



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF JULY, 2019

BEFORE

THE HON'BLE MR.JUSTICE P.B. BAJANTHRI

W.P. Nos.24869 – 24870/2019 (S – PRO)

BETWEEN:

1. Sri N Mahesha
s/o C Narasimhaiah
Aged about 58 years
Assistant Registrar (SS)
High Court of Karnataka
Bengaluru – 560 001.
2. Sri Doreraj A K
s/o late Ajjappa Karegowdra
Aged about 54 years
Assistant Registrar (SS)
High Court of Karnataka
Bengaluru – 560 001. ... Petitioners

(By Sri Nagarajappa A, Advocate)

AND:

1. The Registrar General
High Court of Karnataka
Bengaluru – 560 001.
2. Smt.Rahimunnissa
d/o not known to petitioners
Aged about 58 years
Deputy Registrar (SS)
(under challenge)
Review & Statistics Branch
High Court of Karnataka
Bengaluru – 560 001.

3. Sri P Jayakumar
 s/o not known to petitioners
 Aged about 58 years
 Deputy Registrar (SS)
 (under challenge)
 High Court of Karnataka
 Bengaluru – 560 001. ... Respondents

(By Sri S S Naganand, Sr. Counsel for Sri S Sriranga Advocate,
 Sri V S Naik, Advocate for R2 and R3)

These writ petitions are filed under Article 226 of the Constitution of India, praying to quash the notification dated 3.6.2019, a copy of which is produced at Annexure-J and consequently direct the respondent NO.1 to promote the petitioners in place of the respondents No.2 and 3.

These writ petitions having been heard and reserved on 18.7.2019 and coming on for pronouncement of order this day, The Court, made the following:

ORDER

In these writ petitions, petitioners have sought for the following reliefs:

“(i) Issue a writ of certiorari or any other writ quashing the notification No.HCE.950/2005 (DR (SS) dated 3.6.2019 a copy of which is produced at Annexure-J and consequently direct the respondent No.1 to promote the petitioners in place of the respondents No.2 and 3.

(ii) Grant such other order or direction as deems fit to grant in the facts and circumstances of the case.”

2. Brief facts of the case are that petitioner No.1 was appointed as Stenographer on 28.2.1991 on the establishment of High Court of Karnataka. He has earned promotion to the cadre of Judgment Writer, Senior Judgment Writer and Assistant Registrar on 3.10.1994, 5.8.1997 and 23.5.2012 respectively. He was permitted to change of cadre as Assistant Registrar (Secretarial Services) on 4.3.2013.

3. Petitioner No.2 was appointed as Stenographer on 22.8.1990 on the establishment of High Court of Karnataka as an in-service candidate vide HCE 3/1990 dated 10.8.1990. He has earned promotion to the cadre of Judgment writer, Senior Judgment Writer and to the post of Assistant Registrar (Secretarial Services).

4. High Court of Karnataka framed Rules called High Court of Karnataka Service (Conditions of Service and Recruitment) Rules, 1973, on 15.02.2013 by its notification issued High Court of Karnataka Service (conditions of Service and Recruitment) (I-Amendment)

Rules, 2013 by incorporating various provisions including Amendment to Schedule-III. At Sl. No. 5A relates to Deputy Registrar (Secretarial Services) (for short 'DR (SS)') and Note 1 to 5. Note-3 is relevant for the present case. By its notification dated 04.12.2013, HCS (C of S & R) (VII Amendment) Rules, 2013 was issued. 5A relates to D.R. (S.S.)

5. State Government issued notification incorporating Rule 3 in the Karnataka Civil Service (General Recruitment) Rules, 1977 on 24.06.1982.

6. Petitioners and 4 others were invited for interview to the post of D.R (S.S.) on 01.09.2016, but they were not selected.

7. On 07.11.2017 to fill up vacancies of D.R. (S.S), the then Acting Chief Justice appointed a Committee consisting of three Hon'ble Judges to carryout selection process for filling up of two vacant posts in the cadre of Deputy Registrar (Secretarial Services) (Annexure-E).

8. On 30.4.2018, Selection Committee passed resolution before interviews were held. Extract of resolution in respect of DR (SS) is reproduced hereunder:

“II. For the post of Deputy Registrar (Secretarial Services)

The relevant Rule in the High Court of Karnataka Service (Conditions of Service and Recruitment) Rules, 1973 as amended from time to time prescribes the mode of selection for the post of Deputy Registrars (Secretarial Services) by selection. Under the rules for selection, the Assistant Registrars (Secretarial Services), who have completed 2 years of service, should be called for interview in the ratio of 2 (x) + 4 where, X indicates the number of vacancies. Thus for Two posts, 8 candidates have been called for interview. As such the following eligible Assistant Registrars (Secretarial Services) in the order of seniority as mentioned below have been called for interview and they have appeared before the Committee:-

Sl. No.	Name of the officers (Sri/Smt.)
1	N Mahesh
2	A K Doreraja
3	Rahimunnisa
4	Malaprabha G Nekar
5	Roopa S Kulkarni
6	S Padma
7	S Noorunnisa Begum
8	P Jayakumar

After taking into consideration the aptitude, language and their ability to grasp questions in their performance during interview and also after scrutinizing their Annual Performance Reports for the last five years and taking other relevant factors into consideration, the Committee evaluated the marks out of total 30 marks (10 for each member) and the consolidated marks awarded is as hereunder:-

Sl. No	Name of the Assistant Registrar (SS) (Sri/Smt)	Total marks awarded (Max.30)
1	N Mahesh	17.5
2	A K Doreraja	19
3	Rahimunnisa	22.5
4	Malaprabha G Nekar	22
5	Roopa S Kulkarni	22
6	S Padma	21
7	S Noorunnisa Begaum	21
8	P Jayakumar	22.5

On the basis of the marks obtained by the candidates in the interview and after scrutinizing the Annual Performance Reports for the last 5 years, it is resolved to select the following 2 (Two) Assistant Registrars (Secretarial Services) and recommend them for being promoted to the cadre of Deputy Registrar (Secretarial Services) to fill up the existing Two vacancies.

Sl. No.	Name of the Assistant Registrar (Secretarial Services) recommended for promotion to the cadre of Deputy Registrar (Secretarial Services) (Sri/Smt)
1	Rahimunnissa
2	P Jayakumar

The recommendation of the committee along with the statement of marks awarded by the committee each of the candidates be placed before Hon'ble the Chief Justice for consideration.

(HSJRM)
(HSBVN)
(HSJBV)"

The Committee evolved criteria to select two Assistant Registrar (Secretarial Services) for promotion to the post of Deputy Registrar (Secretarial Services). The criteria is that a candidate should be eligible Assistant Registrar (Secretarial Services) shall be called for interview in the ratio of $2(x) + 4$ where x is the number of vacancies to be filled. Thus, for two posts, eight candidates have been called for interview. Further criteria relating to consideration of aptitude, language and their ability to grasp questions in their performance during the interview and also after scrutinizing their annual performance report for the last five years and taking other relevant facts into consideration, the Committee evaluated marks out of total 30 marks (each member is empowered to award marks up to 10 marks) and the

consolidated marks were allotted against each of Assistant Registrar (Secretarial Services).

9. Pursuant to the interview and award of marks, the 1st respondent proceeded to promote respondents No.2 and 3 to the post of Deputy Registrar (Secretarial Services). Feeling dis-satisfied, both the petitioners submitted representation on 10.06.2019, since there was no evoked from the concerned respondent. Hence the petitions.

10. Learned counsel for the petitioners vehemently contended that the petitioners are the seniors to respondents No.2 and 3 in the final seniority list of 2016 in the cadre of Assistant Registrar (Secretarial Services). Their names are at Sl.Nos.1 and 2 (petitioners) and Sl.Nos.3 and 8 (respondents No.2 and 3). Learned counsel for the petitioners submitted that in the process of selection to the post of DR (SS), the official – respondents have not adhered to the Rules of Recruitment governing the post of DR (SS) to the effect that seniority and order of preference to the Law

Graduates has been ignored. Further it was contended that Rules are silent in respect of holding interview and award of marks under various heads. Therefore the Selection Committee has exceeded its jurisdiction in laying criteria like interview and fixation of marks and award of marks, they are abide by the Rules governing the post of DR (SS) in laying criteria like holding of interview and determining award of marks and minimum ten marks to each of the Members of the Committee are impermissible and contrary to Mode of Selection prescribed under Rules, 2013. The then Acting Chief Justice has authorized the Committee only for the purpose of selection of two Assistant Registrar (Secretarial Services) for promotion to the post of DR (SS). Neither Rules nor the then Acting Chief Justice has evolved the criteria relating to holding of interview and award of marks under various heads. Therefore, in the absence of Rules in respect of holding interview and award of marks under various heads by the Committee is without authority of law.

11. It is further contended that in identical circumstances, this Court in the case of C Channe Gowda and another -vs- High Court of Karnataka reported in ILR 2004 KAR 4633 (DB) – para 24, wherein this court held that Rules are required to be given prominence and it should be strictly adhered. Para-24 of the judgment reads as under:

“24. It is not in dispute that the recruitment to the post of Assistant Registrar is governed by the statutory rules called High Court of Karnataka Service (Conditions of Service and Recruitment) Rules 1973. Rule 7 and Schedule III at item No.6 which deals with it says by promotion on the basis of seniority-cum-efficiency from the cadres of Section Officers, court Officers and Senior Judgment Writer. The said method of recruitment does not prescribe the assessment at an interview based on the performance of the eligible candidates at viva voce test. That being so, the assessment at an interview of the performance of the candidates cannot be a criterion in the process of promotion to the post of Assistant Registrar. Furthermore when the statutory rule itself does not prescribe any much criteria for promotion, the mere fact that the petitioners herein have attended the interview alongwith others will not absolve or disqualify them from challenging the process of promotion based on such criteria which is contrary to and in violation of the statutory rule. There cannot be estoppel when the recruitment is contrary to the statutory rule. Therefore the

appropriate authority could not have taken into consideration the assessment made at the interview and so also the age etc. of the eligible candidates which are not the criterias fixed for promoting to the post of the Assistant Registrar under the statutory rule. That it to say, the purported assessment made at the interview, the age of the eligible candidates etc., could not have been taken into consideration while promoting the Court Officers to the post of the Assistant Registrar under the statutory rule. In the fact situation, the promotion made by the authority is said to be improper and incorrect inasmuch as as the criteria laid down in Rule 7 and Schedule III at item No.6 has not been applied to promote the Court Officers to the post of Assistant Registrars and some other criterions, which have not been specified in the rule have been applied. Even assuming that the efficiency of an eligible candidate is to be considered, it could have been made on the basis of the assessment made in the relevant Annual Confidential Reports which needs approval of the Hon'ble Chief Justice. Even assuming that the Hon'ble Chief Justice has competency and jurisdiction to call the eligible candidates for interview and assess their performance, the records of the interview ought to have been maintained and relative assessment made in respect of each candidate should be discernible from such records to avoid criticism of the process of promotion being arbitrary. In the absence of any such materials, the promotion made can be said to be arbitrary and illegal. While recruiting the officer to the post of Assistant Registrar, the authority must scrupulously follow the statutory rule operating in the field. It may be that for assessment of efficiency, it can lay down its procedure, but it should be

reflected in the statutory rule and such procedure adopted must be free from any criticism of being arbitrary. Therefore we are of the view that a clear case of breach of statutory rule has been made in this case. In this connection, a reference may be made to a decision of the Hon'ble Supreme Court in the case of INDER PARKASH GUPTA -vs- STAT EOF JAMMU AND KASHIMIR wherein it is concluded as under:

“30. Rule 8 does not speak any viva voce test. It, however, appears that so far as academic qualification is concerned, the same had been laid in the advertisement and the requirement of M.D.(Medical/General Medical), MCRF, FRCP, Specially Board of Internal Medicine (USA) or an equivalent qualification of the subject. So far as the teaching experience is concerned, two years' experience as Registrar/Tutor/Demonstrator/Tutor or a Senior Resident in the discipline of medicine in a recognized teaching medical institution recognized by the Medical Council of India was specified.

31. So far as the teaching experience is concerned, the commission awarded marks to those who had even less than two years' experience. One mark was to be awarded for every full year of experience subject to a total of 5 marks. Sports/Games distinction

in NCC activities had also been taken into consideration which were not the criterion prescribed under the 1979 Rules. There is nothing to show that any mark was awarded in relation to the previous record of work, if any.

32. In its judgment, the High Court did notice that in awarding marks for minimum qualification prescribed for the post, the Commission did not award any mark at all to some respondents. It, therefore, for all intent and purport had considered the candidatures of the candidates only on the basis of 10 marks, if the marks awarded for sports/games and NCC activities are excluded as they are beyond the purview of Rule 8, and as it fixed 100 marks for viva voce test, a clear case of breach of the statutory Rules had been made out. While the appellant had been given minimum marks in the viva test, the other respondents who even did not fulfil the requisite criterion were awarded higher marks.

33. The High Court, in our opinion, was correct in holding that Rule 51 providing for 100 marks for viva voce test against 40 for other criteria is contrary to law laid down by this Court.

34. See Union of India and another vs. N Chandrasekharan

and others (AIR 1998 SC 795) Indian Airlines Corporation vs Capt K C Shukla and others 1993(1) SCC 17), Anzar Ahmad vs State of Bihar and others (1994 (1) SCC 150) and Satpal and others vs State of Haryana and others (1995 Suppl(1) SCC 206).

35. *It is true that for allocation of marks for viva voce test, no hard and fast rule of universal application which would meet the requirements of all cases can be laid down. However, when allocation of such mark is made with an intention which is capable of being abused or misused in its exercise, it is liable to be struck down as ultra vires Article 14 of the Constitution of India.*

36. *See Jasvinder Singh and others vs State of J and K and others (2003(2) SCC 132), Vijay Syal and another vs State of Punjab and others (2003) (9) SCC 401).*

37. *It is also trite that when there is recruitment of consultation, in absence of any statutory procedure, the competent authority may follow its own procedure subject to the conditions that the same is not hit by Article 14 of the Constitution of India.*

38. See *Chairman and M.D., BPL Ltd., -vs- S.P. Gururaja and Others* (2003 (8) SCC 567).

39. *We would proceed on the assumption that the commission was entitled to not only ask the candidates to appear before it for the purpose of verification of record, certificates of the candidates and other documents as regards qualification, experience etc. but could also take viva voce test. But mark allotted therefore should indisputably be within a reasonable limit. Having regard to Rule 8 of 1979 Rules higher marks for viva voce test could not have been allotted as has rightly been observed by the High Court. The Rules must, therefore, be suitably recast."*

12. It is contended that the 1st respondent issued number of promotion orders vide Annexures-K to Q produced along with IA for production of additional documents, wherein the 1st respondent has strictly adhered to the seniority with criteria laid down in the statutory Rules. The Law graduates have been given preference and so also seniority has been taken into consideration. Thus the 1st respondent has adopted

different yardsticks in promoting the officials under one Institution.

13. Per contra, learned Senior Counsel for the 1st respondent submitted that on 7.11.2017, the Committee was appointed to select two Assistant Registrar (Secretarial Services) for promotion to the post of DR (SS) (Annexure-R1).

14. The petitioners have no right for promotion. Their case has been considered for promotion along with other candidates and suitable candidates have been promoted. On this sole ground, writ petitions are liable to be dismissed. Rules governing the post of DR (SS) under Rules, 1973 read with Amended Rules, 2013 has been applied in toto. The Selection Committee passed a resolution dated 30.4.2018 after taking into consideration the aptitude, language and their ability and also after scrutinizing their annual performance report for the past five years and taking into consideration other relevant factors has recorded respondents No.2 and 3 for promotion to the post of DR

(SS) and on such recommendation of the Committee, the 1st respondent proceeded to issue order of promotion to respondents No.2 and 3.

15. The petitioners have participated in the selection process merely their names were not recommended for promotion. They are prohibited in challenging the very process of selection and appointment. The time and again, the Courts have held and unsuccessful candidates cannot challenge the selection process after having participated in the process of selection and that no candidate has vested right for being selected to any post. The entire selection process is in terms of the Rules, 2013 which have been approved by the Hon'ble Chief Justice i.e. appointing authority under Article 229 (2) of the Constitution of India. It was further contended that judicial review is not permitted in respect of Selection Committee decision.

16. It was also contended that Regulation 11 of 1973 Rules envisages that in respect of all matters

regarding conditions of service of the members for which no provision or insufficient provision has been made in the Rules, 1973 read with Rules 2013, the Rules and orders applicable to the servants holding post in the Government of Karnataka shall regulate the conditions of service. In pursuance thereof, Rule 3 of Karnataka State Civil Service (General Recruitment) Rules, 1977 specifically provides for the Regulation of Recruitment and Conditions of Service.

17. In view of the aforesaid provisions, the contentions of the petitioners are not tenable. The Committee has taken into relevant facts like seniority, their performance in the interview, suitability to the said post and assess their candidature as 30 marks, while doing so, petitioners have got 17.5 and 19 marks respectively, whereas respondents No.2 and 3 have got 22.5 and 22.5 marks respectively. The Hon'ble Chief Justice in exercise of power conferred under Article 226 (2) of the Constitution of India proceeded to appoint respondents No.2 and 3 as DR (SS) on 3.6.2019.

18. The contention of the petitioners that Selection Committee has failed to prefer respondents No.2 and 3 over the petitioners holder of Law degree whereas in the past years always preference was given to Law degree is denied. The 1st respondent has exercised the power vested in it and in the best of interest of the Institution selected respondents No.2 and 3 and the same does not call for any interference at the hands of this Court. Thus the petitioners have not apprised this Court or place any evidence to show that there is breach of statutory provisions for consideration.

19. The Selection Committee could lay down criteria or methodology, which is supported by the decision of the Supreme Court reported in (1988) 2 SCC 242 (para-5). It was contended that the Selection Committee could introduce the methodology and it may not be notified or informed the candidates, since such criteria is evolved by the Selection Committee in order to select best candidates.

20. Learned Senior counsel appearing for the 1st respondent relied on the decision reported in (1990) 1 SCC 305 (para-12) (Dalpat Abasaheb Solunke and others -vs- Dr.B S Mahajan and others).

21. The learned counsel for the contesting respondents No.2 & 3 submitted that the seniority is not the criteria for selection and appointment to the post of DR (SS). Therefore, the contention of the petitioners that in the seniority of feeder cadre, they are seniors to respondents No.2 and 3 ignoring them for promotion may not hold good in view of the fact that the subject matter of post is selection and not by seniority. It was further contended that the order of preference to the Law graduates would be considered only as and when other things being equal. The Selection Committee have evolved the policy relating to how to proceed for selection of Assistant Registrar (Secretarial Services) to fill up two post of DR (SS) by laying down interview and award of marks in the interview. Each member allotted 10 marks out of 30 marks, the

petitioners have been awarded marks 17.5 and 19 marks respectively. This Court cannot interfere relating to adoption of criteria for selection made by the Selection Committee. Hence, no interference is called for.

22. Heard the learned counsel appearing for the parties.

23. The mode of recruitment to the post of DR (SS) is governed by the High Court of Karnataka Service (Conditions of Services and Recruitment) (I Amendment) Rules, 2013 read with (VII Amendment) Rules, 2013 notified on 15.2.2013 and 4.12.2013 respectively. The Note – 3 in (I Amendment) Rules, 2013 reads as under:

“3. For all the promotional posts the following yardsticks have to be followed invariably.-

(a) There should not be any Disciplinary Enquiry pending/Currency of penalty imposed in any Disciplinary Enquiry as on the date of consideration of promotion against the officer/official who is under consideration for promotion.

(b) There should not be any adverse remarks in the Annual performance Reports

against the officer/official who is under consideration for promotion, for the immediate past 5 years from the date of consideration of promotion. (If an officer/Official who has put In less than 5 years of service comes in zone of consideration for promotion then for such years of service.

(c) The officer/official who is under consideration for promotion to the next higher post shall have passed all such Departmental Exams (and Kannada Language Examination) which have been prescribed for the next higher post as per High Court of Karnataka (Service & Kannada Language Examination) Rules, 1975 failing which such officer/official will not be eligible for being considered for the next higher post.

(d) To be eligible for promotion the period of probation shall be declared as satisfactorily completed in respect of those officer/official who is under consideration.”

Extract of Rule 5A of (VII Amendment) Rules, 2013

(Annexure-R2) reads as under:

Sl.No.	Cadre	Existing method of recruitment	Amendment to be substituted in place of existing method of recruitment
5A	Deputy Registrar (Secretarial Services)	“By promotion by selection from the cadre of Assistant Registrar (Secretarial Services) provided that he or she has completed at least 3 years of service in the cadre. Other	“By promotion by selection from the cadre of Assistant Registrar (Secretarial Services) provided that he/she has complete at least 2 years of combined service in the present cadre of Assistant Registrar (Secretarial Services) as well as erstwhile cadre of Senior Judgment Writer. Other things being equal, preference should be given

		things being equal, preference should be given to those possessing a degree in Law.	to those possessing a degree in Law”.
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24. Para-9 of the reply statement of respondent

No.1 reads thus:

“.....All the 08 candidates attended the interview conducted by the Selection Committee on 30.04.2018. The Selection Committee after taking into consideration the aptitude, language and their ability to grasp questions in during interview and also after scrutinizing their annual performance report for the last 5 years and taking into consideration other relevant factors like their fluency in language, recommended the names of Respondent No.2 and 3 for the post of Deputy Registrar (Secretarial Services) to fill up the two vacancies. Among all the candidates, the Selection Committee has found Respondent No.2 and 3 more suitable for the post having regard to the interaction they had with them during the interview process. The Committee has taken into consideration the relevant factors like seniority, their performance in the interview, suitability to the said post and assessed their candidature as against 30 marks, while doing so the petitioner No.1 has got 17.5 marks and petitioner No.2 has got 19 marks whereas, respondent No.2 has got 22.5 marks and respondent No.3 has got 22.5 marks. Hence, the contention of the petitioners that their seniority was not considered is not correct.”

25. The aforesaid methodology has been prescribed and adopted by the Selection Committee in the absence of authorizing the Selection Committee to frame/introduce methodology of interview, award of marks on various heads by the Rules, 2013.

26. The Supreme Court in the case of Renu –vs- District and Sessions Judge reported in (2014) 14 SCC 50 held as under. The relevant extract of the judgment are paras-15, 16, 29, 30, 34, 35.2:

15. *Where any such appointments are made, they can be challenged in the court of law. The quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the judiciary a weapon to control the executive from making appointment to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office who might be allowed to continue either with the connivance of the executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo*

warranto, he has to satisfy the court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not. For issuance of writ of quo warranto, the Court has to satisfy that the appointment is contrary to the statutory rules and the person holding the post has no right to hold it. (Vide *University of Mysore v. C.D. Govinda Rao* [AIR 1965 SC 491] , *Kumar Padma Prasad v. Union of India* [(1992) 2 SCC 428 : 1992 SCC (L&S) 561 : (1992) 20 ATC 239 : AIR 1992 SC 1213] , *B.R. Kapur v. State of T.N.* [(2001) 7 SCC 231 : AIR 2001 SC 3435] , *Mor Modern Coop. Transport Society Ltd. v. State of Haryana* [(2002) 6 SCC 269] , *Arun Singh v. State of Bihar* [(2006) 9 SCC 375] , *Hari Bansh Lal v. Sahodar Prasad Mahto* [(2010) 9 SCC 655 : (2010) 2 SCC (L&S) 771] and *Central Electricity Supply Utility of Odisha v. Dhobei Sahoo* [(2014) 1 SCC 161 : (2014) 1 SCC (L&S) 1] .)

16. Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process

is commenced, thereby unjustly benefiting someone at the cost of others.

29. Thus, in view of the above, the law can be summarised to the effect that the powers under Article 229(2) of the Constitution cannot be exercised by the Chief Justice in an unfettered and arbitrary manner. Appointments should be made giving adherence to the provisions of Articles 14 and 16 of the Constitution and/or such rules as made by the legislature.

30. In today's system, daily labourers and casual labourers have been conveniently introduced which are followed by attempts to regularise them at a subsequent stage. Therefore, most of the times the issue raised is about the procedure adopted for making appointments indicating an improper exercise of discretion even when the rules specify a particular mode to be adopted. There can be no doubt that the employment whether of Class IV, Class III, Class II or any other class in the High Court or courts subordinate to it falls within the definition of "public employment". Such an employment, therefore, has to be made under rules and under orders of the competent authority.

34. We would like to make it clear that the High Court is a constitutional and an autonomous authority subordinate to none. Therefore, nobody can undermine the constitutional authority of the High Court, and therefore the purpose to hear this case is only to advise the High Court that if its rules are not in consonance with the philosophy of our Constitution then the same may be modified and no appointment in contravention thereof should be made. It is necessary that there is

strict compliance with appropriate rules and the employer is bound to adhere to the norms of Articles 14 and 16 of the Constitution before making any recruitment.

35.2. *(ii) To fill up any vacancy for any post either in the High Court or in courts subordinate to the High Court, in strict compliance with the statutory rules so made. In case any appointment is made in contravention of the statutory rules, the appointment would be void ab initio irrespective of any class of the post or the person occupying it.*

27. The Supreme Court in the case of K K Parmar -vs- High Court of Gujarat reported in (2006) 5 SCC 789 held as under: (para-17)

17. *A bare perusal of the purported resolution adopted by the Government of Gujarat on 20-3-1982 clearly shows that the same was applicable only in relation to the Heads of the Departments. A rule framed by the State in exercise of its power under proviso appended to Article 309 of the Constitution of India may be applicable to the employees of the High Court but the executive instructions issued would not be and in particular when the same is contrary to or inconsistent with the rules framed by the Chief Justice of the High Court in terms of Article 229 of the Constitution of India. The resolution dated 20-3-1982 ex facie applies to the cases of appointment by promotion to the posts of Head of the Department. It, therefore, had no application to promotion to the post of Section Officer, who are not Head of the Department.*

28. The contention of the 1st respondent that laying down criteria by the Selection Committee is in aid of Rule 11 of Rules, 1973 read with Rule 3 of Karnataka Civil Services (General Recruitment) Rules 1977. Such contention would be contrary to the case of K K Parmar.

29. Rule 11 of High Court of Karnataka Service (Conditions of Service and Recruitment) Rules, 1973 reads as under:

“11. Conditions of Service .- In respect of all such matters regarding the conditions of service of the members of the High Court Service for which no provision or insufficient provision has been made in these rules, the rules and orders for the time being in force and applicable to servants holding posts in the Government of Karnataka shall regulate the conditions of service of the members of the High Court Service, subject to such modifications, variations or exceptions, if any, in the said rules and orders, as the Chief Justice may from time to time, specify:

Provided that no order containing modifications, variations or exceptions in the rules relating to salaries, allowances, leave or pensions shall be made by the Chief Justice except with the previous approval of the Governor of Karnataka:

Provided further that the powers exercisable under the rules and orders of the Government of Karnataka by the Governor or the Government or by any authority subordinate thereto shall be exercisable by the Chief Justice.”

Assuming that 1st respondent has invoked the aforesaid procedure in terms of Rule 3 of Rules, 1977. Said provision is for the post of Head of Department and Additional Head of Department and not for the DR (SS) in the High Court of Karnataka, since Deputy Registrar is not one of posts identified as Additional Head or Head of Department. Rule 3(b) relates to the promotion to all other posts shall be on the basis of seniority-cum-merit. Therefore, Rule 3 is not the source of power. More over Rule 3(a) do not stipulate interview and award of marks.

30. Petitioners contended that the 1st respondent has ignored the seniority of feeder cadre while promoting respondents No.2 and 3 to the post of DR (SS) and so also the order of preference to the Law graduates has been ignored. Rules governing promotional post are silent in respect of holding an interview and award of marks under various heads.

Therefore, Selection Committee has exceeded its jurisdiction. The then Acting Chief Justice has appointed a Committee for Selection to the post of DR (SS) and there is no entrustment of holding an interview and award of marks under various heads. Therefore, the action of Selection Committee is without authority of law. Consequently, promotion of respondents No.2 and 3 to the post of DR (SS) are liable to be set aside.

31. Question relating to seniority is alone for consideration of promotion, since it is a selection post and not seniority-cum-merit and so as to give weightage for seniority. The order of preference to Law graduates has been ignored. The petitioners have not produced any material to show that they and other selected candidates are footing in equal and so as to give preference to the petitioners. Thus, the aforesaid contentions are not tenable and they are rejected.

32. The other contentions are that the then Acting Chief Justice while appointing the Selection Committee has only ordered for selection without asking

to laid down criteria like interview and award of marks. The suo-moto action of the Selection Committee in formulating mode of selection by interview and award of total 30 marks among three members, which was allotted 10 marks to each of the member and further they are required to award out of 10 marks, such a procedure adopted by the Selection Committee is without authority law neither Rules 2013 nor the Full Court by its resolution permitted them to prescribe interview and award of marks for selection to the post of DR (SS).

33. On this point, learned counsel for respondents contended that source of power is available to the Selection Committee in terms of Rule 3 of Karnataka Civil Service (General Recruitment) Rules, 1977. The said Rule relates to Additional Head of Department and Head of Department in the Government Departments. The post of DR (SS) is not one of the posts identified as Additional Head or Head of Department.

34. Learned counsel for petitioners relied on the decision of the Division Bench in the case of C Channe Gowda and another –vs- High Court of Karnataka (supra) wherein this Court held that Rules should require to give prominence and it should be strictly adhered. This decision aptly applies to the present case from the stage of holding of interview and award of marks and further selection and appointment of respondents No.2 and 3, which are not in accordance with amended Rules, 2013.

35. Respondents contended that petitioners have no right for promotion. The Supreme Court in the case of Ajith Singh and others (II) –vs- State of Punjab and others reported in (1999) 7 SCC 209 held at para-22 as under:

“Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the “State shall not deny to any person equality before the law or the equal protection of the law”. Article 16(1) issues a positive command that

“there shall be equality of opportunity for all citizens in matters relating to

employment or appointment to any office under the State.”

It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularizes the generality in Article 14 and identifies, in a constitutional sense “equality of opportunity” in matters of employment and appointment to any office under the State. The word “employment” being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be “considered” for promotion. Equal opportunity here means the right to be “considered” for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be “considered for promotion, which is his personal right.

“Promotion” based on equal opportunity and “seniority” attached to such promotion are facets of fundamental right under Article 16(1).”

36. Time and again, the Supreme Court has held that there is no right for promotion at the same time right to consideration of an eligible person for promotion is available in terms of Statutory Rules – Executive order governing such promotional post. It was further

contended that Rule 9 of amended Rules 2013 for selection to the post of DR (SS) has been followed. Rule provides for selection in terms of extracted mode of recruitment (supra), Rule does not provide for Selection Committee to formulate selection procedure like interview and award of marks. Therefore, the aforesaid contention of the 1st respondent that Rules have been adhered for selection and appointment of respondents No.2 and 3 to the post of DR (SS) is untenable.

37. Learned counsel for respondents are estopped in questioning the selection and appointment of respondents No.2 and 3 on the score that they have participated in the selection and later on, they cannot turn around and questioned the mode of selection. No doubt, it is true that once a candidate participated for process of selection after his non-selection is not entitled to challenge the authority of selection procedure. In terms of Rameshchandra Shah -vs- Ajjith Joshi reported in (2013) 11 SCC 309, para-17 read as under:

17. *Those who were desirous of competing for the post of Physiotherapist, which is a Group 'C' post in the State of Uttarakhand must have, after reading the advertisement, become aware of the fact that by virtue of the Office Memorandum dated 3-8-2010, the Board has been designated as the recruiting agency and the selection will be made in accordance with the provisions of the General Rules. They appeared in the written test knowing that they will have to pass the examination enumerated in Para 11 of the advertisement. If they had cleared the test, the private respondents would not have raised any objection to the selection procedure or the methodology adopted by the Board. They made a grievance only after they found that their names do not figure in the list of successful candidates. In other words, they took a chance to be selected in the test conducted by the Board on the basis of the advertisement issued in November 2011. This conduct of the private respondents clearly disentitles them from seeking relief under Article 226 of the Constitution. To put it differently, by having appeared in the written test and taken a chance to be declared successful, the private respondents will be deemed to have waived their right to challenge the advertisement and the procedure of selection.*

38. The above concept is not attracted in the present petition for the reason that admittedly the 1st respondent has stated that criteria of award of marks has not been made known to the prospective Assistant Registrar like petitioners and respondents No.2 and 3

and others. The 1st respondent has not made known criteria i.e. going to be adopted. Therefore, one has to draw inference that as on the date of interview, criteria of allotment of 10 marks to each of the member (three members) and award of marks by each of the member with reference to 10 marks are ear marked for each of the member. Such mode would fall under “change in criteria of selection” which is game changer, which is impermissible as held by the Supreme Court in number of decisions, in otherwords selection should be in accordance with Rules. As on the date of interview i.e. 30th April, 2018, whatever existing Rules to fill up the post of DR (SS) is required to be followed strictly. Undisputedly, Rules, 1973 read with amended Rules 2013 do not provide for award of marks etc. The Supreme Court in the case of Mohd. Faizal K A –vs- D.Sali reported in (2017) 16 SCC 394 at para - 18 held as under:

18. *We may, therefore, without dilating on any other contention, straightaway advert to the background in which the two decisions were passed by the learned Single Judge of the High Court. The first impugned decision*

was rendered by the learned Single Judge on 23-6-2004 [D. Sali v. State of Kerala, Original Petition No. 35398 of 2002, decided on 23-6-2004 (Ker)] . The relevant portion of this decision has been extracted in para 4, above. The crux of the direction issued by the Court was to consider the claim of Respondent 1 for promotion against the vacancy of 2001 on the basis of his confidential records for the years 1998, 1999 and 2001 “in accordance with law”. We find no infirmity in the direction so issued by the High Court. For the nature of direction given by the learned Single Judge vide judgment dated 23-6-2004 [D. Sali v. State of Kerala, Original Petition No. 35398 of 2002, decided on 23-6-2004 (Ker)] , provided full play to DPC to select or not to select Respondent 1 against the vacancies of 2001 after considering the confidential records of Respondent 1 for three preceding years i.e. 1998, 1999 and 2000 “in accordance with law”. This is how DPC as well as the competent authority of the State understood the direction and after due deliberations issued an order on 20-11-2004. As a result, the competent authority while considering the claim referred to the fact that major punishment (i.e. increment bar for two years with cumulative effect vide PHQ Order No. G5/73080 dated 5-11-1997) was still operating against Respondent 1. That punishment was to operate for two years with cumulative effect from 1997.

39. In the case Ramesh Kumar –vs- High Court of Delhi and another reported in (2010) 3 SCC 104, the Supreme Court held at para-18 held as under:

“18. These cases are squarely covered by the judgment of this Court in *Hemani Malhotra v. High Court of Delhi*, wherein it has been held that it was not permissible for the High Court to change the criteria of selection in the midst of selection process. This Court in *All India Judges’ Assn. (3) case* had accepted Justice Shetty Commission’s Report in this respect i.e. that there should be no requirement of securing the minimum marks in interview, thus, this ought to have been given effect to. The Court had issued directions to offer the appointment to candidates who had secured the requisite marks in aggregate in the written examination as well as in interview, ignoring the requirement of securing minimum marks in interview. In pursuance of those directions, the Delhi High Court offered the appointment to such candidates. Selection to the post involved herein has not been completed in any subsequent years to the selection process under challenge. Therefore, in the instant case, in absence of any statutory requirement of securing minimum marks in interview, the High Court ought to have followed the same principle. In such a fact situation, the question of acquiescence would not arise.”

40. In the case of *Salam Samarjeet Singh -vs- High Court of Manipur at Imphal* reported in (2016) 10 SCC 484, the Supreme Court held at paras-20 and 43 as under:

20. *Observing that prescribing minimum marks for the interview was not permissible after the written test was conducted,*

in Hemani Malhotra v. High Court of Delhi [Hemani Malhotra v. High Court of Delhi, (2008) 7 SCC 11 : (2008) 2 SCC (L&S) 203] , it was held as under: (SCC p. 17, para 15)

“15. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and viva voce, but if minimum marks are not prescribed for viva voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at viva voce test was illegal.”

43. *In the aforesaid facts and circumstances, the contention advanced on behalf of the petitioner that the impugned act of bringing about change in the selection procedure by providing minimum marks for interview or viva voce test in midst of the selection process which has already been initiated amounts to changing the rules of the game and hence impermissible, is well supported by a judgment in K. Manjusree v. State of A.P. [K. Manjusree v. State of A.P., (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841] as well as in Hemani Malhotra v. High Court of Delhi [Hemani Malhotra v. High Court of Delhi, (2008) 7 SCC 11 : (2008) 2 SCC (L&S) 203] . In my view once the petitioner was declared as the lone candidate having passed in the written examination, it matters little whether minimum marks for interview were introduced before or after calling him for interview. The*

petitioner or any other person in his place, knowing fully well that there was no separate cut-off or pass mark for the viva voce, would not feel any pressure to be extra ready for the interview. In order to ensure fairness, after the Full Court decision on 12-1-2015 to fix 40% as pass marks for viva voce, the petitioner ought to have been informed of this development, at least when intimation of date of interview was communicated to him through letter dated 29-1-2015. Since the viva voce was held on 12-2-2015, he would have got some time to improve his preparations to meet the 40% cut-off newly introduced. That was not done. In such circumstances, I do not find any material, reason or circumstance to distinguish the case of K. Manjusree [K. Manjusreev. State of A.P., (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841] as well as of Hemani Malhotra [Hemani Malhotra v. High Court of Delhi, (2008) 7 SCC 11 : (2008) 2 SCC (L&S) 203].

41. In the case of High Court of Hyderabad –vs- P.Murali Mohana Reddy and Ors. reported in (2019) 3 SCC 672, the Supreme Court held at paras – 12, 13, 15 and 17.2 as under:

12. *The High Court, on the basis of the aforesaid stipulation in the advertisement as well as in the Rules pointed out that there is no stipulation for securing minimum qualifying marks in viva voce test either as per advertisement or as per the Rules. Insofar as the judgment in Brij Mohan Lal case [Brij Mohan Lal v. Union of India, (2012) 6 SCC 502 : (2012) 2 SCC (L&S) 177] is concerned, the High Court took the view that it does not*

mention qualifying marks in viva voce and also clarifies that examination and interview were to be held in accordance with the relevant Rules enacted by the State for direct appointment of Higher Judicial Services. On that basis, the High Court concluded: (P. Murali Mohana case [P. Murali Mohana Reddy v. State of A.P., 2015 SCC OnLine Hyd 89 : (2015) 4 ALD 156] , SCC OnLine Hyd paras 20-21)

“20. While reading the above pronouncement of the Supreme Court harmoniously with the Rule, we think the following procedure would have been a fair one, as the said judgment has not ignored, rather accepted the relevant Rules—

(i) Written test would be for 150 marks.

(ii) Viva voce would be for 100 marks.

(iii) Candidate has to secure minimum 40% qualifying marks in written test.

(iv) Candidate has to participate in viva voce test.

(v) Securing qualifying marks in viva voce or in aggregate are not the requirements.

21. Therefore, we are of the view that the Selection Committee should not have adopted the norm of securing a minimum qualifying mark in the viva voce test or for that matter, minimum aggregate qualifying marks.”

13. *Regarding the move of the appellant in changing the criteria after issuing the*

advertisement, the High Court has held that it could not be permitted and the discussion in this behalf proceeds as under: (P. Murali Mohana case [P. Murali Mohana Reddy v.State of A.P., 2015 SCC OnLine Hyd 89 : (2015) 4 ALD 156] , SCC OnLine Hyd paras 22-24)

“22. Moreover, it is rightly contended by the learned counsel for the petitioners, relying on the aforesaid judgment of the Supreme Court in Umesh Chandra Shukla v.Union of India [Umesh Chandra Shukla v. Union of India, (1985) 3 SCC 721 : 1985 SCC (L&S) 919] and A.A. Calton v. Director of Education [A.A. Calton v. Director of Education, (1983) 3 SCC 33 : 1983 SCC (L&S) 356] , that the respondents and each of them cannot act contrary to the norms as published in the advertisement or the Rules and admittedly, the advertisement does not stipulate a minimum qualifying mark for the viva voce test or that of aggregate marks both in written and viva voce test. As the petitioners and each of them, in terms of the advertisement as well as the rules, have acted upon and that they acquired a vested right to be considered in terms of the advertisement and the rules.

23. It is not that the norms cannot be changed or varied, but this has to be done in terms of the statutory rules. If they do not permit, the Selection Committee cannot lay down the same as it will be ultra vires.

24. Moreover, as it appears from the original record produced before us, we find that the assessment was made on the basis of minimum qualifying marks in the aggregate

as well as in viva voce tests and it does not appear that the aforesaid norms were ever published.”

15. *We may mention at the outset that the High Court is right to the extent that the appointments are to be made in terms of stipulations contained in the advertisement. Though, such terms can be changed, but that has to be done in terms of statutory rules. Insofar as advertisement is concerned, there was no mention of securing minimum qualifying marks in the viva voce test. The High Court is also right in pointing out that Rule 6 of the Rules does not contain any provision of securing minimum qualifying marks in the interview. At the same time, it stipulates qualifying aggregate marks in written examination and viva voce, as 40% for general category, 35% for backward category and 30% for SC/ST category in the written examination. This requirement of securing minimum qualifying marks in the written examination was fulfilled by the respondents.*

17.2 *Such written examination and interview was to be held in accordance with relevant Rules enacted by the State for direct appointment to Higher Judicial Services.*

42. Note-3 of (I Amendment) Rules, 2013 stipulates yardstick for promotional post. The Selection Committee cannot side track and add something, which is not there. Adding like holding of interview, fixation of marks and award of marks is without amendment to Note-3, which is part and parcel of Rules, 2013. Such

mode of interview, fixation of marks and award of marks amount to tinkering Rules, 2013. Therefore, the principles laid down in the aforesaid citations wherein the principle has been laid down that whatever selection is required to be done, it should be done only in accordance with law. "In accordance with law" means in the present case, only Rules 1973 read with amended Rules, 2013 and not beyond these statutory provisions. Therefore, the Selection Committee and further order of appointment/promotion issued to respondents No.2 and 3 are erred from the stage of inviting them for interview, fixation of marks and award of marks, passing resolution and further promoting them to the post of DR (SS) are patently arbitrary and contrary to Rules governing post of DR (SS) read with Supreme Court +decisions (supra). Learned counsel for respondents pointed out Regulation 11 of Rule 1973, which provides for adopting Rules and orders which are applicable to the government servants holding post in Government of Karnataka in the absence of insufficient provision have

been made in Rules 1973 read with amended Rules, 2013.

43. Learned counsel for respondents contended that petitioners do not meet the merit having regard to the marks obtained by them on par with respondents No.2 and 3. Petitioners have got marks 17.5 and 19 respectively. On the otherhand, respondents No.2 and 3 have got 22.5 and 22.5 marks respectively.

44. Learned counsel for respondents in support of contentions that Selection Committee could laid down criteria or methodology relied on the decision of the Supreme Court reported in (1988) 2 SC 242 at para-5.

45. The aforesaid citation do not assist the respondents in any manner for the reason that later decisions cited supra would prevail over. Similarly he has cited one more decision in the case of Dalpat Abasaheb Solunke and others -vs- Dr.B S Mahajan and others reported in (1990) 1 SCC 305 (supra) is also not

assisting the contention of the respondents in view of later decisions cited (supra).

46. Learned counsel for respondents No.2 and 3 contended that the contention of petitioners is that seniority, Law graduates would be considered only as and when other things being equal are already rejected. Learned counsel supported the criteria laid down by the Selection Committee in inviting eligible Assistant Registrar for selection to the post of DR (SS) and further fixation of marks and award of marks is permissible. Those contentions are not supported by any source of power to the Selection Committee and the Full Court entrusted the Selection Committee to go in a particular manner. Thus, there is a deviation in inviting eligible Assistant Registrar for interview, fixation of marks and award of marks.

47. In this regard, the Supreme Court, in the following decision held that if a statute empower a particular things is to be done by the Authority, it shall be done only in that manner.

“.....Judicial review of administrative action by De-Smith, Wolf and Jowell (5th edition) which is as follows:

“The rule against delegation.

A discretionary power must, in general, be exercised only by the authority to which it has been committed. It is a well known principle of law when a power has been confided to a person in circumstances indicating that trust is a being placed in his individual judgment and discretion, he must exercise that power personally unless he has been expressly empowered to delegate it to another”.

Administrative law, by H.R. Wade and C.F. FORSYTH (9th edition), chapter-10 as follows:

“Inalienable discretionary power;

An element which is essential to the lawful exercise by the authority upon whom it is conferred and by no one else. The principle is strictly applied, even where it causes administrative inconvenience, except in cases where it may reasonably be inferred that the power was intended to be delegable. Normally courts are rigorous in requiring the power to be exercised by the precise person or body stated in the statute, and in condemning as ultra vires action taken by agents, sub-committees are delegate. However, expressed authorised by the authority endowed with the power”.

Hon'ble Supreme Court in the following cases held as under:

“(a) In the case of Dhanajaya Reddy vs. State of Karnataka reported in (2001) 4 SCC 9, in para No.23 held as under:-

“23. It is a settled principle of law that where a power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all. This Court in State of U.P. v. Singhara Singh, AIR 1964 SC 358 (AIR p. 361, para 8) held:-

“A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down.”

(b) Supreme Court in the case of Director General, ESI and another vs. T. Abdul Razak reported in (1996) 4 SCC 708 in para no.14 held as under:-

“14. The law is well settled that in accordance with the maxim delegates non potest delegare, a statutory power must be exercised only by the body or officer in whom it has been confided, unless subdelegation of the power is authorised by express words or necessary implication.”

(c) Supreme Court in the case of Chairman-cum-Managing Director, Coal

India Limited and others vs. Ananta Saha and others, reported in (2011) 5 Supreme Court Cases, 142, in para nos. 32 and 33 held as under:-

“32. It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact situation, the legal maxim *sublato fundamento cadit opus* is applicable, meaning thereby, in case a foundation is removed, the superstructure falls.

33. In *Badrinath v. Govt. of Tamil Nadu & Ors.*, AIR 2000 SC 3243, this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasijudicial proceedings is equally applicable to administrative orders.”

(d) Supreme Court in the case of *M.P. Wakf Board vs. Subhan Shah (Dead) by LRs and another*, reported in (2006) 10 Supreme Court Cases 696, in para nos. 27 to 29 read as under:-

“27. The Wakf Act is a self-contained code. Section 32 of the 1995 Act provides for powers and functions of the Board. Sub-section (2) of Section 32 of the 1995 Act enumerates the functions of the Board without prejudice to the generality of the power contained in sub-section (1) thereof. Clauses (d) and (e) of sub-section (2) of Section 32 of the 1995 Act read as under:

"32. (2)(d) to settle schemes of management for a wakf:

Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard;

(e) to direct-

(i) the utilisation of the surplus income of a wakf consistent with the objects of a wakf;

(ii) in what manner the income of a wakf, the objects of which are not evident from any written instrument, shall be utilized;

(iii) in any case where any object of wakf has ceased to exist or has become incapable of achievement, that so much of the income of the wakf as was previously applied to that object shall be applied to any other object, which shall be similar, or nearly similar or to the original object or for the benefit of the poor or for the purpose of promotion of knowledge and learning in the Muslim community;

Provided that no direction shall be given under this clause without giving the parties affected an opportunity of being heard.

Explanation-For the purposes of this clause, the powers of the Board shall be exercised –

- (i) *in the case of a Sunni wakf, by the Sunni members of the Board only; and*
- (ii) *in the case of a Shia wakf, by the Shia members of the Board only:*

Provided that where having regard to the number of the Sunni or Shia members in the Board and other circumstances, it appears to the Board that the power should not be exercised by such members only, it may co-opt such other Muslims being Sunnis or Shias, as the case may be, as it thinks fit, to be temporary members of the Board for exercising its powers under this clause;"

28. *The Tribunal had been constituted for the purposes mentioned in Section 83 of the 1995 Act. It is an adjudicatory body. Its decision is final and binding but then it could not usurp the jurisdiction of the Board. Our attention has not been drawn to any provision which empowers the Tribunal to frame a scheme. In absence of any power vested in the Tribunal, the Tribunal ought to have left the said function to the Board which is statutorily empowered therefor. Where a statute creates different authorities to exercise their respective functions thereunder, each of such authority must exercise the functions within the four corners of the statute.*

29. It is trite that when a procedure has been laid down the authority must act strictly in terms thereof. (See Taylor V Taylor, (1875) 1 Ch D 426 : 45 LJ Ch 373)."

(e) Supreme Court in the case of Sidhartha Sarawgi Vs. Board of Trustees for the Port of Kolkata and others reported in (2014) 16 SCC 248, in para nos. 4, 9 and 10 held as under:-

"4. There is a subtle distinction between delegation of legislative powers and delegation of nonlegislative/administrative powers. As far as delegation of power to legislate is concerned, the law is well settled: the said power cannot be sub-delegated. The legislature cannot delegate essential legislative functions which consist in the determination or choosing of the legislative policy and formally enacting that policy into a binding rule of conduct. Subordinate legislation which is generally in the realm of rules and regulations dealing with the procedure on implementation of plenary legislation is generally a task entrusted to a specified authority. Since the legislature need not spend its time for working out the details on implementation of the law, it has thought it fit to entrust the said task to an agency. That agency cannot entrust such task to its subordinates; it would be a breach of the confidence reposed on the delegate.

9. The Constitution confers power and imposes duty on the legislature to

make laws and the said functions cannot be delegated by the legislature to the executive. The legislature is constitutionally required to keep in its own hands the essential legislative functions which consist of the determination of legislative policy and its formulation as a binding rule of conduct. After the performance of the essential legislative function by the legislature and laying the guiding policy, the legislature may delegate to the executive or administrative authority, any ancillary or subordinate powers that are necessary for giving effect to the policy and purposes of the enactment. In construing the scope and extent of delegated power, the difference between the essential and nonessential functions of the delegate should also be borne in mind. While there cannot be sub delegation of any essential functions, in order to achieve the intended object of the delegation, the non-essential functions can be sub-delegated to be performed under the authority and supervision of the delegate.

10. Sometimes, in the plenary legislation itself, the lawmakers may provide for such sub-delegation. That is what we see under Sections 21 and 34 of the Major Port Trusts Act, 1963, which we shall be discussing in more detail at a later part of this judgment.”

(f) Supreme Court in the case of Captain Sube Singh and others vs. Lt. Governor of Delhi and others, reported

in (2004) 6 Supreme Court Cases, 440, in para no. 29 held as under:-

*“29. In CIT vs. Anjum M.H. Ghaswala, (2002) 1 SCC 633, a Constitution Bench of this Court reaffirmed the general rule that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. (See also in this connection *Dhanajay Reddy vs. State of Karnataka*, (2001) 4 SCC 9). The statute in question requires the authority to act in accordance with the rules for variation of the conditions attached to the permit. In our view, it is not permissible to the State Government to purport to alter these conditions by issuing a notification under Section 67(1) (d) read with sub-clause (i) thereof.”*

(underline emphasized)

48. In the case of Chief Secretary –vs- Chandraiah reported in SLR 1967 SC 155; H.A. Ramanuja –vs- State of Mysore 1971(2) Mys.LJ 60; T.S. Gurusiddaiah –vs- Chief Secretary, 8 LR 528; 1967 Mys.LJ SN 61, wherein it is held that departmental examination cannot be added to the rules by executive order. Where the rule-making authority has not prescribed the departmental examination required for

promotion, it is not competent for the executive to add the qualifications to the rules framed by the Governor and to insist passing the examinations as a condition for promotion.

49. In the case of Jit Singh -vs- State of Punjab reported in AIR 1979 SC 1034, the Supreme Court held that relaxation of conditions of eligibility without authority. The conditions of eligibility fixed in the rules cannot be relaxed by an executive order, unless the rules empower a designated authority to do so. Therefore, when according to the rules, civil servants would be eligible for promotion only after they put in a continuous service for specified period and the rules did not provide for relaxation, an executive order reducing the period of continuous service, as a condition of eligibility for promotion, cannot bestow any right on the beneficiaries to the promoted post from the date of their promotion.

50. In the case of P K Ramachandra Iyer –vs- Union of India, the Bench “encapsulated” the following conclusions:

“1. The selection committee which has been statutorily constituted should follow the norms for assessing the merit of rival candidates, if such norms are laid down in the statute. The selection committee has not jurisdiction or authority to either relax any of the norms or vary the same.

2. If the statute which provides for the constitution of the selection committee does not provide for the norms for the selection committee, then it is open to the appointing authority to lay down instructions and guidelines providing for such norms. In such a case the selection committee is bound to follow such administrative instructions in conducting the selection.

3. In case where the norms governing the selection are not laid down either in the statutory provisions or in administrative instructions, the selection committee constituted to conduct selection would not have any inherent jurisdiction or authority to evolve its own norms for conducting the selection. If it evolves its own norms, then its action will be without authority and jurisdiction and the selection would be vitiated.

Propositions 2 and 3 read together seems to suggest that in the circumstances mentioned in proposition 3, the committee would have to approach the appointing or

recruiting authority for the norms to be applied.

Procedure and eligibility criteria, as provided in the rules prevailing at the time when vacancies arose, should normally be followed and any change in policy must be supported by good and sufficient reasons and a decision taken without disclosing such reasons would be arbitrary.”

51. In (1995) 6 SCC 1 Dr.Krushna Chandra Sahu & Others -vs- State of Orissa and others, the Supreme Court held at paras – 33, 34 and 36 as under:

“33. The members of the Selection Board or for that matter, any other Selection Committee, do not have the jurisdiction to lay down the criteria for selection unless they are authorized specifically in that regard by the Rules made under Article 309. It is basically the function of the rule-making authority to provide the basis for selection. This Court in State of A.P. v. V.Sadanandam observed as under: (SCC pp. 583-84, para 17)

“We are now only left with the reasoning of the Tribunal that there is no justification for the continuance of the old rule and for personnel belonging to other zones being transferred on promotion to offices in other zones. In drawing such conclusions, the Tribunal has traveled beyond the limits of its

jurisdiction. We need only point out that the mode of recruitment and the category from the which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the executive.”

34. *The Selection Committee does not even have the inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication. In P K Ramachandra Iyer v. Union of India, it was observed: (SCC pp. 180-81, para 44)*

“By necessary inference, there was no such power in the ASRB to add to the required qualifications. If such power is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm.”

36. *In may be pointed out that rule-making function under Article 309 is legislative and not executive as was laid down by this Court in B.S.Yadav v. State of Haryana. For this reason also, the Selection Committee or the Selection Board cannot be held to have jurisdiction to lay down any standard or basis for selection as it would amount to legislating a rule of selection.”*

52. Petitioners in their representations dated 8.5.2019 at paras-4 and 5 contended as under:

“4. *The committee to conduct interview and propose the names of eligible candidates to the promotional post is not a permanent committee. Just before the date of interview, such committee would be constituted consisting of three Hon’ble Judges, who will conduct interview and propose the names. Because this Committee is not permanent, such committee would adopt their own considerations more often than not, without reference to the Rules, select candidates either on the assumed basis that particular candidate/s have short service or on some other ground. I respectfully submit that this is more particularly happening in our cadre (Secretarial Services).*

5. *In the past, when interview was conducted for the posts of Assistant Registrars, I was also a candidate. At that time, the Committee consisted of Mr.P D Dinakaran, Hon’ble Chief Justice, Mr.Justice V G Sabhahit and Hon’ble Mr.Justice Ashok B Hinchigeri. All the three candidates who were selected at that time, who were junior to*

me, were luckily working with Hon'ble Judges/Chief Justice, who were also members of the promotion committee. Those candidates who were selected at that time are Joint Registrars today."

53. To avoid such averments against Committee Members, 1st respondent to administer to appoint Members with the consent of the respective Hon'ble Judge, while evaluate such circumstances, if any, in future.

RESULT:

54. In view of the aforesaid analysis of facts and legal aspects, this Court is of the view that the Selection Committee laying down the criteria of holding of interview, fixation of 30 marks and allotment of 10 marks to each of the member for award of marks to the candidates, who have appeared for the interview for the post of DR (SS) is without authority of law, since Rules, 2013 do not provide for holding of interview and award of marks by the Selection Committee. That apart, in the absence of necessary amendment of Rules, 1973 incorporating mode of selection including holding of interview and award of marks, the Courts have time and

again held that filling up of public post should be strictly in accordance with statutory rules and they should not be any deviation from the statutory rules or executive order governing public post. Therefore, action of the Committee dated 30th April, 2018 onwards till issuance of promotion order dated 3rd June 2019 would be void abnatio in view of Renu's decision (supra) (para-35.2). Therefore, the order of promotion dated 3rd June, 2019 (Annexure-J) is set aside.

The writ petitions stand allowed.

Respondent No.1 is to administer to proceed to fillup the two posts of DR(SS) in terms of the High Court of Karnataka Service (Conditions of Service and Recruitment) (I and VII Amendment) Rules, 2013 within a reasonable period of three months from the date of receipt of this order.

Sd/-
JUDGE

bkm