
(2019) 07 UK CK 0095

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 3679 Of 2017

Arun Kumar Dubey

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 09-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 12

Citation : (2019) 07 UK CK 0095

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Pankaj Miglani, Rakesh Thapliyal

Final Decision : Allowed

Judgement

Sharad Kumar Sharma, J

1. There is an Institute called as "Wildlife Institute of India" (hereinafter would be referred to be as an "Institute"), which is admittedly created under the Societies Registration Act; but the mode and manner and its deep and pervasive control which is being exercised by the Government of India, hence it has been held out to be a State within the scope of Article 12 of the Constitution of India. In order to regulate the services of its employees, the Institute in pursuance to the directives which were referred to by the respondent's counsel was pertaining to 1986, which intended to propagate the mother tongue i.e. "Hindi", keeping that in mind they had, he argues that the Institute has framed the service rules and decided to appoint Hindi "Translators", which has been called as "The Recruitment Rules of Scientific and Administrative Services Wildlife Institute of India" (hereinafter to be called as "Rules of 1986"). The said rules contains various classifications of posts and its modalities of recruitment, qualification which has been contained under Section 5 and the various categories of the post be held and the same has been classified into O1, O2, O3, O4 and O5 categories of employees and henceforth.

2. Before venturing to the factual aspects of the matter, it becomes necessary for the Court to deal with the rules on which the argument has been extended by the learned counsel for the respondent. It is not in controversy that as per table V-0 (Annexure 1 to the writ petition), it provides with the various group of posts, the minimum qualification which a candidate is required to hold to make him eligible, the age slab in which the employee should fall and the mode of its recruitment.

3. This Court at this stage is straightaway considering the criteria of appointment which is contemplated under rules for posts falling under O3 group or cadre of post which is the bone of contention of the present writ petition and is in controversy. The O3 cadre post is inclusive in it the post of Hindi Translators. It would not be out of place to mention that it has been an argument as extended by the learned counsel for the respondent that the inclusion of the post of Hindi Translator into O3 level post was to meet the spirit and the purpose as enunciated by the Government of India in its letter dated 14th January 1985 to promote the mother tongue Hindi for which post was created.

4. Interpreting its implications of the letter of Government of India, it has been argued by the learned counsel for the respondent that, in fact, the said letter where it postulated the appointment on the post of Hindi Translators to be incorporated in the Rules in fact spirited that the appointments as contemplated by way of direct recruitments to be made in pursuance to the directions of Government of India dated 14th January 1985, it has had to be made by way of direct recruitment. It has to be born in mind that the rules governing the service conditions of an employee of the Institute was enforced by the Governing Body of the Institute for the first time in 1986, i.e. much after the directives issued by the Government of India i.e. on 14th January 1985.

5. If, for a moment, the argument as extended by the learned counsel for the respondent is accepted, in that eventuality, the Institute itself while formulating its rules and in particular when it relates to O3 level post which included Hindi Translator, which was a Ministerial cadre post, they themselves have, in column 4, admittedly, made the said post as to be a post which is available to be filled by way of promotion from the feeding cadre of O2 level post and the basic eligibility criteria was that the candidate should have worked on O2 level post for a period of 5 years to make him eligible to be considered for promotion. The said provision governing the criteria of promotion and eligibility of 1986 Rules continued to be in vogue till an administrative contingency accrued in the department, whereby a situation arose as there was no one available in the feeding cadre of O2 category who was eligible to be considered for promotion for O3 level post, consequently, in a meeting, which was held on 21st July 1988, as held by the Governing Body of the Institute, they, by virtue of their Agenda Item No. 6.2 had taken a decision that the said post of "Hindi Translator", which was otherwise under the Rules it has been directed to be filled up by way of promotion. Since there is no provision for direct recruitment and there is no

qualified O2 level person available therein, but since it was necessary to fill the post, they have taken a decision for making a direct recruitment on the post of Hindi Translator which otherwise under the existing rules was a promotional post from feeding cadre of O2. Meaning thereby, reference to Agenda point No. 6.2 as taken by the Institute's Governing Body on 21st July 1988, in fact, was a conscious decision taken by the Institute irrespective of so-called reference of the letter dated 14th January 1985, on which reliance was placed during the course of the argument by the learned counsel for the respondent. In that eventuality, if the respondents themselves had taken a decision by the Agenda in question, whereby siphoning the promotional post into a direct recruitment post, in that eventuality, the respondents would also be deprived of to have any shelter in their argument pertaining to the implications of Rule 15 is directive aspects from the very fact that they themselves have and framed by Rules and had acted de hors to the directions issued by the Government of India which they otherwise claim they are bound to adhere in accordance with Rule 15 of the Rules framed by them.

6. As a consequence of the decision taken by the Governing Body on 21st July 1988, and in order to meet the contingency which was projected in the Agenda with regards to the vacancies of Hindi Translators posts which was as O3 level post, it is not in dispute that the respondent had taken a conscious decision to advertise the O3 post and resort to the process of direct recruitment for the said post and consequently, in order to fill up the said post they had taken a decision on 17th November 1988, whereby in order to provide fairness in the process of selection, they have requisitioned the selection to be made through Staff Selection Commission.

7. Though it might be a one time arrangement due to non availability of a person in the feeding cadre of O2, but the fact remains that it was a conscious decision taken by the Resolution of the Governing Body dated 17th November 1988, that the post was advertised and a regular selection process for O3 post was held through Staff Selection Commission and on conclusion of the process of selection, admittedly, the petitioner was recruited as Hindi Translator by an order dated 12th December 1989. As per the service Rules, the next promotional post which is available for promotion to the incumbents, who are already working on O3 level are on the post on their successful completion of 5 years of service they become eligible to be appointed at O4 level post i.e. the post of an Accountant herein and the process of recruitment as per the rules is contemplated that it had to be through a competitive examination, evaluation of the service records by the Departmental Promotional Committee.

8. After having been appointed and joined on the said post of Hindi Translator, admittedly, till the petitioner has matured his claim for consideration for promotion to O4 level, there had been no controversy that the criteria of promotion of O4 level post had not undergone any amendment or change as a consequence of the resolution dated 17th November 1988, nor it constituted to

be a part of the Agenda which was placed for consideration before the Governing Body. Hence criterion for promotion to O4 level remained the same as provided in the Service Rules of 1986, which reads as under:-

O-(4)

(i)

Accountant

Not applicable

(i) 100% by promotion from Grade O-3.(i) of those who have put in 8 years in that grade. through competitive examination and record evaluation by DPC. Duputation on stop gap basis of absorption of deputationists over 45 years

9. The respondents resorted to the process of promotion at O4 level consequently, they conducted the departmental examination, they held the DPC, they considered and evaluated the service records of the petitioner and thereafter, they have passed an order of promotion of the petitioner on 22nd September 1999, by which the petitioner was promoted to an O4 cadre i.e. on the post of an Accountant. Ever since, his promotion as an Accountant, made on 22nd September 1999, the case of the petitioner is that as soon as he is brought into the feeding cadre of O3 level irrespective of the process of inductment in the feeding cadre and as it has been held in para 19/20 of the judgement of the Division Bench that on his induction into the O3 level cadre, he automatically falls to be as a member of the cadre and would be eligible for consideration for promotion as an Accountant subject to the condition that he fulfils the eligible criteria.

"19. It may be noted that the appellant in Special Appeal No. 338 of 2015 was appointed as Hindi Translator by way of direct recruitment in the year 1989 and it is thereafter that in the year 2000, the third appellant in Special Appeal No. 348 of 2015 was promoted as Hindi Translator.

20. We are also not inclined to interfere with the quashing of the portion providing that the incumbent translator will remain in the feeder category for promotion as Section Officer. Under the 2007 Rules, in fact, Section Officers are to be appointed by way of promotion from Assistant Grade I inter alia. The remaining question is only the direction to give notional promotion to the writ petitioner."

10. What is surprising is that even for a moment if it is presumed that the respondent had resorted to a mode of promotion or a recruitment de hors to the rules then to there has had to be reasonable time within which they could have consciously taken a decision of reversion or whatsoever if all it was permissible then under law but rather on the contrary they permitted the petitioner to function on the promotional post of Accountant at O4 level till the matter was raised before this Court by way of writ petition No. WPSS No. 1580 of 2011, M.D.

Gupta v. Wild Life Institute of India and others, by one Mr. M. D. Gupta, who had filed the writ petition, challenging the order dated 8th November 2011, and rather in the writ petition, as preferred by Mr. M.D. Gupta, he had sought for the following reliefs:-

"1. Issue writ rule or direction in the nature of certiorari quashing the impugned order dated 8.11.2011 along with its effect and operation also after calling the entire records from the respondents and further to declare the condition provide in the service rules 2007 to treat the presently working as Hindi translator for promotion in the feeding cadre is unconstitutional and ultra virus to the Constitution of India and declare the same nonest in law.

2. Issue writ rule or direction in the nature of mandamus directing the respondents to rectify their mistakes as indicated by the respondents in its letter dated 9.1.2004 and also not to carry out any promotional exercise or consider the promotion of the beneficiary of the earlier illegal persons during the year 1993?2000 in utter disregard to the recruitment rules of 1986 and further to direct the respondents to make promotional exercise in tune of rules of 1986 on the post and vacancies available during the period of 1993?2000 strictly in terms of the rules of 1986 and to consider the case of the petitioner for the same or in alternate to grant the benefit of promotion to the petitioner on the basis of his eligibility and seniority w.e.f. the date when the same has been given to other ineligible persons ignoring the service rules."

11. The controversy as far as it related to the promotion already granted to the petitioner it started germinating from the stage when the writ petition was preferred before this Court by Mr. M.D. Gupta, praying for quashing of an order dated 8th November 2011, and also praying for a writ of mandamus, rectifying the mistake as indicated in the letter dated 9th January 2004, and has prayed for that no promotional exercise to be carried out for consideration of promotion for the beneficiary of the illegal promotion, which was granted to them between 1993 to 2000, because according to his version, the said appointment was de hors to the Rules of 1986.

12. Though we are not concerned at this stage with regard to the consequence which flowed from the judgement of the learned Single Judge dated 26th May 2015, as rendered in WPSS No. 1580 of 2011, for the reason that as soon as the order dated 26th May 2015 was passed, immediately without even waiting for the gestation period for the persons affected by the said judgement to prefer a Special Appeal, the respondent had purported to take a decision of reverting the petitioner from the post of Accountant to the post of Hindi Translator by virtue of an Order No. WII/ADM/2011-12/017(Part) dated 7th July 2015, which was passed by respondent No. 2. In particular, the reference pertaining to the reversion of the petitioner from the post of Accountant to the post of Hindi Translator finds reference in sub clause (b) of clause 3 of the letter dated 7th July 2016, which is quoted hereunder:-

"3 (b) Further, the DPC considered and treated the post of Hindi Translator (non-ministerial) in line of promotion of the ministerial posts of the Institute. This recommendation of DPC and consequent promotion of Hindu Translator to the post of Accountant and of Smt. Baljit Kaur from UDC of ministerial cadre to the post of Hindi Translator (non-ministerial) was erroneous because the post of Hindi Translator was a direct recruitment isolated post and the rules do not permit lateral movement of Hindi Translator to the ministerial cadre for promotion purpose nor the personnel from ministerial cadre could get promotion to the post of Hindi Translator. The sense contained in the Order of Hon'ble High Court which is under implementation is also conveying the isolated nature of the post of Hindi Translator.

That the direct recruitment of Shri A.K. Dubey to the post of Hindi Translator was made from the reserve pool of successful candidates of exam advertised by the Staff Selection Commission for filling up of posts of Hindi Translators in all departments of Government of India under the recruitment rules of Official Language, (Rajbhaasha) Recruitment Rules. This exam was announced by the Staff Selection Commission vide their Advertisement F. No. 2/37/87-P&P (Vol.II). Shri A.K. Dubey appeared in the exam and the result placed him in the wait list."

13. It would not be out of relevance to mention that if an order of reversion is taken into consideration, the reason which has been assigned therein by the respondent No. 2, while passing an order was on the premise that since the only discrepancy which was pointed out by the respondent was that the petitioner suffered was that since his applicant was made by way of a direct recruitment and that was not the source of his inductment permissible under Rules into the service as an O3 level officer, hence, he would be rendering himself to be non-suited to be considered for promotion to O4 level post for the reason that as per the interpretation which has been given by the respondent it was to the effect that only those persons who have been appointed by way of promotion only as O3 level officer, they would only be considered for promotion of O4 level i.e. Accountant. The relevant para of the paragraph (b) of clause 3 (clause 3(b) of order dated 7th July 2015 quoted above), in fact, gives the said expression and the foundation for reversion of the petitioner and that to after 16 years of petitioner having worked on the promotional post i.e. since 22nd September 1999 till date of passing of impugned order dated 7th July 2015.

14. Being aggrieved against the judgement of the learned Single Judge dated 26th June 2015, a Special Appeal was preferred before the Division Bench of this Court. There were two Special Appeals being Special Appeal No. 348 of 2015, Smt. Tejvinder Kaur Ahuja and others v. M.D. Gupta and others (with which we are not concerned at the present moment), and other Special Appeal No.338 of 2015, A.K. Dubey v. Wild Life Institute of India and others, which was preferred by the present petitioner against the judgement of the learned Single Judge dated 26th June 2015.

15. The Special Appeal was compositely considered the claim of the two group of

appellants who were raising their grievance against the directives which has been issued by the learned Single Judge for taking an action of reverting the services of the employees, who had already been granted promotion about 16 years back and promotional benefits had already been extended to them. The Division Bench of this Court, after considering the various correspondences which was made inter se between the Institute and the Government of India, governing the criteria of promotion and the recruitments and for the purposes of laying down its modalities, the Division Bench has recorded findings in relation to the petitioner in para 19, 20, 21 and 22 which are quoted hereunder:-

"19. It may be noted that the appellant in Special Appeal No. 338 of 2015 was appointed as Hindi Translator by way of direct recruitment in the year 1989 and it is thereafter that in the year 2000, the third appellant in Special Appeal No. 348 of 2015 was promoted as Hindi Translator.

20. We are also not inclined to interfere with the quashing of the portion providing that the incumbent translator will remain in the feeder category for promotion as Section Officer. Under the 2007 Rules, in fact, Section Officers are to be appointed by way of promotion from Assistant Grade I inter alia. The remaining question is only the direction to give notional promotion to the writ petitioner.

21. We would think that once it is found that the promotions given to the appellants are bad for violation of the decisions of the Governing Body, which we have held to be binding, the proper thing to do would be to direct that the promotional exercise be held strictly in accordance with the Rules as in force from time to time. The Rules of 1986 will, in other words, continue to hold the field till they are modified or superseded. They have indeed been superseded with effect from 01.08.2007 and till they were superseded, the promotional exercise must be conducted in terms of the 1986 Rules. For promotion from O? (2) to O?(3), in other words, the candidate must satisfy the requirement of having been successful in the departmental examination. All the candidates, who are eligible and who are in service, in other words, must undergo the examination and their eligibility for promotion must be determined on the said basis. Therefore, the direction to give notional promotion to the writ petitioner without reference to the requirement of the Rules cannot be sustained.

22. Resultantly, the appeals are partly allowed. In place of the direction given by the learned Single Judge to give notional promotion to the writ petitioner, we direct that the Institute will carry out the promotional exercise for the posts in terms of the decisions of the Governing Body of the Institute beginning with the Governing Body's decision of 1986 and also culminating in the Rules of 2007, which came into effect on 01.08.2007. This is besides the decision taken by the Governing Body in the year 1988 which is, as submitted before us, in modification of the 1986 Rules. In fact, it is brought to our notice that the appellant in Special Appeal No. 338 of 2015, who was directly recruited as Hindi Translator, was wrongly given promotion as Accountant [O?(4)]; he stands

reverted and he is holding the post of Hindi Translator; there is only one post of Hindi Translator; and appellant no. 3 in Special Appeal No. 348 of 2015 is given promotion as Assistant Grade I after the impugned judgment. We only direct that the process of filling up the vacancies be undertaken strictly as per the decisions taken in the years 1986, 1988 and 2007. We make it clear that this will not result in deprivation of any benefit, which persons, who have served and retired, have secured or are securing. Till the exercise is concluded, the notional promotion, which has already been given to the writ petitioner, will continue on ad hoc basis and it will finally be decided on the basis of the exercise to be undertaken by the Institute. This exercise should be concluded within a period of three months from the date of receipt of a certified copy of this judgment. We also make it clear that the promotions given to the parties to these appeals contrary to the Rules will be treated as ad hoc and will be subject to the outcome of the promotional exercise."

16. The language and the sentence formulation of the above paras and its intention behind it as referred in the aforesaid paragraphs, each of them will have a bearing for considering the veracity of the impugned order of reversion dated 7th July 2015, which has been passed in relation to the petitioner. Rather, the Division Bench of this Court at the time when it was dealing with the controversy was conscious of the fact that the appellant of Special Appeal No. 338 of 2015, i.e. the present petitioner, was a direct recruit of 1989, which was made by the Governing Body as one time arrangement, who was appointed as a Hindi Translator. Para 20 of the said judgement also played a pivotal role for the purposes of determination of the controversy in question whereby the Division Bench in its specific terms has expressed that the Division Bench is not intending to interfere in quashing the portion providing the incumbent Translator the benefit of services to remain in the feeding cadre of promotion as Section Officer i.e. the post of an Accountant under the Rules, as applicable at that relevant point of time.

17. We would be more concerned to the arguments which has been extended by the learned counsel for the respondent in relation to the findings which has been recorded in para 22 of the said judgement. The Division Bench in its para 22 had specifically provided that the Hindi Translator, since there happens to be only one post and the same has been done by direct appointment on the basis of policy decision of the Governing Body, the Division Bench has only directed that the process, resorted to for filling up the vacancies by undertaking the same strictly in accordance to the decision which has been taken in 1986, 1988 and 2007 by the respondent.

18. The Division Bench has specifically observed by making it clear that the effect of the judgement will not at all result into any deprivation of benefit in relation to those employees who have served the department and had attained the age of superannuation and have secured or are securing the benefit out of the decisions taken in pursuance to the Office Memorandums of 1986 or 1988.

Meaning thereby, if the exact intention as spirited by para 22 is taken into consideration, the Division Bench has laid down the following wider principles:-

(1) That the direct recruitment on O3 level post as a one-time arrangement on its inductment would be treated as to be the member of the said cadre i.e. O3 and would be eligible to be considered for promotion subject to the fulfilment of the other eligibility.

(2) The Division Bench judgement has safeguarded all the actions and the decision taken, which has been taken by the respondents in pursuance to the Office Memorandums of 1986, 1988 and 2007.

(3) At this stage, we are only concerned with the decision taken by the Governing Body in 1988 by virtue of which they have cared on exception and had resorted to the process of direct recruitment, as against the O3 posts which otherwise in accordance with the Service Rules applicable was to be filled in by way of promotion

(4) The Division Bench in its specific terms had laid down that any person who has been benefited in pursuance to the decisions taken on 1986 or 1988 and if they have secured the benefit or they are securing with the same, the same would not be deprived of irrespective of the directions which has been given in the concluding part of the paragraph.

19. The learned counsel for the respondent, while giving an interpretation to concluding part of the paragraph since it happens to be in continuity to the savings/exceptions, which has been provided to the incumbents already securing a benefit as a consequence of promotion to the O4 level, which has been referred in para 22 of the said judgement, the subsequent part of it where the Division Bench has held that the promotion would be treated to be a notional promotion it was and has to be read in correlation to the petitioners of the writ petition, who have claimed for their promotion in pursuance to a challenge given to an Order dated 8th November 2011. That is why the Division Bench, specifically in para 22 had observed that till the exercise is concluded for consideration of promotion of the "petitioners", they will continue on ad-hoc basis and will be finally determine on the basis of the exercises to be taken by the Institute for consideration of their promotion. That means it didn't include in its ambit the respondents of the writ petition, as its applicability was confined to the petitioners.

20. In view of the observations made by the Division Bench in paragraph No. 22, where the promotions have been treated as to be notional promotions, where the directions have been issued to undertake the exercise of promotion, where the status of the petitioners have been protected till they are considered for actual promotion in pursuance to the direction of the Division Bench judgement, that has specifically to be considered in the light of safeguarding the considerations in relation to the petitioners because the Division Bench while giving such direction has never emphasised or directed that the said criteria was to be adopted in relation to the respondents of the writ petition who had already been promoted

because they had already been promoted and they had already been granted the benefit and are securing the benefit as a consequence of the promotion granted to them by the respondents which would be reference which was made in relation to the petitioner.

21. The aforesaid contention also further stands fortified that the actions which have been taken by the respondents in pursuance to the decision taken by the Governing Body in 1986, 1988 and 2007, the same has been yet again reiterated to be protected in view of the findings which has been recorded in the judgement of review dated 10th January 2017, where a clarification was being sought by the petitioner in relation to the entitlement of promotion of the direct recruits, who have been appointed as an O3 level. The Division Bench while dismissing the Review Petition had protected the action or the decision which has already been taken in pursuance to the Agendas of the Governing Body of 1986 and 1988. As a consequence of passing of the order of reversion dated 7th July 2015, being de hors to the provision of law and the Service Rules, as applicable, since being de hors to the directives of the Division Bench judgement which has safeguarded the decisions taken in pursuance to the Resolution of 1988, and since it was resulting into the deprivation to the petitioner of his right after a lapse of 16 years of regular promotion granted to the petitioner by the respondents themselves, the petitioner had preferred a representation before the respondents which has been rejected by the impugned order dated 25th October 2017 on a premise which was yet again was nothing but a reiteration of the impugned order and the basis of reversion dated 7th July 2017. That as if merely because of the fact that there happens to be a direct recruit of the petitioner made by the respondents as one time arrangement, as against the ministerial posts he would for all times to come be deprived of his promotional avenues irrespective of the fact he has become the regular member of the feeding cadre i.e. O3 on account of an arrangement which was adhered to consciously by the respondent by undertaking the process of recruitment through Service Selection Board and on his induction by direct recruitment, he becomes member of the cadre.

22. The learned counsel for the respondent had during the course of the argument contended that as per the Rules of 1986, they have got ample of power to take an action which runs contrary to the Rules. The powers conferred on the respondent to take an action which runs contrary to the rules herein it would mean and it would not be including the action which is being taken by the Institute itself by giving a direct recruitment and by given promotion to the petitioner on the post of an Accountant as back as on 22nd September 1999. It is settled law that the petitioner cannot be or an employee cannot be made to suffer on account of an inappropriate decision or a decision contrary to the rules governing the service conditions of an employee, because they themselves cannot be the beneficiary of their wrongful decision which they resorted by direct recruitment in 1989 and promotion in 1999. And particularly, when in the light of the fact that the Division Bench judgement once it has already held that irrespective of the fact that the petitioner was directly appointed as a Hindi

Translator under the Rules of 1986, immediately on the conclusion of the process of selection, he would fall to be the member of the cadre i.e. O3 level and would be eligible to be considered for promotion to O4 level, because of the findings which has been recorded in para 22 of the said judgement of the Division Bench which has attained its finality.

23. The learned counsel for the respondent during the course of argument had contended that the decisions impugned dated 7th July 2015, and 25th October 2015, cannot be faulted with, because it was nothing but an exercise of powers which the Institute claims to have been vested in them under the rules and particularly a reference was made by the learned counsel for the respondent to the powers which has been vested with the Governing Body under Rule 12 of the Rules and Regulation of the Society of the Wildlife Institute of India.

24. Particularly, the stress which has been placed upon by the learned counsel for the respondent during the course of his argument is on sub clause (b) of Regulation 12 and in particular, clauses vii, xiv, xvii(b). Clause xvii(b) is quoted hereunder:

xvii) b) Creation of posts, term and tenure of appointments, emoluments, allowances, rules of discipline and other conditions of staff and officers of the Society.

Emoluments structure, i.e., adoption of payscales, allowances and revision thereof and creation of posts above the pay level of Rs. 14,300/- per month or an equivalent level upon revision of payscales from time to time would need the prior approval of the Government of India in consultation with the Ministry of Finance (Department of Expenditure)."

25. Even if the interpretation to the argument extended by the learned counsel for the respondent is taken into consideration in the light of the powers which has been vested with the Governing Body under clause 12(b), it would relate to and be restricted specifically in relation to the parameters of service conditions or the modalities which are included in clause (b) of sub clause (xvii) of regulation 12. The said clause safeguards the power of the Governing Body in relation to:-

(1) Creation of post, which is not the case at hand;

(2) Altering the term of conditions of appointment, on which the learned counsel for the respondent tried to submit that the powers which has been exercised by the Institute in passing the impugned orders is in rectification of their earlier mistakes, which has chanced on account of the conversion of the promotional posts into a direct recruitment post and subsequently by granting the promotion to the petitioner as an Accountant i.e. at O4 level post in 1999, it would fall to be within the ambit of powers of the Governing Body in view of the use of word "terms" in the aforesaid clause.

26. This Court is not in agreement with the argument as extended by the learned counsel for the respondent as far as the interpretation which has been given by

him to sub clause (b) of clause (xvii) of the Regulation 12. The use of word "terms" herein would postulates the terms contained under the Rules of 1986 and even if it is accepted that the Governing Body could have exercise its power in altering the conditions and terms of the appointment then in the instant case, admittedly, as per the documents on record, it shows that it was a conscious decision taken by the Governing Body in its Agenda Item No. 6, point No. 6.2 as placed before the Governing Body on 21st July 1988, which reads as under:-

"6.2 Qualifications for the post of Hindi Translator: According to existing approved recruitment rules for the post of Hindi Translator, the post is to be filled up 100 per cent by promotion from the posts of U.D.C., (Asstt. Store Keepeer and Asstt. Hostel Superintendent). The qualifying service prescribed for promotion is 5 years. The post can also be filled by deputation on stop gap basis. There is no provision for filling up the post by direct recruitment; hence no qualifications have been prescribed. At present there is no one in the feeder grade who could be considered for promotion against this post. It is necessary therefore to fill the post by direct recruitment."

27. If that be so, and even for a moment, if it is considered that the decision of appointment as a direct recruitment or a promotion thereafter is read in consonance to clause (b) of sub clause (xvii) of Regulation 12 then too it would fall to be within a conscious decision making power and taken within the ambit of the powers vested with the Governing Body under the Regulation 12 of the regulation framed therein.

28. In that view of the matter and in view of the inferences which has been derived by para 22 of the Division Bench judgement rendered by this Court earlier on 28th November 2016, since irrespective of the conversion of posts of promotion to a direct recruitment by the decision of the Agenda point No. 6.2 dated 21st July 1988, as soon as the recruitment is made by direct recruitment, the petitioner would fall to be within the feeding cadre of promotion on the post of O4 level i.e. Accountant, on which he was promoted as back as on 22nd September, 1999, and thus in view of the ratio as propounded by the Division Bench of this Court any decision which was flowing as a consequence of the decision of the Governing Body of 1988, that has been protected by the judgement of the Division Bench and hence the petitioner for the purposes of getting a claim which was flowing from promotion granted to him on the post of Accountant on 22nd September 1999 cannot be disturbed or reverted back as a consequence of the impugned order under challenge in the present writ petition. Thus this Court is of the view that the action taken by the respondent in absolute a hurried action without application of mind by passing the impugned order dated 7th July 2015, reverting the petitioner after 16 years of his promotion on 22nd September 1999, in pursuance to the decision rendered by the learned Single Judge cannot be sustained, since being in violation of Rules 1986 and in violation of the ratio which stand settled by its judgement in para 19, 20 and 21 and 22 of the Division Bench.

29. Consequently, the writ petition is allowed and the impugned order dated 7th July 2016 and 25th October 2017 are quashed and the respondents are directed by way of a writ of mandamus to consider the petitioner having been promoted regularly on the post of an Accountant w.e.f. 22nd September, 1999 and to remit him all the benefits which were flowing as a consequence of the promotion granted to him on 22nd September 1999.

30. However, there would be no order as to cost.