Poonam vs State Of U.P.& Ors on 29 October, 2015

Author: Dipak Misra

Bench: R. Banumathi, Dipak Misra

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6774 of 2015
(@ SLP(C) NO. 16650 OF 2012)

Poonam ... Appellant

Versus

State of U.P. & Ors. ... Respondents

J U D G M E N T

Dipak Misra, J.

The appellant invoked the jurisdiction of the High Court of Judicature at Allahbad under Article 226 of the Constitution praying, inter alia, for issue of writ of certiorari for quashment of the order dated 2.3.2012 passed by the respondent no.2, Commissioner, Azamgarh Division, Azamgarh in Appeal No. 85/109/153/334/M of 2008-12 and further seeking a writ of Mandamus against the respondents not to interfere in the peaceful functioning of fair price shop in Gram Sabha Ardauna, Tehsil Sadar, District Mau.

2. The facts that formed the bedrock of the writ petition are that a fair price shop being shop no. 2 was run by the 5th respondent in Gram Sabha Ardauna, Tehsil Sadar, Block Ratanpura, District Mau, which was allotted to him by allotment order dated 11.5.2001 and while he was continuing, on various complaints being made against him pertaining to non- distribution of essential commodities, Sub-Divisional Magistrate, Sadar, District Mau ordered an enquiry and after obtaining the report, suspended his licence and called for an explanation from him vide order dated 30.5.2008. As the factual matrix would depict vide order dated 3.6.2008 the shop of respondent no.5 was attached to another shop being run by one Bhupendra Singh and the respondent no.5 handed over the charge of shop on 19.7.2008. On the said date the final enquiry report was placed before the Deputy District Magistrate, Sadar, District Mau and the report reflected that there was improper distribution of essential commodities in violation of instructions and accordingly the competent authority by its order dated 23.7.2008 cancelled the allotment of the respondent no.5.

3. Being dissatisfied with the order of cancellation, the 5th Respondent preferred an appeal before the Commissioner, Azamgarh assailing the order dated 23.7.2008, along with an application for stay of the cancellation of allotment, but the appellate authority declined to pass any interim protective order. Eventually, the appeal preferred by the appellant was allowed. May it be stated that the appellant herein had got herself impleaded in the appeal on the ground that she had been allotted the shop no.2 after cancellation of the allotment along with the licence granted in favour of the original allottee, the appellant therein.

4. The appellate authority after hearing the appellant and the impleaded party and upon perusal of the file, opined that the entire proceeding against the original allottee was initiated on the basis of the oral statements pertaining to the allegations made by some BPL card holders that the shopkeeper had told them that their cards had been cancelled; and there was no enquiry and investigation by the Deputy District Magistrate from the official documents as regards the cancellation of original ration cards of the BPL card holders; that the allottee was not provided the copy of the investigation report and hence, he was deprived of opportunity to submit his clarification and on the whole, there were serious procedural lapses; and that on a careful scrutiny of number of aspects, it was perceptible that the investigation carried out by the Block Development Officer was absolutely faulty. Being of this view, the appellate authority by order dated 2.3.2012, allowed the appeal of the appellant, restored the allotment and cancelled the allotment of the subsequent allottee.

5. Aggrieved by the aforesaid order, the appellant herein who was the subsequent allottee in respect of shop no.2 preferred C.M.W.P. No. 16390 of 2012 before the High Court which by the impugned order dated 3.4.2012 relied upon an earlier judgment in Sri Pal Yadav v. State of U.P. and others[1] and dismissed the writ petition on the ground that she had no right to continue the litigation being a subsequent allottee, for she had no independent right.

6. Calling in question the legal defensibility of the order passed by the writ court, it is submitted by Mr. Dushyant Parashar, learned counsel for the appellant is that the approach of the High Court is absolutely erroneous inasmuch as it had treated the allotment of the appellant in respect of the fair price shop as a stop gap arrangement and she had entered into the shoes of the original allottee and, therefore, her allotment was subject to attainment of finality of cancellation order totally remaining oblivious to the fact that she was appointed as a dealer under Visually Handicapped quota. It is further urged by him that her rights being independent in nature, she has a right to assail the appellate order and the High Court could not have dismissed the writ petition without adverting to the merits of the case.

7. Mr. Vikrant Yadav, learned counsel appearing for the State, per contra, would contend that in the village Ardauna, two fair price shops were in existence and one was allotted to Mr. Bhupinder Singh and the other one to Mr. Arvind Kumar, the 5th respondent herein and on the basis of the complaint made by the Gram Sabha, the Sub-Divisional Magistrate had attached the shop of respondent no.5 to the shop of Bhupinder Singh, after suspending his licence on 3.6.2008 and eventually, an order of cancellation was passed; and when the order of cancellation was set aside in appeal, the original allottee is entitled to get back his allotment in respect of shop no.2. and hence, the appellant has no

legal right to assail the order passed by the appellate authority. Learned counsel for the State would further submit that shop no.2 having become available and there being no order that said shop is declared as the shop reserved for any kind of quota, either vertical or horizontal, the present appellant cannot assert any independent right in respect of the said shop.

8. At the very outset, we must unequivocally state that we are not required to enter into the issue whether cancellation was justified or not or the order passed by the appellate authority allowing the appeal is defensible in the facts and circumstances of the case, for the High Court has expressed its disinclination to enter into the said arena at the instance of the present appellant on the foundation that she was an allottee after the cancellation of the allotment who was the licencee to run the fair price shop of the 5th respondent. Learned counsel for the appellant has also rightly not advanced any argument in that regard except emphasising on the facet that as the appellant had an independent right on her own the High Court was under the lawful obligation to address itself with regard to legal substantiality of the order passed by the appellate authority on the touchstone of exercise of writ jurisdiction, however restricted it may be. To bolster the said submission, immense emphasis is placed on the nature of the allotment made in favour of the appellant.

9. Be it noted, before the appellate authority, the appellant had got herself impleaded after coming to know that the 5th respondent had preferred an appeal challenging the order of cancellation, and the appellate authority had considered the submissions of the original allottee as well as the present appellant. The thrust of the matter is whether the appellant can be regarded as a person who is a necessary party to the lis in such a situation and is entitled under law to advance the argument that the order passed by the appellate forum being legally unsustainable, the writ court was obliged to adjudicate the controversy on merits.

10. It is an admitted position that village Ardauna had initially two shops. Shop no.2 was allotted in favour of the 5th respondent and he was granted licence to run the fair price shop. On the basis of certain complaints being received the competent authority after an enquiry had cancelled the licence. The appellate authority after ascribing certain reasons, has overturned the said order. The effect of the said order has to be that the original allottee remains an allottee and his licence continues. The appeal was preferred challenging the cancellation of allotment and the order of licence. It is not a situation where the appeal had been treated to have been rendered infructuous on the basis of any subsequent event, such as, the shop in question has been demarcated for any reserved category. In that event, such subsequent fact would have been brought to the notice of the appellate authority and in that event, possibly no relief could have been granted by the appellate authority to the appellant except removing the stigma. The stand of the State is that initially the shop no.2 was attached to the other licencee and thereafter on the basis of the resolution passed by the Gram Sabha, it was allotted to the present appellant though it was mentioned that it had been granted under the visually impaired quota.

But the character of the shop remained the same.

11. At this juncture, it is obligatory on our part to refer to the letter-circular dated 1.2.2009 issued by the Chief Secretary, which refers to the Government Order dated 17.8.2002 in respect of the

scheduled caste, scheduled tribe and other backward classes. Thereafter, there is reference to certain horizontal reservation which refers to the ladies of certain reserved categories, family members of the army who had expired in the concerned reserved category, ex-army personnel, freedom fighters of the concerned reserved categories and their wives and the handicapped persons of the concerned category. After so stating, the circular proceeds to mention as under:-

> "In this regard I was direction to say that for the allotment of FPS shop in the rural and urban area, according to the above arrangement Horizontal reservation is also approved, under which there is arrangement to give 02% reservation to the candidate of handicapped persons. In view of the problem of the blind persons after appropriate consideration, the administration has decided that the blind handicapped be granted 1% reservation under Horizontal reservation. In this manner now to the handicapped person in place of 2% shall be approved 3% reservation and in this manner 1% increased reservation shall be approved only for the handicapped of blind persons. In this manner in para no.3 of the Govt order sub para Gh adding para 3(d), the handicapped person shall be granted 1% reservation.
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> In this manner Horizontal reservation shall be 36% in place of 35% which is under the total reservation category of 50%."

12. After issue of the said circular, a further letter dated 12.8.2008 was issued which mentioned the subject granting priority to the blind handicapped for completing the backlog in the vacant fair price shops under the public distribution system in rural and urban area. It is relevant to produce certain paragraphs of the said circular:-

> "1. Through Govt. order no. 2715/29-6-02-162-Sa/01 dated 17th August, 2012 for the allotment of FPS shop for the implementation of reservation has been issued guidelines and for the reservation of FPS shop also applied the Horizontal arrangement. Under the above arrangement there is the provision to grant 2% reservation to the handicapped. In the above horizontal there was no clear arrangement for blind handicapped persons. Vide Govt. order no. 311/29.06.08-162 SA/01 T.C. dated 01 February, 2008 amending the above Govt. order granted one percent horizontal reservation to handicapped blind person.
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> 2. It came in the notice of the administration that in regard to the reservation of blind handicapped persons vide Govt. order they are not getting the representation. It is pertinent to mention here that in the entire district of the state given the direction on the administration level to complete the quota of reservation. The administration after appropriate consideration has taken decision till then backlog cannot completed for the present reservation of the blind, since then the blind person should be granted first priority in the allotment of the shop, in consideration they are fulfilling the prescribed condition issued by the Govt for the allotment of the shop. In case that resident of gram Sabha, who is entitled, the blind do not apply then the resident of concern Gram Sabha block development area, other blind person shall be entitled to

> apply. In the allotment of FPS shop under Public Distribution system on the basis of total shop the reservation should be assessed. Up to the completion of blind handicapped should not furnish the shop from any category, under the public distribution system in regard to FPS shop time to time issued Govt order should be treated amended up to this limit." [underling is ours]

13. Though, the narration of facts is reflective of a different contour of controversy. i.e., allotment and grant of licence for a fair price shop, the seminal issue, as noted hereinabove, would hinge on the answer to the question pertaining to right to assail the order passed in appeal. The appellant was not impleaded as a party in the appeal but she herself got impleaded. Assuming the appellant authority would have decided the appeal in favour of the original allottee in her absence, could the present appellant, a subsequent allottee in respect of the same shop, have been allowed in law to make a grievance by invoking the jurisdiction of any statutory forum or for that matter the High Court under Article 227 of the Constitution. In essence, whether she is a necessary party to the litigation and entitled to contest the legal vulnerability of the order of cancellation or in any manner advance the plea that her allotment would not be affected despite the factum that the order of cancellation of the earlier allottee has been quashed. To appreciate the said issue we will dwell upon certain authorities though they may pertain to different jurisprudence.

14. First, it is necessary to understand about the concept of necessary and proper party. A Four-judge Bench in Udit Narain Singh Malpaharia v Additional Member Board of Revenue, Bihar and another[2] has observed thus:-

> "7. ....it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled: it is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in this proceeding. "

15. In Vijay Kumar Kaul and others v. Union of India and others[3] the court referred to the said decision and has opined thus:-

> "36. Another aspect needs to be highlighted. Neither before the Tribunal nor before the High Court, Parveen Kumar and others were arrayed as parties. There is no dispute over the factum that they are senior to the appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is difficult to grant.
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> 37. In this context we may refer with profit to the decision in Indu Shekhar Singh v. State of U.P.[4] wherein it has been held thus: (SCC p.

151, para 56) "56. There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority."

38. In Public Service Commission v. Mamta Bisht[5] this Court while dealing with the concept of necessary parties and the effect of non-impleadment of such a party in the matter when the selection process is assailed observed thus: (SCC pp. 207-08, paras 9-10) "9. ... in Udit Narain Singh Malpaharia v. Board of Revenue[6], wherein the Court has explained the distinction between necessary party, proper party and proforma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called 'CPC') provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh v. State of Gujarat[7], Babubhai Muljibhai Patel v. Nandlal Khodidas Barot[8] and Sarguja Transport Service v. STAT[9].)

10. In Prabodh Verma v. State of U.P.[10] and Tridip Kumar Dingal v. State of W.B.[11], it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties."

16. At this juncture, it is necessary to state that in Udit Narain (Supra) question arose whether a tribunal is a necessary party. Recently a two-Judge Bench in Asstt. G.M State Bank of India v. Radhey Shyam Pandey[12] referred to Hari Vishnu Kamath v. Ahmad Ishaque and Ors.[13] and adverted to the concept of a tribunal being a necessary party and in that context ruled that:-

> "In Hari Vishnu Kamath (supra), the larger Bench was dealing with a case that arose from Election Tribunal which had ceased to exist and expressed the view how it is a proper party. In Udit Narain Singh (supra), the Court was really dwelling upon the controversy with regard to the impleadment of parties in whose favour orders had been passed and in that context observed that tribunal is a necessary party. In Savitri Devi (supra), the Court took exception to courts and tribunals being made parties. It is apposite to note here that propositions laid down in each case has to be understood in proper perspective. Civil courts, which decide matters, are courts in the strictest sense of the term. Neither the court nor the Presiding Officer defends the order before the superior court it does not contest. If the High Court, in exercise of its writ jurisdiction or revisional jurisdiction, as the case may be, calls for the records, the same can always be called for by the High court without the Court or the Presiding Officer being impleaded as a party. Similarly, with the passage of time there have been many a tribunal which only adjudicate and they have nothing to do with the lis. We may cite few examples; the tribunals constituted under the Administrative Tribunals Act, 1985, the Custom, Excise & Service Tax Appellate Tribunal, the Income Tax Appellate Tribunals, the Sales Tax Tribunal and such others. Every adjudicating authority may be nomenclatured as a tribunal but the said authority(ies)

> are different that pure and simple adjudicating authorities and that is why they are called the authorities. An Income Tax Commissioner, whatever rank he may be holding, when he adjudicates, he has to be made a party, for he can defend his order. He is entitled to contest. There are many authorities under many a statute. Therefore, the proposition that can safely be culled out is that the authorities or the tribunals, who in law are entitled to defend the orders passed by them, are necessary parties and if they are not arrayed as parties, the writ petition can be treated to be not maintainable or the court may grant liberty to implead them as parties in exercise of its discretion. There are tribunals which are not at all required to defend their own order, and in that case such tribunals need not be arrayed as parties." The principle that has been culled out in the said case is that a tribunal or authority would only become a necessary party which is entitled in law to defend the order.

17. The term "entitled to defend" confers an inherent right to a person if he or she is affected or is likely to be affected by an order to be passed by any legal forum, for there would be violation of natural justice. The principle of audi alteram partem has its own sanctity but the said principle of natural justice is not always put in strait jacket formula. That apart, a person or an authority must have a legal right or right in law to defend or assail.

18. We may first clarify that as a proposition of law it is not in dispute that natural justice is not an unruly horse. Its applicability has to be adjudged regard being had to the effect and impact of the order and the person who claims to be affected; and that is where the concept of necessary party become significant. In The General Manager, South Central Railway, Secunderabad and another v. A.V.R. Siddhantti and Others[14] the Court was dealing with an issue whether the private respondent therein had approached the High Court under Article 226 of the Constitution for issue of a writ of mandamus directing the General Manager, South Central Railway and the Secretary, Railway Board to fix the inter se, seniority as per the original proceedings, dated 16.10.1952, of the Railway Board and to further direct them not to give effect to the subsequent proceedings dated 2.11.1957 and 13.01.1961 of the Board issued by way of "modification" and 'clarification" of its earlier proceedings of 1952. The High Court accepted the contentions of the private respondent and struck down the impugned proceedings. A contention was canvassed before this Court that the writ petitioners had not impleaded about 120 employees who were likely to be affected by the decision and, therefore, there being non-impleadment despite they being necessary parties, it was fatal to the decision. Rejecting the said submission the court held:-

> "As regards the second objection, it is to be noted that the decisions of the Railway Board impugned in the writ petition contain administrative rules of general application, regulating absorption in permanent departments, fixation of seniority, pay etc. of the employees of the erstwhile Grain Shop Departments. The respondents-petitioners are impeaching the validity of those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of Government servant is assailed. In such proceedings the necessary parties to be impleaded are those against whom the relief is sought, and in

whose absence no effective decision can be rendered by the Court. In the present case, the relief is claimed only against the Railway which has been impleaded through its representative. No list or order fixing seniority of the petitioners vis-a-vis particular individuals, pursuant to the impugned decisions, is being challenged. The employees who were likely to be affected as a result of the re-adjustment of the petitioner's seniority in accordance with the principles laid down in the Board's decision of October 16, 1952, were, at the most, proper parties and not necessary parties, and their non-joinder could not be fatal to the writ petition."

19. The court further agreed with the principle stated in B. Gopalaiah and Ors v. Government of Andhra Pradesh[15], J.S. Sachdev and Ors. v.

Reserve Bank of India, New Delhi[16] and Mohan Chandra Joshi v. Union of India and Ors.[17] In this context reference to the authority in State of Himachal Pradesh and another v. Kailash Chand Mahajan and Others[18] would be appropriate. In the said case a contention was raised that non-impleadment of the necessary party was fatal to the writ petition. In support of the said stand reliance was placed upon two decisions of two different High Courts; one, State of Kerala v. Miss Rafia Rahim[19] and the other in Padamraj v. State of Bihar[20]. The Court distinguished both the decisions by holding thus:-

"The contention of Mr Shanti Bhushan that the failure to implead Chauhan will be fatal to the writ petition does not seem to be correct. He relies on State of Kerala v. Miss Rafia Rahim. That case related to admission to medical college whereby invalidating the selection vitally affected those who had been selected already. Equally, the case Padamraj Samarendra v. State of Bihar, has no application. This was a case where the plea was founded in Article 14 and arbitrary selection. The selectees were vitally affected. The plea that the decision of the court in the absence of Chauhan would be violative of principle of natural justice as any adverse decision would affect him is not correct." The Court placed reliance on A. Janardhana v. Union of India[21] and ultimately did not accept the submission that the writ petition was not maintainable because of non-impleadment of the necessary party.

20. In this context the authority in Sadananda Halo and Others v. Momtaz Ali Sheikh and Others[22] is quite pertinent. The Division Bench referred to the decision in All India SC & ST Employees' Assn. v. A. Arthur Jeen[23] wherein this court had addressed the necessity in joining the necessary candidates as parties. The Court referred to the principle of natural justice as enunciated in Canara Bank v. Debasis Das[24]. We may profitably reproduce the same:-

"Natural justice has been variously defined. It is another name for common sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and

restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice." And again:-

"Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. The adherence to principles of natural justice as recognised by all civilised States is of supreme importance...."

21. We have referred to the aforesaid passages as they state the basic principle behind the doctrine of natural justice, that is, no order should be passed behind the back of a person who is to be adversely affected by the order. The principle behind proviso to Order I Rule 9 that the Code of Civil Procedure enjoins it and the said principle is also applicable to the writs. An unsuccessful candidate challenging the selection as far as the service jurisprudence is concerned is bound to make the selected candidates parties.

22. In J.S. Yadav Vs State of U.P. & Anr[25] in Paragraph 31 it has been held thus:-

"No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice. The principles enshrined in the proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 provide that impleadment of a necessary party is mandatory and in case of non-joinder of necessary party, the petitioner-plaintiff may not be entitled for the relief sought by him. The litigant has to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise the proceedings will have to fail. In service jurisprudence if an unsuccessful candidate challenges the selection process, he is bound to implead at least some of the successful candidates in representative capacity. In case the services of a person are terminated and another person is appointed at his place, in order to get relief, the person appointed at his place is the necessary party for the reason that even if the petitioner-plaintiff succeeds, it may not be possible for the Court to issue direction to accommodate the petitioner without removing the person who filled up the post manned by the petitioner- plaintiff. (Vide

Prabodh Verma V. State of U.P, Ishwar Singh Vs. Kuldip Singh, Tridip Kumar Dingal Vs. State of W.B, State of Assam V. Union of India and Public Service Commission V. Mamta Bisht). More so, the public exchequer cannot be burdened with the liability to pay the salary of two persons against one sanctioned post".

23. To appreciate the said decision in a real perspective, it is absolutely necessary to state the facts under which the decision was rendered and such a statement of law was made. The issue that arose before this Court related to an order passed by the High Court of Allahabad by which it had dismissed the writ petition filed by the appellant challenging the notification dated 28.05.2008 by which on the date of constitution of the Uttar Pradesh State Human Rights Commission, the appellant was declared to cease to hold the office as a member of the said commission. This Court noted the facts which were relevant and germane for the disposal of the appeal in paragraph 2. The appellant therein was appointed as a member of the Commission on 29.06.06 for a period of five years. Certain provisions of the Protection of Human Rights Act 1993, stood amended vide the Protection of Human Rights (Amendment Act, 2006) which came into force on 23.11.2006. After completion of the tenure by Chairperson of the Commission and other members in October 2007, the appellant remained the lone working member of the Commission. The State Government issued the notification on 28.05.2008 to the effect that the appellant had ceased to hold the office as a Member of the Commission. The said notification was challenged on the ground that he had been appointed for a tenure of five years and that period could not be curtailed. The appellant had not impleaded any of the members who had been appointed as members on 06.06.2008. Various contentions were raised on behalf of the appellant and the said submissions were resisted by the State on two counts, namely, that the appellant had not impleaded the newly appointed members as parties and further he had suffered the disability by virtue of the operation of the amended law. This court referred to the provision contained in unamended Section 21(2) of the Act and the Amended Section 21(2) of the Act. Prior to the amendment, the qualification prescribed for Member was "a person who is or has been a District Judge in that State" and after the amendment the qualification of the member was changed to the extent "he is or has been a Judge of a High Court or District Judge in the State with a minimum of 7 years experience as a District Judge". The court referred to Article 236(a) of the Constitution and Section 3(17) of the General Clauses Act, 1897. Be it stated, the contention was advanced that a person who has gained experience as an Additional District Judge, he would be entitled for consideration as his experience is equivalent to that of a District Judge.

Repelling the said submission, the Court held:-

"12. The aforesaid submission seems to be very attractive but has no substance for the reason that a cadre generally denotes a strength of a service or a part of service sanctioned as a separate unit. It also includes sanctioned strength with reference to grades in a particular service. Cadre may also include temporary, supernumerary and

shadow posts created in different grades. The expressions "cadre", "posts" and "service" cannot be equated with each other. (See Union of India v. Pushpa Rani and State of Karnataka v. K. Govindappa[26].) There is no prohibition in law to have two or more separate grades in the same cadre based on an intelligent differential. Admittedly, the post of District Judge and Additional District Judge in the State of U.P. is neither interchangeable nor intertransferable. The aforesaid Rules merely provide for an integrated cadre for the aforesaid posts. Thus, the submission is liable to be rejected being preposterous.

xxx xxx xxx

14. In such a fact situation, we do not see any cogent reason to take a view contrary to the same for the reason that in case the legislature in its wisdom has prescribed a minimum experience of seven years as a District Judge knowing it fully well the existing statutory and constitutional provisions, it does not require to be interpreted ignoring the legislative intent. We cannot proceed with an assumption that legislature had committed any mistake enacting the said provision. Clear statutory provision in such a case is required to be literally construed by considering the legislative policy. Thus, no fault can be found with the impugned judgment and order of the High Court on this count."

24. After so stating, the Court noted the fact that 2006 amendment was not under challenge. However, it noted that the issue agitated by the appellant was that the legislature never intended to apply the amended provisions with retrospective effect and, therefore, it could not be discontinued from the post, for his rights stood protected by the provisions of Section 6 of the General Clauses Act. The Court referred to the authorities in State of Punjab v. Bhajan Kaur[27], Sangam Spinners v.

Regl. Provident Fund Commr.[28], and Railway Board v. C.R. Rangadhamaiah[29] and held as follows:-

"Thus, from the above, it is evident that accrued rights cannot be taken away by repealing the statutory provisions arbitrarily. More so, the repealing law must provide for taking away such rights, expressly or by necessary implication."

25. Thereafter, the Court proceeded to lay down as follows:-

"There is no specific word in the 2006 Amendment Act to suggest its retrospective applicability. Rather the positive provisions of Section 1 suggest to the contrary as it reads:-

"1. Short title and commencement.—(1) *** (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint." Undoubtedly, the amended provisions came into force on 23-11-2006 vide S.O. 2002

(E), dated 23-11-2006, published in the Gazette of India, Extra Pt.

II, Section 3(ii) dated 23-11-2006. In fact, the date 23-11-2006 is the pointer and puts the matter beyond doubt. Thus, in view of the above, we do not have any hesitation to declare that the Notification dated 28-5-2008 is patently illegal."

26. After so stating, in paragraph 32 of the judgment, the Court held thus:-

> "The appellant did not implead any person who had been appointed in his place as a Member of the Commission. More so, he made it clear before the High Court that his cause would be vindicated if the Court made a declaration that he had illegally been dislodged/restrained to continue as a Member of the Commission. In view of the above, he cannot be entitled to any other relief except the declaration in his favour which had been made hereinabove that the impugned Notification dated 28-5-2008 is illegal."

27. On a keen understanding of the aforesaid authority, two aspects are clear. First, it had noted the fact what was pleaded before the High Court that the selected members were not arrayed as parties. Thereafter, it had proceeded to deal with the distinction between a District Judge and an Additional District Judge, that is, for the purpose of meeting the qualification under the amended Act. Thereafter, as is manifest, it proceeded to analyse the retrospective applicability of the amended provision and opined that the provision is not retrospectively applicable and, therefore, notification is bad in law. Paragraph 31 of the decision proceeded to state that unless necessary parties are arrayed, no relief can be granted. Irrefragably, there can be no cavil over the said proposition of law. Thereafter, the Division Bench proceeded to state that in case the services of a person are terminated and another person is appointed in his place, in order to get the relief, the person appointed at his place is the necessary party for the reason that even if the petitioner succeeds, it may not be possible for the Court to issue a direction to accommodate the petitioner without removing the person who filled up the post manned by the petitioner. To arrive at the said conclusion, five authorities have been relied upon. We shall discuss at length the said decisions.

28. We shall deal with the authorities in seriatim. A three-judge Bench decision in Prabodh Verma and Others v. State of Uttar Pradesh and Others[30] requires to be addressed. The facts in the said case deserved to be stated. In the said case the principal question that arose for determination before this Court was the constitutional validity of two Uttar Pradesh Ordinances, namely, (1) The Uttar Pradesh High Schools and Intermediate Colleges (Reserve Pool Teachers) Ordinance, 1978 (U.P. Ordinance 10 of 1978), and (2) The Uttar Pradesh High Schools and Intermediate Colleges Reserve Pool Teachers) (Second) Ordinance, 1978 (U.P. Ordinance 22 of 1978). The High Court on certain reasons had struck down the ordinance. Be it noted, the writ petition was filed by the Uttar Pradesh Madhyamik Shikshak Sangh. Apart from the question of validity, the subsidiary question that arose before this Court is whether the termination of the services of the appellants and the petitioner before this Court as secondary school teachers and intermediate college lecturers following upon the High Court judgment is valid and, if not, the relief to which they are entitled. After narrating the facts, the Court observed that the writ petition filed by the Sangh suffered from

two serious, though not incurable, defects. We think it appropriate to reproduce the statement of facts as reproduced in the judgment.

"The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of Uttar Pradesh and its concerned officers. Those who were vitally concerned, namely, the reserve pool teachers, were not made parties — not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non- joinder of necessary parties."

29. Thereafter the Court proceeded to summarise its conclusion and the relevant conclusion for the present purpose are reproduced below:-

> "50 (1) A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join, then the High Court ought to dismiss the petition for non-joinder of necessary parties.
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> (2) The Allahabad High Court ought not to have proceeded to hear and dispose of Civil Miscellaneous Writ No. 9174 of 1978 — Uttar Pradesh Madhyamik Shikshak Sangh v. State of Uttar Pradesh — without insisting upon the reserve pool teachers being made respondents to that writ petition or at least some of them being made respondents thereto in a representative capacity as the number of the reserve pool teachers was too large and, had the petitioners refused to do so, to dismiss that writ petition for non-

joinder of necessary parties."

30. On a studied perusal of the aforesaid judgment, it is crystal clear that this Court had opined that when the constitutional validity of a provision is challenged and there are beneficiaries of the said provision, some of them in a representative capacity have to be made parties failing which the writ court would not be justified in hearing a writ petition in the absence of the selected candidates when they are already appointed on the basis of the provision which was under assail before the writ court.

31. In Ishwar Singh v Kuldip Singh and others[31], a two-Judge Bench was dealing with the situation where the selection and consequent appointments were challenged by unsuccessful candidates before the High Court primarily on the ground that the interviews held for the said selection were a sham affair. The High Court had quashed the selection and the appointments on the foundation that the interviews held were neither fair nor proper thereby vitiating the selection. This Court dislodged the order of the High Court on a singular count which is to the following effect: -

> "It is not disputed by the learned counsel for the parties that except Ishwar Singh, no other selected candidate was impleaded before the High Court. The selection and the appointments have been quashed entirely at their back. It is further stated that even Ishwar Singh, one of the selected candidates, who was a party, had not been served and as such was not heard by the High Court. We are of the view that the High Court was not justified in hearing the writ petition in the absence of the selected candidates especially when they had already been appointed."

32. The decision in the aforesaid case is graphically clear that the selection was under challenge but the selectees were not made parties. There can be no shadow of doubt that they were necessary parties and, therefore, this Court expressed the view, which we have reproduced hereinabove.

33. In Tridip Kumar Dingal and other v. State of West Bengal and Others[32] an appeal was preferred by the appellants being aggrieved and dissatisfied with the judgment and order passed by the High Court of Calcutta. The facts giving rise to the appeal by special leave before this Court were that the State of West Bengal in the Department of Health and Family Welfare taking note of the acute shortage and non-availability of adequate number of Medical Technologists, took an initiative to fill up the requisite number of vacancies by taking up the matter with Employment Exchange. A Memorandum was issued by the Assistant Director of Health Services (Administration) to the Director of Employment Exchange for sponsoring the names of candidates for the post of Medical Technologists. Eventually, on the basis of the marks obtained in the oral interview, a list was prepared. The candidates who could not get entry into the select list challenged the same before the West Bengal Administrative Tribunal. The tribunal granted liberty to the authorities to make appointments of the candidates selected and empanelled subject to the result in the Original Application. The matter at various times travelled to the High Court, which directed for disposal of the Original Application. Eventually, the tribunal directed for preparation of the fresh merit list on the basis of marks obtained in the written examination and oral interview excluding those who were already in service. The tribunal also observed that the Committee had fixed 40% as pass marks in the oral interview and the said standard should be applied on the total marks as pass marks and appointment should be given from the fresh panel so prepared in order of merit subject to reservation and filling up of vacant posts. The decision of the tribunal was challenged before the High Court and the High Court opined that the question of retaining those candidates who had been appointed must be considered afresh by the tribunal since the tribunal had not assigned any reason as to why they should be permitted to be continued in service. The High Court had expressed the view that no sympathy should have been shown to the candidates when the tribunal itself had expressed the opinion that the selection process was vitiated. Various other reasons were also ascribed by the High Court. After remit, the tribunal considering the rivalised submissions and

taking an overall view of the matter found that the selection process was bona fide and in accordance with law and, therefore, it requires to be approved. The tribunal further held that appointments which had already been made by the authorities in respect of 190 candidates who had gained experience of more than three years of work of investigation entrusted to them should not be disturbed. A direction was issued to the State authorities to offer appointments to successful candidates in the waiting list subject to the availability of vacancies following medical examination and police verification. The said judgment was challenged before the High Court which set aside the order of the tribunal and directed a fresh panel of Medical Technologists to be prepared by the State Government on the basis of the qualifying marks obtained both in the written test as well as in the oral interview. Certain directions were given by the High Court including the one if those candidates who had already been appointed did not find place in the panel, consequential orders would be made by the State Government but those who were in the panel were accommodated if by reason of existing vacancies, they should be accommodated. The said order became the subject matter of special leave petition which was dismissed as withdrawn. As the order of the High Court was not implemented, a contempt petition was filed. An unconditional apology was offered on behalf of the contemners stating that they were ready and willing to carry out the directions. At that juncture, the High Court passed an interim order to the extent that Court was not inclined to issue any direction for removal/termination of services of 66 persons who were working since three to four years. The Court also directed the State to report to the Court as regards the exact number of vacancies which were available for the appointment of the panel to be prepared and to inform whether nine vacancies which had become defunct could be revived. When the matter was placed again on the next date, the High Court noted that a panel of 586 candidates, had been prepared on the basis of 40% marks obtained by candidates both in the written test as well as in the oral interview. It also observed that 66 persons who had been appointed could be accommodated by granting liberty to the State Government in the manner it thought best without disturbing their seniority or continuity of service. It further directed that remaining vacancies should be filled up on the basis of seniority position from the panel of 586 candidates. With the aforesaid directions, the contempt petition was disposed of and the said order was assailed before this Court. After hearing the learned counsel for the parties, this Court came to hold that the contention on behalf of the State Government that written examination was held for shortlisting the candidates and was in the nature of elimination test had no doubt substance, for the said authorities regard being had to the large number of applicants seeking appointment and small number of vacancies, had no other option but to screen candidates by holding a written examination more so, when there were no rules in that regard. This Court further opined that it was an administrative decision and such a plea was raised by the State in the first round of litigation before the tribunal which had held that the action of State authorities to be wrong and the High Court upheld it and State did not challenge the order before this Court and, therefore, in the second round the High Court did not commit any error of law in directing the authorities to prepare merit list on the basis of marks obtained by the candidates in written examination as also in oral interview. It was further held that in such a situation it was not open to the State authorities to reiterate and reagitate the same ground on the same occasion. A contention was raised on behalf of the appellant that there cannot be more than 15% marks at the oral interview, which was not accepted by this Court at that stage, for such a direction was issued as early as in 2000 and the appellants were applicants before the Tribunal and the petitioners before the High Court had accepted the said decision and did not challenge the legality thereof by approaching

this Court. Thereafter, the Court proceeded to deal with the 66 candidates. In that context it ruled as follows:-

> "Regarding protection granted to 66 candidates, from the record it is clear that their names were sponsored by the employment exchange and they were selected and appointed in 1998-1999. The candidates who were unable to get themselves selected and who raised a grievance and made a complaint before the Tribunal by filing applications ought to have joined them (selected candidates) as respondents in the original application, which was not done. In any case, some of them ought to have been arrayed as respondents in a "representative capacity". That was also not done. The Tribunal was, therefore, wholly right in holding that in absence of selected and appointed candidates and without affording opportunity of hearing to them, their selection could not be set aside." [Emphasis added]
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> 34. We have referred to the said authority in a comprehensive manner to understand the ratio. It is quite simple. If a non-selected candidate challenges the selection, he is under legal obligation to implead the selected candidates as they are necessary parties and there can be no two opinions as regards such a proposition of law.
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> 35. In State of Assam v. Union of India and Others[33] the State of Assam, being aggrieved by the decision rendered in writ appeal and the dismissal of the review application filed by it, had approached this Court.

The factual matrix as was presented before the Court was that Union of India had introduced "Family Welfare Scheme" under its Family Planning Programme and under the said Scheme, there was a provision for appointment of Voluntary Female Attendants on a monthly honorarium of Rs.50/- per month from the inception of the Scheme which was subsequently increased to Rs.100/- per month, w.e.f. February, 2001. As the factual narration would show a writ petition was filed claiming benefit from the respondents of the pay of Rs.900/- per month, the minimum of the pay scale payable to the Voluntary Female Attendants. A prayer was also made for regularisation. A direction was given by the High Court that it was for the State Government to consider the prayers in accordance with law. A similar writ was filed by another female attendant wherein the Union of India and the State of Assam were arrayed as respondents and the High Court disposed of the writ petition relying on the earlier judgment. The Union of India being aggrieved preferred a writ appeal in which it did not implead the State of Assam as a party to those proceedings. The contention of the Union of India was that the voluntary female attendants were not their employees and, therefore, the Single Judge was not correct in issuing direction to the Union of India for payment of minimum pay scale. It was urged that the State of Assam had issued appointment letters to the said female attendants. There was no mention in those appointment letters that they were appointed under the centrally sponsored scheme. A prayer was made to discharge them of their liability of any payment of wages to the private respondents appointed by the State Government. The Division Bench accepted the stand of the Union of India and held that the appointment letters had nothing to link them with the centrally sponsored scheme of voluntary workers at fixed honorarium. On the basis of the aforesaid analysis, the Division Bench observed that the Union of India had no responsibility of

making the payment on the minimum of the pay scale to the voluntary female attendants, and fixed the liability on the State of Assam. Being aggrieved, the State of Assam had preferred the appeal by special leave. The two-Judge Bench referred to the decision in Udit Narain (supra) and opined thus:-

> "15. In aid of his submission, the learned Senior Counsel has placed reliance on the law laid down by this Court in Udit Narain Singh Malpaharia v. Board of Revenue, wherein it was held that in proceedings for a writ of certiorari, it is not only the tribunal or authority whose order is sought to be quashed but also the parties in whose favour the said order is issued, are necessary parties and that it is in the discretion of the court to add or implead proper parties for completely settling all the questions that may be involved in the controversy either suo motu or on the application of a party to the writ or on application filed at the instance of such proper party.
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> 16. We respectfully agree with the observations made by this Court in Udit Narain case and adopt the same. We may add that the law is now well settled that a necessary party is one without whom, no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceeding.

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23. We are also unable to comprehend any possible reasons for the Union of India to omit the State of Assam from the array of parties in the writ appeals filed before the Division Bench of the High Court. The fact remains that they were not made parties to the proceedings. The High Court, in our view, while allowing the appeals filed by the Union of India and shifting the liability of payment of salary/wages to the Voluntary Female Attendants on the State of Assam, should have taken a little more care and caution to find out whether the State of Assam is arrayed as a party to the proceedings and whether they are served with the notice of the appeals and in spite of service, whether they have remained absent. This is the least that is expected from the Court. Without making this small verification, the Division Bench of the High Court has fixed huge recurring financial liability on the State Government. In our opinion, in matters of this nature, even by mistake of the party, the proper parties were not arrayed in the proceedings, it is the duty of the Court to see that the parties are properly impleaded. It is well-settled principle consistent with natural justice that if some persons are likely to be affected on account of setting aside a decision enuring to their benefit, the Court should not embark upon the consideration and the correctness of such decision in the absence of such persons."

36. The proposition of law stated hereinabove has to be understood in proper perspective. There were two prayers in the writ petition. One was for payment of salary, the other was for regularisation. Ultimately, the Division Bench absolved the Union of India from liability of payment and fastened it on the State. The State was not arrayed as a party to the lis. That was an accepted

fact. Needless to emphasise the State of Assam was a necessary party and more so when the Union of India was taking the stand that it was the State of Assam which had to bear the liability. The State of Assam was entitled to resist the stand and stance put forth by the Union of India in law.

37. In Public Service Commission, Uttranchal v. Mamta Bisht and Others[34] it was held by a two-Judge Bench that the first respondent therein wanted her selection against a reserved category vacancy and, therefore, the last selected candidate in that category was a necessary party and without impleading her the writ petition could not have been entertained by the High Court, for if a person challenges a selection process, successful candidates or at least some of them are to be arrayed as parties they being necessary parties. To appreciate the controversy, we must reproduce two paragraphs from the said authority:-

> "9. In case Respondent 1 wanted her selection against the reserved category vacancy, the last selected candidate in that category was a necessary party and without impleading her, the writ petition could not have been entertained by the High Court in view of the law laid down by nearly a Constitution Bench of this Court in Udit Narain Singh Malpaharia v. Board of Revenue, wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1, Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called "CPC") provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh v. State of Gujarat, Babubhai Muljibhai Patel v. Nandlal Khodidas Barot[35] and Sarguja Transport Service v. STAT[36].)
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> 10. In Prabodh Verma v. State of U.P. and Tridip Kumar Dingal v. State of W.B., it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties."

38. The said decision, as we understand, clearly spells out that in the absence of a necessary party, no adjudication can take place and, in fact, the non-joinder would be fatal to the case.

39. The aforesaid decisions do not lay down as a proposition of law that in every case when a termination is challenged, the affected person has to be made a party. What has been stated is when one challenges a provision as ultra vires the persons who are likely to be affected, some of them should be made parties in a representative capacity. That has been the consistent view of this Court in service jurisprudence. Some other decisions, which have been relied upon are directly connected with regard to the selection and selectees. On a perusal of the analysis made in J.S. Yadav (supra), we are disposed to think that the Court has applied the principle pertaining to the constitutional validity by equating it with the interpretation of a provision, whether it is retrospective or prospective. That apart, the Court, as is evident from paragraph 32 of the judgment, has noted that

the prayer made by the appellant only related to the declaratory relief. The said decision has to be understood in the context. A ratio of a decision has to be understood in its own context, regard being had to the factual exposition. If there has been advertence to precedents, the same has to be seen to understand and appreciate the true ratio. The ratiocination in the said decision is basically founded on the interpretation of the statutory provision and the relief claimed. The Court has been guided by the fact that when the interpretation as regards the provision whether it is retrospective or prospective, the selected members are necessary parties.

40. In this regard, we may refer to the rule stated by Lord Halsbury in Quinn v. Leathem[37]:-

> "Every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law but govern and are qualified by the particular facts of the case in which such expressions are to be found."

41. A three-Judge Bench in Union of India and others v. Dhanwanti Devi and others[38] while discussing about the precedent under Article 141 of the Constitution, held that:-

> "9. Before adverting to and considering whether solatium and interest would be payable under the Act, at the outset, we will dispose of the objection raised by Shri Vaidyanathan that Hari Krishan Khosla case[39] is not a binding precedent nor does it operate as ratio decidendi to be followed as a precedent and is per se per incuriam. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well- settled theory of precedents, every decision contains three basic postulates—(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear

> what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.
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> 10. Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents……"

42. From the aforesaid, it is clear as day that what has been stated in paragraph 31 in the case of J.S. Yadav (supra) does not even follow from the authorities referred to therein. We have analysed the principle of when and in what circumstances, a decision becomes a binding precedent. We have also discussed the facts at length keeping in view the declaratory relief made in the writ petition preferred before the High Court. The context in which the observations have been made have to be kept in mind. Regard being had to the factual scenario in entirety and further taking note of the fact that the court was basically concerned with the retrospective and prospective applicability of the provision, we are disposed to think that it is not a binding precedent for the proposition that in a case of termination or removal or dismissal, the person appointed in the place of a terminated, removed or dismissed employee would be a necessary party. That is how the said authority has to be understood, and we so understand.

43. It has been held in Debasis Das (supra), the principles of natural justice are to be determined in the context and it must depend to a great extent on the facts and circumstances of that case. In this context, the decision in Kailash Chand Mahajan (supra) becomes extremely apposite. May it be noted, we have already referred to the said judgment but a detailed analysis is necessary to understand the present controversy. In the said case, the first respondent, after his retirement, was appointed as a Member of the Himachal Pradesh State Electricity Board and thereafter as the Chairman of the said Board. He was granted extensions from time to time. The last extension was issued on June 12, 1989 for a period of three years i.e., July 25, 1992. After the General Elections to the Legislative Assembly which was held in January 1990, the Government issued a notification on March 6, 1990 by which the earlier notification was superseded and the appointment of the said respondent as Chairman was extended from July 25, 1989 to March 6, 1990. Another notification was issued on the same date directing that one R.S. Chauhan shall function as the Chairman of the Board. The first respondent preferred a writ petition assailing the validity of the notification by which his period was curtailed and prayed for certiorari to quash the same. When the writ petition was pending, a notification was issued terminating the appointment of the writ petitioner. The High Court had passed a direction that no appointment to the post of Chairman could be made till further orders of the Court. That order was passed on 30th March, 1990. At the time of conclusion of the

hearing, the learned Advocate General after obtaining instructions filed an undertaking to the effect that the notification dated March 6, 1990 curtailing the period of the writ petitioner would be withdrawn. Accepting the undertaking, the writ petition was disposed of. On June 11, 1990, the Government withdrew both the notifications, i.e., March 6, 1990 and March 30, 1990. On June 11, 1990, a show cause notice was issued to Kailash Chand Mahajan and eventually he was suspended and R.S. Chauhan, a Member of the Board was allowed to function as the Chairman. The issuance of the show cause notice and the order of suspension were challenged in a writ petition. Various arguments were advanced from both sides and the High Court eventually quashed the notifications issued by the State. Be it noted, a contention was raised before the High Court that R.S. Chauhan having been appointed as the Chairman, he ought to have been impleaded as a party which was rejected by the High Court. This Court, dwelling upon various facets, posed the question whether the failure to implead R.S. Chauhan would be fatal to the writ petition. Addressing the said issue, as stated earlier, this Court distinguished the decision of Miss Rafia Rahim (supra) and Padamraj (supra) and thereafter proceeded to state thus:-

> "104. On the contrary, we think we should approach the matter from this point of view, viz., to render an effective decision whether the presence of Chauhan is necessary? We will in this connection refer to A. Janardhana v. Union of India it is held as under:
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> "Approaching the matter from this angle, it may be noticed that relief is sought only against the Union of India and the Ministry concerned and not against any individual nor any seniority is claimed by anyone individual against another particular individual and, therefore, even if technically the direct recruits were before the court, the petition is not likely to fail on that ground."
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> 105. What was the first respondent seeking in the writ petition? He was questioning the validity of the Ordinance and the Act whereby he had been deprived of his further continuance. What is the relief could he have asked for against Chauhan? None. The first point is Chauhan came to be appointed consequent to the suspension of the first respondent which suspension had come to be stayed by the High Court on June 12, 1990. Then, again, as pointed out by the High Court it was "till further orders". Therefore, we hold the failure to implead Chauhan does not affect the maintainability of the writ petition." [Emphasis added] The said decision, we are inclined to think is a binding precedent for the purpose of understanding the concept of necessary party. The Court has relied on the pronouncement in A. Janardhana (supra). What has been really laid down is that R.S. Chauhan was not entitled in law to contest the lis as Kailash Chand, the aggrieved party, was challenging the ordinance as he had faced the curtailment of period of his tenure.

44. In this context, we may refer to certain other authorities where there has been an expansion of the concept of necessary party. The Constitution Bench in U.P. Awas Evam Vikas Parishad vs. Gyan Devi (Dead) by LRs. & Ors.[40] has laid down that in a land acquisition proceeding, the local authority is a necessary party in the proceedings before the Reference Court and is entitled to be

impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard. That apart, it has also been stated that in the event of enhancement of the amount of compensation by the Reference Court, if the Government does not file an appeal, the local authority can file an appeal against the award in the High Court after obtaining leave of the Court. That apart, the Court also opined that in an appeal by the person having an interest in the land seeking enhancement of the amount of compensation awarded by the Reference Court, the local authorities should be impleaded as a party and is entitled to be served notice of the said appeal and that could apply to appeal in the High Court as well as in the Supreme Court.

45. In Delhi Development Authority vs. Bhola Nath Sharma (Dead) by LRs and Ors.[41], the question arose whether the Delhi Development Authority, at whose instance land of the respondent and others had been acquired, could be treated as a 'person interested' within the meaning of Section 3(b) of the Land Acquisition Act, 1894 and it was entitled to an opportunity to participate in the proceedings held before the Land Acquisition Collector and the Reference Court for determining the compensation. The two-Judge Bench referred to U.P. Awas Evam Vikas Parishat (supra) and relied upon a passage from SLP (C) No.1608 of 1999[42] and eventually allowed the appeal and set aside the impugned judgment of the High Court as well as that of the Reference Court and remitted the matter to the Reference Court to decide the reference afresh after giving opportunity of hearing to the parties which shall necessarily include opportunity to adduce evidence for the purpose of determining the amount of compensation.

46. We have referred to the aforesaid decisions with the purpose that the company or the authority has been treated as a necessary party on the foundation that it meets the criterion provided in the definition clause and that apart ultimately it has to pay the compensation. Therefore, it has a right in law to participate in the proceedings pertaining to determination of the amount of compensation. Factual score, needless to say, stands on a different footing.

47. Few examples can be given so that the position can be easily appreciated. There are provisions in some legislations pertaining to Gram Panchayat or Panchayat Samiti where on certain grounds the competent authority has been conferred the power to remove the elected Sarpanch or the Chairman, as the case may be on certain counts. Against the order of the Collector, an appeal lies and eventually either a revision or a writ lies to the High Court. After his removal, someone by way of indirect election from amongst the members of the Panchayats or the Panchayat Samiti is elected as the Sarpanch or the Chairman. The removed Sarpanch assails his order of removal as he is aggrieved by the manner, method and the reasons for removal. In his eventual success, he has to hold the post of the Sarpanch, if the tenure is there. The question, thus, arises whether the person who has been elected in the meantime from amongst the members of the Panchayat Samiti or Sabha is a necessary party. The answer has to be a categorical 'no', for he cannot oppose the order of removal assailed by the affected Sarpanch nor can he defend his election because he has come into being because of a vacancy, arising due different situation.

48. In the instant case, shop no.2 had become vacant. The appellant was allotted the shop, may be in the handicapped quota but such allotment is the resultant factor of the said shop falling vacant. The

original allottee, that is the respondent, assailed his cancellation and ultimately succeeded in appeal. We are not concerned with the fact that the appellant herein was allowed to put her stand in the appeal. She was neither a necessary nor a proper party. The appellate authority permitted her to participate but that neither changes the situation nor does it confer any legal status on her. She would have continued to hold the shop had the original allottee lost the appeal. She cannot assail the said order in a writ petition because she is not a necessary party. It is the State or its functionaries, who could have challenged the same in appeal. They have maintained sphinx like silence in that regard. Be that as it may, that would not confer any locus on the subsequent allottee to challenge the order passed in favour of the former allottee. She is a third party to the lis in this context. The decisions which we have referred to hereinbefore directly pertain to the concept of necessary party. The case of Kailash Chand Mahajan (supra) makes it absolutely clear. We have explained the authority in J.S. Yadav's case (supra) and opined that it has to rest on its own facts keeping in view the declaratory relief made therein, and further what has been stated therein cannot be regarded as a binding precedent for the proposition that in a case of removal or dismissal or termination, a subsequently appointed employee is a necessary party. The said principle shall apply on all fours to a fair price shop owner whose licence is cancelled. We may hasten to add, this concept will stand in contradistinction to a case where the land after having vested under any statute in the State have been distributed and possession handed over to different landless persons. It is because of such allotment and delivery of possession in their favour, that is required under the statute rights are created in favour of such allottees and, therefore, they are necessary parties as has been held in Ram Swarup & Ors. vs. S.N. Maira & Ors.[43] The subtle distinction has to be understood. It does not relate to a post or position which one holds in a fortuitous circumstance. It has nothing to do with a vacancy. The land of which possession is given and the landless persons who have received the Pattas and have remained in possession, they have a right to retain their possession. It will be an anarchical situation, if they are not impleaded as parties, whereas in a case which relates to a post or position or a vacancy, if he or she who holds the post because of the vacancy having arisen is allowed to be treated as a necessary party or allowed to assail the order, whereby the earlier post holder or allottee succeeds, it will only usher in the reverse situation – an anarchy in law.

49. In this context, reference to the judgment in Ramesh Hirachand Kundanmal vs. Municipal Corporation of Greater Bombay & Ors.[44] would be fruitful. The two-Judge Bench was dealing with the concept of duminus litis which relates to the plaintiff. The Court analysed the provision contained in Order I Rule 10 and various sub-rules. The subject matter in the case pertained to a dispute between the petitioner and the respondent no.1 which centered on the demolition and unauthorized construction by the competent authority under the Bombay Municipal Act. The respondent no.2 was the lessee in possession of the service station. The Municipal Corporation had not issued any notice to the said respondent. It was contended before the Court that the respondent no.2 was instrumental in the initiation of the proceeding by the Municipal Corporation against him. The court addressed to the issue whether the said respondent is a necessary or proper party. In the said case, the appellant had instituted a case against the third respondent for declaration that she was the lawfully married wife of the third respondent who had entered context and admitted the claim. An application for impleadment was sought by the respondent nos.1 and 2 on the ground that they were respectively the wife and son of the third respondent and they were interested in denying the appellant's status as wife and the children as the legitimate children of the third respondent. The

trial court had allowed the application and the said order was confirmed by the High Court in its revisional jurisdiction. This Court referred to the authority in Razia Begum vs. Anwar Begum[45] and came to hold that there is a clear distinction between the suits relating to property and those suits in which the subject matter of litigation is a declaration as regards status or legal character. The Court observed that in the former category, the rule of personal interest is distinguished from the commercial interest which is required to be shown before a person may be added as a party and accordingly held :-

> "The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights." And again:-
>
> "It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in Amon v. Raphael Tuck & Sons Ltd.[46], wherein after quoting the observations of Wynn-Parry, J. in Dollfus Mieg et Compagnie S.A. v. Bank of England[47], that their true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject matter of the action if those rights could be established, Devlin, J. has stated:
>
> "The test is 'May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights'." Eventually, the Court unsettled the order passed by the trial court as well as by the High Court.

50. We have referred to the said decision in extenso as there is emphasis on curtailment of legal right. The question to be posed is whether there is curtailment or extinction of a legal right of the appellant. The writ petitioner before the High Court was trying to establish her right in an independent manner, that is, she has an independent legal right. It is extremely difficult to hold that she has an independent legal right. It was the first allottee who could have continued in law, if his licence would not have been cancelled. He was entitled in law to prosecute his cause of action and restore his legal right. Restoration of the legal right is pivotal and the prime mover. The eclipse being over, he has to come back to the same position. His right gets revived and that revival of the right cannot be dented by the third party.

51. In view of the aforesaid premises, we do not perceive any merit in this appeal and, accordingly, the same stands dismissed. There shall be no order as to costs.

.....J. [Dipak Misra] ....., J.

[R. Banumathi] New Delhi October 29, 2015

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[1] 2008 (1) ADJ 718
[2] AIR 1963 SC 786
[3] (2012) 7 SCC 610
[4] (2006) 8 SCC 129
[5] (2010) 12 SCC 204
[6] AIR 1965 SC 786
[7] AIR 1965 SC 1153
[8] (1974) 2 SCC 706
[9] (1987) 1 SCC 5
[10] (1984) 4 SCC 251
[11] (2009) 1 SCC 768
[12] 2015 (3) SCALE 39
[13] AIR 1955 SC 233
[14] (1974) 4 SCC 335
[15] AIR 1969 AP 204
[16] ILR (1973) 2 Delhi 392
[17] C.W. No. 650 of 1970, decided by Delhi High Court
[18] 1992 Supp (2) SCC 251
[19] AIR 1978 Ker 176
[20] AIR 1979 Pat 266
[21] (1983) 3 SCC 601
[22] (2008) 4 SCC 619
[23] (2001) 6 SCC 380
[24] (2003) 4 SCC 557
[25] (2011) 6 SCC 570
[26] (2009) 1 SCC 1
[27] (2008) 12 SCC 112
[28] (2008) 1 SCC 391
[29] (1997) 6 SCC 623
[30] (1984) 4 SCC 251
[31] 1995 Supp (1) SCC 179
[32] (2009) 1 SCC 768
[33] (2010) 10 SCC 408
[34] (2010) 12 SCC 204
[35] (1974) 2 SCC 706
[36] (1987) 1 SCC 5
[37] (1901) AC 495, p. 506
[38] (1996) 6 SCC 44
[39] 1993 Supp (2) SCC 149
[40] (1995) 2 SCC 326
[41] (2011) 2 SCC 54
[42] Decided on 12.04.1999
[43] (1999) 1 SCC 738
[44] (1992) 2 SCC 524
[45] AIR 1958 SC 886
[46] (1954) 1 All ER 273
[47] (1950) 2 All ER 605, 611
