

# **Devki Nandan And 17 Others vs State Of U.P. And 3 Others on 28 May, 2018**

**Author: Sunita Agarwal**

**Bench: Sunita Agarwal**

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Reserved

Case :- WRIT - A No. - 54923 of 2017

Petitioner :- Devki Nandan And 17 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Shantanu Khare,Ashok Khare

Counsel for Respondent :- C.S.C.

Alongwith

Writ-A-1856-2018 Writ-A-2796-2018 Writ-A-2847-2018 Writ-A-3806-2018 Writ-A-4118-2018

Hon'ble Mrs. Sunita Agarwal,J.

Heard learned counsel for the parties.

This bunch of writ petitions have been filed challenging the Government Order dated 30.10.2017 whereby the earlier Government Order dated 30.5.2008 has been rescinded. In the Government Order dated 30.5.2008, a provision was made that the Seasonal Collection Peons and Amins would not be deprived of the benefit of regular appointment on the ground of them having crossed the age of 45 years, in case, they are found otherwise eligible. It was provided that the Selection Committee

in such cases shall forward its recommendations to the State Government for considering their cases for grant of age relaxation.

Some of the writ petitions tagged in this bunch have been filed challenging the orders of the State Government refusing to grant relaxation on the ground that there is no provision under the U.P. Collection Amins Service Rules, 1974 as amended by the Rules 2015 (in short "Rules, 1974") and Uttar Pradesh Collection Peon's Service Rules, 2004 as amended by the Rules 2016 (in short "Rules, 2004"), for grant of such relaxation. Both the recruitment rules provide the maximum age for regular appointment. Moreover, the U.P. Public Service Commission (Relaxation of Age Limit) Relaxation Rules, 1992 (in short "Relaxation Rules, 1992") which confers power upon the Governor to grant relaxation in maximum age limit in public recruitment, is a General Rule. The specific rules namely the Rules, 1974 and Rules, 2004 pertaining to recruitment of Seasonal Collection Amins and Peons to the regular post provides the maximum age limit, no relaxation can be given by invoking provisions of the Relaxation Rules, 1992, which is a General Rule, in absence of any such provision in the specific rules.

The facts of the case in brief are that the petitioners herein have been engaged as Seasonal Collection Amins or Peons in different districts in the State of U.P. and almost each of the petitioner has rendered substantial length of working as such. Under the statutory provisions, for recruitment to the post of Collection Amins and Collection Peons, there is quota of 35% and 50% for appointment from amongst the Seasonal Collection Amins and Peons. As per the procedure for selection, a seniority list is to be drawn in the order of length of services rendered by the seasonal employees. The said list is to contain full details with regard to their education qualifications, category to which they belong, their date of birth, the date of their first engagement in seasonal capacity and the length of working as against the name of each employee. The said eligibility list is to be placed before a Selection Committee at the district level which considers the name of each candidate finds place in the said list in the ratio of the vacant post and the required number of candidates on the basis of their seniority or the length of their service on the post of Seasonal Collection Amin/Peon in the district are appointed on regular post, subject to satisfactory working based on the recommendation of the Selection Committee.

The Government Order dated 30.5.2008 was issued in the matter of regular appointment of Seasonal Collection Amins and Peons which provided that the recommendation of the Selection Committee with respect to those candidates who had crossed the age of 45 years and were otherwise eligible should be forwarded to the State Government for consideration to grant relaxation in age and till such decision is taken, the post shall be kept vacant and the proceeding for regular selection shall not be concluded. The said Government Order has been revoked by another Government Order dated 30.10.2017 and hence these writ petitions.

Learned counsels for the petitioners vehemently contended that age relaxation was being granted for the purpose of regular appointment to the similarly situated Amins and Peons in a routine manner. While issuing the Government Order dated 30.5.2008, the State Government has admitted in principle that the power to grant age relaxation lies with the Governor under the Relaxation Rules, 1992 and the said rules are applicable to recruitment in public services under the State of U.P.

Moreover, the Government Order dated 30.10.2017 cannot be applied retrospectively and would not be relevant to the selection proceedings conducted prior to its issuance. The selection proceedings which had already completed and the recommendations whereof have been sent to the State Government, will be governed by the Government Order dated 30.5.2008. Reliance is placed upon the Full Bench judgment of this Court in Santosh Kumar Singh vs. State of U.P. and others<sup>1</sup>, wherein in the light of the judgment of Apex Court in A.A. Calton vs. Director of Education and another<sup>2</sup>, it has been held that a selection process has to be governed by the rules and Government Orders in existence on the date on which the process is initiated.

Further reliance is placed upon the judgment of the Apex Court in Madan Mohan Sharma and another vs. State of Rajasthan and others<sup>3</sup> to submit that after the selection process is set in motion with the issuance of the advertisement, it should continue on the basis of criteria which were laid down by the Circulars/Government Order/Rules at the relevant point of time. The subsequent changes, if any, would be of no relevance. As any amendment of rules at a subsequent stage cannot be made retrospective so as to make the selection on the basis of rules which were subsequently amended.

Reference has also been placed upon the judgment of the Apex Court in B.N. Nagarjun and others, etc. vs. State of Mysore and others etc.<sup>4</sup> and the Full Bench judgment of this Court in Vijay Singh and others vs. State of U.P. and others<sup>5</sup> to submit that if there are statutory rules or a legal provision in the matter, the Executive Instructions must abide by the Act or rule. It cannot in exercise of the executive power under Article 162 of the Constitution of India ignore or act contrary to that rule or Act.

It is further submitted that the impugned Government Order is based upon misconstruction of the Rules, 2004 read with the Relaxation Rules, 1992 which are applicable to all services or posts in the State of U.P. which are governed by distinct sets of rules framed under the proviso to Article 309 of the Constitution of India.

Further, with reference to the rules 24 and 25 of the Rules, 2004 and the rules 30 and 31 of the Rules, 1974 as amended from time to time, which are *pari materia*, it is contended that the rule 24 of Rules, 2004 provides that the matters which are not specifically covered by the rules or orders made or issued thereunder or by special order, persons appointed to the service (under the said rule), shall be governed by the general rules, regulations and orders applicable to the Government servants serving in connection with the affairs of the State. Similarly, rule 25 of the Rules, 2004 confers power upon the State Government to relax or dispense with any of the requirement of the rules which causes prejudice to a particular class of employee or in any individual so as to deal with the said case in a just and equitable manner.

It is further contended that the Court may take note of the fact that while referring the provisions of Relaxation Rules, 1992, in para '2' of the Government Order under challenge, the State Government does not make it clear as to whether the said rule can be invoked to grant age relaxation in the recruitment-in-question. Rather it simply states that there exist no provision for according relaxation in the upper age limit in the rules governing recruitment and service conditions of

Seasonal Collection Amins and Seasonal Collection Peons namely the Rules, 1974 and Rules, 2004; and as such the Government Order dated 30.5.2008 was not in accordance with the provisions of the rules and be cancelled.

It is vehemently contended by the learned counsels for the petitioners that for more than a decade, a practice was in vogue in the department for regular appointment of Seasonal Collection Amins and Peons, against a regular post, who have crossed the upper age limit of 45 years, considering the continuous long period of their working in seasonal capacity. The U-turn taken by the Government is clearly arbitrary and violative of Article 14 of the Constitution of India.

One such order of relaxation granted to 24 incumbents passed on 7th October, 2016 (Annexure '8' to the writ petition) has been placed before the Court, paragraph '2' of the said order records that the relaxation had been granted by the Governor in exercise of the powers, conferred upon him under rule 3 of the Relaxation Rules, 1992 readwith the Government Order dated 30.5.2008.

It is demonstrated that one such order dated 5.10.2016 with reference to the list of 28 candidates was challenged before this Court in Writ Petition No. 56391 of 2016 (Vageesh Chand and 3 Ors. vs. State Of U.P. And 33 other). Noticing the fact that relaxation in maximum age was granted by the Governor in exercise of the power under Relaxation Rules, 1992, this Court had refused to interfere.

It is, thus, submitted that the Government Order dated 30.10.2017 proceeds on misconstruction of the statutory provisions and would result in arbitrary exercise of power not being in the spirit of the statute.

With reference to the seniority list at page '31' of the paper book of the leading writ petition, it is contended by Sri Ashok Khare, learned Senior Advocate that many of the incumbents in the said list have been engaged as early as in the year 1981 and have rendered more than 14 years of service as Seasonal Collection Peons and most of them have rendered more than 10 years of services. There is no justification to deny consideration to these persons, for regular appointment on the ground that they have crossed the age of 45 years. Moreso, when the idea of regular appointment is, to absorb the incumbents already working on seasonal basis for long time, on substantive posts. All such candidates who have been recommended by the Selection Committee have worked satisfactorily for the minimum required period under the rules. The idea to exclude them for being beyond 45 years of age cannot but be said to be contrary to the spirit of the recruitment rules.

Referring to various recruitment rules pertaining to the services in different departments in the State of U.P., the learned Senior Advocate submits that no other rule for regular appointment or regularisation/absorption of a seasonal or temporary or work charge employees provides for upper age limit for regular appointment.

This apart, the meeting of the Selection Committee are not held regularly. The incumbents who have rendered long length of services in the department and have crossed the age of 45 years, for inaction of the district authorities in holding meeting of the Selection Committee regularly, cannot be deprived of the benefit of regular appointment by excluding them on the ground of being overage.

Even otherwise, by fixing age limit for regular appointment, similarly situated employees are being kept in different categories which is not based on any reasonable differentia.

Lastly, it was prayed that a direction may be issued to the State Government to consider all the pending cases/recommendations before it for grant of relaxation in the upper age limit and to re-consider all such claims which have been rejected solely on the ground that there exist no provision for age relaxation.

In rebuttal, Sri Y.K. Srivastava learned Chief Standing Counsel assisted by Sri Vikram Bahadur Yadav, learned Standing Counsel defending the Government Order dated 30.10.2017 submits that executive instructions under Article 162 of the Constitution of India cannot be issued in contravention of the statutory provisions. Any such instruction which has the effect of amending or superseding the statutory rules governing the subject, cannot be sustained. The upper age limit has been provided under the second proviso to sub-rule (1) of Rule 5 of Rules, 1974 (as amended by Fifth Amendment Relaxation Rules, 1992) readwith the Sixth Amendment Rules, 2004 with reference to Collection Amins. Similar provision are framed under Rules, 2004 relating to regular appointment of Seasonal Collection Peons. There being a provision under the specific rules framed by the Governor under the proviso to Article 309 of the Constitution of India, the Government Order dated 30.5.2008 was clearly beyond jurisdiction and as such has been rightly rescinded vide Government Order dated 30.10.2017 under challenge. Their claim for consideration for appointment to the regular posts of Collection Amins/Peons under rule 5 of Rules, 1974 and Rules, 2004 (as amended from time to time), by granting relaxation in age, therefore, is legally untenable.

With reference to paragraph '2' of the Government Order dated 30.10.2017 and paragraph '23' of the counter affidavit filed on behalf of the respondent no. 1 in the Writ Petition No. 54923 of 2017 (Devki Nandan and 17 others vs. State of U.P. and 3 others), it is contended by the learned Chief Standing Counsel that even otherwise, the subject of relaxation in upper age limit in recruitment of State services is governed by a general set of rules namely the Relaxation Rules, 1992. In terms of rule 3 thereof, the power to grant relaxation in maximum age limit has been conferred upon the Governor. The field stands occupied and as such no executive instructions/Government Orders could be issued so as to substitute the provisions of the Rules, 1974 or the Rules, 2004. In any case, the decision taken by the State Government to rescind the Government Order dated 30.5.2008 cannot be said to be an arbitrary exercise of power or contrary to any legal provision. The Government Order dated 30.10.2017 cannot be termed discriminatory in violation of Article 14 of the Constitution of India.

Even otherwise, there is no challenge to the specific provision fixing upper age limit in the second proviso to sub-rule (1) of Rule 5 of the Rules, 1974 and Rules, 2004. In absence of such a challenge in the light of the existing statutory provision, the present bunch of writ petitions is liable to be dismissed outrightly being misconceived.

Lastly, it is contended that reference to rules 24 and 25 of Rules, 2004 (relating to Collection Peons) and rules 30 and 31 of Rules, 1974 (relating to Collection Amins) would not be appropriate, inasmuch as, the said provisions are not attracted in the matters of recruitment and rather would be

relevant only in respect to the service conditions of those incumbents who are in regular service within the meaning of the rules.

Till the Seasonal Collection Amins/Peons are appointed on regular post, they are not members of service and would not be governed by the general rules applicable to the Government servants and the power of relaxation of conditions of service as conferred upon the State Government under the said rules cannot be invoked. Rules 24 and 25 of Rules, 2004 and rules 30 and 31 of Rules, 1974 cannot be read to mean that the State Government has power to relax the requirement of upper age limit in recruitment of Seasonal employees to regular posts as it is causing hardship to them.

In rejoinder, Sri Ashok Khare, learned Senior Advocate asserts that if relaxation in upper age requirement is denied, whole purpose of regular appointment would frustrate. Moreover, the Seasonal Collection Amins and Peons are one of sources of recruitment under the rule 5 of Rules, 1974 and Rules, 2004 rules. In the matter of Collection Peons, 50% of the substantive posts are to be filled from amongst such Seasonal Collection Peons who have rendered satisfactory services for atleast 4 fasals as per clause (ii) of Rule 5. As per the proviso to Rules, 2004, in case of non-availability of suitable candidates, the remaining vacancies are to be filled by direct recruitment as per clause (i) thereof. Whereas in the matter of recruitment of Collection Amin; Rules, 1974 was amended by Fifth Amendment Rules, 1992, to add the source of recruitment upto 35% of vacancies to be filled by Seasonal Collection Amins who have rendered satisfactory services within the meaning of the said provision. Only in the event of non-availability of suitable candidates, the remaining vacancies are to be filled through direct recruitment. Thus, the Seasonal Collection Amins and Peons being the source of recruitment to the regular posts of Collection Amins and Peons under their respective rules have a right to seek relaxation under rule 3 of the Relaxation Rules, 1992.

It is contended that by virtue of rule 1(3) of the Relaxation Rules, 1992, it has been made applicable to all civil services and posts with respect to which power lies with the Governor to frame rules under proviso to Article 309 of the Constitution of India.

This apart, rule 3 of Relaxation Rules, 1992 gives it an overriding effect over all such rule which provides for maximum age limit for recruitment to a State service or post. The Governor enjoins wide power to form an opinion that in a particular recruitment to public services or posts, the maximum age limit is required to be relaxed.

He, however, admits that the power to relax should be exercised prior to commencement of the recruitment process i.e. advertisement of the post for direct recruitment. But he submits that the said condition cannot be made applicable in the matter of recruitment by regular appointment of seasonal employees within the quota, inasmuch as, there is no question of public notice of the said vacancies. The persons who are already in service on seasonal basis are required to be considered by the Selection Committee on the basis of the list of such employees prepared by the department. The question to consider for grant of relaxation would arise only at the stage where the Selection Committee finds that the candidate or candidates is/are otherwise suitable for the post.

It is contended that the relaxation in upper age limit under the Relaxation Rules, 1992 can be granted, both in favour of a candidate or a particular class of candidates. The recruitment by regular appointment of Seasonal Collection Peons/Amins is in the nature of direct recruitment to the substantive post in recognition of their long services, the State Government cannot deny consideration on the ground that there is no power to relax under the statutory rules.

To deal with the issue at hands, certain more facts are needed to be noted. It is noteworthy that noticing the apparent contradictions in the submissions of the learned Standing Counsel, with reference to the averments made in the counter affidavit regarding the power of the State Government under the Relaxation Rules, 1992 being intact, with that of discernment in the Government Order under challenge, this Court passed a detailed order dated 30.3.2018 in the connected Writ Petition No. 55346 of 2017 (Vedpal Singh And 19 Others vs. State Of U.P. And 3 Others). The learned Standing Counsel was asked to obtain instructions, upon examination of the issue.

Hearing in the matter was resumed on 11.4.2018, the learned Standing Counsel passed on a written instructions dated 10th April, 2018 received from the office of the Chief Secretary whereby four weeks further time was sought to complete instructions pursuant to the order dated 30.3.2018 passed by this Court.

The matter was further argued on 30.4.2018. After hearing the parties, this Court has granted time to the learned Standing Counsel to clarify the stand of the Government on the factual and legal issues by 7.5.2018 and to place the object and reason of Seventh Amendment Rules 2015 and Second Amendment Rules, 2016 raising the quota for regular appointment of Seasonal Collection Amins and Peons by adding 4th proviso to sub-rule (i) of Rule 5 in the Rules, 1974 and the Rules, 2004.

On 7th May, 2018, written instructions dated 4th May, 2018 received from the office of the Special Secretary, State of U.P. was placed by the learned Chief Standing Counsel to bring before the Court, the minutes of meeting of the Principal Secretary and Chief Secretary concerned which was held under the chairmanship of the Principal Secretary after approval of Hon'ble the Chief Minister.

It is pertinent to note that the said meeting was held on 10th April, 2018 in the light of the order passed by this Court on 30th March, 2018.

In paragraph '2' of the written instructions dated 4th May, 2018, while explaining the objective and purpose of raising quota of regularization by Seventh Amendment Rules, 2015 and Second Amendment Rules, 2016, it is submitted by the Additional Chief Secretary that from a perusal of the records, it transpired that one time exercise for regular appointment by directing to increase quota was undertaken in order to address the grievances of the large number of Seasonal Collection Amins/Peons working in the revenue department who attain age of superannuation without getting a chance of regular appointment and, thus, are deprived of the benefits admissible to the Government servants. Further the State respondents have to face large number of litigations being filed before the High Court which give rise to contempt in large numbers. In order to bring down litigation, the decision was taken to address the grievances of the seasonal employees by giving them

a chance for regular appointment before they attain age of superannuation which would also curtail the huge number of litigation.

Paragraph '2' of the written instructions dated 4th May, 2018 is relevant to be reproduced as under:-

"2& iz'uxr izdj.k esa voxr djuk gS fd Þeko eq[;ea=h th ds vuqeksnu ds mijkUr 'kklukns'k la[;k&616@d&7&2017&jko&7 fnukad 30 vDVwcj] 2017 fuxZr fd;k x;k gS rFkk fjV ;kfpdk la[;k&55346@2017 osniky flag o vU; cuke moizo ljdkj o o3 vU; esa eko mPp U;k;ky;] bykgckn }kjk ikfjr fu.kZ; fnukad 30 ekpZ] 2018 ds dze esa eq[; lfpo egksn; dh v/;{krk esa fnukad 10-4-2018 dks lEiUu cSBd dk dk;Zo`Rr dk;kZy; vkns'k la[;k&97@d&7&2018 fnukad 17 vizSy] 2018 ¼layXud&1½ fuxZr fd;k x;k gSA fy;s x;s fu.kZ; ds dze esa 'kklu ds i= la[;k&113@d&7&2018&jko&7 fnukad 24 viSzy] 2018 ¼layXud&2½ }kjk vk;qDr ,oa lfpo] jktLo ifj'kn] moizo y[kuÅ dks dk;Zo`Rr ds fcUnq lao&1] 2] 3] 4 ds vuqlkj dk;Zokgh djkus ds funsZ'k fn;s x;s gSA blds vfrfjDr moizo dysD'ku vehuks dh lsok ¼lkrokW la'kks/ku½ fu;ekoyh] 2015 dh vf/klwpuk fnukad 01 vDVwcj] 2015 }kjk fuxZr fd;k x;k gSA mDr fu;ekoyh esa lkef;d laxzg vehuksa dk 35 izfr'kr ls dksVk c<+kdj 85 izfr'kr dksVk dsoy ,d ckj esa mik; ds fy, p;u }kjk Hkjs tkus dh O;oLFkk dh x;h gSA i=koyh esa miyC/k vfHkys[kksa dk ifj'khyu fd;s tkus ij ;g ik;k x;k fd moizo laxzg vehu lsok fu;ekoyh] 1974] ds ;Fkk la'kksf/kr fu;ekoyh] 2004 esa lkef;d laxzg vehuksa ds fy, fjfDr;ksa dk 35 izfr'kr dksVk fu/kkZfjr gSA laxr lsok fu;ekoyh esa lkef;d laxzg dfeZ;ksa ds fy, izkfo/kku gksrs gq, Hkh buesa ls cgqr;r la;k esa lkef;d dehZ fcuk fu;fer :i ls fu;qDr gq, gh vf/ko"Zrk vk;q iw.kZ dj ysrs gS] ifj.kkeLo:i mUgsa ljdkjh lsodksa ds HkkWfr dksbZ ykHk izkIr ugh gksrk gSA ,slh fLFkfr esa vusdks fjV ;kfpdk,sa eko mPp U;k;ky; es nk;j gksrh jgrh gS rFkk vk;s fnu fofHkUu voekuukoknksa dk lkeuk Hkh djuk iM+rk gS] blh mn~ns'; ,oa dkj.k ds n`f"Vxr lkef;d laxzg vehuksa dk dksVk 35 izfr'kr ls c<+kdj 85 izfr'kr fd;k x;k gSA moizo laxzg vuqlsod lsok ¼f}rh; la'kks/ku½ fu;ekoyh] 2016 fnukad 05 vDVwcj] 2016 dks fuxZr fd;k x;k gSA mDr fu;ekoyh esa lkef;d laxzg vuqlsodksa dks 100 izfr'kr p;u lfefr ds ek;/e ls ,d ckjxh mik; ds :i esa p;u }kjk Hkjs tkus dh O;oLFkk dh x;h gSA i=koyh esa miyC/k vfHkys[kksa dk ifj'khyu fd;s tkus ij ;g ik;k x;k fd Þmoizo laxzg vuqlsod lsok fu;ekoyh] 2004 esa lkef;d laxzg vuqlsodksa ds fy, fjfDr;ksa dk dksVk 50 izfr'kr fu/kkZfjr gSA mDr dksVk 50 izfr'kr dks c<+kdj 100 izfr'kr fd;s tkus dk mn~ns'; ,oa dkj.k ;g gS fd izns'k ds fofHkUu tuinksa esa foxr 20&25 o"kksZa ls gtkjksa dh la;k esa lhtuy :i ls laxzg vuqlsod dk;Z dj jgs gSa] tks fcuk fu;fer fu;qfDr ds vf/ko"Zrk vk;q iw.kZ dj ysrs gSA mDr la'kks/ku ls lhtuy laxzg vuqlsodksa dks fu;fer fu;qfDr iznku fd;s tkus ij fu;fer deZpkjh dh HkkWfr ykHk izkIr gks ldsxk rFkk ogha nwljh vksj lhtuy laxzg vuqlsod }kjk vius fofu;ferhdj.k dh ea'kk esa tks lSdM+ks dh la;k esa fjV ;kfpdk,sa eko mPp U;k;ky; esa ;ksfr dh tk jgh gS] mlesa Hkkjh deh vk;sxA Further the resolution passed in the meeting dated 10th May, 2018 as noted above is also relevant to be quoted:-

"¼41½ moizo laxzg vehu lsok fu;ekoyh] 2015 ds iz[;kiu ds i'pkr dqy 45 tuinksa esa lhtuy laxzg vehuksa dks vk;q lhek esa NwV iznku dh x;h gSA mDr fu;ekoyh] 2015 ds vUrxZr vo'ks"ku tuinksa ds lhtuy laxzg vehuks dh vk;q lhek esa NwV iznku fd;s tkus ds



izdj.k esa jktLo ifj"kn ls izLrko ,oa mudh Li"V laLrqfr izkIr dh tk;A 1/42 1/2 foxr o3 o"kksZa esa laxzg olwyh dk ekud D;k Fkk \ mDr ekud ds lkis{k laxzg vehuks }kjk D;k olwyh dh tk jgh gS] dk fooj.k jktLo ifj"kn ds ek;/e ls izkIr fd;k tk;A 1/43 1/2 lhtuy laxzg vehu ds fdrus in Lohd`r gS gS vkSj ;fn mudh vko';drk ugha gS rks mDr in dks lekIr djus dk izLrko jktLo ifj"kn ls izkIr fd;k tk;A 1/44 1/2 lhtuy laxzg vuqslod dk in prqFkZ Js.kh dk in gSA foRr foHkkx ds 'kklukns'k lao&osovko&2&2052@nl&59 1/4,eo 1/2@2008 fnukad 08-02-2010 }kjk vkmVlksflZax ds ek;/e ls inksa dks Hkjs tkus ds funsZa'k gSaA mDr 'kklukns'k ds mijUr fuxZr mo izo laxzg vuqslod ls ok fu;ekoyh] 2016 ,oa 'kklukns'k lao&769@,d&7&2016&95@2011 fnukad 07 vDVwcj] 2016 dks fujLr djkr gq, foRr foHkkx ds 'kklukns'k fnukad 08 Qojh] 2010 ds vuqlkj prqFkZ Js.kh ds inksa ij Hkjs tkus ds lEcU/k esa dk;Zokgh dh tk;A"

With reference to the said resolution, Sri Dharmendra Tripathi, one of the learned counsel for the petitioners submits that the State Government has not come with the clear stand as to whether it has acceded in principle to consider the request of the petitioners and other similarly situated Seasonal Collection Amins/Peons to consider for grant of age relaxation. Though, it is admitted that in 45 districts of the State, relaxation in upper age limit has been granted to Seasonal Collection Amins after promulgation of the Amendment Rules, 2015 but for the remaining districts, a proposal with recommendation is required from the Board of Revenue.

With reference to the item nos. '3' and '4' of the resolution dated 10th April, 2018 as quoted above, it is contended that the stand of the State Government is dubious. It has invited proposal from the Board of Revenue with an intention to abolish the posts of Seasonal Collection Amin.

With respect to Seasonal Collection Peon, it is resolved that the said post being a Class-IV post, a proposal be made for filling up the said post through Outsourcing in the light of the Government Order dated 8.2.2010. It is further suggested that the Second Amendments Rules, 2016 in Collection Peons Rules, 2004 and the Government Order dated 7th October, 2016 be cancelled. It is, thus, submitted that the State Government is proceeding to abolish the posts of Seasonal Collection Peons and discontinue the process of selection of Seasonal Collection Peon in order to frustrate this litigation.

Before dealing with the submissions of learned counsels for the parties, it would be appropriate to go through the relevant statutory provisions relating to engagement of Seasonal Collection Amins and Peons and their recruitment to regular posts.

The engagement of Seasonal Collection Amin/Peons in the revenue department is guided by the U.P. Collection Mannual. Para 19 of the Collection Mannual states that Seasonal Collection employees would be engaged in addition to the permanent staff, in case of administrative exigencies, after approval of the Commissioner of the Division. For the purpose, the Sub Divisional Officer would be requiring to submit a report to the Collectorate giving detail reasons for such engagement and the pending demands for recovery in the District.

The Collector after receipt of the approval of the Commissioner shall direct the Sub Divisional Officer, who will make such engagement as per the procedure. The Circular dated 16.08.1989 issued by the Board of Revenue, U.P., Lucknow with reference to the appointment of Seasonal Collection Amin, shows that initially, the seasonal staff is required to be engaged for three months, however, in case of pending demands of revenue, they may be engaged for a further period of three months. Said engagement can continue for the entire year depending upon the requirement of recovery. The seasonal staff can also be engaged to assist the regular staff working in the revenue department for the purpose of deposit of recovered revenue.

Relevant paragraph of the circular dated 16.08.1989 is quoted as under:-

"mijksDRk fo"k; es esj vo 'kko i= laoA@fuo lo@2&lxyzg &88 lh@87 ] fnukad 4 vxLr] 1989 ds rkjrE; es eq>s ;g dguk gS fd orZeku ,ao cdk;k ns;ksa dh olwyh dh ekax dks ns[krs gq, tks lkekf;d lxyzg vehu fu;qDr fd;s x;s gS mudh lsoka, rc rd tkjh j[kh tk;s tc rd olwyh gsrq mudh lsokavksa dh vko';drk gksA 'kklu dh orZeku uhfr ds vuqlkj ;g lkef;d LVkQ rhu ekg ds fu;qDr fd;k tkrk gS ijUrQ ftyksa esa olwyh gsrq jktdh; ns;ksa dh ekax egqr vf/kd iM+h gS] vr% rhu ekg ds ckn mUgsa rqjUr fQj ls fu;qDr fd;k tk;sa bl izdkj o"kZ Ik;ZUr lkekf;d LVkQ }kjk olwyh dk dke fy;k tk ldrk gSA ftu fnuksa tekcUnh cukus ij fu;fer vehu yxs jgrs gS] mu fnuksa Hkh lkef;d LVkQ }kjk olwyh tkjh j[kh tk;saA"

Another circular dated 13.01.1988 issued by the Secretary, Board of Revenue, U.P. Anubhag-2 Lucknow contains directions for engagement of seasonal staff and to take action against them in case of poor performance.

Paragraph nos.4 and 8 of the said circular is relevant to be quoted here:-

"4& ifj"kn pkgrs gS fd e.Myk;qDr lhtuy LVkQ dh Lohd`fr nsus ls iwoZ lacaf/kr ftys dh iwoZ Qlyh o"kksZa dh ekax ,oa olwyh ds vkadMksa dk ijh{k.k dj ysa rFkk lhtuy LVkQ dh Lohd`fr rHkh ns tcf os bl ckr ls larq"V gks tk;s fd lacaf/kr ftys dh olwyh ekud ds vuqlkj jgh gS rFkk leLr laxzg LVkQ dk Hkjiwj mi;ksx fd;k x;k gS olwyh vlarks"ktud gksus dh fLFkfr eas dankfpr vki lger gksxs fd vfrfjDr lhtuy LVkQ dk dksbZ vkSfpR; ugh jg tkrk gSA 8& tgka rd [kjk olwyh djus okys v{ke lhtuy laxzg vehuksa ds fo:) dk;Zokgh dk iz'u gS] bl laca/k esa vkidk /;ku ifj"knkns'k la[k% 11@2&laxzg&370@70 fnukad 14-10-70 ds izLrj &23 dh vksj vkdf"kZr fd;k tkrk gS fd ifj"knkns'k esa [kjk olwyh djus okys v{ke lhtuy laxzg vehuksa ds laca/k esa jSoU;w eSuqvy ds izLrj&281 1/43 1/2 1/44 1/2 ds vuqlkj leqfpr dk;Zokgh djus ds funsZ'k fn;s x;s gSA vr,o ;fn fdlh lhtuy laxzg vehu dh dkjxqtkjh fu/kkZfjr ekud ls de gks rks fuEufyf[kr dh tk ldrh gS%& 1/41 1/2 izR;sd Qlyh @ lky ds var esa ijxukf/kdkjh mu lhtuy laxzg vehuksa dh rhu lwfp;ka RkS;kj djsa ftUgksus Qly esa muds le fMohtuy rglhy esa dk;Z fd;k gksA lwph 1/4d 1/2 esa lcls vPNs lhtuy vehuksa ds uke gksxsA lwph 1/4[k 1/2 esa mu O;fDr;ks ds uke gksxsA tks lwph 1/4d 1/2 esa ntZ fd;s tkus ds fy;s dkQh vPNs u gks] fQj Hkh iqfufuZ;qfDr ds fy;s mi;qDr gksA lwph 1/4x 1/2 [kjk olwyh djus okys v{ke lhtuy vehuksa ds uke gksxsA ijUrQ lwph 1/4d 1/2 eas ogh uke j[kh tk;s ftudh olwyh fu/kkZfjr ekud ls

vf/kd gks ;k de ls de fu/kkZfjr ekud ds cjkj gksA mDr lwfp;ksa dks ijxukf/kdkjh  
ftykf/kdkjh dh Lohd`fr ds fy;s izLrqR fd;k djsaA  $\frac{1}{4}2\frac{1}{2}$  lwph  $\frac{1}{4}d\frac{1}{2}$  ds vH;kfFkZ;ksa  
dks nwljh Qly esa lhtuy laxzg vehu ds :i esa fu;qDr nh tk;saA rRi'pkr lwph  $\frac{1}{4}[k\frac{1}{2}$  ds  
vH;kfFkZ;ksa dks nwljh Qly esa ckgjh O;fDr;ksa ds eqdkcys rHkh fu;qDr nh tk;s tc  
olwyh ;ksX; ekax Ik;kZIr gksA lwph  $\frac{1}{4}x\frac{1}{2}$  ds vH;kfFkZ;ksa dks fdlh Hkh n'kk esa  
iqufuZ;qfDr ugha nh tkuh pkfg;saA bldk iw.kZ mRrjnkf;Ro fu;qfDr  
vf/kdkjh@ijxukf/kdkjh dk gksxkA"

Having gone through the relevant paragraphs of the U.P. Collection Manual and the circulars issued by the Board of Revenue, it is noteworthy that the Seasonal Collection Amins/Peons are being engaged in contingency where large number of demands are outstanding and permanent staff is insufficient to meet the requirement.

The said appointment though is made initially for a period of three months but they may be reappointed and continue for the whole year, in the event of requirement of the department.

There is a provision for preparation of three lists of engaged Seasonal Collection Amins at the end of the fasli year at the Sub Divisional level and the incumbents who are kept in list (ka) and (kha) could only be re-appointed.

Thus, there cannot be a doubt to the fact that the Seasonal Collection Amin/Peon are the support staff of the revenue department who are engaged in departmental exigencies by adopting the procedure provided under the Collection Manual and Circulars issued by the Board of Revenue from time to time. They have a right to seek reappointment as per the seniority list prepared at the Sub Divisional level, in case of existing work exigency, as against an outsider.

#### History of Legislation:-

To understand the object and purpose of the statutory provisions governing absorption or regular appointment of Seasonal Collection Amin/Peon and to know the real intent of the legislation, it would be appropriate to go through the history of the legislation, namely the rules governing recruitment and conditions of services of Collection Amin and Collection Peon.

The U.P. Collection Amin Service Rules 1974 was promulgated on 09.08.1974. The said rule has been framed by the Governor in exercise of powers under proviso to Article 309 of the Constitution of India in suppression of all existing rules and order, with a view to regulate the matter of recruitment and service conditions of Collection Amin.

Un-ammended Rules' 1974 provided for two sources of recruitment; Direct recruitment through competitive examination subject to the conditions that 10% of the vacancies would be filled by promotion of the Seasonal Collection Peon, subject to their suitability. There was no provision for regular appointment of Seasonal

Collection Amin in the un-amended Rules' 1974.

Under Rule 8 (2) of un-amended Rules' 1974 the Board of Revenue was conferred with the power to grant relaxation in the upper age limit of any candidate or a class of candidate in direct recruitment, if it considered necessary in the interest of fair dealing or in the public interest.

The un-amended Rule' 1974 was subjected to amendment from time to time. By Amendment Rules 1977, relaxation was granted in the required minimum academic qualification for the purpose of direct recruitment to those who had worked as Seasonal Collection Peon for at least four fasals till the commencement of the amended Rules and further whose names were included in the approved list of candidates for re-appointment on the post of Seasonal Collection Amin on the date of commencement of the rules. This requirement was further relaxed vide Third amendment Rules, 1980 in the following words.

"Academic qualification- A candidate for direct recruitment to the service must have passed the Intermediate Examination of the Board of High School and Intermediate Education, U.P. or an examination recognized by the Government as equivalent thereto:

Provided that , in respect of persons who were recruited in the service prior to the commencement of these Rules, the academic qualifications shall be deemed to be as prescribed at the time of their first regular appointment in the Service:

Provided further that, in respect of persons who has been appointed to the post of Seasonal Collection Amins, prior to the commencement of the U.P. Collection Amins' Service (Third Amendment) Rules, 1980 and who have already worked satisfactorily for atleast for fasals till the said date, the academic qualifications shall be as prescribed at the time of their first appointment as Seasonal Amin."

By Fourth amendment Rules 1984, a new clause in Rule 3 of Rules 1974 was added to define "the year of recruitment" which means a period of 12 years commenced from the first day of July of the Calander year. There was an amendment to Rule 5 also by adding clause-A to sub-rule (1) but the same is not relevant for purpose of this litigation.

For the first time, by way of Fifth amendment Rules 1992, Rule 5 was amended by adding Second proviso wherein right of regular appointment was given to Seasonal Collection Amins which reads as under:-

"Recruitment to posts in the ordinary grade of the service shall be made on the result of a competitive examination as provided in Part V of these rules:

Provided that subject to availability of suitable candidates fifteen percent of the vacancies shall be filled by promotion from amongst such substantively appointed collection peons-

(a) Who have passed at least High School Examination of the Board of High School and Intermediate Education, Uttar Pradesh or an Examination recognized by the Government as equivalent thereto: and

(b) Who have worked in the Collection Organization of the Revenue Department for a period of at least six Fasals:

Provided further that thirty-five percent vacancies shall be filled by selection from amongst such Seasonal Collection Amins-\

(a) who have worked satisfactorily for at least for Fasals:

(b) Whose age on the first day of July of the year in which selection is made does not exceed 45 years.

Provided also that if suitable candidates are not available, remaining vacancies shall be filled by general candidates through direct recruitment."

Rule 17-A was added to provide the method of selection of Seasonal Collection Amins to regular posts.

Rule 17-A is quoted as under:-

"17-A- Procedure for selection of Seasonal Collection Amins- The Collector shall prepare a list of Seasonal Collection Amins who are eligible for selection under the first proviso of sub-rule (1) of rule 5 and select from amongst them, the required number of candidates on the basis of seniority or the length of their service on the post of Seasonal Collection Amin in the district subject to satisfactory work."

By Sixth amendment Rules 2004, 'explanation' to second proviso to explain "satisfactory work", the requirement in the second proviso, was added to say that the satisfactory work would mean average collection of atleast 70% as per the prescribed standard.

By the latest amendment i.e. Seventh amendment Rules 2015, Fourth proviso to Rule 5 has been added which reads as under:-

"Provided further that after the commencement of the Uttar Pradesh Collection Amin's Service (Seventh Amendment) Rules, 2015, only as on time measure, 85 per cent of the existing vacancies on the date of commencement of these rules, shall be filled by selection, from amongst such seasonal collection amins who possessed

requisite qualifications as prescribed in second proviso to sub-rule (1) of rule 5."

The Appendix-C as per the Rule 20(1) provides the order of appointment on the regular post of Collection Amin from three sources of recruitment under the Rules' 1974 as amended upto date which is relevant to be re-produced as under:-

"Order of Appointment on the post of Collection Amin:-

Subject to availability of suitable candidates to be selected from Seasonal Collection Amins and promoted from the permanent Collection Peons, appointment shall be made in the following order"

Ist Vacancy .....Directly recruited 2nd Vanancy .....Seasonal Collection Amin  
3rd Vacancy.....Directly recruited 4th Vacancy..... Seasonal Collection Amin  
5th Vacancy.....Directly recruited 6h Vacancy.....Promoted Collection  
Amin 7th Vacancy .....Directly recruited 8th Vacancy .....Seasonal Collection  
Amin 9th Vacancy .....Directly recruited 10th vacancy .....Seasonal  
Collection Amin 11th Vacancy ..... Directly recruited 12th  
Vacancy.....Promoted Collection Peon 13th Vacancy.....Directly recruited  
14th Vacancy .....Seasonal Collection Amin 15th Vacancy .....Directly  
recruited 16th Vacancy .....Seasonal Collection Amin 17th Vacancy  
.....Directly recruited 18th Vacancy .....Seasonal Collection Amin 19th  
Vacancy .....Directly recruited 20th Vacancy.....Promoted Collection  
Peon."

Thus having gone through the entire scheme of the statutory provision which are subjected to amendment from time to time, it is noteworthy that the State government had granted recognition to the services of the Seasonal Collection Amins in the revenue department for the first time in the year 1992 wef 23.10.1992, by giving them a right to seek appointment on regular posts under the prescribed quota. Prior to that, they were only entitled to get relaxation in academic qualification in a process of direct recruitment to the service.

A perusal of Appendix-C, inserted by Fifth amendment Rule 1992, shows that the appointments to the post of permanent Collection Amins are to be made in the order of vacancy provided therein, from three lists i.e. (i) the list of directly selected candidates under Rule 17, (ii) the list of candidates selected from Seasonal Collection Amin under Rule 17-A and (iii) list of promotees under Rule 18.

The Seventh amendment Rules' 2015 has added fourth proviso, as a one time measure, for filling up 85% of the existing vacancy on the date of commencement of the amendment which is 01.10.2015. However, the requirement of possessing the requisite qualification as prescribed in the second proviso to sub rule (1) of rule 5 remains the same i.e. a candidate who has worked satisfactorily for atleast four fasals and whose age does not exceed 45 years on the first day of July of the year of selection, can be considered for regular appointment on the recommendation of the selection committee.

Similarly, U.P. Collection Peons Service Rules 2004 was promulgated on 17th December 2004 and was amended by First amendment rule 2011. The requirement of un-amended rule 5 clause (II) relating the conditions for regular appointment i.e. of having worked satisfactorily for atleast 4 fasals and age being below 45 years are the same. By second amendment Rule 2016, second proviso to clause (ii) of Rule 5 was added to provide that 100% of the vacancies on the date of commencement of the said amendment i.e. on 05.10.2016, would be filled by regular appointment of Seasonal Collection Peons.

Thus from a perusal of the rule 5 read with Appendix-C of the Fifth Amendment Rules' 1992 leaves no room for doubt that 35% quota has been reserved to be filled up by selection, from amongst such Seasonal Collection Amins who confirm to both the requirements of the second proviso to sub rule (1) of Rule 5 i.e. of satisfactory work and age being not more than 45 years on the first of July of the year of selection.

There cannot be a doubt to the legal position that for any selection, fixing eligibility criteria, falls within the exclusive domain of the legislatures and cannot be subject matter of judicial review, unless found to be arbitrary, unreasonable or having been fixed/prescribed without keeping in mind the nature of services for which the appointments are to be made or it has no rational relation to the object sought to be achieved by the Statute. It is solely within the jurisdiction of the recruiting authority to prescribe the appropriate qualification/eligibility and to fix the upper age limit or age-criteria in the matter of appointment/promotion.

Whenever such a criteria is fixed and notified in the advertisement, some persons may fall on the right side and others may fall on the wrong side, resulting in their exclusion from the zone of consideration being overage. But for this reason only, the age limit or the upper age criteria fixed by the recruiting authority cannot be termed as arbitrary or violative of Article 14. The only issue which can be examined by the Court as to whether the enactment is likely to achieve the object sought to be achieved, in case of challenge to the same. Reference may be made to the five judges full bench judgement of this Court in the Case of Vijay Singh & others Vs. State of U.P. & others<sup>6</sup>.

In the instant case, there is no challenge to the age criteria fixed by the statute and as such there is no question of examining the reasonableness or unreasonableness of the age determination made by the enactment.

Vide fifth amendment Rules' 2015 wef October 1' 2015, the quota of 35% has been increased to 85% of the existing vacancies on the date of commencement of the rules Thus, though the number of posts reserved for selection of Seasonal Collection Amins was increased but the eligibility requirements of the rules for selection and appointment i.e. the satisfactory work and the age criteria remain the same.

Similarly, by Second Amendment Rules 2016, the quota of 50% for selection of Seasonal Collection Peons was increased to 100% of the vacancies existing as on 05.10.2016, as a one time measure, but the eligibility requirement for selection remain the same.

The contention of learned counsels for the petitioners is that the petitioners are entitled for consideration by granting relaxation in the upper age criteria in view of the past practice prevailing in the department regulated by the Government Order dated 30.05.2008, wherein a direction was issued to forward the recommendations of the selection committee for consideration by the State Government for relaxation on case to case basis.

The said Government order has been rescinded vide Government order dated 30.10.2017 on the ground that the age criteria fixed by the statutory provision could not have been relaxed by the executive instruction. The requirement of the recruitment rules cannot be relaxed by the executive instructions under Article 162 of the Constitution of India. The executive instructions or order which runs counter to or is inconsistent with the statutory rules cannot be enforced.

It is settled legal proposition that executive instruction cannot override the statutory provision. They cannot amend or supersede the statutory rules or add something therein. Reference may be made to the judgement of this Court in *Vijay Singh*<sup>7</sup>.

In case of any conflict between the executive instruction and the rules framed under the proviso to Article 309 of the Constitution of India, the statutory rules will prevail. Reference be made to the judgements in *State of U.P. & others Vs. Babu Ram Upadhyaya*<sup>8</sup>, *State of Tamil Nadu Vs. M/s. Hind Stone etc.*<sup>9</sup> and *Union of India Vs. Sri Somasundaram Vishwanath*<sup>10</sup>.

In view of this settled proposition of law, the challenge to the Government order dated 30.10.2017 in the present sets of petitions cannot be entertained in as much as, the statutory rules provides for the maximum age limit as one of the eligibility requirements for selection of Seasonal Collection Amins or Peons in the matter of regular appointment. This Court is of the opinion that it has been rightly revoked in order to correct the mistake.

Now the Court has been left to answer the question raised by the counsels for the petitioner with regard to applicability of Relaxation Rules' 1992 which confers a discretion upon the Governor to grant relaxation in the requirement of any rule regulating the maximum age of recruitment to a service or post in connection with the affairs of the State, the same is quoted as under:-

"In exercise of the powers conferred by the proviso to Article 309 of the Constitution and in supersession of all existing rules and orders on the subject, the governor is pleased to make the following rules:

The Uttar Pradesh Public Services (Relaxation of the Age Limits for Recruitment) Rules, 1992.

1. (1) These rules may be called the Uttar Pradesh Public Services (Relaxation of the age-limits for recruitment) Rules, 1992.

(2) They shall come into force at once.



(3) They shall apply to all civil services and posts under the rule making power of the Governor under proviso to Article 309 of the Constitution.

2. In these rules, unless there is anything repugnant in the subject or context

(a) "Commission" means the Uttar Pradesh Service Commission;

(b) "Constitution" means the Constitution of India;

(c) "Governor" means the Governor of the Uttar Pradesh;

(d) "State" means the State of Uttar Pradesh.

Notwithstanding anything to the contrary in any rule-regulating the maximum age of recruitment to a service or post in connection with the affairs of the State, relaxation in the maximum age-limit may be granted by the Governor in favour of a candidate or a class of candidates.

Provided that in the case in which recruitment is made through the Commission, that body shall be consulted before the relaxation is granted."

As per Rule 3 of 1992 Rules (reproduced above), such relaxation may be granted by the Governor in favour of a candidate or a class of candidates. Proviso to Rule 3 of 1992 rules states that in case any such recruitment is made through the Commission, the said body shall be consulted before relaxation is granted.

A careful reading of the Relaxation Rules 1992 makes clear the purpose and import of the rule that it has been framed conferring discretion upon the Governor to grant relaxation in the maximum age criteria fixed by the statutory rules pertaining to any recruitment to a service or post in connection with the affairs of the State; in case any such opinion is formed by him in a given case, in the interest of public or in a case of hardship shown to him.

The said discretion, however, may be exercised by the Governor before the process of recruitment is commenced with the advertisement in the matter of direct recruitment to a service or post; as the said relaxed criteria, if any, has to be published to make people aware of the criteria of selection. After the post/posts is/are notified or advertised for recruitment, the Governor would have no discretion to grant relaxation in favour of a candidate or a class of candidate. As any such exercise would be contrary to the rule of equality and equal opportunity as enshrined under Article 14 and 16 of the Constitution of India.

However, the discretion conferred upon a constitutional authority cannot be claimed as a matter of right. The statutory or the Constitutional authority to whom discretion has been conferred may in a given sets of circumstance exercise the same but the Court cannot insist upon such authority to invoke the discretionary powers conferred upon it in a particular manner, as a matter of rule or right of the candidate cannot seek invocation thereof as a matter of right to address their individual

grievances.

Learned counsel for the petitioners, however, submits that the claim of the petitioners for grant of age relaxation cannot be thrown on the ground that the same was required to be considered before hand i.e. before the process of recruitment was set in motion in as much as, the selection process herein is a in-house process which is being made by the District Level Committee.

The manner in which the said process is to be completed, there was no question of any notification or advertisement notifying the upper age limit or the age criteria for public. In the matter of recruitment against 35% or 85% (for Seasonal Collection Amins) and similarly 50% or 100% (for Seasonal Collection Peons) quota, there was no occasion to place the matter before the Governor to apply his mind for relaxation of the age criteria fixed under the rules for recruitment to the posts in question.

In such matters, as per the practice in vogue for the last decade, the recommendation of the selection committee were being forwarded to the State Government after satisfying the requirement of the first condition of second proviso to sub Rule (1) of Rule 5 i.e. the satisfactory service rendered for atleast 4 fasals. The State Government, on the decision of the Governor in exercise of discretionary powers conferred upon him under Relaxation Rules' 1992, had issued orders to approve the recommendations. One such order with regard to 24 Seasonal Collection Amins in district Mirzapur has been brought before the Court to demonstrate that relaxation was granted under rule 3 of Relaxation Rules' 1992.

The submission is that the State has to act fairly in all such matters with respect to the similarly situated persons who are petitioners in the present bunch. Being a welfare State, it cannot be allowed to deviate from the procedure adopted by it. The petitioners cannot be discriminated on the ground that the Government order dated 30.05.2008 has been recinded as it runs contrary to the statutory provision and no such power exist as of now.

Submission is that the revocation of the Government order dated 30.05.2008 vide Government order 30.10.2017 is of no consequence as far as the powers under Relaxation Rules' 1992 are concerned. Further, Rule 3 of said rules starts with an Non-obstante clause which gives an overriding effect to the said rule.

The power conferred upon the Governor to grant relaxation is special and exceptional and the Relaxation Rules 1992 cannot be termed as general rules. They are the specific rules conferring special power upon the Governor to grant relaxation in the maximum age criteria; even if there is anything contrary provided in any rule regulating the maximum age requirement.

In rebuttal, learned Chief Standing Counsel does not dispute the procedure adopted by the State Government in the matter of similarly situated Seasonal Collection Amins/Peons i.e. the recommendation of the District Level Selection Committee were forwarded to the State Government and the relaxation was granted after seeking approval of the Governor in the matter of maximum age requirement for selection against the quota reserved for Seasonal Collection Amins/Peons.

He, however, vehemently submits that the power as conferred by Relaxation Rules' 1992 is a discretionary power and the same cannot be claimed as a right by the petitioners. The rules pertaining to the recruitment against the aforesaid quota are clear and specific. They are special rules pertaining to recruitment to the posts in question. The provisions of said rule cannot be altered by a general rules namely the Relaxation Rules' 1992 in as much as, the specific rules pertaining to the recruitment to a service or post would prevail over a general rule.

For appreciating the said submission, it would be appropriate to note that Rule 5 of Rules 1974 (as amended by 5th Amendment Rules 1992) provides for three sources of recruitment.

1. Recruitment by a competitive examination i.e. open selection.
2. By promotion from substantially appointed Collection Peon in 15% of the vacancies.
3. By selection from amongst such Seasonal Collection Amins against 35% vacancies who fulfills the prescribed eligibility criteria provided therein.

The original Rule' 1974 contained a provision in rule 8(2) which conferred power upon the Board to relax the age limit prescribed in sub rule (1) of the said rule in favour of a candidate or a class of candidate, if it was considered necessary in the interest of fair dealing or in public interest. The said provision has been deleted by the 4th Amendment Rules 1994.

Learned Chief Standing Counsel does not dispute that in the open recruitment, in a given case on the peculiar set of circumstances brought before the Governor, he may invoke his discretionary power, so as to grant age relaxation in public interest or to mitigate the hardship, which would required to be notified in the advertisement so as to give chance to all similarly situated candidates to apply.

As far as the applicability of Relaxation Rules' 1992 in the matter of selection of Seasonal Collection Amin against the prescribed quota for regular appointment under the rules, the submission of learned Chief Standing Counsel that since Relaxation Rules' 1992 are general rules, they would have no reference to the special rules pertaining to recruitment to the posts in question, which are special provisions fixing the eligibility requirement for the selection in question, does not seem to be correct for two reasons:-

Firstly, that in the matter of open selection, which is one of the sources of recruitment provided under Rule 5 of 1974 rules, rule 8 fixes age criteria/upper age limit for the post advertised for the purpose. Earlier the power to grant age relaxation lies with the Board of Revenue in terms of Sub-rule (2) of Rule 8 which has now been deleted. The said amendment of 1994 was brought, it appears, for the fact that the power to grant relaxation in maximum age was conferred upon the Governor in the year 1992, by the Relaxation Rules' 1992. Thus, the Fourth Amendment rules brought the recruitment rules in line with the existing legislation so as to rule out any conflict.

Further, it does not seem correct proposition to say that in respect to another set of recruitment, where the source of recruitment is different, though provided under the same set of rules, the Governor would have no discretionary power to grant age relaxation under the Rules' 1992.

The mode and manner of selection may be different in both the recruitment but they are governed by the same set of statutory rules which provide for age criteria/upper age limit therein for both category of recruitment. It would result in total absurdity to say that though the Governor can exercise its discretionary power for relaxation of age criteria in one set of selection with respect to one source but not to another, though both recruitments are in respect to the same posts within their prescribed criteria.

Thus, in the opinion of the Court, the Relaxation Rule' 1992 would be attracted to both the sources of recruitment provided under rule 5 of Rules 1974 (as amended by Fifth Amendment Rules' 1992) i.e. (i) open selection; and (ii) by selection of Seasonal Collection Amins to the regular post of Collection Amin against the prescribed quota.

Secondly, terming the Relaxation Rules' 1992 a general rule, would be a misconception. A careful reading of the said rule shows that it confers special and exclusive power upon the Governor to grant relaxation in the age criteria provided under any of the rules, relating to a post or service framed by it under his rules making power under proviso to Article 309 of the Constitution.

In *In Justiniano August De Piedade Barreto v. Antonio Vicente Da Fonseca*,<sup>11</sup> (para 12), the Apex Court has observed that though a law dealing with a particular subject may be a general law in the sense that it is a law of general applicability, laying down general rules yet, it may contain special provisions on certain matters, and in respect of those matters, it would be classified as a special law pertaining to the particular subject, and cannot be termed as general rule.

In the light of the said legal position, considering the nature of power provided under the Relaxation Rules' 1992, it can only be termed as special law containing the provision for grant of age relaxation in the minimum age requirement which is exclusive to the Governor. No other law on the subject has been framed nor any such provisions exist in the rules relating to recruitment of Collection Amins/Peons.

Furthermore, it is sound principle of jurisprudence that a prior particular law is not easily to be held to be abrogated unless, it is so by expressed repeal or by making provisions which are wholly inconsistent with it. The special law cannot be held to have been abrogated by mere implication.

In *Municipal Corporation of Delhi v. Sheo Shankar*,<sup>12</sup> the Apex Court considered the question and scope of implied repeal and held that the Court should not lean towards

implied repeal in absence of express or implied legislative intent.

Relevant paragraph (5) of the aforesaid judgement is quoted as under:-

"As the legislature must be presumed in deference to the rule of law to intend to enact consistent and harmonious body of laws, a subsequent legislation may not be too readily presumed to effectuate a repeal of existing statutory laws in the absence of express or at least clear and unambiguous indication to that effect. This is essential in the interest of certainty and consistency in the laws which the citizens are enjoined and expected to obey. The legislature which may generally be presumed to know the existing law, is not expected to intend to create confusion by its omission to express its intent to repeal in clear terms. The Courts, therefore, as a rule, lean against implying a repeal unless the two provisions are so plainly repugnant to each other that they cannot stand together and it is not possible on any reasonable hypothesis to give effect to both at the same time. The repeal must, if not express, flow from necessary implication as the only intendment. The provisions must be wholly incompatible with each other so that the two provisions operating together would lead to absurd consequences, which intention could not reasonably be imputed to the legislature. It is only when a consistent body of law cannot be maintained without abrogation of the previous law that the plea of implied repeal should be sustained. The meaning, scope and effect of the two statutes, as discovered on scrutiny, determines the legislative intent as to whether the earlier law shall cease or shall only be supplemented. If the objects of the two statutory provisions are different and the language of each Statute is restricted to its own objects or subject, then they are generally intended to run in parallel lines without meeting and there would be no real conflict though apparently it may appear to be so on the surface."

Furthermore, it is well established rule of interpretation of a statute that it has to be interpreted by reference to the exposition it has received from the competent authority. The words used in the provision should be understood in the same way in which they have been understood in original parlance in the area in which the law is in force or by the people who ordinarily deal with them.

If two statutory provisions are different and distinct and the language of each statute is restricted to its own subjects or subject, then they are generally intended to run in parallel lines without meeting and there would be no real conflict though apparently it may appear to be so on the surface.

Considering the said settled rules of interpretation, both the statutes are to be read harmoniously so as to give way to each other. The doctrine of implied repeal cannot be resorted to say that since by the latter enactment i.e. Seventh Amendment 2015, the legislature did not relax the age criteria, the prior enactment provided for the power to grant relaxation stands repealed.

It is settled law that unless the latter enactment expressly repeal or it is crystal clear that the legislature intended to repeal the earlier statutory provisions, the question of implied repeal of prior enactment does not arise. Thus it cannot be assumed that by Fifth Amendment of 1992 in Rules'

1974 which laid down the age criteria and Seventh Amendment 2015, whereby the quota of the source has been enhanced, as a one time measure, prior special rule conferring powers upon the Governor to grant age relaxation, in a given case in public interest, stood impliedly repealed.

The said proposition if accepted, would result in abrogation of law existing on the Statute book and it is not permitted for the Court to do so.

Resultantly, the only question remains as to whether the said power can be invoked in the matter of appointment of Seasonal Collection Amin on the regular post under the quota prescribed in the rules at this stage and further whether any such occasion had arisen before the Governor, an earlier point of time.

In the present matter, the petitioners being Seasonal Collection Amins are in the group which is one of the sources of recruitment under Rule 5 of the Rules 1974 (as amended by 5th Amendment 1992); they have worked in the department for a long time and some of them could not be considered for regular appointment due to the quota for appointment being only 35%. The said quota has been increased to 85% (in the case of Seasonal Collection Amin) which would expand the area of consideration against the existing vacancies on the date of amendment i.e. 01.10.2015. As per the instructions supplied by the learned Chief Standing Counsel, aims and object of amendment is to give chance for those Seasonal Collection Amins working in the department for appointment on regular post, who have rendered satisfactory services. The petitioners before the Court have been denied consideration on the ground of being overage though they have been found otherwise eligible. They never got chance for consideration to their claim for regular appointment in the previous selection process as the quota was less.

In the considered opinion of the Court, rejecting the claim of the petitioners solely on the ground that no such power can be exercised in the matter of regular appointment of Seasonal Collection Amins/Peons at this stage of selection, would be a fallacy.

The Court is conscious of the fact that the discretionary power conferred upon the Governor cannot be claimed as a matter of right and he is not obliged to exercise the power in a particular manner; but at the same time, it cannot ignore that the dispute being raised herein has not been brought to the knowledge of the Governor. There was no occasion for him to consider this issue. This Court is of the considered view that once all the attending circumstances are brought to his notice, justifying exercise of such power, atleast there would be an application of mind on his part to form an opinion whether such powers should be exercised or not, and its extent etc. For the above discussion, having gone through the facts of the instant case and the statutory provisions, in the peculiar facts and circumstance of these cases, it would be in the fitness of the things and in order to meet the end of justice that the matter ought to be placed before the Governor to examine the question of grant of relaxation in the maximum age limit for regular appointment of Seasonal Collection Amins and Peons in the Revenue Department.

Furthermore, in view of the own stand of the State-respondent that the quota of regular appointment has been raised, in order to address the grievances of the large number of Seasonal

Collection Amins/Peons, who are being retired on attaining the age of superannuation without getting a chance for regular appointment.

Since the recruitment in the present case has to be made by the District Level Committee, the State-respondent is, thereafter, required to issue necessary guidelines to the District authorities in the light of the decision of the Governor, so as to guide them as to how and in what manner, they shall proceed in the matter of an employee or a class of employee who are found overage but possess other eligibility requirement for regular selection.

It goes without saying that the guidelines so issued would not be the executive instructions within the meaning of Article 162 of the Constitution of India, so as to confer power upon the State-respondent to grant relaxation at its own whims and fancies. Rather, it would be strictly in conformity with the decision taken by the competent authority i.e. the Governor, so as to felicitate the district authorities to implement the said order, effectively; by adopting a uniform criteria in all such cases, where the Seasonal Collection Peons/Amis are found over age, in the process of selection.

Resultantly, all the writ petitions are being disposed of by directing the competent authority under Rule 3 of Rules' 1992 to consider:-

1. Whether there should be relaxation in the matter of maximum age, in the context of Rules' 1992, for such candidates who fall within the zone of consideration on account of increase in quota to 85% (for Seasonal Collection Amin) and 100% (for Seasonal Collection Peon), by amendment of the relevant rules, as a one time measure; but have been excluded on account of being overage though they fulfill all other eligibility requirements of the Rules, for regular appointment.
2. Similarly, a simultaneous decision shall also be taken, in the context of Rules' 1992, with regard to petitioners and other similarly situated employees, whose candidature for regular appointment has been considered under the existing quota of 35% and 50% under the second proviso, but they have been denied regular appointment on being overage and their claims have been rejected by the State-respondents on the ground that there is no provision for grant of age relaxation under the recruitment rules.
3. For the purpose, the State-respondent would be requiring to place all relevant material before the Governor so that all attending circumstances are brought to his notice so as to form an opinion as to whether relaxation is to be granted or not; and the manner in which the said power is to be exercised.

The aforesaid exercise shall be completed expeditiously, preferably, within a period of two months from the date of presentation of this order before the competent authority.

Till such a decision is taken and appropriate guidelines are issued by the State-respondent in conformity with the decision of the Governor, the District authorities are restrained from making selection within the quota for regular appointment as provided under the second proviso as also under the fourth proviso of both the relevant recruitment rules, to the regular post of Collection Amins and Collection Peons.

With the above observations and directions, this bunch of writ petitions is disposed of.

Order Date:-28.05.2018 Himanshu/Brijesh