist on compliance of useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. Furthermore in this case, the selection of the appellant was illegal. He was not qualified on the cut off date. Being ineligible to be considered for appointment, it would have been a futile exercise to give him an opportunity of being heard."

In case of **Dharampal Satyapal Limited Vs. Deputy**

Commissioner of Central Excise Gauhati; (2015) 8 SCC 519, the Hon'ble Apex Court held as under:-

"39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principles of natural justice cannot be applied in straight-jacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. **Nevertheless, there may be situations wherein for some reason – perhaps because the evidence against the individual is thought to be utterly compelling – it is felt that a fair hearing 'would make no difference' – meaning that a hearing would**

not change the ultimate conclusion reached by the decision-maker – then no legal duty to supply a hearing arises.”

Even otherwise also, it is trite law that if setting aside an order which is found to be issued without jurisdiction/bad in law, results into restoration of another illegal order, the courts would be loathe in setting aside the later order as it would amount to perpetuate illegality. If the order dated 30.7.2020 is quashed and set aside being violative of the principles of natural justice, it would restore the promotion order of the promotee-employees based on the guidelines dated 29.1.2013 which have been held to be void ab initio and thus, non est. The Hon’ble Apex Court has, in the case of **Mohd. Swelleh** (supra), held as under:

“7. It was contended before the High Court that no appeal lay from the decision of the Prescribed Authority to the District Judge. The High Court accepted this contention. The High Court finally held that though the appeal laid before the District Judge, the order of the Prescribed Authority was invalid and was rightly set aside by the District Judge. On that ground the High Court declined to interfere with the order of the learned District Judge. It is true that there has been some technical breach because if there is no appeal maintainable before the learned District Judge, in the appeal before the learned District Judge, the same could not be set aside. But the High Court was exercising its jurisdiction under Article 226 of the Constitution. The High Court had come to the conclusion that the order of the Prescribed Authority was invalid and improper. The High Court itself could have set it aside. Therefore in the facts and circumstances of the case justice has been done though, as mentioned hereinbefore, technically the appellant had a point that the order of the District Judge was illegal and improper. If we reiterate the

order of the High Court as it is setting aside the order of the Prescribed Authority in exercise of the jurisdiction under Article 226 of the Constitution then no exception can be taken. As mentioned hereinbefore, justice has been done and as the improper order of the Prescribed Authority has been set aside, no objection can be taken."

A Full Bench of this Court has, in the case of **Jagan Singh** (supra), held as under:

"11. As we have already stated above, we do not feel inclined to decide this question in the facts and circumstances of this case; whether Sagruddin, non-petitioner No. 2, can be considered as a person aggrieved by the variation in the conditions of the petitioner's permit. We have already held above that the order of the Regional Transport Authority, whereby the variation in the conditions of the permit of the petitioner was allowed, was not legal and proper as it had been passed without following the procedure prescribed under Section 57, Sub-sections (3), (4) and (5). Assuming for argument's sake, that the non-petitioner No- 2, Sagruddin, had no locus standi to file an appeal or revision before the State Transport Appellate Tribunal against the order of the Regional Transport Authority dated May 27, 1978, the fact remains that the said order of the Regional Transport Authority is illegal and if we were to allow this writ petition and set aside the impugned order by the State Transport Appellate Tribunal, the result would be that the illegal order of the Regional Transport Authority would be restored. It may be noted that there has been no failure of justice in the present case and we would be justified in refusing to interfere unless we are satisfied that the justice of the case requires it. We are of opinion, that having regard to the facts of the case and the law bearing on the subject, we should decline to interfere.

12. In *Gani Mohammed v. State Transport Appellate Tribunal* 1976 RLW 201, it was observed that while granting a writ of certiorari, this court would not exercise its discretion in such a manner which would have the effect of restoring an illegal order passed by the Regional Transport Authority. As we have already pointed out above, the effect of setting aside the impugned order passed by the Tribunal by a writ of certiorari would be restoring an invalid and illegal order passed by the Regional Transport Authority. Reference may also be made to *G. Venkateswara Rao v. Govt. of Andhra Pradesh* MANU/SC/0020/1965 : AIR 1966 SC 828 wherein the Supreme Court came to the conclusion that the State Government had no power under Section 72 of the Andhra Pradesh Panchayat Samitis & Zila Parishads Act to review its previous order, yet their Lordships refused to interfere with the order passed by the State Government upon such a review on the ground that quashing of that order would lead to restoration of an illegal order passed earlier by the State Government. In this connection, their Lordships further observed that the High Court rightly refused to exercise its extraordinary discretionary power under Article 226 of the Constitution of India. In this view of the matter, this writ petition deserves to be dismissed."

The judgement of a Constitution Bench in the case of **Hargovind Pant** (supra) relied upon by the learned counsel for the promotee-employees is of no help to them inasmuch as therein, the Hon'ble Apex Court considered the question of validity of the appointment of the Governor.

Now this Court considers as to whether the petitioners, the promoted employees are entitled to continue on the post on account of promotion granted under the guidelines dated 29.1.2013.

Their Lordships has, in **Dr. M.S. Mudhol** (supra), held as under:

"6. Since we find that it was the default on the part of the 2nd respondent, Director of Education in illegally approving the appointment of the first respondent in 1981 although he did not have the requisite academic qualifications as a result of which the 1st respondent has continued to hold the said post for the last 12 years now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There is nothing on record to show that he had at that time projected his qualifications other than what he possessed. If, therefore, inspite of placing all his cards before the selection committee, the selection committee for some reason or the other had thought it fit to choose him for the post and the 2nd respondent had chosen to acquiesce in the appointment, it would be inequities to make him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd respondent. They are alone to be blamed for the same."

This Court has, in **Lal Mohammad** (supra), held as under:

"17. xxxIt may be mentioned that in view of the principle laid down in M.A. Hameed's case (supra), by their Lordships of the Supreme Court, after such a long time, reversion of the petitioner from Helper to Class IV servant is wholly unjustified, as the settled position, cannot be allowed to be unsettled by the Department on account of their fault."

Their Lordships in **Arbind Kumar** (supra), held as under:

"5. On behalf of the Arbind Kumar, reliance has been placed on a judgment of this Court in the case of Arun Kumar Rout and Ors. v. State of Bihar and Ors.:1998 (9)

SCC 71, whereby this Court in the peculiar facts of that case directed for framing a scheme for absorption/regularisation of the appointees who were working as temporary or ad-hoc for a long number of years. The judgment itself makes it clear that the order was passed Under Article 142 of the Constitution of India with a specific observation that it shall not be treated as a precedent. Hence, we are not persuaded to follow that course of action in the present case. Although the Appellants have pleaded that they are mere victims of irregular or illegal action by the concerned police officials who appointed them to the post of Constable without following the procedure prescribed under the Police Manual and hence deserve sympathy, but we are not persuaded to accept such submission. In our considered view, the beneficiaries cannot blame the appointing authority alone and claim that the illegal appointment should be continued in perpetuity. To accept such plea would amount to giving premium to dishonest and illegal acts in matters of public appointments."

The Hon'ble Apex Court in **R.J. Pathan** (supra), held as under:

"6. The order passed by the learned Single Judge dismissing the writ petition was in the year 2011. The order passed by the learned Single Judge was challenged by the respondents by way of LPA. In the year 2011, the Division Bench granted the interim relief and directed to maintain status quo and pursuant to the said interim order, the respondents were continued in service with the Government. In the year 2021, when the said LPA was taken up for further hearing, it was submitted on behalf of the respondents that as by now the respondents have worked for seventeen years, the State may be directed to absorb them in the Government and their services may be regularised. By observing that as the respondents have

worked for a long time, i.e., for seventeen years, the Division Bench has directed the State to consider the cases of the respondents for absorption/regularisation and if required, by creating supernumerary posts. However, while issuing such a direction, the High Court has not at all considered the fact that the respondents were continued in service pursuant to the interim order passed by the High Court. The Division Bench has also not appreciated the fact and/or considered the fact that the respondents were initially appointed for a period of eleven months and on a fixed salary and that too, in a temporary unit – "Project Implementation Unit", which was created only for the purpose of rehabilitation pursuant to the earthquake for "Post-Earthquake Redevelopment Programme". Therefore, the unit in which the respondents were appointed was itself a temporary unit and not a regular establishment. The posts on which the respondents were appointed and working were not the sanctioned posts in any regular establishment of the Government. Therefore, when the respondents were appointed on a fixed term and on a fixed salary in a temporary unit which was created for a particular project, no such direction could have been issued by the Division Bench of the High Court to absorb them in Government service and to regularise their services. The High Court has observed that even while absorbing and/or regularising the services of the respondents, the State Government may create supernumerary posts. Such a direction to create supernumerary posts is unsustainable. Such a direction is wholly without jurisdiction. No such direction can be issued by the High Court for absorption/regularisation of the employees who were appointed in a temporary unit which was created for a particular project and that too, by creating supernumerary posts."

In **T.K. Suryanarayan & Ors.** (supra), their Lordships, held as under:

"8. We are, however unable to accept the submission made by the learned counsel appearing in both these SLPs. Even if in some cases erroneous promotions had been given contrary to the said Service Rules and consequently such employees have been allowed to enjoy the fruits of improper promotion, an employee can not base him claim for promotion contrary to the statutory Service Rules in law courts. Incorrect promotion either given erroneously by the department by misreading the said Service Rules or such promotion given pursuant to judicial order contrary to Service Rules cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory Service Rules."

Petitioners have been granted promotion relaxing the promotion quota vide guidelines issued vide order dated 29.1.2013 which have been held to be void ab initio and non est by this Court. It is also revealed that, but for the guidelines, other eligible and senior Class-IV employees in the Governor Secretariat at the relevant time, would have been promoted prior to promotion of the petitioners. In the aforesaid factual background and in view of the judgements of Hon'ble Apex Court wherein, it has been directed not to remove/terminate service of an employee who has worked on a post for a considerable period of time, though not eligible, for no fault of his own and to balance equity, the Court disposes off the writ petitions with following directions:

- 1) the order dated 20.12.2012 and the guidelines dated 29.1.2013 are quashed and set aside;
- 2) the order dated 30.7.2020 is upheld;

- 3) promotion of the petitioners (promotee employees) on the post of Clerk Gr.I vide order dated 16.1.2019, which was subject to decision of the S.B. Civil Writ Petition No.15192/2017, is quashed and set aside. However, the salary, other emoluments or any other monetary benefit already paid and received by such petitioners shall not be recoverable;
- 4) the petitioners in S.B. Civil Writ Petition No.8497/2020 and S.B. Civil Writ Petition No. 10057/2020 shall continue as LDC; but, shall be placed in seniority list of LDC below the petitioners in S.B. Civil Writ Petition No.15192/2017 and shall be entitled for further promotion as and when their turn comes as per their seniority.

This Court refrains from passing any order/direction qua the Class-IV employees in the Governor's Secretariat at the relevant time, i.e., when the guidelines dated 29.1.2013 were issued, who were senior to the petitioners, the promotee employees and were otherwise eligible for promotion to the post of LDC as per their qualification, but for the guidelines, in view of pendency of a S.B. Civil Writ Petition No.769/2016: Pramod Rai & Anr. vs. State of Rajasthan & Ors. filed on behest of such Class-IV employees, as apprised by Shri A.K. Sharma, learned Senior Counsel.

सत्यमेव जयते (MAHENDAR KUMAR GOYAL),J