

3. In the year 2001, large number of vacancies of Junior Engineers existed in various departments of the State of Uttaranchal. Therefore, a proposal was sent by the State Government on 2nd November, 2001 to the PCSU for conducting a written examination. The written examination had to be conducted by IIT, Roorkee as the PCSU did not have the necessary infrastructure. The PCSU had been established in May, 2001 soon after the State of Uttaranchal came into existence on 9th November, 2000. On 12th November, 2001, the Government of Uttaranchal framed Uttaranchal Subordinate Engineering Service (Emergency Direct Recruitment) Rules, 2001 under proviso to Article 309 of the Constitution of India. These rules were notified vide Gazette Notification No.1973/One-2001 dated 12th November, 2001. It appears that these rules were framed only for filling up large number of post of Junior Engineers which became available upon the creation of State of Uttaranchal. Therefore, the rules specifically provided as follows :-

“The Rules shall become ineffective after the process of Recruitment is completed as it has never been promulgated. Candidates selected on the basis of Rules shall be governed by Service Rules and G.Os. as applicable before in the Govt.”

4. Rule 5 which dealt with the manner in which the candidate was to be selected and the merit list was to be prepared reads as under :-

“4. Conduct method of Examination (1) Appointing authorities shall inform the no. of SC, ST and OBC vacancies in all the categories and decide the vacancies to Dept. of Personnel of State Govt. who will publish the same in the newspapers.

(2) The application for selection shall be invited in prescribed format of the Govt. for consideration.

(3) Even if the relevant Service Rules regarding the issue or Govt. Orders are contrary, then also with the permission of IIT Roorkee shall conduct the examination for the Direct Recruitment of Senior Engineers for the candidates.

(4) The marks of interview to be added to marks of the written examination for selection.

(5) Written examination shall be conducted by the IIT Roorkee according to Rules Prescribed by the State Govt.

(6) Marks for the interview shall be determined by the State Govt. which shall not be more than 12.5% of the written examination.

(7) Question papers of the written examination shall be printed both in Hindi and English languages.

(8) Written examination shall be conducted at place on time as decided by IIT Roorkee.

(9) IIT Roorkee shall prepare list on the basis of written examination and shall make it available to the Public Service Commission, Uttaranchal.

(10) Commission shall call the candidates for interview on the basis of minimum qualifying marks in the written examination.

(11) Commission shall prepare the merit list as shown in the written examination and interview. If two or more candidates score equal marks their the candidate scoring more marks in written exam shall be preferred. If marks in written exam are also equal the candidate of more age shall be preferred and to be kept in merit list accordingly. The names of candidates in merit list shall not be more than 25% of the total no. of vacancies.

(12) Commission shall forward the merit list to the Department of Personnel.”

5. On 27th November, 2001, the State issued an advertisement for filling up the vacancies of Junior Engineers, which was accompanied by a prescribed format of the application form. The terms and conditions of the advertisement were strictly in conformity with the 2001 rules. The written examination was held by the IIT Roorkee on 12th January, 2002. The result of the written examination was declared on 10th July, 2003.

6. It appears that a notification was issued on 31st July, 2003, superseding all the existing rules and regulations of selection process in regard to direct recruitment of Junior Engineer in various departments. The notification reads as under :

“Govt. of Uttaranchal Department of Personnel Notification Misc.

Dated 31.07.2003 No. 1097/one-2 2003 Hon’ble Governor under Article 309 Constitution of India for different Engineering Departments the effective Services Rules are encroached once and Rules framed for direct recruitment of Junior Engineers as follows:

Uttaranchal Subordinate Engineering Services (Emergency Direct Recruitment) (First Amendment) Rules 2003.

3. Brief name, Start and application/effect

(i) The Rules shall be called Uttaranchal Subordinate Engineering Services (Emergency Direct Recruitment) (First Amendment) Rules 2003.

(ii) The Rules shall be applicable-with immediate effect.

(iii) Substitution of Rule 5 (4)

(iv) Rule 5(4) given in column 1 to be substituted by Rule given in column 2 in Uttaranchal Subordinate Engineering Services (Emergency Direct Recruitment) Rules 2001.

Present Rule	Substituted Rule	
5(4) The marks of	5(4) for selection marks scored	
interview to be added to marks	by the candidate in written	

|of the written examination for |exam and interview to be added | |selection. |but for the preparation of | | |merit list such candidates who | | |had completed apprenticeship in| | |the concerned department to | | | | |be given bonus of 10 marks in | | |the total marks scored in | | |written exam and interview. |

7. The candidates who had cleared the written examination were called for interview from 18th December, 2003 to 22nd December, 2003. In the notification dated 31st July, 2003, Rule 5(4) provided that for the purpose of selection, the marks obtained in the written examination would be added in the marks obtained in the interview, but for preparing the final merit list, the candidates who had completed apprenticeship would be given extra 10 marks in addition to the marks obtained by them in the written examination and interview. However, by letter dated 29th April, 2004, it was clarified that 10 marks were to be added to the total marks obtained by the candidates who had completed apprenticeship, only where the direct recruit candidate and the apprentice candidate stood on equal footing. Thereafter, the selected list of the successful candidates was prepared and forwarded to the State Government on 15th May, 2004.

8. Aggrieved by the non-grant of additional 10 marks, large number of unsuccessful candidates in the apprenticeship category filed a number of petitions, seeking a writ in the nature of mandamus directing the appellant to make a selection after giving benefit of 10 additional marks to all the candidates who had completed apprenticeship. In the writ petition filed before the High Court, the petitioners had claimed that the preference had to be given to the trained apprentices in view of the directions by this Court in the case of U.P. State Road Transport Corporation & Anr. Vs. U.P. Parivahan Nigam Shishukhs Berozgar Sangh & Ors.[1] In the aforesaid judgment, the following directions were given :-

“(1) Other things being equal, a trained apprentice should be given preference over direct recruits.

(2) For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in Union of India v. N. Hargopal would permit this. (3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the service rule concerned. If the service rule be silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

(4) The training institute concerned would maintain a list of the persons trained yearwise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior.”

9. These directions were reiterated by this Court in U.P. Rajya Vidyut Parishad Apprentice Welfare Association & Anr. Vs. State of U.P. & Ors.[2]

10. On the basis of the aforesaid judgments, the trained apprentices claimed to be a class apart. It was claimed that the classification between the apprentices and others would not be only for the purpose of giving preferential treatment in the selection but also for giving relaxation in upper age limit, relaxation in the matter of getting their names sponsored by the employment exchange.

11. The High Court has allowed the writ petition solely on the ground that the clarification dated 29th April, 2004 could not have the effect of amending the statutory rules framed under Article 309 on 31st July, 2003. It is held that the direction issued on 29th April, 2004 related to the same selection to which the amended rules of 2003 were applicable. Therefore, the G.O. dated 29th April, 2004 being in the nature of executive instructions could not supplant the statutory rules but could only supplement the statutory rules. With this reasoning, the High Court issued a writ in the nature of mandamus directing the PCSU to give weightage of additional 10 marks to the apprentices by adding the same to the total marks secured by them in the written examination and the interview.

12. We have heard the learned counsel for the parties.

13. Mr. Vijay Hansaria, learned counsel appearing for the appellant, has submitted that the High Court has misread the directions issued by this Court in the case of U.P. State Road Transport Corporation & Anr. (supra). He further submitted that the selection was governed by the 2001 rules which had been framed only for making selection on the large number of posts that have become available on the creation of Uttaranchal. He submits that the 2001 Rules specifically provided that it shall be applicable only for the direct recruitment in the year 2002. The process for this recruitment had commenced when the advertisement was issued in the year 2001. All the respondents had applied pursuant to the aforesaid advertisement. Under these rules, no preference was given to the trained apprenticeship. Even the advertisement did not indicate any preference to the trained apprentices. Learned senior counsel pointed out that 2001 rules became ineffective with effect from 11th November, 2002 as provided in Rule 6 thereof. Mr. Hansaria further submits that the 2003 rules have been wrongly read by the High Court to be an amendment of the 2001 rules. After making a reference to the 2003 Rules, learned senior counsel pointed out that the 2003 Rules came into force on 31st July, 2003. Therefore, the High Court has erred in treating the same to be as amendment of the 2001 rules, which no longer existed.

14. Learned senior counsel further submitted that 2003 rules cannot be given retrospective effect as no such express provision has been made to that effect. He relies on the judgment in N.T.Devin Katti & Ors. Vs. Karnataka Public Service Commission & Ors.[3] P.Mahendran & Ors. Vs. State of Karnataka & Ors.[4] and Sonia Vs. Oriental Insurance Co. Ltd. & Ors.[5] He also submits that all the respondents having participated in the selection process cannot be permitted to challenge the same. He submitted that the final select list was published on 15th May, 2004. Only when the respondents did not get selected on merit, they filed the writ petitions in June, 2004. He relies on the judgments in Chandra Prakash Tiwari & Ors. Vs. Shakuntala Shukla & Ors.[6] and Manish Kumar Shahi Vs. State of Bihar & Ors.[7]

15. Mr. Hansaria further pointed out that 841 posts had been advertised on 27th November, 2001. All the posts have been duly filled up soon after selection. Therefore, the High Court committed an

error of jurisdiction in issuing the directions to prepare the merit list after adding 10 marks to the marks obtained by the trained apprentices. He submitted that in any event, all the vacancies having been filled up immediately after the publication of the select list, the mandamus issued by the High Court can not possibly be implemented.

16. Mr. C.U. Singh, appearing for the respondents submitted that vested rights of the respondents under 2003 Rules could not have been taken away by issuance of executive instruments issued on 29th April, 2004. He further submitted that in this case no retrospective effect is being given to the 2003 Rules as these Rules were framed in respect of antecedent facts. He relies on the judgment of this Court in *Ramji Purshottam (dead) by Lrs. & Ors. Vs. Laxmanbhai D. Kurlawala (dead) by Lrs. & Anr.*[8]

17. We have considered the submissions made by the learned counsel for the parties.

18. In our opinion, it is not at all necessary to examine all the submissions made by the learned counsel for the parties. The 2001 Rules were specifically framed to cater for an emergency as the State of Uttaranchal came into existence on 9th November, 2000. The State sent a letter/request on 2nd November, 2001 to PCSU to hold a written examination to fill up large number of posts which have become available on creation of the new State. On 27th November, 2001, the State Government advertised 841 posts of Jr. Engineers in different departments throughout the State. There was such an urgent need for recruitment that since the infrastructure of the PCSU was not in existence, a request was made that the posts be taken out of the purview of the PCSU on this one occasion, and the written examination be conducted by IIT, Roorkee. PCSU agreed to such procedure but limited only to the holding of the written examination. The interviews were still to be held by the PCSU. The Rules of 2001 were specifically framed for making the selection of the candidates, who would have applied for the available posts.

19. The Rules were notified on 12th November, 2001. Within two weeks, the necessary advertisement was issued on 27th November, 2001. The 2001 Rules specifically provided as under:-

1. Brief name, Start and application/effect

(i) The Rules shall be called Service (Emergency Direct Recruitment) Rules, 2001.

(ii) The Rules shall be applicable with immediate effect.

(iii) The Rules shall be applicable only for the direct recruitment in the year 2002 for Subordinate Engineering Services.

(iv) The Rules shall be applicable to all the Department for Direct Recruitment of Junior Engineers.

(v) The rules shall have over riding effect on all the applicable service Rules for the purpose of Direct Recruitment of Junior Engineer for once only.

20. A perusal of the aforesaid would clearly show that all the candidates including the respondents, who applied in response to the advertisement dated 27th November, 2001 were governed by the 2001 Rules. Rule 4 provides comprehensive criteria for making a selection to the post of Jr. Engineer. The written examination was to be conducted by the IIT, Roorkee. The selection was to be made on the basis of the total marks obtained by the candidates in the written examination and the interview. The list of successful candidates of the written examination was to be made available by IIT, Roorkee to PCSU. Thereafter, the PCSU was to call the candidates for interview on the basis of minimum qualifying marks in the written examination. Section 4(11) provides that the PCSU shall prepare a merit list by adding marks obtained by the candidates in the written examination and the interview. If two or more candidates secured equal marks, the candidates securing more marks in the written examination shall be preferred. In case, the marks obtained by two candidates in written examination are also equal, the older candidate shall be preferred to the younger. Therefore, it is evident that consciously the State had not provided for any preference to be given to the trained apprentices under the Rules. Keeping in view the provisions contained in the Rules, the State Government issued an advertisement on 27th November, 2001. The advertisement also did not provide for any weightage to be given to the trained apprentices. All the candidates including the respondents participated in the selection process, being fully aware that no preference will be given to the trained apprentices. This was inspite of the directions issued by this Court in UPSRTC's case (supra). Therefore, it cannot be said that any accrued or vested right had accrued to the trained apprentices, under the 2001 Rules.

21. The result of the written examination was declared on 10th July, 2003. The interview was conducted by the PCSU from 18th December, 2003 to 22nd December, 2003. Thereafter, only the result was to be declared and the appointments were to be made on the basis of merit obtained by the candidates in the selection process.

22. As noticed earlier, the 2001 Rules specifically provided that the Rules are applicable only for the direct recruitment in the year 2002 for subordinate engineering service. The Rules also make it clear that the same shall become ineffective after the process of recruitment is completed. Thereafter, the selected candidates shall be governed by the Service Rules and the Government Orders applicable in the Government. This makes it abundantly clear that on 12th November, 2002, the 2001 Rules ceased to exist.

23. However, on 31st July, 2003, the 2003 Rules were framed. A bare perusal of the title of the Rules would show that the Rules came into force on 31st July, 2003. The Rules supersede all existing Rules but Rule 5(4) of 2001 Rules is transposed by Rule 5(4) of the 2003 Rules. Rule 5(4) of the 2001 Rules provided that marks of interview shall be added to the marks of written examination for selection. But Rule 5(4) of the 2003 Rules provides that the marks obtained in the written examination and the marks obtained in the interview shall be increased by 10 extra marks in case of trained apprentices. In our opinion, the respondents could have taken no advantage of these Rules. The Selection process was under the 2001 Rules. The Rules of 2001 as well as advertisement did not provide for any additional marks/weightage to be given to the trained apprentices. The Rules of 2003 came into force on 31st July, 2003. No retrospective effect can be given to the same without any express provision to that effect being made in the Rules. This apart, the 2001 Rules that were

said to be amended were, in fact, non-existent. The 2001 Rules expired on 11th November, 2001 in terms of Rule 6 thereof. The High Court, in our opinion, was in error in holding that 2003 Rules were applicable to the process of selection which had commenced in 2001 under the 2001 Rules.

24. In our opinion, the High Court has wrongly concluded that as the 2003 Rules had been framed in obedience to the directions issued by a Single Judge of the Uttaranchal High Court in Writ Petition No.44 (SB) of 2002 titled Subhash Chandra Vs. State of Uttaranchal, they would relate to the selection which was governed by the 2001 Rules and the advertisement issued by the State on 27th November, 2001. We have already earlier concluded that although 2003 Rules are titled as 'First Amendment Rules', the same is a misnomer. The 2003 Rules could not have the effect of amending the 2001 Rules which had already ceased to exist in terms of Rule 6 thereof with effect from 11th November, 2001. The respondents, therefore, cannot claim that any accrued or vested right of the trained apprentices has been taken away by the 2004 clarification, in relation to the selection governed by the 2001 rules, and advertisement dated 11th November, 2001.

25. Furthermore, the High Court in Subhash Chandra's case (supra) had only reiterated the directions which have been given by this Court in the case of UPSRTC (supra). In spite of those directions being in existence, no preference had been provided to the trained apprentices in the 2001 Rules. We had earlier also noticed that the respondents, unsuccessful candidates who were trained apprentices, woke up only after the select list was published by the PCSU. We may also point out that even if the 2003 Rules have been framed on the directions of the High Court, the rules came into force on 31st July, 2003. Therefore, by no stretch of imagination can it be said that the aforesaid rules were applicable to the selection which was governed under the 2001 Rules and the advertisement dated 11th November, 2001. Candidates had applied on the basis of the aforesaid advertisement. As noticed earlier, the advertisement in this case was issued on 27th November, 2001. It had set out the criteria of selection laid down in the 2001 Rules which were notified on 12th November, 2001. Written examination in respect of aforesaid advertisement was held by IIT, Roorkee on 12th January, 2002. The result of the written examination was declared on 10th July, 2003. The 2003 Rules were notified on 31st July, 2003. The interviews were conducted between 18th December, 2003 to 22nd December, 2003. Under the 2001 Rules, the marks to be given for the interview could not be more than 12.5% of the written examination. Under the 2001 Rules, there was no provision for adding 10 marks to the total marks of written test and interview in the category of trained apprentices. This was sought to be introduced by the 2003 Rules which came into force on 31st July, 2003. In such circumstances, it would be wholly impermissible to alter the selection criteria which was advertised on 27th November, 2001. Since no preference had been given to the trained apprentices, many eligible candidates in that category may not have applied. This would lead to a clear infringement of Article 14 of the Constitution of India. To this extent, we accept the submission made by Mr. Hansaria. Selection procedure can not be altered after the process of selection had been completed. [See: K. Manjusree Vs. State of Andhra Pradesh & Anr. (2008) 3 SCC 512 (para 27)].

26. We are not able to accept the submission of Mr. Hansaria that the benefit of 10 additional marks to the trained apprentices is limited only to those trained apprentices who have secured equal marks with one or more candidates in the category of direct recruits. The learned senior counsel seeks to

support the aforesaid submission from the directions issued by this Court in the case of UPSRTC (supra) which was as follows :

“Other things being equal, a trained apprentice should be given preference over direct recruits.” The only natural meaning of the aforesaid phrase ‘other things being equal’ is that all the candidates must have been subjected to the same selection process, i.e., same written test and interview. Further that their inter-se merit is determined on the same criteria, applicable to both categories. In this case, it is the aggregate of the marks secured by the candidate in the written test and the interview. The additional 10 marks are given to the apprentices as they are generally expected to secure lesser marks than the direct recruits in the written examination. Thus, by adding 10 marks to the total of the written examination of the trained apprentices, they are sought to be put at par with the direct recruits. Therefore, necessarily this preference is to be given to all the trained apprentices across the board. It cannot be restricted only to those trained apprentices who fortuitously happen to secure the same marks as one or more of the direct recruits.

In case the additional 10 marks are restricted only to such trained apprentice candidates, it would result in hostile discrimination. This can be best demonstrated by giving an illustration. Assume there are ten candidates belonging to trained apprentices category. Let us say that candidate No.1 secures 50% total marks on the basis of the marks obtained in the written test plus interview, whilst candidates No.2 to 10 secure total marks ranging from 51 to 59. But candidate No.1 has secured total marks identical to a direct recruit, i.e., 50%; whereas candidates No.2 to 10 have not secured marks at par with any direct recruit candidate. On the basis of the clarification dated 29th April, 2004, candidate No.1 will get the benefit of 10% weightage and candidates No.2 to 10 will not. Therefore, after weightage is given to candidate No.1, his/her total marks would be 60%. This would put him/her over and above, all other candidates, i.e., candidates No.2 to 10 who have secured higher marks than candidate No.1 who actually has lesser marks, if no weightage is given to his/her. Therefore, candidate Nos. 2 to 10 securing higher marks would be shown at a lower rank to candidate No.1 in the inter-se merit. In such a situation, a trained apprentice candidate securing lesser marks than his colleague would not only steal a march over the direct recruits but also over candidates who got more marks within his own category. Such an interpretation would lead to absurd consequences. This is not the intention of giving the preference to the trained apprentices. The interpretation sought to be placed by Mr. Hansaria would, in fact, create a sub-classification within the class of trained apprentice candidates. Such a sub-classification would have no rationale nexus, with the object sought to be achieved. The object of the preference is to give weightage to the apprentices so that the State does not lose the benefit of the training given to them, at the State expense. This would be a clear breach of Article 14 of the Constitution of India.

27. The only direction issued by this Court in UPSTRC's case (supra) was to give preference to the trained apprentices over direct recruits. No direction is given in the judgment as to how the preference is to be given. It was left entirely to the discretion of the Government to make the necessary provision in the statutory rules. In that case, number of candidates who had successfully completed apprenticeship under the Apprenticeship Act, 1961 claimed appointment upon completion. In support of their claim, the candidates relied on number of Government Orders, which according to them held out a promise that on successful completion of apprenticeship, they

would be given employment. The High Court issued a writ in the nature of Mandamus directing that such candidate should be given employment. In such circumstances, UPSRTC came before this Court and submitted that there was no obligation on the State Government to ensure employment to any trained apprentices. This Court analyzed the various Government Circulars and came to the conclusion that there is no promise held out for the candidates of definite employment. However, in order to ensure that the training given to the apprentices at the State expense is utilized, certain directions were issued, which have been reproduced earlier. As noticed earlier, inspite of the aforesaid directions, no preference was given to the trained apprentices in the selection process which was governed by the 2001 Rules, and the advertisement dated 27th November, 2001. Whilst the process of selection was still in progress, the High Court rendered its judgment in the case of Subhash Chandra (supra). For the reasons which are not made clear in the pleadings or by the learned counsel for any of the parties, the 2003 Rules were framed and enforced with effect from 31st July, 2003. Consequently, when the interviews were being conducted, the PSCU was faced with the 'amendment rules' of 2003. Therefore, the PSCU by a letter dated 5th April, 2004 sought clarification as to whether 2001 rules would be applicable or Rules of 2003 would be applicable, to the selection process. In these circumstances, the State Government wrote to the PSCU on 29th April, 2004, on the basis of legal advice that preference to the trained apprentices is to be given only if the two candidates secured equal marks. The legal opinion clarified that the amended rules of 2003 would not be applicable to the selection process which had already started. Therefore, the selection process under the 2001 Rules was excluded.

28. However, we find substance in the submission made by Mr. C.U. Singh that 2004 clarification would not have the effect of amending 2003 Rules. Undoubtedly, 2004 clarification is only an executive order. It is settled proposition of law that the executive orders cannot supplant the rules framed under the proviso to Article 309 of the Constitution of India. Such executive orders/instructions can only supplement the rules framed under the proviso to Article 309 of the Constitution of India. In spite of accepting the submission of Mr. C.U. Singh that clarification dated 29th April, 2004 would not have the effect of superceding, amending or altering the 2003 Rules; it would not be possible to give any relief to the respondents. The criteria under the 2003 Rules governs all future recruitments. We have earlier already concluded that no vested right had accrued to the respondents, the trained apprentices, under the 2001 Rules. We do not accept the submission of Mr. C.U. Singh that the claim of the respondents (trained apprentices) would be covered under the 2001 Rules by virtue of the so called amendment made by 2003 Rules. We are of the opinion that the High Court committed an error, firstly, in holding that the 2003 rules are applicable, and secondly, not taking into consideration that all the posts had been filled up by the time the decision had been rendered.

29. For the reasons stated above, we are of the opinion that the judgment rendered by the High Court is unsustainable in law and the same is hereby set aside. The appeals are allowed with no order as to costs.

.....J.

[Surinder Singh Nijjar]J.

[Ranjana Prakash Desai] New Delhi;

March 3, 2014.

- [1] (1995) 2 SCC 1
- [2] (2000) 5 SCC 438
- [3] (1990) 3 SCC 157
- [4] (1990) 1 SCC 411
- [5] (2007) 10 SCC 627
- [6] (2002) 6 SCC 127
- [7] (2010) 12 SCC 576
- [8] (2004) 6 SCC 455
