IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.355, 378, 369, 406, 430, 445, 488, 496, 727, 746, 747 & 750 OF 2015

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Sr. No.	OA No.	Name of the Applicant/s
1.	355 of 2015	1. Shri Raghunath Bhimaji Vyavahare 2. Shri Sambhaji S. Jagdale 3. Shri Bharat T. Gaikwad 4. Shri Harihar S. Muttepwar 5. Shri Sarjerao B. Memane 6. Shri Arun M. Zol 7. Shri Narayan A. Roman 8. Shri Veerdhaval R. Karkhanis All C/o Shri A.V. Bandiwadekar, Advocate, MAT, Mumbai
2.	378 of 2015	1. Shri Sunil D. Nikumbh 2. Shri Rajendra K. Lawangare 3. Shri Shivaji V. Kadam 4. Shri Milindkumar S. Jawalgekar 5. Shri Hemant K.Kajgaonkar 6. Shri Ravikiran S. Shinde 7. Shri Ravindra B. Nakave 8. Shri Milind G. Katkar All C/o Shri A.V. Bandiwadekar, Advocate, MAT, Mumbai
3.	369 of 2015	1. Shri Rajeshwar D. Mandage 2. Shri Vijay D. Patil 3. Shri Mahaveer G. Malawade 4. Shri Atul R. Kulkarni All C/o Shri A.V. Bandiwadekar, Advocate, MAT, Mumbai

4.	406 of 2015	1. Shri Rajendra M. Shirwadkar 2. Shri Jagannath S. Patil 3. Shri Vijay G. Deshpande 4. Shri Narayan D. Patil 5. Shri Dilip J. Shirode 6. Shri Pramod D. Jawale 7. Shri Arvind V. Nagare 8. Shri Satish P. Jagtap 9. Shri Sharad T. Kelhe 10. Shri Dattatraya R. Patil 11. Shri Ramesh G. Mane 12. Shri Janardhan H. Kulkarni 13. Shri Vivek W. Giridhar 14. Shri Tukaram G. Jadhav 15. Shri Sadashiv B. Desai 16. Shri Pandurang D. Patil 17. Shri Shaym K. Bhavsar 18. Shri Jagannath K. Sonwane 19. Shri Sheshrao M. Patil 20. Shri Sharad M. Darvhatkar 21. Shri Kishor E. Kawalkar 22. Shri Ghanshyam D. Tote All C/o Shri A.V. Bandiwadekar, Advocate, MAT, Mumbai
5.	430 of 2015	1. Shri Kumar P. Kulkarni 2. Shri Vasant G. Petkar 3. Shri Avdhoot N. Kulkarni 4. Smt. Mohini S. Kulkarni 5. Shri Sharad S. Sodegaonkar 6. Shri Sadashiv E. Talekar 7. Shri Shirish M. Harip 8. shri Nandkishor N. Oza 9. Shri Nandkumar V. Pattewar 10. Shri Dilip D. Niturkar 11. Shri Sanjay V. Kulkarni 12. Shri Yashwant H. Narwade 13. Shri Gopale C. Bhikaji All C/o Shri A.V. Bandiwadekar, Advocate, MAT, Mumbai

6.	445 of 2015	1. Shri Mustak M. Sayyed 2. Shri Satish R. Raut 3. Shri Sanjay O. Borkhade 4. Shri Prakash N. Gumble 5. Shri Dinesh K. Gupta 6. Shri Mahadeo P. Khandare 7. Shri Subhash M. Deshmukh 8. Shri Ashok S. Raut 9. Shri Anil M. Bondre 10. Shri Ramesh P. Virulkar 11. Shri Nirmalkumar K. Banerjee 12. Shri Madhav M. Shelke 13. Shri Dileep V. Samant 14. Shri Rajaram T. Vedpathak 15. Shri Dipak N. Kalaskar 16. Shri Bansilal D. Jadhav 17. Shri Dattatraya N. Joshi 18. Shri Suhas S. Deshpande All C/o Shri A.V. Bandiwadekar, Advocate, MAT, Mumbai
7.	488 of 2015	1. Shri Ramchandra I. Patil 2. Shri Chandrashekhar D. Doddamani 3. Shri Rajendra N. Dake All C/o Shri A.V. Bandiwadekar, Advocate, MAT, Mumbai
8.	496 of 2015	1. Shri Sanjay M. Kulkarni 2. Shri Mir M.Z. Hashmi 3. Shri Nilkanth B. Tupatkar 4. Shri Yogiraj V. Ingole 5. Shri Anil B. Deshmukh 6. Shri Pramod D. Pund 7. Smt. Smita Prashant Ghodeswar 8. Shri Amol U. Kothe 9. Shri Dindayal A. Borkar 10. Shri Satish V. Khandle 11. Shri Anil V. Patil 12. Shri Liladhar E. Garse

		All C/o Smt. Sanjivani Deshmukh-Ghate, Advocate, High Court/MAT, Aurangabad
9.	727 of 2015 (332/15 – Nagpur)	1. Shri Virendra B. Selukar 2. Shri Prakash C. Vaishnao 3. Shri Yuwraj W. Chafle 4. Shri Maroti P. Thuturkar 5. Shri Anil U. Bothale 6. Shri Ram S. Tasgaonkar 7. Shri Ranjan A. Tillu 8. Shri Dilip O. Naphade 9. Shri Chandrashekar B. Nitnaware 10. Miss Pranali D/o Arvindrao Punwatkar 11. Shri Sanjay D. Kasangotuuwar 12. Shri Ghanshyam E. Bawaskar All C/o Smt. Sanjivani Deshmukh-Ghate, Advocate, High Court/MAT, Aurangabad
10.	746 of 2015 (317/15 – Aurangabad)	1. Shri Syed Yahiya S.M. Qhadri 2. Shri Manohar D. Waghchaure 3. Shri Ravindra R. Joshi 4. Shri Satish M. Ardhapurkar 5. Shri Rukminikant D. Bakshi 6. Shri Anil M. Takalkar 7. Shri Suryakant S. Biradar 8. Shri Mohamad Pasha M. Bagwan 9. Shri Chandrakant G. Thombre 10. Shri Ramesh J. Bhalerao 11. Shri Vijay L. Supekar 12. Shri Sadanand M. Gupta 13. Shri Prakash B. Diwane 14. Shri Arun A. Ghate 15. Shri Mukund M. Kahalekar 16. Shri Jafer Khan Saye Khan 17. Shri Bhimrao S. Khedkar 18. Shri Hirappa M. Ravangaonve All C/o Smt. Sanjivani Deshmukh-Ghate, Advocate, High Court/MAT, Aurangabad

11.	747 of 2015 (329/15 – Aurangabad)	1. Shri Mukhtar Shaikh Rahim Shaikh 2. Shri Shivaji G. Pawar 3. Shri Umakant V. Dhongde All C/o Smt. Sanjivani Deshmukh-Ghate, Advocate, High Court/MAT, Aurangabad
12.	750 of 2015 (367/2015 – Aurangabad)	Shri Vithal Manikrao Tele C/o Smt. Sanjivani Deshmukh-Ghate, Advocate, High Court/MAT, Aurangabad

Versus

1. The State of Maharashtra,)
Through Additional Chief Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400032)

2. The State of Maharashtra,)
Through Principal Secretary,)
Water Resources Department,)
Mantralaya, Mumbai 400032)..Respondents

Shri A.V. Bandiwadekar – Advocate for Applicants in Sr. Nos.1 to 7

Smt. Sanjivani Deshmukh-Ghate – Advocate for Applicants in Sr. Nos.8 to 12

Shri N.K. Rajpurohit – Chief Presenting Officer with

Shri Nitin Gangal – Special Counsel for the Respondents

CORAM : Rajiv Agarwal, Vice-Chairman
R.B. Malik, Member (J)
DATE : 30th March, 2016
PER : R.B. Malik, Member (J)

JUDGMENT

1. The commonality of facts and the applicable legal principles admit to the disposal of all these Original Applications (OAs) under Section 19 of the Administrative Tribunals Act, 1985 by this common judgment.

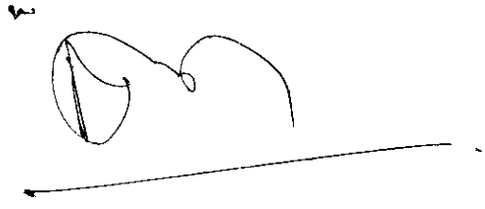
2. As and by way of facility, OA 445/2015 and 355/2015 are taken as representative OAs. The facts in other OAs are broadly the same.

3. The Applicants call into question the applicability to them of the provisions of the Revenue Division Allotment for appointment by way of nomination and promotion to the post of Group-A and Group-B (Gazetted and Non-Gazetted) of the Government of Maharashtra Rules, 2015 (2015 Rules or Superseding Rules), dated 28.4.2015 read with the Circular dated 8.5.2015 issued by the Respondent No.1 – State of Maharashtra through the Additional Chief Secretary, G.A.D. The 2nd Respondent is the State of Maharashtra through Principal Secretary, Water Resources Department. According to the Applicants, in the matter herein involved of their promotion to the post of Sub-Divisional Level Engineers (SDE) would continue to be governed by the Divisional

Cadre Structure and the Divisional Cadre Allotment for appointment by promotion to the post of Group 'A' and Group 'B' (Gazetted and Non-Gazetted) of the Government of Maharashtra Rules, 2010, dated 8.6.2010 (to be called 2010 Rules or superseded Rules). In the prayer Clause, the Circular of 8.5.2015 above referred to is assailed for the alleged supplanting and not supplementing the 2015 Rules and hence being void. It is further prayed that the issue about the promotion of the Applicants was outside the ambit of Rule 14 of 2015 Rules, because as claimed by them, their cases were not pending for the allotment of the revenue divisions on 28.4.2015 which was the date on which the 2015 Rules came into force. It is prayed in the alternative and without prejudice that their cases would be governed by Rule 14 of 2015 Rules and not read with the Circular of 8.5.2015. Consequently, the orders issued pursuant to the 2015 Rules are sought to be got quashed and set aside.

4. The case of the Applicants is that they hold the requisite qualifications like Diplomas or Degrees in Engineering on the strength of which they entered the Government service as Junior Engineers on different dates. All of them barring a few like the Applicant No.1 in OA 445/2015 had been working as Assistant Engineer Grade II. The said Applicant No.2 was working as Sectional Engineer. 2010 Rules came to be framed under the proviso to Article 309 of the Constitution of India (Constitution hereinafter). These Rules will be presently read because it will be necessary to read them as well as the 2015 Rules closely. The Applicants claim to have become eligible and entitled for being promotion as SDE (Promotional post hereinafter). The case of the

Applicants and the others similarly placed Engineers who were in the zone for consideration of promotion came to be considered and cleared by the Respondents. 2010 Rules provided for the facility of option / undertaking / first preference in respect of the revenue division to which the promotees post promotion would be allotted depending upon vacancies, etc. The Applicants accordingly gave their options and / or choices. The entire record was forwarded by the Respondent No.2 to the Respondent No.1 and the Respondent No.1 accordingly approved the proposal. The Applicants' claim that the said approval was inclusive of the options given by them. The file was cleared by the Respondent No.2 and the final decision came to be taken by the Hon'ble Minister for Water Resources. According to the Applicants, what really remained was only to complete the formality by issuance of formal orders of promotion and posting of the Applicants. However, on 28.4.2015, the 2015 Rules came to be framed and enforced as a result of which the 2nd Respondent being Principal Secretary, Water Resources Department felt that he could not take any further steps unless the procedural requirements of 2015 Rules were gone through. In other words, it appears to be the case of the Applicants that the Respondents took a decision that the case of the Applicants would be governed by 2015 Rules and not by 2010 Rules which were in fact superseded by the 2015 Rules. The net result, it would appear would be that the requirement of taking option or preference, etc. which was to be taken in accordance with the 2010 Rules would be no more necessary and this aspect of the matter would become clear as this judgment progresses and as we deal with the superseding and the superseded Rules.



5. A representation came to be made on 13.4.2015 on behalf of the Applicants by the Federation of Government Recognized Association viz. Maharashtra Engineering Services Federation whereby the Hon'ble Minister was requested not to follow 2015 Rules retrospectively to direct the 2nd Respondent to effectuate the orders of promotion with the divisional cadre being in accordance with 2010 Rules.

6. At this stage itself, it may be noted that the State of Maharashtra is subdivided into six revenue divisions. The Applicants must have given preference according to the superseded Rules of a particular division while in apparent exercise of powers under 2015 Rules, the Respondents wanted to assign them to some divisions which probably was / were not of the preference of the Applicants. These facts, if need be, may have to be amplified a little later on.

7. The Applicants then made a representation to the Hon'ble Chief Minister on 3.5.2015. This representation did not evince any reply, and therefore, the present OAs came to be instituted.

8. Pending these OAs, some G.R. came to be issued pursuant to which the relief in all probability was given to some of the Applicants who have withdrawn from the OAs or the entire OAs in their case came to be disposed of.

9. It will be appropriate in our view to note down the gist of the Grounds which the Applicants have sought to found their OAs on.

10. As already indicated above, the case of the Applicants is that as on 28.4.2015, the allotment of revenue divisions to them had been concluded and only formalities had remained. According to them, therefore, it could not be said that their matters were pending. This aspect of the matter may require some more discussion which will be made at its appropriate place.

11. Further elaboration is made by raising a ground that the 2015 Rules are prospective in operation, and therefore, the Applicants' matters would be governed by the 2010 Rules. According to the Applicants (Para 6.13), the "radical changes" brought about as per 2015 Rules would not be applicable in their case because their rights had been concluded under the 2010 Rules. It needs to be emphasized, therefore, that even according to the Applicants, 2015 Rules have brought the changes which even the Applicants termed as "radical" in nature. The Applicants are aggrieved by the provisions of 2015 Rules which do away with the requirement of taking into consideration the option / preference / choice of the revenue division by the concerned Government servant in accordance with the 2010 Rules. They have repeatedly mentioned that 2015 Rules would not apply in their case because the matter of the allotment of revenue divisions in their case was not pending and had concluded when 2015 Rules came into force.

12. The Circular of 8.5.2015 which will have to be discussed to the extent necessary has been assailed by the Applicants as already indicated hereinabove. It is inter-alia pleaded that this Circular suffers from the vice of supplanting the Rule 14 of 2015 Rules which seeks its validity to the proviso to Article 309 of the Constitution while the validity of said Circular in so far as its efficacy is concerned at the most be located in Article 162 of the Constitution. Therefore, that Circular is legally infirm and cannot stand in contest with the Rules framed under the proviso to Article 309 of the Constitution. We must repeat that we shall deal with the details of that Circular presently.

13. The incidental submissions in more ways than one to buttress this contention has been raised in the various grounds in these OAs.

14. The Applicants have challenged the 2015 Rules also on the ground of the object that they seek to achieve.

15. Further, the challenge is made to the 2015 Rules on the ground that its application has been made without considering the existence of vacancies. This in turn is in order to establish their case that old vacancies (vacancies during the currency of 2010 Rules) would be governed by the 2010 Rules and not 2015 Rules. According to the Applicants, the right that they had under 2010 Rules was too fundamental to be trifled with by 2015 Rules. Further grounds are raised by pleading that the effect to 2015 Rules has been given regardless of whether the vacancies in the divisions

for which preference was given by the Applicants were filled up or not. In fact, it appears to be the case of the Applicants that they had not been filled up. In Para 6.29 of the OA, a number of grounds came to be raised to buttress the contention of the Applicants that the 2015 Rules introduced "radical changes".

16. Shri Rajeshmukar C. Patil, Deputy Secretary of Respondent No.2 has filed an Affidavit-in-reply on behalf of Respondents 1 and 2. The details have been pleaded as to the manner in which the personnel to the cadre which the Applicants are working in are appointed. The details have been pleaded to show as to how initially the preferences were asked from the Officers concerned under 2010 Rules. According to the Respondents, after having received the approval on 27.4.2015, it was on 28.4.2015 that 2015 Rules were brought into force superseding 2010 Rules. It is the case of the Respondents that the case of the Applicants would be governed by 2015 Rules and not 2010 Rules. According to them, the Circular impugned herein (dated 8.5.2015) suffers from no vice suggested by the Applicants or even otherwise. It was clarificatory in nature and facilitatory of 2015 Rules in actual practice. It is further pleaded that it cannot be held that the cases of the Applicants were not pending as on 28.4.2015 for the reasons mentioned by the Applicants or otherwise.

17. We have perused the record and proceedings and heard the submissions of Shri A.V. Bandiwadekar and Smt. Sanjivani Deshmukh-Ghate, the learned Advocates for the Applicants and Shri Nitin Gangal, the learned Special Counsel for the Respondents and

Shri N.K. Rajpurohit, the learned Chief Presenting Officer also for the Respondents.

18. The above discussion must have made it clear as to the scope hereof. We have made it clear that the perusal of the 2010 Rules, 2015 Rules and the Circular issued thereafteron 8.5.2015 would be necessary in order to find the facts at issue. Both the sides have relied upon case law which will be referred to for guidance presently.

19. 2010 Rules came to be framed under the proviso to Article 309 of the Constitution of India. These Rules came into effect on 8.6.2010. A select list was to be prepared after one month from that date of the promotee Officers of Group A and Group B posts and to them, those Rules would be applicable for Divisional Cadre allotment. But it was subject to the condition that the said posts should have the Cadre strength of thirty or more which number would be ensured by the concerned Administrative Department. It was further provided that those posts should be transferable at State level as per the Recruitment Rules for which posts roaster was maintained at State level.

20. Rule 3 of 2010 Rules was the dictionary Clause Rule 3(b) read with the Schedule would show that Divisional Cadre would mean the Divisional Cadre of the six revenue divisions viz. Nagpur, Amravati, Aurangabad, Konkan, Nashik and Pune. Mumbai City and Mumbai Suburban were included in Konkan Division.

21. Rule 4 of 2010 Rules needs to be reproduced.

"4. Appointment to the post of Group 'A' and Group 'B' to be filled in by promotion, shall be according to the six Divisional Cadres mentioned in the Schedule. The rules regarding allotment to those six Divisional Cadres are as follows, namely :-

(a) the employee whose name is included in the select list for promotion shall indicate his first preference to any one of the Divisional Cadre for appointment by promotion;

(b) the Appointing Authority shall decide the Divisional Cadre Allotment after taking into consideration the first preference given by the employee and his/her serial number in the concerned select list;

(c) while making Divisional Cadre allotment, if posts in promotion quota are available in the Divisional Cadre for which the employee has given first preference, the Divisional Cadre allotment shall be made accordingly, if posts are not available in the Divisional Cadre for which preference has been given by the employee then in case of such employees Divisional Cadre allotment shall be made as per the serial number of the employee in the select list in the following order, i.e. (1) Nagpur, (2) Amravati, (3) Aurangabad, (4) Konkan, (5) Nashik and (6) Pune, as mentioned in the Schedule :

Provided that, the Divisional Cadre allotment shall be made proportionately taking into account the vacancies in the Divisional Cadre at the time of preparation of

select list and vacancies at the time of actual Divisional Cadre allotment ;

(d) As per the above mentioned Divisional Cadre allotment, the employees appointed by promotion in Group 'B' shall be required to complete a minimum period of six years; and the employee appointed by promotion in Group 'A' shall be required to complete a minimum period of three years in that Divisional Cadre :

Provided that, before completion of such period of six years in case of employee in Group 'B', if he gets second or third promotion, the minimum period of six years prescribed for Divisional Cadre allotment after first promotion shall remain unchanged :

Provided further that, if post is not available at the time of next promotion in that Divisional Cadre then before completion of the period of six years, a posting shall be given in other Divisional Cadre on promotion :

Provided also that, the period of six years or three years as the case may be is not completed due to non-availability of post in that Divisional Cadre, then in case of such employees, posting can be given again for the remaining period in the original Divisional Cadre either by promotion or transfer :

Provided also that, after Divisional Cadre allotment the period of six years or three years, as the case may be, is completed, then it shall be compulsory to give posting to such employee in other Divisional Cadre as per the

availability of post' and it shall be compulsory on the part of that employee to accept it;

(e) a separate post wise list of employees working in every Divisional Cadre shall be prepared by the Appointing Authority and it shall also be necessary to update it, from time to time."

22. Although Rule 4 has been quoted fully and it is self-speaking but a few features need to be underlined in view of the fact that they would be relevant when 2015 Rules are placed under judicial scrutiny. **Firstly**, there was a provision there for allowing the Officer concerned to indicate his preference for the division which he wanted to be posted post promotion. The concerned authority would take into consideration the first preference given by the said Officer for Division allotment. There were other incidental provisions giving primacy to the preference given by the said Officer. **Secondly**, if the posts were not available in the preferred division, then for the purpose of allotment, the order of Divisions would be Nagpur, Amravati, etc. It is clear that the region which Nagpur and Amravati fell within got some kind of priority in the matter of allotment. **Thirdly**, the minimum period that Group B and Group A Officers would be posted at the allotted division would be 6 years and 3 years respectively. Certain other contingencies in that behalf were taken care of. For that, the provisos in the above extracts need to be perused.

23. By Rule 5, special provisions were made for Naxalite areas.

24. Rule 6 provided that before finalizing the Divisional Cadre allotment after promotion as per the provisions of Rule 4, the concurrence of the General Administration Department of the Government shall be mandatory.

25. Rule 7 provided that after the Divisional Cadre allotment as per 2010 Rules, the transfers thereafter would be made as per the provisions of "The Maharashtra Government Servants (Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005" (Transfer Act) and the Rules made there under. Rule 8 laid down that the 2010 Rules would apply only to such employees who were actually working on the date of issue of the said Rules.

26. Let us now turn to the Rules which became effective from 28.04.2015. They were made under the proviso to Article 309 of the Constitution of India. They were made in supersession of 2010 Rule above discussed and also in supersession of all the existing Government Resolutions, Orders or Instruments made in that behalf. The 2015 Rules may be called Revenue Division Allotment for appointment by nomination and promotion to the post of Group A and Group B (Gazetted and Non-Gazetted) of the Government of Maharashtra Rules 2015 (2015 Rules hereinafter).

27. Be it noted, therefore, that 2010 Rules were expressly superseded by 2015 Rules and 2010 Rules, therefore, ceased to be effective from 28.04.2015. Some submissions were made on behalf

of the Applicants in this regard. To the extent relevant, they would be dealt with presently.

28. Now, as far as applicability is concerned, 2010 Rules were applicable for Divisional Cadre allotment to those posts in the Groups B and A which were to be filled up by promotion. The 2015 Rules would be applicable to both Gazetted and Non-Gazetted Group B and A posts to be filed up by nomination and promotion. The first proviso to Rule 2 about the Rules being applicable only to such posts which were transferable at the State level in 2010 Rules was retained in 2015 Rules. The second proviso to Rule 2 of 2010 Rules about cadre strength, 30%, etc. was omitted by 2015 Rules. But by another proviso to Rule 2, the 2015 Rules shall not be applicable to the posts of Professor, Associate and Assistant Professor in the Government Medical Colleges and Hospitals which are under Medical Education and Drugs Department. Therefore, that was the only departmental which was expressly made immune from 2015 Rules through the implementation thereof to the Police and Sales Tax Department was deferred by a period specified therein (one year).

29. In 2015 Rules, there is substantial difference in the dictionary clause when compared with 2010 Rules. 2015 Rules has introduced a new definition of "Administrative Department" to mean a department of Government of Maharashtra of Mantralaya level as specified in Rules of business. The definition of "appointing authority" is the same in both, the superseding and superseded Rules. So also is the case with the expressions Government, Group

A and Group B posts, Schedule and State. The expression "Divisional Cadre" which was to be read with the Schedule in 2010 Rules has been omitted in 2015 Rules. But a new phrase "Revenue Division" is included in the dictionary clause of 2015 Rules. It should be read along with the Schedule which Schedule in 2015 Rules is the same as it was in 2010 Rules. The phrase Revenue Division "means one of the six Revenue Divisions of the State mentioned in the Schedule". The phrase "Divisional Cadre" in 2010 Rules" means the Divisional Cadre of the six Revenue Divisions of the State mentioned in the Schedule". The question of its relevance to this OA apart, but it appears by an *ex-facie* reading that the "Divisional Cadre" in 2010 Rule were composite cadres of six Scheduled Revenue Divisions of the State. On the other hand, in 2015 Rules "Revenue Division would be "one Division out of the Scheduled Six. There are other Rules which may not be read in detail. But it does appear by a combined reading of Rules 10 and 11 of 2015 Rules that lists of Officers working in every revenue division under promotion and nomination quotas of Group A and Group B Cadres will be maintained and updated by the competent authority. Rule 11 of 2015 Rules does away with the mandate to have GAD concurrence for allotment of Divisional Cadres to both Group A. The power of allotment of Officers selected either by promotion or nomination has been delegated to the concerned Administrative Department (in Mantralaya). In case of Group B Officers, the power is delegated to the State level heads of the departments under the control of the concerned Administrative Department in Mantralaya. It, therefore, clearly appears that by elucidating and elaboration, 2015 Rules have further streamlined

and simplified the procedure. But they produce the same results or ever better results than 2010 Rules. 2015 Rules have retained 6 years, 3 years tenure for Groups B and A respectively which was provided for in 2010 Rules.

30. 2015 Rules introduce a new expression "Selection Committee" to mean "the Selection Committee constituted for appointment to Group 'A' and Group 'B' posts which are exempted from purview of the Maharashtra Public Service Commission as per Maharashtra Public Service Commission (exemption from consultation) Regulations 1965". The meaning and import are quite clear.

31. Another new expression in 2015 Rules is "State level Head of Department". We have already dealt herewith above.

32. It is, therefore, clear that in the matter of Division Allotment as per 2015 Rules Group 'A' Officers are under the control of the Government i.e. Administrative Department in Mantralaya while Group 'B' Officers are under the immediate control of State level Head of the Department, but who in turn is under the control of the concerned Administrative Department.

33. Rule 4 of 2015 Rules reads as follows :

> "4. The appointments shall be made to the posts of Group "A" and Group "B" by nomination and promotion

in six Revenue Divisions mentioned in the Schedule appended hereto as per these rules."

34. Subject to the discussion to follow on the issue of the applicability of 2010 Rules to the vacancies that existed when 2015 Rules came into force which was a point strongly urged by Mr. Bandiwadekar, it is clear that 2015 Rules provide that "the appointments shall be made to the posts of Group "A" and Group "B" by nomination and promotion in six Revenue Divisions mentioned in the Schedule appended hereto as per these rules." Therefore, other factors remaining constant 2015 Rules will govern the appointments after 28th April, 2015.

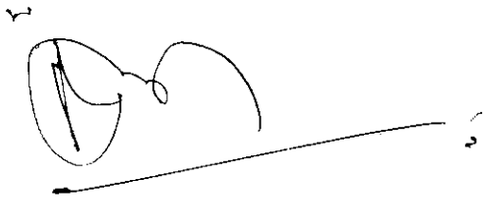
35. Rule 4 of the 2010 Rules has been fully quoted above. It was an elaborate and detailed Rule. Its salient features have also been set out. There in that Rule which has now been superseded by 2015 Rules primacy was given to the preference given by the Officers. Rule 4 of 2015 is a much shorter Rule than its superseded counterpart and it completely does away with the preference aspect of the matter and everything ancillary to it and that quite clearly affects and hurts the Applicants.

36. Rule 5 of the 2015 Rules requires every administrative department of the Government to determine the revenue division-wise posts of the quotas from promotion and nomination in Groups A & B before allotting the Revenue Divisions. It seems to be the case of the Applicants that this exercise has not been undertaken by the

Government before the impugned allotment of the Revenue Divisions.

37. Now, before proceeding further and right here itself, we need to mention that though dated and traditional but still a salutary principle of interpretation is that while each word of the Act or Rules under judicial scrutiny must be construed on the basis that there is life in each word and not even one of it is a listless dead letter but then this Rule of interpretation must be read in harmony with another one which has it that the entire enactment or Rule must be read as a whole bearing in mind apart from other factors, the purposive aspect thereof. The process of interpretation that reads each word and/or sentence of the provision in isolation and either accepts or rejects it, is not a good one because there is every likelihood that it might then leave a disfigured and asymmetrical structure of little practical utility. Therefore, Rule 5 also will have to be read alongside other Rules.

38. But even if read in isolation, Rule 5 mandates nothing more than the determination of the revenue division-wise status of vacancies from both the sources viz. promotion and nomination. At this stage itself, it may be noted that the Applicants have expressed a grievance apparently based on the alleged non-compliance with Rule 5 of 2015 Rules. But, in our view, subject to the discussion to follow even otherwise the Applicants ought to have demonstrated prejudice which they have not been able to do. The Applicants apparently perceive Rule 5 to be a "must to be performed ritual" pre assignment. We do not quite see Rule 5 that way. If at least some



objective material was adduced by the Applicants may be, then we would have examined the effect of production or non-production of statistical material by the Respondents. And the statement of this principle is not for nothing. In fact, the judicial process cannot start with a presumption that a provision or enactment or Rules is legally bad. In fact, it is the other way round. There would be a presumption in favour of constitutionality and hence, validity of an Act and/or Rules or State instrument. No doubt, such a presumption may be stronger in case of enactment than Rules or State instrument and may be in that order. But there will be a presumption nonetheless. Just how much material will be required to displace it would be fact specific. But quite certainly a mere *ipse-dexit*, a plain say so of a party would not be sufficient. There has to be something more than that.

39. The Applicants have not challenged the 2015 Rules on the ground of lack of State's Rule making power. The said Rules are challenged on other grounds which aspect is under consideration. Further, the case law will be noticed presently. The application thereof to the present facts will in our view fortify the conclusion that we are drawing generally as well as particularly in respect of Rule 5 of 2015 Rules. On its plain language, we see nothing obnoxious about it. But now, let us read the other Rules. Rule 6 to the extent, it is relevant hereto reads as follows :

> "6. While making appointments to such determined posts of nomination quota and promotion quota allotment of Revenue Divisions shall be made as follows :

a) ....

b) For appointment to the posts in Group "A" and Group "B" by promotion to the officers whose names are included in the select list for promotion Revenue Divisions as mentioned in the schedule shall be allotted to the officers by rotation as per their serial numbers in the select list by taking into consideration total vacancies in the promotion quota existing at that time in the sequential order of Nagpur, Amravati, Aurangabad and Nashik Revenue Division. After all the vacant posts in promotion quota in the above four Revenue Divisions are filled up, the Konkan Division and Pune Division shall be allotted alternately to the remaining candidates in the select list.

For appointments to posts by promotion, the Revenue Divisions shall be allotted to all officers in the select list at the same time except in cases which are kept open due to non-availability of confidential reports, non-availability of caste validity certificates and in which departmental enquiries are in progress or where the subject matter is *sub-judice*. In case of latter such allotment of Revenue Division shall be made separately after final decisions on them."

40. The above quote is self-speaking and self-explanatory requiring no elucidation or elaboration except that by exercise of the Rule making power the Government has given primacy to Nagpur,

Amravati, Aurangabad and Nashik Revenue Divisions with Konkan and Pune coming thereafter. If the action of the Government is within the bounds prescribed by the Constitution and by law, then normally such a move shall be immune from judicial interference. That of course is, if other factors remain constant. We have the discussion of case law in store. But then again, other factors remaining constant and absent breach of constitutional strictures, there is nothing *per-se* objectionable about the provision being made for some regions for which reasons might have been disclosed if asked for either expressly or impliedly by someone in the shoes of the Applicants. No doubt with the intervention and even interference of law, the freedom that was available to the employers under the traditional law of contract of service will have to be read down as per law. In this connection, reference can usefully be made to **University of Pune Vs. Mahadeo (2006) 5 Mh.LJ 2170** which came to be cited by Mr. Gangal, the learned Special Counsel. Relying on some judgments of the Hon'ble Supreme Court, it was explained as to how a public service is not merely a service, but is status. Further, the concept of "Vested Right" was also elucidated. But even otherwise if no violence to this principle is caused, the tenet howsoever old, it may be that in case of a transferable job transfer is an incidence of service will be applicable.

41. Rule 7 of 2015 Rules is what can be called exemption Clause. Rule 7(a) read along with a recent G.R. of 15.07.2015 has it that an Officer who is due for retirement in less than three years at the time of Revenue Division Allotment will be exempted from the 2015 Rules. Further, a handicapped Officer or the one whose

spouse or child was mentally retarted or a widow or abandoned lady too would also be exempted from its provisions.

42. A detailed reading of Rules 8, 9 and 10 may not be necessary except to note all about the retention of the provision of the tenure of six years and three years for Group 'B' and Group 'A' Officers respectively which was there in 2010 Rules as well. Some other aspects of these Rules are not quite germane hereto.

43. Rule 11 is a new one. It delegates powers of allotment of Revenue Divisions and does away with the concurrence of G.A.D. which aspect has been alluded to already. But let it be reproduced verbatim for, then it will be self-speaking. It reads as follows :

> "11. (1) Powers to allot Revenue Divisions to officers appointed by nomination and by promotion to the posts of Group 'A' cadres as per provisions of these rules, are hereby delegated to the concerned Administrative Departments. It shall not be necessary for them to obtain the concurrence of the General Administration Department for this purpose.
>
> (2) Power to allot the Revenue Divisions to officers appointed by nomination and by promotion to the post of Group 'B' cadres as per the provisions of these rules, are hereby delegated to concerned State level heads of departments under control of the concerned Administrative Departments. It shall not be necessary

for them obtain the concurrence of the General Administration Department for this purpose."

44. Similarly, we may advantageously reproduce Rules 12 and 13. They read as follows :

"12. After completion of service of one year in the allotted Revenue Divisions, an officer may apply for change of the Revenue Division on the following grounds, namely :-

(a) these illness of the officer himself or of his or her spouse or children or father or mother, who are dependent on him or her :-

(i) Cases of Heart Surgery.

(ii) Kidney Transplantation or Kidney Dialysis.

(iii) Cancer.

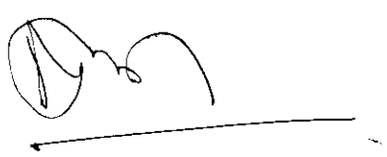
(iv) Brain Tumor or Brain Surgery.

(v) Coma.

(vi) Mental Disorder.

(b) Postings of spouses together at the same place or location :

If husband or wife is in service in an office of Central or State Government, Semi-Government Organization, Municipal Corporation, Municipal Council, Zilla Parishad, Panchayat Samiti or Government Educational Institution (excluding Government aided private educational institutions),-



(i) a change of the Revenue Division may be allowed only from Konkan and Pune Revenue Divisions to Nagpur, Amravati, Aurangabad and Nashik Revenue Divisions; and

(ii) Nagpur, Amravati, Aurangabad and Nashik Revenue Divsisions may be interchanged amongst themselves.

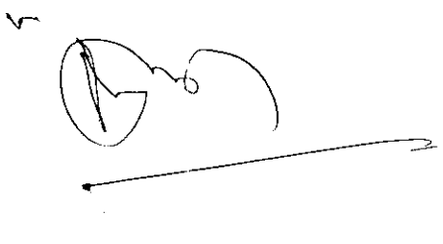
(c) Mutual change in allotted Revenue Divisions :-

(i) If request for change in the Revenue Division on mutual basis is received from an officer appointed by nomination, the Revenue Division may be changed ....

(ii) If request for change in the Revenue Division on mutual basis is received from an officer appointed by promotion, the Revenue Division may be changed only with another officer appointed by promotion :

Provided that, while allowing such change in the Revenue Division on mutual basis, the officer whose Revenue Division is changed from Konkan or Pune Revenue Division to either Nagpur or Amravati or Aurangabad or Nashik Revenue Division, will be required to join first in the newly allotted Revenue Division.

13. The concerned administrative Departments may allow change in the Revenue Divisions as per the provisions of rule 12, and it shall not be necessary to



obtain the concurrence of the General Administration Department for this purpose."

45. Rule 14 is very crucial one. It was heavily relied upon by the Applicants. It reads as follows :

"14. All the cases pending for the allotment of Revenue Divisions and the applications pending for the change of Revenue Divisions on the date of publication of these Rules in the Maharashtra Government Gazette shall be disposed of as per the provisions of these Rules."

(emphasis supplied)

46. The contention of Shri Bandiwadekar, the learned Advocate for the Applicants has been that the cases of the Applicants were cleared and even the ministerial sanction had been granted, may be a few days before the enforcement of 2015 Rules. What was to be done was only to complete ministerial work of making actual orders of postings. It is in this sense that according to the Applicants their cases were not "pending" and therefore, the 2015 Rules will have no application and consequently, since there can be no vacuum, the 2010 Rules would only be applicable and the effectuation to the decision which was taken at the highest ministerial level will have to be made. These submissions were countered by Mr. Gangal, the learned Special Counsel and Mr. N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents.

47. We shall proceed on the basis that the submission of Mr. Bandiwadekar is factually accurate. The result would be that we

would assume that the ministerial approval was also given to the Divisional allotment before 28.4.2015, but still it is indisputable that the orders were not issued. As already indicated above, Mr. Bandiwadekar dismissed this as inconsequential and according to him, the case of the Applicants was as if closed only for being effectuated and there could not have been any recourse to 2015 Rules. Now, Mr. Bandiwadekar himself has relied upon to buttress his contention an unreported judgment of the Hon'ble Supreme Court in **State of U. P. and others Vs. Mahesh Narain etc., Civil Appeal Nos.2208 and 2209/2013 (AO) SLP (Civil) No.7441-7442/08, dated 6th March, 2013**. That was a promotion related matter. There also the judicial determination of amended and unamended Rules was involved. In Para 10, the Hon'ble Supreme Court was pleased to hold that the Rules cannot be held to have become effective from the date of its preparation, but the legal validity and hence, enforcement of the Rules would be from the date on which it was made effective by publication in official gazette. Now, no doubt the facts therein were not exactly like the present one and the observations made in Para 10 by the Hon'ble Supreme Court related to the enforcement of the Rules, but then the principles would be squarely applicable even to the present set of facts. As a matter of fact, those principles would be applicable with more force because here, the case of the Applicants when placed in a proper perspective is that even as their matters coursed through various hierarchical levels and went up to the Minister that itself gives them a right and in that context, they claim that a right had accrued to them. We must repeat that it is indisputable that the final actual orders were not issued. In case of Acts, they become effective from

the date of issuance of Notification by the competent Government. In case of Rules, etc. also there has to be formal declaration by way of either express declaration in the body of the Rules or at least a date of its issuance being there. If that be so, then the observations of the Hon'ble Supreme Court as we mentioned would be applicable with more force because one has to concede to the day to day public administration, the dynamism rather than straight jacketed static position as it were. In other words, the administration has its own dynamics and in the absence of express or implied law, rules or case law, they cannot be hidebound by the principles that emanate from the interpretation of Acts and Rules with statutory force, etc. In our opinion, therefore, no right would accrue unless the actual orders were issued and actually effectuated. If the ministerial approval as is contended by Mr. Bandiwadekar was given, then nothing is brought to our notice to show that it was not open to the Hon'ble Minister to recall his order. After-all, an authority which is clothed with the power to do something has as a necessary concomitant, the power to undo it also and that of course will be subject to there being nothing contrary in law, rules, etc. as mentioned above.

48. As already indicated above, the topic currently under discussion is required to be considered in the context of whether a right had accrued to the Applicants only by the approval granted by the Minister as claimed by them. The essence of the matter, therefore, is accrual of the right and so long as the matter had not gone beyond the control and power of the authorities to make alteration, the changes could always have been made, and therefore, we do not agree with Mr. Bandiwadekar that a right had accrued to

the Applicants in the sense that phrase is understood in the realm of jurisprudence and law.

49. Although not exactly on the same point, the judgment of the Hon'ble Supreme Court in **E.P. Royappa Vs. Tamil Nadu, AIR 1974 SC 555** would also provide the guiding light. There the issue was with regard to a high executive functionary viz. the Chief Secretary of the State of Tamil Nadu. A very detailed delve into the factual matrix is not really necessary. The issue which must engage our attention for the purposes of these OAs in **Royappa's** case (supra) was with regard to the difference between authenticated order of the Governor and the draft order of the Government. As a matter of fact, this authority was cited by both the sides in support of their respective contentions. The full text was furnished by Mr. Gangal, the learned Special Counsel. One of the most important principles laid down as would become clear by a careful reading of **E.P. Royappa's** case is that it was always open to the authorities to make corrections in the event some error was brought to their notice or if the governmental decision was not rightly reflected in the order actually passed. That was a judgment where there was no dissent, but His Lordship Hon'ble Mr. Justice Bhagwati wrote a separate concurring judgment and the observations made by His Lordship in the running page 29 submitted by the learned Special Counsel would make it clear that even corrections could be made after the formal announcement of the Rules. If that be so, then in our opinion, application of that principle with necessary moulding to the present facts must lead us to conclude that not till the orders were actually issued and implemented could it be said that a right had

accrued. Equally true is the fact that at the governmental level, it was always open to them to either hold their hands or to even set the clock back as it were, to pave way for the application of 2015 Rules. There is nothing legally or constitutionally forbidden in that behalf. The Applicants were not divested of any right. If one goes by the discussion thus far, it must become quite clear that no right had accrued to the Applicants as on 28.04.2015.

50. It is, therefore, quite clear that the cases of the Applicants had not been decided in the manner they could have been placed beyond the pale of being called pendency, and therefore, by no stretch of imagination can it be said that their matters were not pending. They were in fact pending. Therefore, by virtue of Rule 14 of 2015 Rules fully quoted above to the Applicants 2015 Rules would be applicable, and therefore, even without examining the effect of the impugned Circular of 8.5.2015, the discussion whereon is still in store, on its own language, 2015 Rules by themselves were fully applicable to the case of the Applicants.

51. If we read the OA as a whole preferring substance to the form and making allowance to take in our stride avoidable repetition and verbosity, there is no real challenge to the Rules to 2015 itself. The real challenge is to the Circular of 8.5.2015 and whatever Mr. Bandiwadekar might say, we think we agree with the learned Special Counsel and the learned Chief Presenting Officer in so far as this aspect of the matter is concerned. We must, therefore, repeat that on its own language, in the absence of a challenge to 2015 Rules, they by themselves furnished a complete answer to all the questions

that the Applicants might throw up. Therefore, regardless of whatever we find in respect of the Circular of 8.5.2015, there can be no escape from the conclusion that the applicable instrument would be 2015 Rules.

52. On principles of law, both the sides were *ad-idem* that the Rules framed under the proviso to Article 309 cannot be supplanted by any instrument originating from a source of lesser efficacy including Article 162 of the Constitution. The authorities were cited by both the sides in support of this contention and one of the recent authorities is **Public Commission, Uttaranchal Vs. Jagdish Chandra Singh Bora and Anr. (2014) 2 SCC (L & S) 630 = (2014) 8 SCC 644 (B)**. Having noted the principles, the fact remains that in the totality of the circumstances, unless the case of the Respondents was found to be suffering from the vice of supplanting one cannot rush to the conclusion just because this or that party makes high sound about it. It has to be something judicially capable of being found as such.

53. Let us now turn to the Circular dated 8.5.2015 in the above background. The preface to the said Circular narrates the history about the 2010 Rules and the supersession thereof by 2015 Rules. It is mentioned (in Marathi) in effect that under 2015 Rules, the preference given by the promotees would not be taken into consideration. Now, it is no doubt true that this Circular mentions this fact even as one does not find anything explicitly and expressly mentioned in the 2015 Rules themselves. However, we have in extenso read 2010 Rules and 2015 Rules. Generally and more

particularly, Rule 4 of both the set of Rules would make it very clear that the net result is that under 2015 Rules, the preference regarding the divisional cadre allotment would cease to exist and the whole thing will be governed by 2015 Rules and naturally, the procedure therein prescribed. Therefore, at the highest and at the best, what the Circular of 8th May, 2015 does is to state something which is even otherwise very clear on a bare perusal of both the set of Rules. It does nothing independently of its own.

54. Further, we have already discussed as to how the Administrative Departments in Mantralaya on State level and other authorities at other level for Group 'A' and Group 'B' posts have been created under 2015 Rules. That is restated in the said Circular. Now, Paras 2.1, 2.2 and 2.3 apparently have led to great annoyance to the Applicants and left them aggrieved. Let us quote them in Marathi.

> "२.१ ज्या प्रकरणी यापूर्वीच्या अधिसूचनेनुसार विभागीय संवर्ग वाटपास, सामान्य प्रशासन विभागातीलकडून सहमती प्राप्त करून घेतली असेल, तथापि, पदस्थापनेचं आदेश निर्गमित करण्यात आलेले नसतील, अशा प्रकरणी महसूली विभाग वाटपासाठी पसंतीक्रम विचारात न घेता ''महाराष्ट्र शासकीय गट अ व गट ब (राजपत्रित व अराजपत्रित) पदांवर सरळसेवेने व पदोन्नतीने नियुक्तीसाठी महसूली विभाग वाटप नियम, २०१५ '' नुसार महसूली विभाग वाटप करून पदस्थापना देण्यात यावी.
>
> २.२ महाराष्ट्र शासकीय गट अ व गट ब (राजपत्रित व अराजपत्रित) पदांवर सरळसेवेने व पदोन्नतीने नियुक्तीसाठी महसूली विभाग वाटप नियम, २०१५ ''

लागू होईपर्यत, महाराष्ट्र शासकीय गट अ व गट ब (राजपत्रित व अराजपत्रित) पदांवर सरळसेवेने नियुक्तीसाठी लोकसेवा आयोगाने शिफारस .....

२.३ ''महाराष्ट्र शासकीय गट अ व गट ब (राजपत्रित व अराजपत्रित) पदांवर सरळसेवेने व पदोन्नतीने नियुक्तीसाठी महसूली विभाग वाटप नियम, २०१५'' लागू होईपर्यत, महाराष्ट्र शासकीय गट ट व गट ब (राजपत्रित व अराजपत्रित) पदांवर पदोन्नतीने नियुक्तीसाठी निवडसूची तयार केलेल्या ज्या प्रकरणांतध्ये महसूली विभाग वाटपाची व पदस्थापनेची कार्यवाही पूर्ण झाली नसेल तर ती या नवीन नियमानुसार करावी.''

55. Now, if Para 2.1 says that the action must be in accordance with 2015 Rules, there is nothing to take exception to. Paras 2.2 and 2.3 for all practical purposes do not add to or subtract from anything in Rule 14 of 2015 Rules. Other Rules are inconsequential.

56. It is, therefore, quite clear that the action of the Respondents allegedly based on the Circular of 8th May, 2015 an aspect so vociferously urged by the Applicants is really an instance of much ado about nothing. Left to us, we are really unable to comprehend as to what the Respondents achieved by the said Circular except may be some self-satisfaction. That is because the said Circular states and re-states whatever the 2015 Rules expressly or by implication said and sought to convey. The crux of the matter is that by assailing the said Circular, if the Applicants wanted to suggest that the action of the Respondents are vitiated by an incurable vice, it is quite clearly is not possible for us to accept it. We would repeat, there was probably nothing that warranted the

issuance of such a Circular. Therefore, to consider if it is supplants or supplements the 2015 Rules at least on these facts and on the language of the said Circular studied alongside the 2015 Rules, would amount to giving to the said Circular an elevated status which perhaps the same does not deserve. Mr. Bandiwadekar contended that this Circular was issued to preempt a possible order that could be made on this fasciculus of OAs.

57. In the first place, most of these OAs were instituted after the Circular was issued. However, assuming that the Circular was issued in anticipation. In actual fact, nothing turns on it because if the 2015 Rules by themselves can successfully stand the judicial scrutiny, then everything else including the Circular recedes into the background, but we unhesitatingly hold that the action of the Respondents cannot be assailed on the ground of issuance of the said Circular.

58. This is the factual peculiarity of this matter. We say so because assiduous and learned submissions were made at the Bar on the validity of an action based on an instrument which has the tendency to supplant or supplement 2015 Rules that really depended upon the brief that one held. That quite clearly in so far as these OAs are concerned is academic because we find herein that a plain perusal of 2015 Rules by itself is sufficient to sustain the case of the Respondents and the Circular of 8th May, 2015 whether it stands or does not stand, at least one point is clear that it does not in any way add to or subtract from the 2015 Rules and that therefore, is the end of the road as far as the Applicants are

concerned. In our view, the said Circular is totally superfluous. Formally, it needs neither to be upheld nor annulled. We are not on any academic mission. In actual facts, 2015 Rules are legally and constitutionally good and sustainable and hence effective.

59. We may now turn to another aspect of Mr. Bandiwadekar's argument. According to him, regardless of the language of 2010 Rules and 2015 Rules in so far as the vacancies that were existing when 2015 Rules came into force, they would be governed in any case by a 2010 Rules. Now, in our view while dealing with this submission of the learned Advocate, we must bear in mind and that again is the factual peculiarity hereof. That perculiarity is that one must clearly understand the context in which the term 'vacancy' and its plural arise. Here, the promotions apparently have been cleared and now the issue is of transferring the new promotees to the new divisions. In our opinion, in the present set of facts, there is nothing to even remotely suggest that there was any mala fide or oblique intention or motive to assign the revenue divisions to the new promotees, and therefore, the principles laid down in the matters where the initial appointments are made or even the appointments by promotion are made, but in different factual scenario cannot be bodily lifted and made applicable hereto. The case law has been cited which we shall presently seek guidance from. However, it needs to be restated that for example, if the Rules provide for appointment in the context of the qualifications or experience at the time of the issuance of an advertisement and the Rules are changed in the interregnum, then the different set of

principles would apply which we must repeat cannot just be bodily lifted and applied to the present set of facts.

60. Mr. Bandiwadekar relied upon **Kulwant Singh and others Vs. Daya Ram and others, (2015) 3 SCC 177**. Mr. Bandiwadekar laid particular emphasis on placitum 'C' which lays down the principle that normally the amended Rules would operate prospectively and the vacancies which had occurred after the amendment would only be governed thereby. The facts of **Kulwant Singh's** case (supra) may not be exactly similar to the present one, but the principles will have to be carefully read for guidance. It must be clearly understood that when one considers the issue of applicability of the amended Rules in the context of retroactivity or prospective operation, the core issue is as to whether according to the old Rules, certain rights had accrued which rights are threatened to be divested from the concerned litigant. If we were to peruse Para 39 of **Kulwant Singh's case** (supra) wherein another earlier judgment of the Hon'ble Supreme Court was discussed, it should become clear in our view that while considering such aspects, the Rules concerned will have to be carefully perused, understood and interpreted. The Hon'ble Supreme Court was pleased to hold that the vacancies that had arisen after the amendment would be governed by the amended Rule and the vacancies that arose prior to the amendment would be governed by the unamended Rules.

61. Another judgment cited by Mr. Bandiadekar was in the matter of **M. Surender Reddy, (2015) 8 SCC 410**. That was in the

context of the Rules retroactivity of the Rules regarding reservations. The facts were different and the principles have already been grasped and applied herein by us.

62. We have already referred to the judgment in the matter of **Jagdish Chandra Singh Bora** (supra) hereinabove. Here, we may only mention that Hon'ble Supreme Court in that matter has again emphasized the factor of vesting of right and its accrual. Mr. Bandiwadekar then relied upon a judgment of Division Bench of the Hon'ble Bombay High Court at Aurangabad Bench in the matter of **Trimbak Sangramappa Kadge Vs. State of Maharashtra, 2003 (2) Bombay Cases Reporter 231**. It laid down the principle that administrative instructions cannot override the Rules that seek their validity from higher sources. We have already discussed that aspect of the matter in the context of the present facts.

63. Mr. Gangal, the learned Special Counsel in support of his contention relied upon **University of Pune** (supra). He emphasized the fact that in this matter, the virus of 2015 Rules by itself has not been questioned. In so far as the principles are concerned, in Para 12, the Hon'ble High Court was pleased to refer to a number of judgments of the Hon'ble Supreme Court and it was held as follows in the context of the concept of vested right which is in our view highly significant for the present matter.

> "12. .... It was held that the expression "vested right" has been used in the context of a right flowing under a relevant rule which was sought to be altered with effect

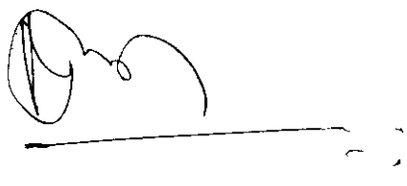
from an anterior date, and thereby to take away the benefits which were available under the rule in force at that time, and in that context, it was ruled that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Article 14 and 16 of the Constitution. Further with reference to the case of Rangadhamaiah, it was observed that the court therein was concerned with the case relating to the pension payable to the employees after their retirement. In that regard, it was also observed that the concerned persons were no longer in service on the date of issuance of the Notification which was sought to be impugned. Considering the fact that the amendments to the Rules were not restricted n their application in future, and the amendments were sought to be applied to the employees who had already retired and who were no longer in service on the date of the impugned notification, it was held to be bad in law. However, at the same time, it was also held that, "it can, therefore, be said that a rule which operates in future so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being violative or articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed of, e.g., promotion of pay scale, can be assailed as being violative

of Articles 14 and 16 of the Constitution to the extent it operates retrospectively."

64. The distinction between the applicability of amended provision in case of the personnel appointed prior to the crucial date would depend upon the issue as to whether it would amount to giving retrospective effect to the amended provision or it would merely amount to giving effect "in futuro". The observations in Para 21 of the said judgment are also very apposite and they need to be reproduced.

> "21. CONSIDERING the law on the point in question and the provision comprised under Section 20(1)(c) of the said Act, it cannot be said that merely because the person was appointed prior to 12-5-2000, the provision incorporated under the said amended clause will not apply to such person. The law laid down in Bishun Narain Misras case (supra) clearly states that the rule regarding the service tenure is a matter of policy to be decided by the Government. Accordingly, the post of finance and Accounts Officer being made a tenure post, it will apply to all the incumbents in the said post from the day the law in that regard has come into force. Those who have completed five years before coming into force of the said Act will also be covered by the said provision and their service tenure cannot be considered different from the tenure of those who are appointed on or after 12-5-2000. The same principle will have to be applied in all

such cases irrespective of their date of appointment. No vested right is accrued in favour of the person occupying such post and it is a status acquired by such officer and his service conditions including the tenure of service are subject to the rules and regulations framed by the Government from time to time. The Government having declared the said post to be a tenure post for five years, on completion of the said period the incumbent thereof has to leave the post, unless his tenure is renewed for the second term of five years by the University. The observation in the impugned Judgment that the employee has acquired vested right, and that therefore the Legislature cannot take away the same by giving retrospective effect to the provision comprised under Section 20 (1)(c) of the said act is not sustainable. There is no vested right in favour of the Government servant in relation to their services and they merely hold a status and not like an ordinary contract of service between a master and servant. Same principle will apply to the relationship between the employer and employee of local bodies and public institution like the University. Therefore, no fault could have been found with the order passed by the appellant terminating the services of the respondent in terms of Section 20(1)(c) of the said Act and, therefore, there was no justification for interference in the order passed by the University Tribunal. Considering the same, the impugned Judgment cannot be sustained."



65. Pertinently, relying upon the judgment of the Hon'ble Supreme Court in **Bishun Narain Misra Vs. State of Uttar Pradesh and others, A.I.R 1965 SC 1567**, it was observed that the cases of public servants are not like ordinary contract of service because though at the base of it, it may be a contract, but then once that contract takes shape, the provisions of constitution and law accord to it an element of status and that will have to be borne in mind in dealing with the matters pertaining to the public servants.

66. Mr. Gangal, the learned Special Counsel relied upon **Shivaji S. Gaikwad & others Vs. State of Maharashtra & others, Writ Petition No.2092/2011 along with 4236 of 2011, dated 30.9.2011**. The citation appears as **CDJ 2012 BHC 485**. It may not be necessary for us to closely examine the facts therein, but the issue of the prospective operation or retroactivity of the amended Rules were at issue in that matter as well. Relying on the judgment in the matter of **K. Nagra Vs. State of Andhra Pradesh, A.I.R 1985 SC 551**, it was held that the power to amend the Rules retrospectively was very much there and until and unless an authoritative Rule emanating from higher sources like legislature intervened, such Rules would continue to hold the ground. Relying upon **T.R. Kapoor Vs. State of Haryana, A.I.R 1987 SC 415**, it was held in effect that an authority competent to lay down qualifications for promotions could as well change the qualifications and that can be done even retrospectively, subject to the condition that the rights acquired under the existing Rules were not taken away. Now, in these OAs, as already discussed above, no such right has accrued to the Applicants much less have they been taken away.

The learned Special Counsel then relied upon **K.K. Bhaskaran and another Vs. Administrator of Daman and others**. The citation of which is **CDJ 2010 BHC 2394 (DB)**. In Para 20 of that judgment, their Lordships were pleased to observe that by amendment, even if chances of promotion were affected that by itself can be no ground for striking down the said Rules. Now, if that be so, the present facts are much better placed for the Respondents.

67. In **Mani Subrat Jain Vs. State of Haryana, A.I.R 1977 (SC) 276 = 1977 (1) SCC 486**, it was held in effect that unless a legal right was established, no relief could be claimed in service jurisprudence. We do not think any further elaboration is necessary on this point. Mr. Gangal, the learned Special Counsel then relied upon **A.S. Sangwan Vs. Union of India, A.I.R 1981 SC 1545**. Two senior Army Officers were vying for one of the highest posts. A certain policy statement arose for judicial consideration. In Para 4, it was held by the Hon'ble Supreme Court in effect that the employer being the Union of India in that matter (the State of Maharashtra in this matter) had the power to change and re-change the policy and unless it was demonstrated that the impugned action fell fowl of the constitutional mandate, the action cannot be successfully challenged.

68. At this stage, it may be noted that Mr. Bandiwadekar strongly relied upon the facts showing that the personnel of some other Departments have been treated differently and in fact, more liberally when compared with the present Applicants. Without detailing out the facts, let us proceed on the assumption that the

personnel of some other departments have already been given by the Government what the Applicants are claiming herein. One way of looking at it is the grievance based on hostile discrimination and the failure to treat the like in the manner alike. One such instance apparently was from the Urban Development Department. The gravamen of the case of the Applicants must have become clear. The point is as to whether on that count alone, the different interpretative yardstick should be adopted in so far as 2015 Rules are concerned. When a certain enactment or certain set of Rules are placed under judicial scrutiny, the judicial forum shall be in duty bound to scrutinize the same on the basis of the recognized and acceptable cannons of interpretation and application of the principles enunciated by the pronouncements of the highest Court which by Article 141 are law of the land and the pronouncements of the Hon'ble High Courts which are precedents. Other factors remaining constant, we do not think that the process of interpretation by judicial forum would be influenced by the considerations such as the one advanced on behalf of the Applicants. Even otherwise, what the Applicants have been at best and at the highest able to show is that the personnel of a certain other Department was meted out a certain other type of treatment. That *ipso-facto* may not be sufficient to conclude even discrimination much less hostile discrimination. The basis therefor has to be laid by the one that complains of hostility. We are deeply conscious of the fact that in such matters, the judicial fora do not rest content with the abstract theory of burden of proof and / or onus. However, howsoever, scanty or a little, there must be material to suggest that the impugned action falls foul of the constitutional mandate, that

material has got to be there. That is quite clearly not the state of affairs herein, and therefore, it is not possible for us to find for the Applicants in this behalf.

69. In **Chandigarh Administration Vs. Jagjit Singh, A.I.R 1995 SC 705**, the Hon'ble Supreme Court in Para 8 made the following observations which we think need to be fully quoted, so that nothing is left for us to say of our own.

> "8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the Court should direct

the appropriate authority to correct such wrong orders in accordance with law but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course -- 751 barring exceptional situations would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises.)"

70. Therefore, assuming the action of the State in relation to Urban Development Department was even wrong still that can be no ground to make any change in the outcome hereof based on the interpretation of 2015 Rules. Mr. Bandiwadekar would naturally hail that course of action (Urban Development Department) as not wrong but right and seek parity, but then if upon an interpretation of the 2015 Rules, we reach the conclusion that we do, then it is not possible for us to alter our conclusions because of the manner in which the Government treated some other Departments. We say nothing beyond that except that each governmental wing has its own area of operation which they work within without encroaching upon the area reserved for the other wing and we shall keep ourselves restricted to the scope provided by these very OAs.

71. Reliance was placed by Mr. Bandiwadekar and also by Mr. Gangal on a few judgments rendered by this Tribunal. We have perused them. It is not necessary to mention that all over here. They were also based on the principles capable of being culled out by the above discussed case law which in our view is what we have done here as well.

72. The upshot is that it is not at all necessary for us to rule upon the validity or otherwise of the Circular of 8.5.2015 for the reasons already set out hereinabove. No case is made out for the grant of any declaration in that behalf or any other declaration either. We uphold the impugned action manifested by the 2015 Rules, but make it clear that whatever benefits have been extended to other personnel pending these OAs shall remain unaffected

hereby. With this, these Original Applications stand dismissed with no order as to costs.

Sd/-
(R.B. Malik)
Member (J)
30.03.2016

Sd/-
(Rajiv Agarwal)
Vice-Chairman
30.03.2016

Date : 30th March, 2016
Dictation taken by: S.K. Wamanse.
E:\SANJAY WAMANSE\JUDGMENTS\2016\3 March, 2016\OA.355.15