IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: March 11, 2024

\+ W.P.(C) 6679/2022, CM APPL. 28072/2023

MD. ABDUL AHAD AZIM

..... Petitioner

Through: Ms. Sangeeta Chandra, Adv. (DHCLSC)

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. D. S. Vohra, SPC

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed by the petitioner with the following prayers:

> *"a) An appropriate writ, order or direction quashing the impugned letter dated 30.08.2018 issued by the respondent Authority declaring the petitioner ineligible for recruitment under the new Recruitment Rules, 2010 of Constable (Tradesmen) (Group 'C' Post);*
> *b) Directions to the respondents for issuance of the joining letter to the petitioner on the post of Follower Group 'D' post (Washerman) to which he was already selected in the recruitment process of October, 2008 and which now stands merged with Group 'C' posts; and/or*
> *c) Pass any other order/s, direction/s which this Hon'ble Court may deem fit and proper in the facts and circumstances of the*

present case to meet the ends of justice."

2. At the outset, it may be stated here that this petition was dismissed by this Court vide order dated April 27, 2022, wherein this Court had *inter alia* stated as under:

> *"3. Vide the present writ petition, the petitioner is seeking quashing of the impugned letter dated 30.08.2018 issued by the respondent authority declaring the petitioner ineligible for recruitment under the new Recruitment Rules, 2010 of Constable (Tradesmen) (Group 'C' Post); directions to the respondents for issuance of the joining letter to the petitioner on the post of Follower Group 'D' post (Washermen) to which he was already selected in the recruitment process of October, 2008 which now stands merged with Group 'C' posts.*
> *4. It is not in dispute that the petitioner was selected to the post of enrolled Follower (Group 'D' posts) (Washerman) in the recruitment process of October, 2008. Thereafter, vide order dated 29.10.2009 issued by Ministry of Home Affairs, Government of India declared as under:*
>
> > *"6th Pay Commission in its report vide recommendation in para 7.19.45 recommended that all the posts in CPMFs should be combatised like the position existing in the Defence Forces. The Commission, accordingly, recommended abolition of the cadre of Followers. The Commission further recommended that any further recruitment in the grade of Followers should cease immediately. The existing Followers should initially be placed in the -1S pay band (separately being recommended by the Commission for all Group D categories till the time they are re-deployed in the Group C posts). Proper training should be given to make them combatised and on successful completion of such training, they should be absorbed in the grade of combatant Constables against regular vacancies. The Commission finally recommended that all non essential jobs that can be done by outsiders without any operational problems but are presently being done by Followers, should henceforth be*

contracted out or outsourced. The above recommendation was accepted by the Government.

2. Keeping in view the operation problems in outsourcing the jobs presently being done by the Followers, the proposal for continuation of the Cadre of Followers in CPMFs has been reconsidered by the Government and the following decisions have now been taken in the matter:-

i) All posts of Followers/other Gr. D posts in CPMFs may be converted into Group C posts and be placed in PB-I with grade pay of Rs.2000/-.

ii) After conversion of posts as proposed above the posts may be designated as Rifleman (name of trade) in case of Assam Rifles and Constable (name of trade) in case of other CPMFs, as for example Constable (Carpenter), Constable (Cook) etc.

iii) RRs will be modified to make recruitment in each trade and for such posts will have no linkage with the RRs for the post of Constable/ General Duty and Constable/ Driver.

iv) There will be no change in the total sanctioned strength of Battalion/ Company due to conversion of the posts of Followers in / as Gr. C posts.

v) CPFs will submit the proposals for sanctioning of posts in the grade of Constable (Name of trade) against the posts which had been excluded earlier, while sanctioning other posts, on account of the recommendations of the 6th CPC for the abolition of the posts Followers/ Group D posts.

3. The above decisions will be implemented by CPMFs subject to the following conditions:-

i) The recruitment qualifications will not be lower than Matriculation ITI i.e. the lowest qualification prescribed by the 6th CPC for entry into Government Service.

ii) The functions of the various trades would be gone into and multi-skilling introduced. The additional posts to be created should take into account the impact of outsourcing (particularly in Static Formations) and multi-skilling; and

iii) The practice of deployment of Constables/ Followers at the residences of officers will be stopped forthwith and wherever they are required to be deployed at the residences of officers due to operation reasons, it will be done after obtaining a prior sanction of the competent authority. 4. This issues with the approval of MoF's vide their U.O. No.7.19/24/2009 dated 20.10.2009 and with concurrence of Integrated Finance Division of this Ministry vide their Dy. No.45403/Fin.III/2009 dated 28.10.2009."

5. While the petitioner was pursuing with the respondents for the outcome of the selection process of 2008, Frontier Headquarters of Border Security Force (BSF), Humhama, Kashmir vide communication dated 30.08.2018 informed that the petitioner had appeared in various stages of the subject recruitment of Group 'D' posts at STC BSF Srinagar being a ward (son) of BSF serving personnel (blood relation) and was shortlisted for selection to the Group 'D' post i.e. Enrolled Followers alongwith other 38 candidates for various trades. However, in the meantime, 6th Central Pay Commission report was implemented by Government of India wherein it was recommended to abolish the cadre of 'Followers' (Group 'D'). The Commission further recommended that recruitment in the Grade of Followers should cease immediately. Accordingly, ongoing process of recruitment of Group 'D' Enrolled Followers in BSF was kept in abeyance and clarification was sought from MHA. MHA, vide its order No.11/27011/26/2009/PF-11 dated 29.10.2009 conveyed decision to cease the recruitment in the grade of Enrolled Followers (Group 'D') in CPMFs immediately. The existing posts of Enrolled Followers were placed in Pay Band PB-1 with Grade Pay of 2000 in Group 'C' and designated them as Constable (Tradesmen) comprising Constable (Cook), Constable (Washermen), etc. as the case may be. Fresh Recruitment Rules for the post of Constable (Tradesmen) (Group 'C' post) were notified vide MHA G.S.R. No.131 dated 03.08.2010. It was further stated in the said communication that the petitioner was not meeting the eligibility conditions as

per the fresh Recruitment Rules of Constable (Tradesmen) (Group 'C' post) which are as under:

> *"(a) not having of ITI/Experience Certificate and*
>
> *(b) Less in height by 0.5 cm (petitioner's height was 167 cms against requirement of 167.5 cms as per revised RRs)."*

6. It was further mentioned in the said communication that none of the 39 candidates of the Recruitment Centre of Headquarter, who were in the zone of consideration as per the earlier eligibility criteria of Enrolled Flower (Group 'D' post), were fulfilling the eligibility criteria as per the fresh recruitment rules for the post in question. Accordingly, the complete recruitment process was cancelled.

7. It is also not in dispute that respondent did not issue any appointment letter to petitioner and other 38 candidates till date.

8. For the relief sought in the present petition, the petitioner earlier moved a writ petition, i.e. W.P.(C) 1102/2019, and the same was disposed of vide order dated 04.02.2019 by a Co-ordinate Bench of this Court and relevant portion of same is reproduced as under:

> *"2. Learned counsel for the Petitioners seeks leave to withdraw this petition with liberty to file a proper petition, including explaining the delay in approaching the Court for relief.*
>
> *3. Dismissed as withdrawn with liberty as prayed for."*

9. It is pertinent to mention here that the petitioner has challenged the Recruitment Rules of 2010 whereas the petitioner was selected in the recruitment process of 2008 and the ground of the petitioner is that recruitment of 2010 cannot be applied on the recruitment process of 2008.

10. It is not in dispute that the recruitment process of 2008 was cancelled and none of the candidates selected from the said recruitment process were given appointment.

11. Moreover, when the petitioner earlier filed petition, i.e. W.P.(C) 1102/2019, even on that date, the petition was filed with delay and latches as is evident from order dated 04.02.2019 passed by Co-ordinate Bench of this Court. Even

thereafter, the petitioner did not file petition for good 3 years.
12. Thereafter, the petitioner again filed the petition, i.e. the present petition, now and the delay is not properly explained.
13. Even otherwise, we find no merit in the present petition and the same is, accordingly, dismissed on merits as well as for the delay."

3. The aforesaid judgment was taken in an appeal before the Supreme Court by the petitioner in Civil Appeal No. 3452/2023, whereby the Supreme Court has set aside the order dated April 27, 2022, by stating as under:

"1. Leave granted.
2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 27.04.2022 passed by the High court of Delhi at New Delhi in Writ Petition (C) No. 6679 of 2022, by which the High Court has dismissed the said Writ Petition, the original writ petitioner has preferred the present appeal.
3. Having heard Shri Pal1av Sisodiya, learned senior Advocate, appearing for the appellant and Ms. Madhavi Divan, learned ASG appearing for the respondent-Union of India and having gone through the impugned judgment and order passed by the High Court dismissing the writ petition, we are at pains to note that the manner in which the High court has dismissed the writ petition is not appreciable at all. The High Court has not at all considered the main grievance on merits, namely, whether the subsequent recruitment rules/procedure shall be applicable with respect to the earlier recruitment process or not. The High Court has observed that as such recruitment process of 2008 was cancelled and none of the candidates selected from the said recruitment process were given appointment and therefore, the appellants lacks merit also cannot be accepted. That was the exact grievance before the High Court that the recruitment process of 2008 has been cancelled illegally and by applying the subsequent regulations. Therefore, the High Court ought to have considered the matter

on merits. As the High court has not at all considered the matter on merits, we set aside the order passed by the High Court dismissing the writ petition and remand the matter back to the High Court to decide and dispose of the same afresh in accordance with law and on merits.

4. ***In view of the above and for the reasons stated above, the present appeal succeeds in part. The impugned judgment and order passed by the High court dismissing the writ petition is hereby quashed and set aside. The matter is remitted back to the High court to decide and dispose of the writ petition in accordance with law and on merits and on grounds which were raised/urged before the High court.***

The said exercise be completed by the High Court within a period of 3 months from the date of receipt of the present order.

The present Appeal stands allowed in terms of the above."

(emphasis supplied)

4. The facts as noted from the petition are that in the month of October, 2008, an advertisement was issued in a local daily Hindi Newspaper of Kashmir for recruitment of various trades of enrolled Followers (Group 'D' posts) in BSF/respondents' Force, stipulating the eligibility criteria for the concerned posts. On October 20, 2008, the recruitment process was conducted in terms of the advertisement at STC, BSF, Srinagar. The petitioner also participated in the said recruitment process and undertook various tests including physical test, trade test and medical test, which were all cleared by him.

5. On November 2, 2008, the result of the recruitment process was declared and the same was communicated by the respondents by putting up the merit list of 39 successful candidates. The petitioner was selected to the Group 'D' post of Washerman, i.e., enrolled 'Followers'

along with 38 other candidates for other trades from amongst more than 5000 candidates. In fact, it is the case of the petitioner that he topped the merit list. It was only sometime thereafter, the petitioner and the other selected candidates were informed that they have been recruited and the joining letter would be sent soon. However, it appears that no appointment letter was issued to the petitioner. It was only in the year 2010 that the petitioner was informed by the Director General, Headquarter, CGO Complex, Delhi that his case is under consideration of the Ministry of Home Affairs ('MHA', for short). Between years 2014-2016, the petitioner approached the Recruitment Section, Srinagar, Frontier Headquarter, but did not get any cogent information. It is his case that he also met many officers in 2016 alongwith his father, but again did not get any proper information.

6. On December 23, 2016, the petitioner filed a representation before the Headquarter 68 Battalion, BSF, stating therein, as the petitioner was selected for the post of Washerman in the recruitment drive which was held in the year 2008, he should be given the appointment. Between January 9, 2017 and March 9, 2017, the representations of the petitioner were responded by the respondents wherein it was stated that as the Recruitment Board in which the petitioner has been selected was formed by the Frontier Headquarter, BSF, Kashmir, all information and documents related to the said recruitment process would be available and dealt with by them and as such, the petitioner was asked to approach the said office.

7. It appears that somewhere on August 30, 2018, a letter ('impugned letter') was issued by the respondents denying the issuance

of joining letter to the petitioner on the ground that there has been a subsequent change in the Recruitment Rules of 2010, wherein, the eligibility conditions have been modified and under which the petitioner does not qualify.

8. The petitioner along with the other three persons filed a writ petition being W.P.(C) 1102/2019, which was dismissed as withdrawn on February 4, 2019 with liberty to approach the Court again by filing a proper petition explaining the delay in approaching the Court.

9. It is under the aforesaid circumstances, the present petition has been remitted by the Supreme Court for fresh adjudication on the merit of the case.

10. On the other hand, the case of the respondents primarily is that an advertisement was issued for filling up 58 vacancies of various trades of enrolled ‘Followers’ (Group 'D') posts in BSF through open recruitment prepared by Frontier HQ, BSF, Srinagar for candidates who were bona fide domiciles of certain districts of Srinagar and Leh and Ladakh. The wards (son) of the BSF personnel who were deployed under Kashmir Frontier were also made eligible. The same was forwarded to Directorate of Advertising and Visual Publicity (‘DAVP’, for short), Ministry of Information and Broadcasting for publication in employment news and leading newspapers. On publication of vacancies in employment news and newspapers, a board of officers was detailed by Frontier HQ, BSF, Srinagar to conduct the said recruitment. The recruitment was conducted by the detailed Board of officers from October 20, 2008 onwards at STC, BSF, Srinagar. The Board of officers submitted its proceedings to IG, BSF, Srinagar Frontier on

November 29, 2008. The Petitioner had also appeared in the above recruitment process for the post of Followers (Washerman) being ward's (son) of a serving BSF personnel under Blood Relations quota. The petitioner qualified various stages of recruitment i.e. preliminary screening, preliminary medical, verification of documents, physical efficiency test ('PET', for short), interview to test general awareness and mental alertness, trade test and medical test. Thus, he was in the zone of consideration for selection with other 38 candidates of various trades. The name of petitioner figured at serial No. 127 of board proceedings under OBC category. In the meantime, the recommendations of the 6th Central Pay Commission ('6th CPC', for short) were implemented by Government of India, w.e.f., September 1, 2008. The Commission in its report *inter alia* recommended to abolish the cadre of the 'Followers' and further recommended that recruitment in the grade of 'Followers' should cease immediately. The respondents decided to keep the recruitment process concerned herein i.e., of Group 'D' enrolled 'Followers' in abeyance and further sought clarification from the Ministry of Home Affairs. Thereafter, the Government of India vide order dated October 29, 2009, conveyed its decision to cease the recruitment in the grade of enrolled 'Followers' (Group 'D') in Central Para-military Forces ('CPMF', for short) immediately and placed the existing 'Followers' in Group 'C' in Pay Band-I with Grade Pay of ₹2,000/- and further to designate them as Constable (Tradesman), Constable (Cook) etc. as the case may be after giving proper training to the existing Group 'D' enrolled 'Followers' to make them combatised and on successful completion of such training, they be

absorbed in the Grade of Combatant constables against regular vacancies. The lowest qualification prescribed by the 6th CPC for entry level into Government service was matriculation / ITI.

11. It is also stated that the respondents, keeping in view the instructions of MHA, directed all recruitment agencies / frontiers vide their letter dated December 1, 2009 that on finalization of new Recruitment Rules ('RRs', for short) which were under preparation by the respondents, candidates who fulfill the requisite qualification / criteria as per revised RRs only be called to draw fresh board proceedings after conducting re-medical examination as per eligibility criteria of 6th CPC and then getting it approved by competent authority.

12. The respondents vide communication dated July 16, 2010 asked the Recruitment Agencies / Frontiers to review the cases in respect of candidates who were qualified as per the eligibility criteria of revised RRs of Constable (Tradesman) approved by the Government and accordingly, intimate the candidates who are found eligible for appointment to the post of Constable (Tradesman).

13. The MHA issued revised RRs for Constable (Tradesman) on August 3, 2010. Accordingly, the Board examined all documents pertaining to the qualified candidates in accordance with Ministry's order dated November 29, 2009 and revised RRs for the post of Constable (Tradesman) in BSF, but none of the candidates were found eligible for appointment to the post of Constable (Tradesman) as per revised RRs. Insofar as, the petitioner is concerned, it is stated that the petitioner was not found eligible on account of the reasons that (i) he had not produced the ITI / Experience Certificate and (ii) his height is

less by 0.5 Cms.

14. It is also stated that the petitioner has no vested right under the law to be selected and appointed but only to be considered as per the prevalent RRs. Reference in this regard is made to the latest Judgment of the Supreme Court in the case of ***State of Himachal Pradesh v. Raj Kumar & Others (2023) 3 SCC 773,*** to state that it is held in the said case that vacancies which occurred prior to the amendment of rules would be governed by old rules and not by amended rules does not reflect correct position of law governing services under the Union and State.

15. Whereas, the submission of Ms. Sangeeta Chandra, learned counsel appearing for the petitioner is that it is an admitted position that the MHA had issued the revised RRs for Constable (Tradesman) on August 3, 2010. The same clearly mentions that they supersede the Rules of 2001 (Rules under which the recruitment concerned herein was initiated) "*except as respect things done or omitted to be done before such supersession*". She submitted that this aspect has not been considered by the respondents at all. Hence, the respondents have erroneously taken a decision that the petitioner was to be considered for selection to the post of Constable (Washerman). The post of Constable (Washerman) exists under the new RRs of 2010, which are not applicable to the case of the petitioner. According to her, the petitioner is entitled to be considered under the Rules of 2001, which were in vogue at the time when the petitioner was selected to the post of enrolled 'Followers' (Group 'D'- Washerman). She submitted that the rules of the games cannot be changed, once the entire process of

selection is not only over but has also been communicated to the petitioner. She qualified her submission by stating that the recruitment process under question was successfully conducted in October, 2008 i.e., at the time when the Rules of 2001 were in vogue. Moreover, the petitioner has been denied the issuance of joining letter on the ground that the eligibility criteria had changed in the subsequent Rules of 2010, which according to her cannot apply to the recruitment process in respect of which, advertisement was already issued and the entire recruitment process has been held and completed. She further submitted that there cannot be a dispute that the Recruitment Rules are always prospective unless specified to the contrary. In fact, the revision in new Recruitment Rules i.e., the Rules of 2010 came into effect after the completion of recruitment process in which the petitioner was successful. It is thus clear that the selection process was to be regulated by the then existing Recruitment Rules i.e., the Rules of 2001 and any amendment to the Recruitment Rules pending the issuance of joining letter would not affect the validity of selection already made. She also submitted that 6th CPC had not recommended the abolition of Group 'D' posts, rather the recommendation was that the Group 'D' posts be merged / upgraded along with Group 'C' posts on the same pay scale.

16. Though it has been stated in the writ petition and as also noted from above, the case of the petitioner is that his case is governed by the old Rules of 2001 and the same stands superseded by the new Rules of 2010. We note from the new Rules of 2010 i.e., Border Security Force Constable (Tradesman) Group 'C' Posts Recruitment Rules, 2010, itself, that it is the Rules of 2000, i.e., Border Security Force

(Tradesman Group 'C' and Enrolled followers Group 'D' Posts) Recruitment Rules, 2000, which have been superseded. It follows, it is the Rules of 2000 which governs the case of the petitioner and not the Rules of 2001. It also appears, the reference to the Rules of 2001 is an error. In fact no Rules of 2001 have been annexed by the petitioner. So henceforth, the Rules of 2001 shall be referred as Rules of 2000.

17. It is her case that the ground on which the petitioner has been denied the issuance of joining letter i.e., the petitioner had not produced any ITI / Experience Certificate, is totally irrelevant as the petitioner had applied for Group 'D' Post of Washerman and has already cleared the trade test for the said post. Even the height requirement in the subsequent Rules of 2010 cannot take away the right of the petitioner to get the joining letter as he qualified the height criteria under the old Rules of 2000 which were in force at the time when the recruitment process was conducted and the selection was made on the basis of merit. She submitted that the respondents' Force cannot by subsequent merging of Group 'D' posts with Group 'C' posts take the higher eligibility / criteria qualification into consideration and reject, on that basis, the candidates including the petitioner who successfully qualified under the old Rules of 2000.

18. She stated that the reliance placed by the respondents on the judgment of the Supreme Court in the case of ***Raj Kumar & Others (supra)*** does not lay down a blanket rule, rather it is clear from the perusal of the judgment that the same was on specific facts of the case as arose for consideration in that petition.

19. Suffice to state that Mr. D. S. Vohra, learned SPC, appearing

for the respondents has primarily reiterated the submissions as noted by us in the aforesaid paragraphs.

ANALYSIS

20. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the respondents were justified in issuing the impugned order declaring the petitioner ineligible for recruitment under the Rules of 2010 for the post of Constable (Tradesmen) (Group 'C' Post) despite the recruitment process was initiated and culminated into the issuance of the merit list as per the old Rules of 2000.

21. There is no dispute to the fact that the recruitment process to the post of enrolled 'Followers' (Group 'D') was initiated around October, 2008, the result of the same was declared on November 2, 2008 and subsequently, a merit list was prepared by the respondents. It is thereafter that the Government of India vide order dated October 29, 2009 conveyed its decision to cease the recruitment in the Grade of enrolled Followers (Group 'D') in CPMFs and further designated them as Constable (Tradesman) comprising Constable (Cook), Constable (WM) etc. The said decision was conveyed by the respondents to recruitment agencies / frontiers vide their letter dated December 1, 2009 that on finalization of new Recruitment Rules which were under preparation by the respondents, the candidates who fulfill the requisite qualification / criteria as per revised RRs of 2010, only be called to draw fresh board proceedings after conducting re-medical examination as per eligibility criteria of 6th CPC and getting it approved by competent authority. In other words, the aforesaid stand of the

respondents depicts that the selection process initiated by the respondents in the year 2008 for Followers (Group 'D') posts need not be implemented.

22. Whereas it is the submission of Ms. Sangeeta Chandra, learned counsel appearing for the petitioner that the selection process in the present case being complete with the issuance of the final merit list, any subsequent communication of 2009, i.e., of October 29, 2009 shall have no bearing on the recruitment process which was initiated in the year 2008.

23. Suffice to state that this submission of Ms. Chandra is appealing inasmuch as, though a decision was taken by the Government to abolish Group 'D' posts to upgrade the same with Group 'C' posts, on the basis of the recommendation of the 6th CPC, which was implemented on September 1, 2008, the said decision is made effective only by framing of the new Recruitment Rules i.e., the Rules of 2010, which were finally issued on August 3, 2010.

24. Therefore, a related question would arise as to whether the recruitment process which was initiated and culminated in terms of the old Rules of 2000, needs to be scrapped / not given effect to before the advent of the new Rules of 2010.

25. Ms. Chandra is justified in relying upon the saving contemplated under the Rules of 2010, framed on August 3, 2010. She stated, the said Rules shall be in supersession of the Rules of 2000, '*except as respect of things done or omitted to be done before such supersession'*.

26. In other words, it is her submission that the supersession of the

old Rules of 2000, shall exclude the things done or omitted to be done before such supersession, under the old Rules. So, it follows that whatever has been done or omitted to have been done before such supersession, i.e., August 3, 2010, under the Rules of 2000, the same are not superseded, especially, when the recruitment process under question was completed before August 3, 2010, and the result thereof and merit list for the same, had already been declared and prepared. Hence, the said selection cannot stand superseded by the Rules of 2010.

27. We agree with this submission of Ms. Chandra, as the Supreme Court comprising of three Hon'ble Judges in the case of ***P. Mahendran and Ors. v. State of Karnataka and Ors.,*** *MANU/SC/0417/1990*, in paragraphs 4, 5 and 12, has held as under:

> *"4. There is no dispute that under the Recruitment Rules as well as under the advertisement dated 6. 10.1983 issued by the Public Service Commission, holders of Diploma in Mechanical Engineering were eligible for appointment to the post of Motor Vehicle Inspectors alongwith holders of Diploma in Automobile Engineering. On receipt of the applications from the candidates the Commission commenced the process of selection as it scrutinised the applications and issued letters for interview to the respective candidates. In fact the Commission commenced the interviews in August 1984 and it had almost completed the process of selection but the selection could not be completed on account of interim orders issued by the High Court at the instance of candidates seeking reservation for local candidates. The Commission completed the interviews of all the candidates and it finalised the list of selected candidates by 2nd June 1987 and the result was published in the State Gazette on 23rd July 1987. In addition to that the selected candidates were intimated by the Commission by separate letters. In view of these facts the sole question for consideration is as to whether the amendment*

made in the Rules on 14th May 1987 rendered the selection illegal. Admittedly the amending Rule does not contain any provision enforcing the amended Rule with retrospective effect. In the absence of any express provision contained in the amending Rule it must be held to be prospective in nature. The Rules which are prospective in nature cannot take away or impair the right of candidates holding Diploma in Mechanical Engineering as on the date of making appointment as well as on the date of scrutiny by the Commission they were qualified for selection and appointment. In fact the entire selection in the normal course would have been finalised much before the amendment of Rules, but for the interim orders of the High Court. If there had been no interim orders, the selected candidates would have been appointed much before the amendment of Rules. Since the process of selection had commenced and it could not be completed on account of the interim orders of the High Court, the appellants' right to selection and appointment could not be defeated by subsequent amendment of Rules.

5. It is well-settled rule of construction that every statute or statutory Rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the Rule must be held to be prospective. If a Rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision. or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rule of 1987 does not contain any express provision giving the amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the Rule with retrospective effect. Since the amending Rule was not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force. The amended Rule could not affect the

existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter.

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12. In view of the above discussions, we allow the appeal and set aside the order of the Tribunal dated September 30, 1987. We further direct the State Government to make appointments to the posts of Motor Vehicle Inspectors on the basis of the select list prepared and finalised by the Commission. The writ petition is also disposed of accordingly. There will be no order as to costs."

(emphasis supplied)

28. Similarly in the latest judgment of the Supreme Court in the case of ***Pallavi v. Union of India (UOI) and Ors., MANU/SC/0953/2023***, wherein in paragraphs 14, 15, 16 and 17 it has been held as under:

"14. The facts in this case are not disputed; undoubtedly the Petitioner was treated as a foreign national and allowed to appear in the NEET mains- as OCI cardholder; she even secured a fairly high rank. She was allowed to participate in the mock rounds of allocations which led to an indication that she would be offered PG in Paediatrics in AIIMS and just before the first round of counselling she was informed that her status would no longer be as a foreign national and that she would be treated as an Indian national.

15. A plain reading of the notification undoubtedly leads one to conclude that it withdraws the eligibility or privileges which had been hitherto conferred upon OCI Card holders regarding their parity with Indian nationals for appearing in All India examinations such as NEET. This meant that after the date of issuance of that notification, i.e. 04.03.2021, such OCI card holders could not claim the privilege of eligibility for

admission in any competitive entrance examination "any seat reserved exclusively for Indian citizens" was an abrupt notifications all these notifications were somewhat softened by of the retroactive application facially was that all OCI Card holders who had planned their academic careers based upon pre-existing notifications dated 11.04.2005, 05.01.2007 and 05.01.2009 were held to be eligible to continue with that privilege in terms of the judgment in Anushka (supra). The relevant portions of the judgment in Anushka (supra) are extracted below:

> *45. However, what is necessary to be taken note is that the right which was bestowed through the notification dated 11.04.2005 and 05.01.2009 insofar as the educational parity, including in the matter of appearing for the All-India Pre-Medical Test or such other tests to make them eligible for admission has been completely altered. Though the notification ex facie may not specify retrospective application, the effect of superseding the earlier notifications and the proviso introduced to Clause 4(ii) would make the impugned notification dated 04.03.2021 'retroactive' insofar as taking away the assured right based on which the Petitioners and similarly placed persons have altered their position and have adjusted the life's trajectory with the hope of furthering their career in professional education.*
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> *46. The learned Senior Counsel for the Petitioners would in that context contend that since Sub-section (2) to Section 7B of Act, 1955 does not exclude the right Under Article 14 of the Constitution, it is available to be invoked and such discrimination contemplated in the notification to exclude the OCI Cardholders should be struck down. Article 14 of the Constitution can be invoked and contend discrimination only when persons similarly placed are treated differently and in that view the OCI Cardholders being a class by themselves cannot claim parity with the Indian citizens, except for making an attempt to save the limited statutory right bestowed. To that extent certainly the fairness in the*

procedure adopted has a nexus with the object for which change is made and the application of mind by the Respondent No. 1, before issuing the impugned notification requires examination.

47. As noted, the right of the OCI Cardholders is a midway right in the absence of dual citizenship. When a statutory right was conferred and such right is being withdrawn through a notification, the process for withdrawal is required to demonstrate that the action taken is reasonable and has nexus to the purpose. It should not be arbitrary, without basis and exercise of such power cannot be exercised unmindful of consequences merely because it is a sovereign power. To examine this aspect, in addition to the contentions urged by the learned Additional Solicitor General we have also taken note of the objection statement filed with the writ petition. Though detailed contentions are urged with regard to the status of a citizen and the sovereign power of the State, as already noted, in these petitions the sovereign power has not been questioned but the manner in which it is exercised in the present circumstance is objected. The contention of learned Additional Solicitor General is that the intention from the beginning was to grant parity to OCI Cardholders only with NRIs. On that aspect as already noted above we have seen the nature of the benefit that had been extended to the Petitioners and the similarly placed Petitioners under the notifications of the year 2005, 2007 and 2009. The further contention insofar as equating the OCI Cardholders to compete only for the seats which are reserved for NRIs and to exclude the OCI Cardholders for admission against any seat reserved exclusively for the Indian citizens, across the board, even to the persons who were bestowed the right earlier, it is stated that the rationale is to protect the rights of the Indian citizens in such matters where State may give preference to its citizens vis-à-vis foreigners holding OCI Cards. It is further averred in the counter

that number of seats available for medical and engineering courses in India are very limited and that it does not fully cater to the requirement of even the Indian citizens. It is therefore contended that the right to admission to such seats should primarily be available to the Indian citizens instead of foreigners, including OCI Cardholders.

48. Except for the bare statement in the objection statement, there is no material with regard to the actual exercise undertaken to arrive at a conclusion that the participation of OCI Cardholders in the selection process has denied the opportunity of professional education to the Indian citizens. There are no details made available about the consideration made as to, over the years how many OCI cardholders have succeeded in getting a seat after competing in the selection process by which there was denial of seats to Indian Citizens though they were similar merit-wise.

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52. Therefore it is evident that the object of providing the right in the year 2005 for issue of OCI cards was in response to the demand for dual citizenship and as such, as an alternative to dual citizenship which was not recognised, the OCI card benefit was extended. If in that light, the details of the first Petitioner taken note hereinabove is analysed in that context, though the option of getting the Petitioner No. 1 registered as a citizen Under Section 4 of Act, 1955 by seeking citizenship by descent soon after her birth or even by registration of the citizenship as provided Under Section 5 of Act, 1955, was available in the instant facts to her parents, when immediately after the birth of Petitioner No. 1 the provision for issue of OCI cards was statutorily recognised and under the notification the right to education was also provided, the need for parents of Petitioner No. 1 to make a choice to acquire

the citizenship by descent or to renounce the citizenship of the foreign country and seek registration of the Citizenship of India did not arise to be made, since as an alternative to dual citizenship the benefit had been granted and was available to Petitioner No. 1 and the entire future was planned on that basis and that situation continued till the year 2021.

53. Further, as on the year 2021 when the impugned notification was issued the Petitioner No. 1 was just about 18 years i.e., full age and even if at that stage, the Petitioner was to renounce and seek for citizenship of India as provided Under Section 5(1)(f)(g), the duration for such process would disentitle her the benefit of the entire education course from pre-school stage pursued by her in India and the benefit for appearing for the Pre-Medical Test which was available to her will be erased in one stroke. Neither would she get any special benefit in the country where she was born. Therefore in that circumstance when there was an assurance from a sovereign State to persons like that of the Petitioner No. 1 in view of the right provided through the notification issued Under Section 7B(1) of Act, 1955 and all 'things were done' by such Overseas Citizens of India to take benefit of it and when it was the stage of maturing into the benefit of competing for the seat, all 'such things done' should not have been undone and nullified with the issue of the impugned notification by superseding the earlier notifications so as to take away even the benefit that was held out to them.

54. Therefore, on the face of it the impugned notification not saving such accrued rights would indicate non application of mind and arbitrariness in the action. Further in such circumstance when the stated object was to make available more seats for the Indian Citizens and it is demonstrated that seats have remained vacant, the object for which such notification was issued even without saving the rights and excluding the Petitioners and similarly placed OCI Cardholders with the other

students is to be classified as one without nexus to the object. As taken note earlier during the course this order, the right which was granted to the OCI cardholders in parity with the NRIs was to appear for the Pre-Medical Entrance Test along with all other similar candidates i.e. the Indian citizens. In a situation where it has been demonstrated that the Petitioner No. 1 being born in the year 2003, has been residing in India since 2006 and has received her education in India, such student who has pursued her education by having the same 'advantages' and 'disadvantages' like that of any other students who is a citizen of India, the participation in the Pre-Medical Entrance Test or such other Entrance Examination would be on an even keel and there is no greater advantage to the Petitioner No. 1 merely because she was born in California, USA. Therefore, the right which had been conferred and existed had not affected Indian citizens so as to abruptly deny all such rights. The right was only to compete. It could have been regulated for the future, if it is the policy of the Sovereign State. No thought having gone into all these aspects is crystal clear from the manner in which it has been done.

55. In the above circumstance, keeping in view, the object with which the Act, 1955 was amended so as to provide the benefit to Overseas Citizen of India and in that context when rights were given to the OCI cardholders through the notifications issued from time to time, based on which the OCI cardholders had adopted to the same and had done things so as to position themselves for the future, the right which had accrued in such process could not have been taken away in the present manner, which would act as a 'retroactive' notification. Therefore, though the notification ex-facie does not specify retrospective operation, since it retroactively destroys the rights which were available, it is to be ensured that such of those beneficiaries of the right should not be affected by

such notification. Though the Rule against retrospective construction is not applicable to statutes merely because a part of the requisite for its action is drawn from a time antecedent to its passing, in the instant case the rights were conferred under the notification and such rights are being affected by subsequent notification, which is detrimental and the same should be avoided to that extent and be allowed to operate without such retroactivity.

56. We note that it is not retrospective inasmuch as it does not affect the OCI Cardholders who have participated in the selection process, have secured a seat and are either undergoing or completed the MBBS course or such other professional course. However, it will act as retroactive action to deny the right to persons who had such right which is not sustainable to that extent. The goal post is shifted when the game is about to be over. Hence we are of the view that the retroactive operation resulting in retrospective consequences should be set aside and such adverse consequences is to be avoided.

57. Therefore in the factual background of the issue involved, to sum up, it will have to be held that though the impugned notification dated 04.03.2021 is based on a policy and in the exercise of the statutory power of a Sovereign State, the provisions as contained therein shall apply prospectively only to persons who are born in a foreign country subsequent to 04.03.2021 i.e. the date of the notification and who seek for a registration as OCI cardholder from that date since at that juncture the parents would have a choice to either seek for citizenship by descent or to continue as a foreigner in the background of the subsisting policy of the Sovereign State.

58. In light of the above, it is held that the Respondent No. 1 in furtherance of the policy of the Sovereign State has the power to pass appropriate notifications as contemplated Under Section 7B(1) of the Citizenship

Act, 1955, to confer or alter the rights as provided for therein. However, when a conferred right is withdrawn, modified or altered, the process leading thereto should demonstrate application of mind, nexus to the object of such withdrawal or modification and any such decision should be free of arbitrariness. In that background, the impugned notification dated 04.03.2021 though competent Under Section 7B(1) of Act, 1955 suffers from the vice of non-application of mind and despite being prospective, is in fact 'retroactive' taking away the rights which were conferred also as a matter of policy of the Sovereign State.

59. Hence, the notification being sustainable prospectively, we hereby declare that the impugned portion of the notification which provides for supersession of the notifications dated 11.04.2005, 05.01.2007 and 05.01.2009 and the Clause 4(ii), its proviso and Explanation (1) thereto shall operate prospectively in respect of OCI cardholders who have secured the same subsequent to 04.03.2021.

60. We further hold that the Petitioners in all these cases and all other similarly placed OCI cardholders will be entitled to the rights and privileges which had been conferred on them earlier to the notification dated 04.03.2021 and could be availed by them notwithstanding the exclusion carved out in the notification dated 04.03.2021. The participation of the Petitioners and similarly placed OCI cardholders in the selection process and the subsequent action based on the interim orders passed herein or elsewhere shall stand regularised.

16. <u>It is evident that the ruling held that notification (dated 04.03.2021) operated arbitrarily because firstly it indicated non-application of mind in not saving accrued rights</u>. <u>The application of proviso to Clause 4 (ii) of the notification of 04.03.2021 was held to have no nexus with the objects sought to be achieved.</u> <u>The court also held that those who are born</u>

prior to 2005 and residing in India had received their education in India and had pursued by having some advantages and disadvantages like other children who are citizens of India, and could not be denied their right to participate in NEET examinations or such similar examinations. It was also held that no additional advantage was granted to such class of people merely because they were born abroad and importantly, court took note of the amendment which introduced concession to OCI Card holders. Therefore, the Court concluded that when the right conferred was withdrawn and altered, in the process leading to such change, should demonstrate application of mind, nexus to the object of such withdrawal or modification and any such decision had to be free of arbitrariness. In the light of this conclusion, the court held that the notification saved from the vice of non-application of mind and was in fact retroactive. It was in these circumstances that the Court held that only those persons who obtained OCI Cards after 04.03.2021 were rendered ineligible in terms of the notification.

17. In the present case, although the OCI Card relied upon by the Petitioner on 04.08.2022, the fact that she was in fact issued the OCI registration card first, on 02.11.2015. In such circumstances, the Petitioner's eligibility to claim the benefit of OCI card holder in terms of the ruling in Anushka (supra) is undeniable. The rejection of her candidature at this stage, i.e. on 19.06.2023 is not supportable in law. She is consequently directed to be considered in remaining counselling rounds by the AIIMS and all participating institutions for PG Medical seats. It is clarified that the consideration would be regarding seats that are unfilled on the date of this judgment whether reserved for SC/ST/OBC or other categories and such as specially earmarked for Bhutanese candidates etc. if they can be filled by other candidates, like her. Furthermore, this facility should be open to the Petitioner as well as other candidates based upon the available records of those issued OCI cards prior to 04.03.2021 and who can participate in such counseling having regard to their performance in the NEET test, and their ranking."

(emphasis supplied)

29. It is also pertinent to refer here the judgment of the Supreme Court in the case of ***Manish Kumar v. Union of India (UOI) and Ors., MANU/SC/0029/2021***, with regard to the scope and ambit of a saving clause in a given statute, wherein, in paragraph 298, it has been held as under:-

> *298. While on the ambit of the saving Clause we may notice Bansidhar v. State of Rajasthan MANU/SC/0057/1989 : (1989) 2 SCC 557 while dealing with the fact of saving Clause in a repealing statute the court held as follows:*
>
> > *28. A saving provision in a repealing statute is not exhaustive of the rights and obligations so saved or the rights that survive the repeal. It is observed by this Court in IT Commissioner v. Shah Sadiq & Sons [MANU/SC/0351/1987 : (1987) 3 SCC 516 : 1987 SCC (Tax) 270 : AIR 1987 SC 1217, 1221]: (SCC p. 524, para 15)*
> >
> > > *... In other words whatever rights are expressly saved by the 'savings' provision stand saved. But, that does not mean that rights which are not saved by the 'savings' provision are extinguished or stand ipso facto terminated by the mere fact that a new statute repealing the old statute is enacted. Rights which have accrued are saved unless they are taken away expressly. This is the principle behind Section 6(c), General Clauses Act, 1897....*
>
> *We agree with the High Court that the scheme of the 1973 Act does not manifest an intention contrary to, and inconsistent with, the saving of the repealed provisions of Section 5(6-A) and Chapter III-B of "1955 Act" so far as pending cases are concerned and that the rights accrued and liabilities incurred under the old law are not effaced. Appellant's contention (a) is, in our opinion, insubstantial.*
>
> *Re Contention (b)"*

(emphasis supplied)

30. Similarly in the case of ***Thyssen Stahlunion Gmbh v. Steel Authority of India Ltd., MANU/SC/0652/1999***, specifically in paragraph 32, it has been held as under:

> *"32. Reference may yet be made to two more decisions of this Court on the question of effect of repeal of an enactment and as to what is right accrued. In Gajraj Singh and Ors. v. State Transport Appellate Tribunal and Ors. MANU/SC/0116/1997:AIR1997SC412 this Court was examining the provisions of Section 217(1) and (2)(a) & (b) and (4) of the Motor Vehicles Act, 1988, which contained repeal and saving provisions of the Motor Vehicles Act, 1939. The Court examined various judgments of this Court and Treatises on the rules of interpretation and said:*
>
> > *22. Whenever an Act is repealed it must be considered, except as to transactions past and closed, as if it had never existed. The effect thereof is to obliterate the Act completely from the record of Parliament as if it had never been passed; it never existed except for the purpose of those actions which were commenced, prosecuted and concluded while it was an existing law. Legal fiction is one which is not an actual reality and which the law recognises and the court accepts as a reality. Therefore, in case of legal fiction the court believes something to exist which in reality does not exist. It is nothing but a presumption of the existence of the state of affairs which in actuality is non-existent. The effect of such a legal fiction is that a position which otherwise would not obtain is deemed to obtain under the circumstances.*
>
> *On the question on the right acquired or accrued the Court*

observed:

> *42. There is a distinction between right acquired or accrued, and privilege, hope and expectation to get a right, as rightly pointed out by the High Court in the impugned judgment. A right to apply for renewal and to get a favourable order would not be deemed to be a right accrued unless some positive acts are done, before repeal of Act 4 of 1939 or corresponding law to secure that right of renewal. In Gujarat Electricity Board v. Santilal R. Desai MANU/SC/0374/1968 : [1969]1SCR580 this Court had pointed out that before Section 71 of the Electricity (Supply) Act, 1948 was amended, the appellant had issued a notice under Section 7 thereof, exercising the option to purchase the undertaking. It was held that a right to purchase the electrical undertaking which had accrued to the Electricity Board was saved by Section 6 of the GC Act."*
>
> (emphasis supplied)

31. Having said that, one of the submissions of Mr. Vohra is that even the selection process initiated under the Rules of 2000 and the merit list prepared thereof would not give a right to the petitioner to be appointed to the post in question. The said submission though looks appealing on a first blush, but surely the petitioner had the legitimate expectation to be appointed to post in question as the selection process with respect to the same had already been initiated and a merit list thereof was already prepared and as such, the recruitment process initiated under the Rules of 2000 shall not be vitiated with the advent of the new rules, i.e., the Rules of 2010.

32. In this regard, it is important to highlight the latest judgment of the Constitution Bench of the Supreme Court in the case of ***Sivanandan***

CT and Others v. High Court of Kerala and Others, (2023) 11 S.C.R. 674 wherein, on the aspect of legitimate expectation, it has been held as under:-

> *"36. The doctrine of legitimate expectation does not impede or hinder the power of the public authorities to lay down a policy or withdraw it. The public authority has the discretion to exercise the full range of choices available within its executive power. The public authority often has to take into consideration diverse factors, concerns, and interests before arriving at a particular policy decision. The courts are generally cautious in interfering with a bona fide decision of public authorities which denies a legitimate expectation provided such a decision is taken in the larger public interest. Thus, public interest serves as a limitation on the application of the doctrine of legitimate expectation. Courts have to determine whether the public interest is compelling and sufficient to outweigh the legitimate expectation of the claimant. While performing a balancing exercise, courts have to often grapple with the issues of burden and standard of proof required to dislodge the claim of legitimate expectation.*
>
> *xxx xxx xxx*
>
> *42. In a constitutional system rooted in the rule of law, the discretion available with public authorities is confined within clearly defined limits. The primary principle underpinning the concept of rule of law is consistency and predictability in decision-making. A decision of a public authority taken without any basis in principle or rule is unpredictable and is, therefore, arbitrary and antithetical to the rule of law. The rule of law promotes fairness by stabilizing the expectations of citizens from public authorities. This was also considered in a recent decision of this Court in SEBI v. Sunil Krishna Khaitan, where it was observed that regularity and predictability are hall-marks of good regulation and governance. This Court held that certainty and*

consistency are important facets of fairness in action and non-arbitrariness:

> *"59. […] Any good regulatory system must promote and adhere to principle of certainty and consistency, providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. […] This does not mean that the regulator/authorities cannot deviate from the past practice, albeit any such deviation or change must be predicated on greater public interest or harm. This is the mandate of Article 14 of the Constitution of India which requires fairness in action by the State, and non-arbitrariness in essence and substance. Therefore, to examine the question of inconsistency, the analysis is to ascertain the need and functional value of the change, as consistency is a matter of operational effectiveness."*
>
> *(emphasis supplied)*

43. The underlying basis for the application of the doctrine of legitimate expectation has expanded and evolved to include the principles of good administration. Since citizens repose their trust in the state, the actions and policies of the state give rise to legitimate expectations that the state will adhere to its assurance or past practice by acting in a consistent, transparent, and predictable manner. The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being regarded as arbitrary and therefore violative of Article 14.

44. From the above discussion, it is evident that the doctrine of substantive legitimate expectation is entrenched in Indian administrative law subject to the limitations on its applicability in given factual situations. The development of Indian jurisprudence is keeping in line with the developments in the common law. The

doctrine of substantive legitimate expectation can be successfully invoked by individuals to claim substantive benefits or entitlements based on an existing promise or practice of a public authority. However, it is important to clarify that the doctrine of legitimate expectation cannot serve as an independent basis for judicial review of decisions taken by public authorities. Such a limitation is now well recognized in Indian jurisprudence considering the fact that a legitimate expectation is not a legal right. It is merely an expectation to avail a benefit or relief based on an existing promise or practice. Although the decision by a public authority to deny legitimate expectation may be termed as arbitrary, unfair, or abuse of power, the validity of the decision itself can only be questioned on established principles of equality and non-arbitrariness under Article 14. In a nutshell, an individual who claims a benefit or entitlement based on the doctrine of legitimate expectation has to establish: (i) the legitimacy of the expectation; and (ii) that the denial of the legitimate expectation led to the violation of Article 14.

xxxx xxxx xxxx

46. Rule 2(c)(iii) of the 1961 Rules provided at the material time that 25% of the posts of District and Sessions Judges should be filled by direct recruitment from the Bar on the basis of aggregate marks/grade obtained in the written examination and the viva-voce conducted by the High Court. The scheme of examination specifically stipulates that there shall be no cut off marks for the viva voce. Further, the notification dated 30 September 2015 also stipulates that the merit list of successful candidates would be prepared on the basis of the total marks obtained in the written examination and the viva voce.

47. The statutory rule coupled with the scheme of examination and the 2015 examination notification would have generated an expectation in the petitioners that the merit list of selected candidates will be drawn on

the basis of the aggregate of total marks received in the written examination and the viva voce. Moreover, the petitioners would have expected no minimum cut-off for the viva voce in view of the express stipulation in the scheme of examination. Both the above expectations of the petitioners are legitimate as they are based on the sanction of statutory rules, scheme of examination, and the 2015 examination notification issued by the High Court. Thus, the High Court lawfully committed itself to preparing a merit list of successful candidates on the basis of the total marks obtained in the written examination and the viva voce.

ii. Whether the High Court has acted unlawfully in relation to its commitment?

xxxx xxxx xxxx

51. Under the unamended 1961 Rules, the High Court was expected to draw up the merit list of selected candidates based on the aggregate marks secured by the candidates in the written examination and the viva voce, without any requirement of a minimum cut-off for the viva voce. Thus, the decision of the Administrative Committee to depart from the expected course of preparing the merit list of the selected candidates is contrary to the unamended 1961 Rules. It is also important to highlight that the requirement of a minimum cut-off for the viva voce was introduced after the viva voce was conducted. It is manifest that the petitioners had no notice that such a requirement would be introduced for the viva voce examination. We are of the opinion that the decision of High Court is unfair to the petitioners and amounts to an arbitrary exercise of power.

52. The High Court's decision also fails to satisfy the test of consistency and predictability as it contravenes the established practice. The High Court did not impose the requirement of a minimum cut-off for the viva voce for the selections to the post of District and Sessions Judges for 2013 and 2014. Although the High Court's

justification, when analyzed on its own terms, is compelling, it is not grounded in legality. The High Court's decision to apply a minimum cut-off for the viva voce frustrated the substantive legitimate expectation of the petitioners. Since the decision of the High Court is legally untenable and fails on the touchstone of fairness, consistency, and predictability, we hold that such a course of action is arbitrary and violative of Article 14.

iii. What should this Court do?

xxxx xxxx xxxx

55. The following are our conclusions in view of the above discussions:

(i) The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being termed as arbitrary and violative of Article 14;

(ii) An individual who claims a benefit or entitlement based on the doctrine of substantive legitimate expectation has to establish the following: (i) the legitimacy of the expectation; and that (ii) the denial of the legitimate expectation led to a violation of Article 14;

(iii) A public authority must objectively demonstrate by placing relevant material before the court that its decision was in the public interest to frustrate a claim of legitimate expectation;

(iv) The decision of the High Court of Kerala to apply a minimum cut-off to the viva voce examination is contrary to Rule 2(c)(iii) of the 1961 Rules.

(v) The High Court's decision to apply the minimum cut-off marks for the viva voce frustrates the substantive legitimate expectation of the petitioners. The decision is arbitrary and violative of Article 14.

(vi) In terms of relief, we hold that it would be contrary to the public interest to direct the induction of the petitioners into the Higher Judicial Service after the lapse of more than six years. Candidates who have been selected nearly six years ago cannot be unseated.

They were all qualified and have been serving the district

judiciary of the state. Unseating them at this stage would be contrary to public interest. To induct the petitioners would be to bring in new candidates in preference to those who are holding judicial office for a length of time. To deprive the state and its citizens of the benefit of these experienced judicial officers at a senior position would not be in public interest."

33. From the above, it is clear that the doctrine of legitimate expectation is clearly applicable in the facts of this case, inasmuch as, the selection process having been culminated into the merit list, not giving effect to the same shall be arbitrary and violative of Article 14 of the Constitution of India, 1950. It cannot be denied that the petitioner had legitimately expected that with the culmination of the selection process, he shall be appointed to the post concerned herein. It also follows that it is a case where during the midst of the selection process the respondents decided to discontinue the same on the recommendations of the 6th CPC. The respondents' decision to cease the selection process surely frustrates the claim of the petitioner of legitimate expectation. Surely, the petitioner despite having been found selected for the post in question, the denial of appointment as legitimately expected by the petitioner in the facts of the present case, shall be violative of Article 14 of the Constitution of India, 1950.

34. Insofar as reliance placed by Mr. Vohra on the judgment of the Supreme Court in the case of ***Raj Kumar and Ors. (supra)*** in support of his submissions is concerned, suffice to state, that the said judgment shall not be applicable in the facts of this case, especially, when this Court is concerned with an issue of appointment made under the direct recruitment quota, wherein the process of appointment had

already been initiated with the issuance of the advertisement / employment notice. That apart, the process of appointment has also been carried out till the stage of issuance of the merit list where name of the petitioner has been included. Whereas, in the judgment on which reliance has been placed by Mr.Vohra, the Supreme Court was considering the right of an employee in the organisation to be considered for promotion to the next higher post against the vacancies which were in existence under the old rules concerned therein. It was in that context, the Supreme Court had *inter alia* held that such an employee has no right outside the rules governing the service under the State as his service is in the nature of status, a hallmark of the same is, the need of the State to unilaterally alter the rules to subserve the public interest. More particularly, in the said case, the 2006 Rules (new rules, concerned therein), governing the services of the respondents therein came into force immediately after they were notified, which also, did not contain any provision to enable the respondents therein to be considered under the Rules of 1966, i.e., old rules. Therefore, in the facts of the present case, the said judgment shall have no applicability.

35. Mr. Vohra has also relied upon the judgment of the Supreme Court in the case of ***Shankarsan Dash v. Union of India (1991) 3 SCC 47***, wherein it is held that ordinarily a notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. At the same time, it is also held that the State does not have the license of acting in an arbitrary manner. We have already held in paragraph 33 above that the respondents by not giving effect to the merit list and not appointing the

petitioner to the post concerned herein have acted in an arbitrary manner. Hence, the said judgment shall also not help the case of the petitioner.

36. We are conscious that it is a settled position of law that even candidates selected for appointment have no right to appointment and it is open to the Government at a subsequent date not to fill up the posts. It can also resort to fresh selection on revised criteria, as held by the Supreme Court in the case of ***Jai Singh Dalal and Others v. State of Haryana and Others, 1993 Supp (2) SCC 600***, which has also been relied upon by Mr. Vohra.

37. In the said case, the selection process concerned therein had not been completed and before it could be completed, the State Government reviewed its earlier decision and decided to revise the eligibility criteria for appointment and in such circumstances, it was held that the petitioners therein had no right to claim that the selection process once started must be completed. In the present case, as already noted above, the petitioner has already been selected as his name finds mentioned in the merit list. The only step left in the recruitment process was the issuance of the joining letter to the petitioner. Therefore, apart from our finding on the legitimate expectation of the petitioner, the said judgment of the Supreme Court is also distinguishable on facts.

38. Now, the question arises as to what relief needs to be granted to the petitioner. We are conscious of the fact that the selection in question was initiated in the year 2008 and 15 years have gone by. It is also a fact that in terms of the recommendation of the 6th CPC in paragraph

7.19.45, it has been recommended that all the posts in CPMFs should be combatised like the position existing in the Defence Forces and also the fact that all posts of 'Followers' / other Group D posts in CPMFs have been converted into Group-C posts and be placed in PB-I with grade pay of ₹2000/-.

39. It is also an admitted fact that the selection process which was initiated in the year 2008, was for Group-D posts, which do not exist as of today, but the same were in existence, when the selection process was initiated. Against, the order passed by this Court dismissing the petition, the petitioner had approached the Supreme Court. The Supreme Court directed this Court to decide the issue on merit insofar as the plea of the petitioner that his appointment to the post in question should be governed by the old Rules of 2000 instead of the new Rules of 2010. As such, the only relief in the facts of this case that can be granted to the petitioner is that he shall be given the appointment w.e.f., the date of culmination of the selection process as a 'Follower' i.e., from October 2008. The appointment shall be made in the erstwhile Group-D Posts/ 'Followers', and thereafter, he shall be given proper training to make him combatised. On successful completion of such training, he should be absorbed in the grade of combatant Constable (Washerman). It is clarified that the petitioner shall not be entitled to any monetary benefits. His seniority and pay fixation (on notional basis) shall relate back to the month of October 2008.

40. The present writ petition is disposed of in the above terms. There is no order as to Costs.

CM APPL. 28072/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

MARCH 11, 2024*/jg*