

Supreme Court of India

Om Prakash Shukla vs Akhilesh Kumar Shukla & Ors on 18 March, 1986

Equivalent citations: 1986 AIR 1043, 1986 SCR (1) 855

Author: E Venkataramiah

Bench: Venkataramiah, E.S. (J)

PETITIONER:

OM PRAKASH SHUKLA

Vs.

RESPONDENT:

AKHILESH KUMAR SHUKLA & ORS.

DATE OF JUDGMENT 18/03/1986

BENCH:

VENKATARAMIAH, E.S. (J)

BENCH:

VENKATARAMIAH, E.S. (J)

SEN, A.P. (J)

RAY, B.C. (J)

CITATION:

1986 AIR 1043                      1986 SCR (1) 855

1986 SCC Supl. 285              1986 SCALE (1) 475

ACT:

U.P. Subordinate Civil Courts Ministerial Establishments Rules, 1947/Rules for the Recruitment of Ministerial Staff to the Subordinate offices, 1950/Subordinate Civil Courts Ministerial Establishment (Amendment) Rules, 1969 Subordinate Offices Ministerial Staff (Direct Recruitment) Rules, 1975.

Rules 5, 9-12, and Appendix II of 1947 Rules - Recruitment to establishment - 1950 Rules - Applicability of.

Interpretation of statutes : Doctrine of implied repeal - Applicability of.

HEADNOTE:

Recruitment to the ministerial establishment in the Subordinate Civil Courts of the United Provinces was regulated by the Subordinate Civil Courts Ministerial Establishments Rules 1947. Rule 11 provided that the recruitment shall be based on the results of a competitive examination and an interview, to be held in the manner laid down in Appendix II. On July 15, 1950, the Governor in supersession of all existing rules promulgated the 'Rules for the Recruitment of Ministerial Staff to the Subordinate

Offices, 1950' for the recruitment of ministerial staff to the subordinate offices in the State including the offices of Subordinate Civil Courts.

These Rules did not expressly say that the 1947 Rules had been superseded, but clearly stated that the Governor had framed them in supersession of all existing rules and orders on the subject for recruitment to the ministerial establishment of subordinate offices under his control. Rules 9 to 12 and Appendix II of the 1947 Rules were thus superseded. The two reasons in support thereof are : (1) that in the definition of the expression "subordinate office" only the offices of the Secretariat, the State Legislature, the High Court and the Public Service Commission stood excluded, and (ii) the

856

offices of the Subordinate Civil Courts were included in the Schedule to those Rules. This is evidenced from the letter dated 12th February, 1973, written by Joint Registrar of the High Court to all the District Judges in the State. The High Court on its administrative side also understood that rules 9 to 12 and Appendix II to the 1947 Rules had been superseded by the 1950 Rules.

In the meanwhile, the Governor had promulgated the Subordinate Civil Courts Ministerial Establishment (Amendment) Rules, 1969 on September 20, 1969 amending the 1947 Rules. The existence of these Amending Rules of 1969 was not taken note of by the High Court at the time when the said letter was issued. The High Court was following the 1950 Rules even after the promulgation of the 1969 Amending Rules for purposes of holding the competitive examination for recruitment to the ministerial staff in the Civil Courts. Then Subordinate Offices Ministerial Staff (Direct Recruitment) Rules 1975 were promulgated by the Governor, in supersession of all existing rules and orders on the subject. Rule 2 made these Rules inapplicable to the Secretariat, the office of the State Legislature, Lokayukta, Public Service Commission, High Court, the Subordinate Courts under the control and superintendence of the High Court and all the establishments under the control of the Advocate-General. The 1975 Rules prescribed the qualifications and the pattern of a competitive examination for purposes of recruitment in substitution of what had been prescribed by the 1950 Rules.

After the promulgation of the 1975 Rules, a competitive examination was held by the District Judge of Kanpur in September, 1981 and its results were announced on July 25, 1983. This competitive examination was held in accordance with the 1950 Rules and the 1969 Amending Rules were not followed. Respondent No. 1, an unsuccessful candidate in the said competitive examination, filed a writ petition contending that the competitive examination which had been held in accordance with the 1950 Rules was unauthorised one and that it should have been held in accordance with the

1947 Rules as amended by the 1969 Amending Rules. The High Court allowed the petition holding that the intention of promulgating the 1950 Rules was only to prescribe a syllabus different from what had been prescribed in the 1947 Rules but the modification made by the

857

1950 Rules did not, however, modify the rest of the 1947 Rules.

The High Court quashed the examination held in 1981 by the District Judge of Kanpur and directed all the candidates who had applied for the 1981 examination to appear for the fresh examination to be held by the District Judge of Kanpur. In other districts where similar examinations had been held under the 1950 Rules and which had not been challenged, the selection and appointment made in pursuance thereof were not rendered invalid.

Allowing the appeal by one of the selected candidates in the Kanpur Examination to this Court,

^

HELD : 1. The judgment of the High Court is set aside and the writ petition is dismissed. The appellant and all other successful candidates at the 1981 examination held in Kanpur shall be appointed in accordance with the rules. If in any other centre, selections and appointments have been made on the basis of the 1969 Amending Rules, they shall remain undisturbed. [879 G-H; 880 A-B]

2. The orders passed by the High Court in the connected writ petitions Nos. 10224 of 1983 and 5073 of 1984 are set aside. [880 B]

3. The 1947 Rules made appropriate provisions regarding the recruitment of candidates to the posts in the ministerial establishment in the Subordinate Courts in the former United Provinces. They were continued to be in force till July 11, 1950 when the 1950 Rules were promulgated. They were applicable not merely to the ministerial establishments in Civil Courts but to the ministerial establishments in several other offices. Rules 9 to 12 of the 1947 Rules and Appendix II to it stood superseded. The other parts of the 1947 Rules remained intact. Thus, the 1947 Rules were not superseded in their entirety by the 1950 Rules. The opening words 'in supersession of all existing rules and orders on the subject' in the 1950 Rules only refer to those matters in the existing rules which correspond to the matters dealt with by the 1950 Rules. The High Court was, therefore, right in observing that the whole of the 1947 Rules did not come to an end on the promulgation of the 1950 Rules. [875 B-H; 876 A-B]

858

4. The 1969 Amending Rules specifically amended the 1947 Rules, which appear to have been made after consultation with the High Court. By these Rules, rule 5 of the 1947 Rules was amended. Rule 5 dealt with the minimum academic qualification which a candidate for a post in the

ministerial establishment in a Subordinate Civil Court should possess. The other amendment related to the substitution of the former Appendix II which related to the subjects prescribed for the competitive examination and the marks assigned to each of them as it obtained before the 1950 Rules came into force by a new Appendix. [876 A-B]

5. Rule 11 of the 1947 Rules which required the District Judge to hold the examination in accordance with the former Appendix II of the 1947 Rules, which also stood superseded by the 1950 Rules in view of rules 5 and 7 of the 1950 Rules, which dealt with the same subject, was however not replaced nor a corresponding rule authorising the District Judge to hold the competitive examination in accordance with the new Appendix II was introduced by the 1969 Amending Rules into the 1947 Rules simultaneously. While the new Appendix II again re-appeared in the 1947 Rules prescribing certain subjects and marks assigned to them, the authority who should hold the competitive examination was not again prescribed in the 1947 Rules. It was necessary to re-enact Rule 11 of the 1947 Rules because it also stood repealed by the 1950 Rules which had made provisions with regard to topic contained in the former Rule 11. [876 F-H; 877 A]

6(a). The legal position that by the promulgation of the 1950 Rules, the former rules 9 to 12 of the 1947 Rules stood repealed by necessary implication is accepted even by the High Court in its letter dated February 12, 1973. Therefore, the former Rule 11 should have been re-enacted either in the same form or with modification and brought back to life to give effect to the new Appendix II, reintroduced in the 1947 Rules. Without such reintroduction of Appendix II in the 1947 Rules by the 1969 Amending Rules would be meaningless and ineffective as the authority who can hold the examination remained unspecified. The method of selection of candidates also remained unspecified. Whatever was provided in Rules 9 to 12 of the 1947 Rules, which was needed for conducting the examination and selecting candidates was unavailable. Old

859

Rules 9 to 12 did not get automatically revived along with the Appendix II without an express provision reintroducing them. The 1969 Amending Rules do not expressly state that the 1950 Rules would no longer be applicable to the ministerial establishment of the Subordinate Civil Courts. They also did not repeal the item referring to the Judicial Department Subordinate Civil Courts, which found a place in the Schedule to the 1950 Rules. The discontinuance of the application of the 1950 Rules to the ministerial establishments of the Subordinate Civil Courts can only be inferred by relying upon the rule of implied repeal provided the said rule is applicable. [877 A-F]

6.(b). An implied repeal of an earlier law can be inferred only where there is the enactment of a later law,

which had the power to override the earlier law and is totally inconsistent with the earlier law, that is, where the two laws - the earlier law and the later law - cannot stand together because the two inconsistent laws cannot both be valid without contravening the principle of contradiction. The later laws abrogate earlier contrary laws. The principle is however subject to the condition that the later law must be effective. If the later law is not capable of taking the place of the earlier law and for some reason cannot be implemented, the earlier law would continue to operate. To such a case the rule of implied repeal is not attracted because the application of the rule of implied repeal may result in a vacuum which the law making authority may not have intended. Appendix II contains a list of subjects and marks assigned to each of them. It is only in the presence of rule 11 one can understand the meaning and purpose of Appendix II. [877 F-H; 878 A-B]

7. In the absence of an amendment re-enacting rule 11 in the 1947 Rules, it is difficult to hold by the application of the doctrine of implied repeal that the 1950 rules have ceased to be applicable to the ministerial establishments of the Subordinate Civil Courts. The High Court overlooked this aspect of the case and proceeded to hold that on the mere reintroduction of the new Appendix II into the 1947 Rules the examination could be held in accordance with the said Appendix. This Court is not in agreement with this view of the High Court. [878 B-C]

8. There is also no material to show that after the 1969 Amending Rules, examinations were held in the different districts of Uttar Pradesh in accordance with the 1947 Rules as amended by the 1969 Amending Rules. No body including the High Court appears to have taken notice of the amendment.

860

Admittedly, the examinations were held in 1981 in accordance with the 1950 Rules and not in accordance with the 1947 Rules as amended by the 1969 Amending Rules. The High Court treated the 1950 Rules as the existing Rules in 1973 even after the 1969 Amending Rules came into force. [878 C-F]

9. In the year 1981 in some other districts of Uttar Pradesh also examinations were held as per the 1950 Rules because the High Court expressed its reluctance to set aside the results of the examinations in other districts and confined the operation of its judgement to Kanpur district only. The 1969 Amending Rules appear to have been ignored by some District Judges. Having regard to the lacuna created by the non-repromulgation of rule 11 of the 1947 Rules it has to be held that there was no effective substitution of the 1950 Rules brought about by the 1969 Amending Rules. The 1950 Rules should, therefore, be held to be operating even in the year 1981. Hence the examination held according to them cannot be held to be bad. [879 A-C]

10. 1950 Rules have not been repealed by the 1975 Rules in so far as the Subordinate Civil Courts are concerned.

Though Rule 20 of the 1975 Rules clearly stated that the 1950 Rules had been repealed, but the 1975 Rules did not apply to the Subordinate Courts under the control and superintendence of the High Court. Hence the 1950 Rules in so far as they applied to the Subordinate Courts continued to be in force. [879 C-D]

In the instant case, the petitioner in the writ petition should not have been granted any relief. He appeared in the examination without protest and filed the petition when he realised that he would not succeed in the examination. The High Court itself observed that the setting aside of the result of the examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the District of Kanpur also. [879 E-F]

#### JUDGMENT :

CIVIL APPELLATE JURISDICTION :Civil Appeal No. 2999 of 1985.

From the Judgment and Order dated 12th April, 1985 of the Allahabad High Court in Civil Misc. Writ Petition No. 3961 of 1982.

S.N. Kacker, R.B. Mehrotra for the Appellant. Arun Deo Sagar and Pramod Dayal for the Respondents. The Judgment of the Court was delivered by VENKATARAMIAH, J. This appeal by special leave is filed against the judgment and order of the High Court of Allahabad dated April 12, 1985 in Writ Petition No. 3961 of 1982 by which the High Court of Allahabad quashed the results of the competitive examination held by the District Judge of Kanpur in September, 1981 for selecting candidates for appointment to the vacancies in Grade III of the ministerial staff in the Subordinate Courts in the District of Kanpur.

Before the commencement of the Constitution, recruitment to the ministerial establishment in the Subordinate Civil Courts of the United Provinces was regulated by the Subordinate Civil Courts Ministerial Establishment Rules, 1947 (hereinafter referred to as 'the 1947 Rules'). The said Rules were promulgated by the Governor of the United Provinces on August 1, 1947. The expression 'Ministerial Establishment' was defined by rule 2(c) of the 1947 Rules as the staff of the subordinate civil courts consisting of ministerial servants as defined in Fundamental Rule (17), Financial Handbook, Vol.II, Part II. According to the definition given in rule 2(e) of the 1947 Rules the expression 'Subordinate Civil Courts' included the Courts of District and Sessions Judges, Additional District & Sessions Judge, Civil and Sessions Judges, Civil Judges, Additional Civil Judges, Munsifs, Additional Munsifs and Courts of Small Causes subordinate to the High Court of Judicature at Allahabad or the Chief Court of Oudh at Lucknow. Rule 5 of the 1947 Rules prescribed the academic qualifications which a person should possess for being a candidate to a post in the ministerial establishment. It read as follows :

"5. Academic qualifications - No person who is not already on the staff attached to a subordinate civil court shall be appointed to a post in the ministerial establishment unless;

(a) he has passed at least the High School examination conducted by the Board of High School and Intermediate Education, United Provinces or any other examination which has been or may be declared by the Governor to be equivalent thereto;

(b) he possesses a thorough knowledge both of Urdu and Hindi;

(c) he possesses in the case of a candidate for the post of stenographer a diploma or certificate from a University or a recognised shorthand and typewriting institution, showing that he possesses a speed of at least 100 words in shorthand and 35 words per minute in typewriting."

Rule 11 of the 1947 Rules which is relevant for the purposes of this case read as follows :-

"11. The recruitment shall be based on the results of a competitive examination, and an interview by the district Judge at the headquarters of the judgeship. The examination and the interview shall be held in the manner laid down in Appendix II. Provided that the District Judge may delegate any one or more of the functions other than the function of interviewing the candidates to a senior civil judge or senior munsif in respect of the examination held under this rule."

Appendix II of the 1947 Rules which contained the details regarding the manner in which the competitive examination was to be held read thus :-

"APPENDIX II (Vide Rule 11) The examination shall be in three parts (1) Compulsory subjects 350 marks :Total (2) Optional subjects 50 marks : 500 (3) Interview 100 marks :

Compulsory subjects shall be-

(a) Translation from English into Urdu : Total

(b) Translation from English into Hindi : 200

(c) Translation from Urdu into English :

(d) Translation from Hindi into English :

(e) Precis writing	50
(f) Dictation	100

Optional subjects -

In the optional subjects no marks shall be awarded to any candidate who does not reach the minimum standard required in the note to rule 14.

Any clerk who is already on the establishment and is not qualified as a stenographer may sit for the examination in typewriting and shorthand alone and will be eligible for appointment as stenographer if he qualifies."

By virtue of the provisions of Article 313 and Article 372 of the Constitution, the 1947 Rules continued to be in force even after the commencement of the Constitution. But on July 15, 1950 the Governor of Uttar Pradesh promulgated rules for the recruitment of ministerial staff to the subordinate offices in the State of Uttar Pradesh including the offices of subordinate civil courts in exercise of the powers conferred on him by the proviso to Article 309 of the Constitution of India in supersession of all existing rules and orders on the subject. These rules were called the 'Rules for the Recruitment of Ministerial Staff to the Subordinate Offices, 1950' (hereinafter referred to as 'the 1950 Rules'). Rule 2 of the 1950 Rules defined the term 'Subordinate Office' as including all offices under the control of the Governor of Uttar Pradesh other than those of the Secretariat, the State Legislature, the High Court and the Public Service Commission. Rule 3 of the 1950 Rules provided that the recruitment to the lowest grade of the ministerial staff in a subordinate office shall be made on the basis of a competitive test. Rules 5,6 & 7 of the 1950 Rules read as follows :-

"5. Tests to be held annually - The competitive tests shall be held at least once a year and at the time specified in the Schedule by each head of a subordinate office for posts not requiring technical knowledge, e.g. stenography: Provided that if the strength of any office does not warrant annual recruitment, or recruitment in a particular year, a competitive test shall be held whenever it becomes necessary to recruit a ministerial servant to the office.

6. Subjects of the tests (1) The competitive tests shall comprise a written test as well as an oral test.

(2) The subject of the tests and the maximum marks on each subject shall be as follows :

	Subjects	Marks
		Oral

(i) Personality 25

(ii) General Knowledge and suitability for the particular post. 25 Written

(i) Simple drafting 50



(ii) Essay and Precis writing 50

(iii) Hindi 50 Optional

(i) Typewriting and shorthand 50

(ii) English 50 \_\_\_\_\_ X X

X X Note:- A candidate must take one of the two optional subjects and may take both.

7. Selection of candidates - (1) On the results of the test, the head of the subordinate Office shall select a number of candidates sufficient to fill the number of vacancies as ascertained in rule 3 and offer to them appointments as and when the vacancies occur, according to the order of merit disclosed at the test.

(2) No one who has not been selected in accordance with sub-rule (1) shall be appointed to any vacancy unless the list of selected candidates is exhausted.

(3) Casual vacancies may be filled up by appointing persons who have not taken the test but their further retention shall depend on their taking the next test and being selected in it." In the Schedule attached to the 1950 Rules it was provided that for the offices of the subordinate civil courts the competitive examination should be held in August second week every year. The relevant entry in that Schedule read as follows :-

"Judicial (A) Department (1) Offices of Subordinate Civil Courts - August second week"

The 1950 Rules did not, however, expressly say that the 1947 Rules had been superseded by these Rules. But it is significant to note that the 1950 Rules clearly stated that the Governor had framed them in supersession of all existing rules and orders on the subject for recruitment to the ministerial establishment of subordinate offices under his control. The clear effect of the 1950 Rules therefore was that the 1947 Rules stood superseded by the 1950 Rules as regards the subjects prescribed for the test and the manner of the examination to be held for the purpose of selecting candidates for the ministerial staff in the Civil Courts of the State of Uttar Pradesh. To be precise, rules 9 to 12 and Appendix II of the 1947 Rules were superseded. The two reasons in support of G the above view are : (i) that in the definition of the expression 'Subordinate Office' only the offices of the Secretariat, the State Legislature, the High Court and the Public Service Commission stood excluded and

(ii) the offices of the Subordinate Civil Courts were included in the Schedule to those Rules. On its administrative side the High Court also understood that the 1950 Rules were applicable insofar as recruitment to the ministerial staff in the Civil Courts was concerned. This is evident from a letter written by Shri M.P. Singh, Joint Registrar of the High Court of Allahabad to all the District Judges in the State of Uttar Pradesh on February R 12, 1973 which is as under :-

"From:

M.P. Singh, B.A., LL.B.

Joint Registrar, High Court of Judicature at Allahabad.

To All the District Judges, Subordinate to the High Court of Judicature at Allahabad.

CIRCULAR LETTER No. 14/Ve-4 Dated Allahabad February 12, 1973. Subject :- Recruitment to the establishment of the Subordinate Civil Courts.

Sir, It has been brought to the notice of the Court that many District Judges face a lot of difficulties at the instance of Employment Exchange in making recruitments to their establishments. Broadly speaking the difficulties pointed out by them are as under :-

1. Quite often the District Judges, on the list of approved candidates having exhausted, have to recruit candidates directly without subjecting them to a regular test prescribed under the rules for filling up casual vacancies and for meeting the requirements of newly created additional courts at short notice and such candidates continue in the employment of the civil courts for a considerable time, but when a test is held for recruitment, the Employment Exchange either refuses to sponsor the names of those candidates or withholds their applications for one reason or the other and consequently such candidates are prevented from taking up the test .
2. Some times the Employment Exchange, while forwarding the applications of candidates, withholding applications of such candidates who appear to be deserving the suitable to the District Judges without assigning any reason and this compel the District Judges to recruit candidates only from amongst the candidates whose applications are forwarded by the Employment Exchange.

In order to obviate the difficulties, the court has examined the whole scheme and the rules and within frame work of the existing rules and Government orders on the subject, the following procedure is laid down for our guidance :-

While following the procedure laid down in existing rules, published under Government Notification No.0-111/-XI- 8-50 dated July 11, 1950 (which was adopted in supersession of rules 9 to 12 of the U.P. Subordinate Civil Courts Ministerial Establishment Rules 1947) and amplified in G.O. No. 0-2248/II-8-1950 dated August 30, 1950, the District Judge should in addition himself advertise his requirement under intimation to the Employment Exchange and while doing so he should take care to make it clear that all applications are to be addressed to him and routed through the Employment Exchange. The District Judge should further require that candidates should send advance copies of their applications direct to the District Judge which would go to ascertain whether all applications have been forwarded to him by the Employment Exchange or not. However, if on receiving the applications from the Employment Exchange, it is found that applications of certain suitable candidates have been withheld by the Employment Exchange, the District Judge may in his discretion, permit such candidates to take the test as contemplated in paragraph 7 of the G.O. dated August 30, 1950 referred to earlier.

In the case of candidates who are appointed to fill up casual vacancies without appearing in the regular test prescribed under the rules and are already working on the staff of the civil court concerned, they should be treated as departmental candidates and should be allowed to take the test without any reference to the Employment Exchange in order to enable them to qualify for regular appointment.

Yours faithfully, sd/- M.P. Singh Joint Registrar"

(underlining by us) From the above letter it is clear that the High Court understood that rules 9 to 12 of the 1947 Rules including rule 11 which prescribed the manner of examination and Appendix II to the 1947 Rules which prescribed details regarding the subjects in the examination had to be held had been superseded by the 1950 Rules.

In the meanwhile in exercise of his powers under proviso to Article 309 of the Constitution, the Governor had promulgated the Subordinate Civil Courts Ministerial Establishment (Amendment) Rules, 1969 on September 20, 1969 amending the 1947 Rules (hereinafter referred to as 'the 1969 Amending Rules'). The 1969 Amending Rules read as follows :

"No. 49(1)/69-Nyaya (Ka-2) September 20, 1969.

In exercise of the powers under proviso to Article 309 of the Constitution, the Governor is pleased to make the following rules with a view to amend the subordinate Civil Court Ministerial Establishment Rules, 1947 published with Government notification No.2494/VII-612-40 dated August 1. 1947.

#### RULES

1. Short title and commencement : (i) These Rules may be called the subordinate Civil Courts Ministerial Establishment (Amendment) Rules, 1969

(iii) They shall come into force with effect from the date of their publication in the Gazette.

2. Amendment of rule 5: In the Subordinate Civil Courts Ministerial Establishment Rules, 1947 (hereinafter referred to as the said rules, for the rules as set out in Column 1, the rule as set out in column 4 shall be substituted. B

Column 1  
Column 4 \_\_\_\_\_

5. Academic qualifications :- Academic qualification :- No person who is not already No person who is not on the staff attached to a already on the staff attached to a subordinate civil court shall be appointed to a post Court shall be appointed to in the ministerial establishment unless :- establishment unless :-

(a) he has passed at least (a)he has passed at least the High School examination the Intermediate Examina- conducted by the Board of tion conducted by the Board High School and Inter- of High School and Inter- mediate Education United mediate Education, U.P. Or Provinces, or any other any other examination which examination which has been has been or may be declared or may be declared by the by the Governor to be the Governor to be equivalent equivalent thereto. thereto;

(b) he possesses a thorough (b)he possesses a thorough knowledge both of Urdu and knowledge both of Urdu and Hindi; Hindi.

(c) he possesses in the case (c)he possesses in the case of a candidate for the post of a candidate for the post of Stenographer, a diploma or of Stenographer, a diploma certificate from a University or certificate from a of a recognised Shorthand University or a recognised and typewriting Institution, Shorthand and typewriting showing that he possesses a Institution showing that he speed of at least 100 words possesses a speed of at per minute in Shorthand and least 100 words per minute 35 words per minute in in typewriting.

typewriting.

---

3. AMENDMENT OF APPENDIX II 5. In the said rules for the Appendix as set out in column 1, the Appendix as set in column 2 shall be substituted.

Column 1 Column II Existing Appendix II Marks Appendix as hereby Marks substituted.

The Examination shall The Examination shall be in three parts: be in three parts:

1. Compulsory subjects 350 1.Compulsory subjects 350

2. Optional subjects 50 2.Optional subjects 50

3. Interview 100 3.Interview 100

--- ---

Total	500	Total	500
---	---	---	---

Compulsory subjects shall Compulsory subjects shall be be

(a) Translation from Translation from English English to Urdu 50 to Hindi 50

(b) Translation from (b) Translation from English to Hindi 50 Hindi to English 50

(c) Translation from Urdu (c)Hindi Drafting to English. 50 (Added) 50

(d) Translation from (d)Hindi Precise writing 50 Hindi to English 50

(e) Precise writing 50 (e)English Drafting 50

(f) Dictation 100 (f)Dictation 100 OPTIONAL SUBJECTS : OPTIONAL SUBJECTS Shorthand & Typewriting 50 Shorthand & Typewriting 50 In the optional subject no In the optional subject marks shall be awarded to no marks shall be awarded any candidate who does not to any candidate who does reach the minimum standard not reach the minimum required in the note to standard required in the rule 14. note to rule 14.

Any clerk who is already Any clerk who is already On the Establishment and on the Establishment and is not qualified as, a is not qualified as a stenographer may sit for Stenographer may sit for the examination in typewriting the examination in typewri- and shorthand alone and will ting and shorthand alone be eligible for appointment and will be eligible for as stenographer if he appointment as Stenographer qualifies. if he qualifies."

The existence of these Amending Rules of 1969 was not taken note of by the High Court when the letter of the Joint Registrar dated February 12, 1973 was addressed to all the District Judges. It appears from the said letter that the Nigh Court was following the 1950 Rules even after the promulgation of the 1969 Amending Rules for purposes of holding the competitive examination for recruitment to the ministerial staff in the Civil Courts. Then came the subordinate Offices Ministerial Staff (Direct Recruitment) Rules, 1975 (hereinafter referred to as 'the 1975 Rules') promulgated by the Governor under the proviso to Article 309 of the Constitution. The said Rules were promulgated in supersession of all existing rules and orders on the subject. Rule 2 of the 1975 Rules which deals with their application read as follows :

"2. Application of these rules. (1) These rules shall govern recruitment to all the ministerial posts of the lowest grade, other than the posts of stenographer (which are required to be filled by direct recruitment and which are outside the purview of the Public Service Commission) in all subordinate offices under the control of the Government but excluding the Secretariat, the offices of State Legislature, Lokayukt, Public Service Commission, Uttar Pradesh, High Court the Subordinate Courts under the Control and superintendence of the High Court, the Advocate General, Uttar Pradesh and of the establishments under the control of the Advocate General."

From rule 2 of the 1975 Rules which is set out above, it clear that the said Rules were not made applicable to the Secretariat, the offices, of the State Legislature, Lokayukta, Public Service Commission, High Court, the subordinate Courts under the control and superintendence of the High Court and all the establishments under the control of the Advocate General. The 1975 Rules prescribed the qualifications and the pattern of a competitive examination for purposes of recruitment in substitution of what had been prescribed by the 1950 Rules in respect of subordinate offices to which the 1975 Rules applied. Sub-rule (1) of rule 20 of the 1975 Rules expressly provided thus :

"20. Repeal and validation. (1) The Rules for the recruitment of ministerial staff in the Subordinate offices published under notification No.C-1119/IU-850, dated July 11, 1950 as amended from time to time, shall be, and be deemed to have been repealed with effect from June 5, 1974."

It was after the promulgation of the 1975 Rules that the competitive examination, with which we are concerned, was held by the District Judge of Kanpur. The said examination was held in September 1981 and its results were announced on July 25, 1983. Respondent No.1 and many others appeared in the said examination. The competitive examination was, however, held in accordance with the 1950 Rules. The 1969 Amending Rules were not, however, followed. Respondent No.1 who had appeared for the competitive examination was not successful. Aggrieved by the result of the examination he filed the writ petition before the High Court of Allahabad, out of which this appeal arises. His principal contention before the High Court was that the competitive examination which had been held in accordance with the 1950 Rules was an unauthorised one and that it should have been held in accordance with the 1947 Rules as amended by the 1969 Amending Rules. The High Court held that it was evident that the intention of promulgating the 1950 Rules was only to prescribe a syllabus different from what had been prescribed in the 1947 Rules but the modification made by the 1950 Rules did not, however, modify the rest of the 1947 Rules. The High Court was of the opinion that "therefore, it follows that the 1950 Rules being later in time superseded 1947 Rules to the extent of its inconsistency. After the enforcement of 1950 Rules competitive tests for holding selection for appointment to the Ministerial Establishment of Subordinate Courts was required to be held in accordance with the syllabus of 1950 Rules and not in accordance with Appendix II of 1947 Rules. In other respects the 1947 Rules continued to be effective."

The High Court then found that on the promulgation of the 1969 Amending Rules the syllabus prescribed by the 1950 Rules could not be followed. The High Court observed on this question as follows:

"The question, however, arises what was the effect of Subordinate Civil Courts Ministerial Establishment (Amendment) Rules, 1969. As noted earlier, the Rules of 1969 were framed by the Governor, amending Appendix II of 1947 Rules. The notification dated September 20, 1969, under which the Rules were enforced, does not contain any reference to 1950 Rules. It appears that while amending the 1947 Rules, the Governor failed to notice that Appendix II of 1947 Rules had already been superseded by Rule 6 of 1950 Rules. However, it is evident that the intention was to prescribe different syllabus than that prescribed by 1950 Rules. There is no doubt that by the 1969 Rules, the Governor intended to lay down a syllabus for holding competitive examination for selection and appointment to the ministerial establishment of Subordinate Courts which was quite different to the syllabus prescribed by rule 6 of 1950 Rules as well as Appendix II of 1947 Rules. The 1969 Rules were also framed by the Governor in respect of the same subject matter as laid down by rule 5 of 1950 Rules. Since 1969 Rules were framed later in time by the same authority on the same subject, it must be held that the syllabus prescribed by the Amending Rules superseded the earlier rules on the subject.

The High Court gave one more reason for holding that the 1950 Rules were no longer in force in the year 1981. The High Court was of the view that the 1950 Rules having been repealed by rule 20 of the 1975 Rules they were no longer effective from June 5, 1974. It observed thus :

"The 1969 Rules, no doubt, purported to amend Rule 5 and Appendix II of 1947 Rules. The language of the Rules of 1969 indicates that apart from the rules being in the nature of an amendment, the Governor intended to lay down specific rules prescribing educational qualifications and syllabus for holding the examination for recruitment to the Ministerial Staff of the Subordinate Courts. Even if the 1969 Rules could not be effective during the period the 1950 Rules were in force, the same would be fully effective after June 5, 1974, the same repeal of 1950 Rules. We, therefore, hold that in any event after June 5, 1974 recruitment to the ministerial staff of the Subordinate Courts could be held only in accordance with 1947 Rules read with 1969 Rules and not in accordance with 1950 Rules.

The High Court was of the view that since within the judgeship of Kanpur the examination had not been held in accordance with the syllabus prescribed by the 1947 Rules as amended by the 1969 Amending Rules all those who were successful and selected for appointment had no legal right to be appointed. It accordingly quashed the examination held in 1981 by the District Judge of Kanpur, the results of which had been announced in 1983 by its judgment dated April 12, 1985. The High Court clarified that all the candidates who had applied for the 1981 examination were, however, entitled to appear for the fresh examination to be held by the District Judge of Kanpur. It further observed that in the other Districts of Uttar Pradesh where examinations had been held under the 1950 Rules and which had not been challenged the selection and appointment made in pursuance thereof should be treated as valid and would not be rendered invalid on the ground that any other view would cause great hardship 'which will not be in the public interest'. The result of the judgment was that only those who had been selected or appointed on the basis of the competitive examination held by the District Judge, Kanpur lost their appointments or the right to be appointed but all other candidates who had been selected on the basis of examinations held in accordance with the 1950 Rules in the rest of the State of Uttar Pradesh continued in their posts.

Aggrieved by the judgment of the High Court, the appellant who was one of the selected candidates in the Kanpur examination, has filed this appeal by special leave.

In this case the deficiencies in the drafting of the rules and the inadvertence on the part of the High Court in complying with them pose some difficulty in arriving at a just solution. There is no dispute that the 1947 Rules made appropriate provisions regarding the recruitment of candidates to the posts in the ministerial establishment in the Subordinate Courts in the former United Provinces and they continued to be in force till July 11, 1950. On July 11, 1950 the 1950 Rules were promulgated. They were applicable not merely to the ministerial establishments in Civil Courts but to the ministerial establishments in several other offices. They were promulgated in supersession of all existing rules and orders on the subject. They prescribed that recruitment to the ministerial staff in a subordinate office to which the said rules were applicable should be made on the basis of a competitive test and also provided for the mode of calculation of vacancies, the period during which

competitive examinations should be held, the subjects for the test and the marks assigned to each of them and the method of selection of successful candidates. They also provided that appointments to higher posts in the ministerial staff of those offices should be made by promotion. Rules 9 to 12 of the 1947 Rules and Appendix II to it which dealt with above topics thus stood superseded. The other parts of the 1947 Rules which dealt with the nationality domicile and residence of the candidates, their academic qualifications, character and physical fitness, the appointing authority, probation and confirmation, seniority, punishment, rate of pay, transfers and regulations of conditions of service remained intact since the 1950 Rules did not make any provision as regards these topics. Hence we do not agree with the argument urged on behalf of the appellant that the 1947 Rules stood superseded in their entirety by the 1950 Rules relying upon the opening words of the 1950 Rules which read thus : G "In exercise of the powers conferred by Article 309 of the Constitution of India, and in supersession of all existing rules and orders on the subject.....

(Emphasis supplied) "In supersession of all existing rules and orders on the subject" can only refer to those matters in the existing rules which correspond to the matters dealt with by the 1950 Rules. We have explained earlier the other subjects in the 1947 Rules which were not covered by 1950 Rules. Hence the argument based on the assumption that the entire 1947 Rules had been repealed by implication and no amendment could be made to the 1947 Rules has to be rejected. The High Court was, therefore, right in observing that the whole of the 1947 Rules did not come to an end on the promulgation of the 1950 Rules. The problem, however, does not get solved thereby as we shall presently show.

The 1969 Amending Rules specifically amended the 1947 Rules. These 1969 Amending Rules appear to have been made after consultation with the High Court as can be seen from the letter dated November 30, 1968 written by the Joint Registrar of the High Court to the Joint Legal Remembrancer of the Government of Uttar Pradesh. The 1969 Amending Rules were published in the Uttar Pradesh Gazette dated October 9, 1969. By these Rules, rule 5 of the 1947 Rules was amended. Rule 5 dealt with the minimum academic qualification which a candidate for a post in the ministerial establishment in a Subordinate Civil Court should possess. The other amendment related to the substitution of the former Appendix II which related to the subjects prescribed for the competitive examination and the marks assigned to each of them as it obtained before the 1950 Rules came into force by a new Appendix which has already been set out above.

Rule 11 of the 1947 Rules which required the District Judge to hold the examination in accordance with the former Appendix II of the 1947 Rules which also stood superseded by the 1950 Rules in view of rules 5 & 7 of the 1950 Rules which dealt with the same subject, was however not replaced nor a corresponding rule authorising the District Judge to hold the competitive examination in accordance with the new Appendix II was introduced by the 1969 Amending Rules into the 1947 Rules simultaneously. The result was that while the new Appendix II again re-appeared in the 1947 Rules prescribing certain subjects and marks assigned to them, the authority who should hold the competitive examination was not again prescribed in the 1947 Rules. It was necessary to re-enact rule 11 of the 1947 Rules because it also stood repealed by the 1950 Rules which had made provision with regard to the topic contained in the former rule 11. The legal position that by the promulgation of the 1950 Rules, the former rules 9 to 12 of the 1947 Rules stood repealed by necessary implication



is accepted even by the High Court in its letter dated February 12, 1973 referred to above. Therefore the former rule 11 should have been re-enacted either in the same form or with modification and brought back to life to give effect to the new Appendix II reintroduced in the 1947 Rules. Without such reintroduction of rule 11, the mere reintroduction of Appendix II in the 1947 Rules by the 1969 Amending Rules would be meaningless and ineffective as the authority who can hold the examination remained unspecified. The method of selection of candidates also remained unspecified. In effect whatever was provided in Rules 9 to 12 of the 1947 Rules which was needed for conducting the examination and selecting candidates was however unavailable. It is not correct to assume that the old rules 9 to 12 also automatically revived along with Appendix II without an express provision reintroducing them. Here we are not trying to be technical. It is to be noted that the 1969 Amending Rules do not expressly state that the 1950 Rules would no longer be applicable to the ministerial establishments of the Subordinate Civil Courts. They also did not repeal the item referring to the Judicial Department Subordinate Civil Courts, which found a place in the schedule to the 1950 Rules. The discontinuance of the application of the 1950 Rules to the ministerial establishments of the subordinate Civil Courts can only be inferred by relying upon the rule of implied repeal provided the said rule is applicable.. An implied repeal of an earlier law can be inferred only where there is the enactment of a later law which had the power to override the earlier law and is totally inconsistent with the earlier law, that is, where the two laws - the earlier law and the later law - cannot stand together. This is a logical necessity because the two inconsistent laws cannot both be valid without contravening the principle of contradiction. The later laws abrogate earlier contrary laws. This principle is, however, subject to the condition that the later law must be effective. If the later law is not capable of taking the place of the earlier law and for some reason cannot be implemented, the earlier law would continue to operate. To such a case the rule of implied repeal is not attracted because the application of the rule of implied repeal may result in a vacuum which the law making authority may not have intended. Now, what does Appendix II contain? It contains a list of subjects and marks assigned to each of them. But who tells us what that list of subjects means? It is only in the presence of rule 11 one can understand the meaning and purpose of Appendix II. In the absence of an amendment re-enacting rule 11 in the 1947 Rules, it is difficult to hold by the application of the doctrine of implied repeal that the 1950 Rules have ceased to be applicable to the ministerial establishments of the Subordinate Civil Courts. The High Court overlooked this aspect of the case and proceeded to hold that on the mere reintroduction of the new Appendix II into the 1947 Rules, the examinations could be held in accordance with the said Appendix. We do not agree with this view of the High Court.

There is also no material before the Court to show that after the 1969 Amending Rules, examinations were held in the different districts of Uttar Pradesh in accordance with the 1947 Rules as amended by the 1969 Amending Rules. No body including the Nigh Court appears to have taken notice of the amendment. On the other hand examinations have been held according to the 1950 Rules even after the above 1969 amendment. The District Judge has filed a counter-affidavit stating that the examinations were held in 1981 in this case in accordance with the 1950 Rules and not in accordance with the 1947 Rules as amended by the 1969 Amending Rules. me letter of the High Court dated February 12, 1973 shows that it treated the 1950 Rules as the existing Rules in 1973 even after the 1969 Amending Rules came into force because it is stated in that letter as follows :

"While following the procedure laid down in the existing rules. published under Government Notification Nb. O-1119/XI-850 dated July 11, 1950 (which was adopted in supersession of rules 9 to 12 of the U.P subordinate Civil Courts ministerial establishment Rules 1947) and amplified in G.O. No.O-2248/II-8-III-1950 dated August 30, 1950, the District Judge should..... "

(emphasis added) Further it appears that in the year 1981 in some other districts of Uttar Pradesh examinations were held as per the 1950 Rules. This is borne out by the observation of the High Court in its judgment where it has expressed its reluctance to set aside the results of the examinations in the other districts and confined the operation of its judgment to Kanpur District only. The 1969 Amending Rules appear to have been ignored by some District Judges. In the circumstances having regard to the lacuna created by the non-

repromulgation of rule 11 of the 1947 Rules it has to be held that there was no effective substitution of the 1950 Rules brought about by the 1969 Amending Rules. The 1950 Rules should therefore be held to be operating even in the year 1981. Hence the examinations held according to them cannot be held to be bad.

We do not agree with the view of the High Court that the 1950 Rules have been repealed by the 1975 Rules insofar as the Subordinate Civil Courts are concerned. It is true that rule 20 of the 1975 Rules clearly stated that the 1950 Rules had been repealed. But the 1975 Rules did not apply to the subordinate courts under the control and superintendence of the High Court. Hence the 1950 Rules insofar as they applied to the subordinate courts continued to be in force. The finding of the High Court on this question is erroneous and is liable to be set aside.

Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the District of Kanpur also. They were not responsible for the conduct of the examination.

For the foregoing reasons we feel that the judgment of the High Court should be set aside. We accordingly set aside the judgment of the High Court and dismiss the Writ Petition. The appellant and all other successful candidates at the 1981 examination held in Kanpur shall be appointed in accordance with the Rules. We further direct that they shall be given the salary, allowances, increments and seniority to which they would have been entitled but for the judgment of the High Court. But they will not be entitled to any salary and allowances for the period during which they have not actually worked. We also make it clear that if in any other centre, selections and appointments have been made on the basis of the 1969 Amending Rules they shall remain undisturbed.

The order passed by the High Court in the connected writ petition No. 10224 of 1983 on its file is also set aside. Similarly the order passed in writ petition No.5073 of 1984 on the file of the High Court is also reversed. There shall be a common order in these connected cases as directed in this appeal.

The appeal is accordingly allowed. No costs. The High Court may take steps, if it so desires, to promulgate a fresh set of Rules of recruitment for-the staff in the subordinate courts early.

A.P.J.

Appeal allowed.