

(1990) 08 RAJ CK 0039

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2658 of 1989

Chhagan Lal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 09-08-1990

Acts Referred:

Cantonments Act, 1924 — Section 280
Constitution of India, 1950 — Article 323

Citation : (1990) 2 WLN 417 : (1990) WLN 420

Hon'ble Judges : B.R. Arora, J;A.K. Mathur, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Mathur, J.—In this batch of writ petitions mentioned in the schedule appended to this order, the validity of Rule 38 of the Rajasthan Municipal (Subordinate and Ministerial Service) Rules, 1963 and Rule 20 of the Rajasthan Municipalities (Class IV Service) Rules, 1964 has been challenged.

2. For the convenient disposal of all these writ petitions, the facts of Chhagan Lal v. State of Rajasthan and Orthers. D.B. Civil Writ Petition No. 2658 Of 1989 and Prem Kishan v. Stale of Rajasthan and Orthers D.B. Civil Writ Petition No. 1972 of 1990 are taken into consideration. In Chhagan Lal's case, the petitioner was a resident of Sirohi and he was working as a Naks Guard in the Municipal Board, Sirohi. He was transferred to the Municipal Board, Abu Road by the order of the secretary, Local Self Government, Government of Rajasthan dated 29.7.1989. Therefore, he has filed the present writ petition challenging the validity of Rule 20 of the Rajasthan Municipalities (Class IV Service) Rules, 1964 (referred so hereinafter as "the Rules of 1964") being ultra vires of the Rajasthan Municipalities Act, 1959 (hereinafter referred to as "the Act of 1959")

3. In Prem Kishan's case, the petitioner was appointed as Sanitary Inspector on temporary basis in the Municipal Board Sirohi. The services of the petitioner were extended from time to time by the orders of the Director, local Self Department.

The initial appointment of the petitioner as sanitary Inspector was in the Municipal Board, Sirohi. The Secretary, Local Self Government Department issued a general order of transfer-dated 25.4.1990, whereby the petitioner's services were ordered to be transferred to Municipal Board, Sunel, District Jhalawar. Therefore, by this writ petition the petitioner has challenged his transfer so also the validity of Rule 38 of the Rajasthan Municipal (Subordinate and Ministerial Service) Rules, 1963 (hereinafter called as "the Rules of 1963").

4. In both these writ petition as well as in this batch of writ petitions mentioned in the schedule appended to this order, the question involved is the validity of Rule 38 of the Rules of 1963 and the Rule 20 of the Rules of 1964. Therefore, all these writ petitions are disposed of by this common order.

5. In order to appreciate the controversy in issue in these writ petitions, the relevant provisions of the Rules of 1963 and the Rules of 1964 are reproduced below:

6. Rule 38 of the Rules of 1963 reads as under:

38. Transfer of a member of the service from one Board to the other--(1) Persons appointed to the service may be transferred from one Board to the other in the same grade and category when considered necessary of the service.

(2) Such transfer shall be made by the Director in case of transfer from one Board to the other in the same district and by the State Government in case of transfer from a Board in one district to a Board in another district.

Rule 20 of the Rules of 1964 reads as under:

20. Transfer of a Member of the service from one Board to the another-Persons appointed to the service may be transferred from one board to another in the same grade and category when considered necessary for the efficiency of the service, by the Director, Local Bodies, Rajasthan.

7. The principal submission of all the learned Counsel for the petitioners is that both these rules have been framed under the purported exercise of the powers conferred. Under clause (b) of Sub-section (2) of Section 297 read with Section 88 of the Act of 1959, but the present rules does not confer any power on the Government to frame the rules for transfer of one incumbent from one municipality to another municipality. It has been contended that each Municipal Board is an autonomous body and transferring one incumbent from one municipality to another amounts to termination of the services of the incumbent from one municipality and appointing him in another municipality against the wishes of that employee. It was contended that a master cannot be changed against the wishes of the employee. In this connection, a heavy reliance was placed on the decision of their lordships of the Supreme Court in General Officer Commanding-in-Chief and another v. Dr. Subhash Chandra Yadav and another AIR 1980 SC 876 and Jawaharlal Nehru University v. Dr. K.S. Jawatkar and Ors. 1989 (1) SCC 679.

8. In order to appreciate the contentions of the learned Counsel for the petitioners, it would be necessary to refer to the provisions of the Act of 1959. Both these Rules i.e. Rules of 1963 and the Rules of 1964 have been framed in the purported exercise of powers conferred by Section 297 read with Section 88 of the Act of 1959. The relevant portion of Sections 297 and 88 read as under:

297. Power of Government to make rules and orders.--(1) The State Government may make rules or orders generally for the purpose of carrying into effect the provisions of this Act and prescribe forms for any proceeding for which it considers that a form should be provided.

(2) In particular, and without prejudice to the generality of the foregoing power, the State Government may make rules or orders.

(a)...

(aa)...

(b) For the regulation of all or any of the matters specified in clauses (b), (c), (e), (f). (g) And (h) of Section 88,.

...

...

88, Power of boards to make rules.--Every board shall make rules, not inconsistent with this Act or with the rules made by the State Government u/s 297.

(a) Regulating the delegation of any of its powers or duties and the appointment and constitution of committee:

(b) Determining the staff of officers and servants to be employed by the board and the respective designations, duties, salaries, fees and absence or other allowances of such officers and servanter;

(c) Generally for the guidance of its officers and servants in all matters relating to the municipal administration;

(d) Fixing the amount and nature of the security to be furnished by any officer or servant from whom it may be deemed expedient to require security.

(e) Determining the mode and conditions of appointing, punishing or dismissing any officer or servant and delegating to officers designated in rules the powers to appoint, fine, reduce, suspend or dismiss any officer or servant;

(f) Regulating the grant of leave to officers or servants, and fixing the remuneration to be paid to the person, if any appointed to act for them whilst on leave;

(g) Authorising the payment of contributions, at such rates and subject to such conditions as may be prescribed in such rule, to any pension or provident fund,

which may be established by the board, or with the approval of the board by the said officers and servants;

(h) Prescribing, subject to the provisions of chapter VII, the taxes u/s 105 to be levied in the municipality for municipal purposes, the circumstances in which exemptions will be allowed, the conditions on which and the extent to which remissions may be granted and the system on which refunds are to be allowed and paid in respect of such taxes and the fees to be charged for licenses or permissions granted and the times at which and the mode in which the same shall be levied or recovered or shall be payable and prescribing the fees for notices demanding payments due on account of any tax, leviable u/s 104 or imposed u/s 105 or Section 106 or of any amount recoverable In accordance with Chapter VIII and for the execution of warrants of distress, and the rates to be charged for maintaining any livestock detained, and discharging the persons authorized to receive payment of any sums so leviable and the manner in which auctions of movable property shall be held:

(i) Prescribing the conditions subject to which sums due on account of any tax or of costs in recovering any tax or any other account may be written off as irrecoverable, and the conditions subject to which the whole or any part of any fee chargeable for distress may be remitted;

Provided that

(i) No Rule made by a board under this Section shall have effect unless and until it has been approved by the state Government;

(ii) No board shall, unless with the assent of the State Government, and otherwise than in accordance with the provisions of Chapter XIII or the rules made there under, dispense with the service of any officer transferred from the service of the Central or a State Government to the service of the board or employed partly by the state Government board or finally dispense from the service of the board any officer transferred from the service of the board to the service of the State Government.

9. The staff of the boards has been dealt with in Chapter XIII of the Act of 1959. The staff of the boards consists of officers, subordinate officers, ministerial staff and class IV servants. In the present case, we are only concerned with the subordinate ministerial and class IV staff 302 deals with the creation of the municipal service. Section 302 reads as under:

302. Creation of Municipal Service--(1) As soon as may be after the commencement of this Act, there shall be created and constituted by the State Government for the whole of the State a service designated as the Rajasthan Municipal Service and hereinafter referred to as the service.

(2) The service shall be divided into different categories, each category being sub-divided into different grades, and shall consist of officer; administrative as well as technical.

Section 303 deals with the classification of the Municipalities. Section 303 reads as under:

303. Classification of Municipalities.--(1) For the purpose of creating and constituting the service, the State Government may, by notification in the official Gazette.

(a) Divide municipalities in the State into classes according to their income and other circumstances, and

(b) Transfer a municipality from one class to another class.

(2) For the purpose aforesaid, the State Government may also, by a like notification prescribe uniform scales of pay for different posts in the service with different designations for all municipalities included in each class under clause (a) of Sub-section (1).

Section 304 deals with the recruitment to the posts in the service. Section 304 reads as under:

304. Recruitment to posts in the Service--(1) Upon the creation and constitution of the service, appointments to all posts therein shall, subjects to any rules u/s 297 and notwithstanding anything in the rules u/s 88, be made in accordance with the provisions of Section 307.

(a) By direct recruitment,

(b) By promotion, or

(c) By transfer.

(2) The State Government shall lay down the terms and conditions on which appointments shall be made by transfer from a State service.

(3) With the approval of the State Government and in conformity with such general or special directions as it may from time to time issue any officer or servant of a board who is a member of the service may be transferred to the service of another board.

10. Section 305 deals with the consultation with the Commission, which reads as under:

305. Consultation with commission-(1) As respects the service, the State Public Service commission, herein after referred to as the commission, shall in addition to its functions under the constitution be consulted,

(a) On all matters relating to appointments to the service by direct recruitment, and

(b) On all disciplinary matters affecting the members of the service.

(2) It shall be the duty of the Commission to advise on any matter referred to it

under Sub-section (1).

(3) It shall be the duty of the Commission to conduct examinations, if necessary, for appointment to the service or to any grade or category there of.

(4) The Commission shall include and embody, in its report presented under clause (2) of article 323 of the constitution a report as to the work order by the Commission in relation to the service under this Section and such report shall be dealt with as provided in the said clause of the said article.

Section 306 deals with the first appointment, with which we are not concerned at present, Section 307 deals with the administrative officers.

Section 307 lays down that the state Government will appoint certain categories of officers in the municipal board. Section 307 reads as under:

307. Administrative officers-(1) Subject to the foregoing provisions of this chapter and the rules made u/s 297 or and other provision of this chapter, the State Government shall appoint

(i) A Commissioner for every council

(ii) An Executive officer for every board for which such officer is required by rule to be appointed and

(iii) A Secretary for every council which resolves to appoint a Secretary in addition to the Commissioner and for every board for which no Executive officer is appointed.

(2) All officers and servants appointed u/s 308 or Section 310 of under any other provisions of this Act shall be subordinate to the Commissioner in the case of a city and to the Executive officer in any other case.

(3) In addition to any duties imposed upon or delegated to him by or under this Act, a Commissioner or an executive officer, as the case may be shall subject to the control of the President or the Chairman of the council or board-la) watch over the financial and executive municipal administration of the Municipality

(b)Take prompt steps to remove and defect or irregularity brought to the notice in the course of the audit of the municipal accounts or pointed out in the audit report

(c) Report all cases of fraud, embezzlement, the for loss of municipal money or property

(d) Supply any return, statement, account or report or any other document in his charge or a copy thereof requisitioned by the council or the board as the case may be, and

(e) Make an explanation in regard to subject under discussion at a meeting thereof but not vote upon or make any proposition thereat.

(4) Subject to any rules obtaining in this behalf a council or board as the case may be, may punish any officer appointed under this Section , otherwise than by dismissal or removal, by a resolution passed by a majority of not less than two third of the whole number of its members at a special general meeting and approved by the State Government.

(5) Pending inquiry into his conduct an officer appointed under this Section may be placed under suspension by the State Government.

Section 308 deals with technical officers in the municipal board and their appointment is also made by the state Government. Section 309 deals with the determination of strength of the staff. Section 310 deals with subordinate officers, ministerial establishment and other servants. Section 310 read as under:

310. Subordinate officers, ministerial establishment and other servants.

(1) Subject to the provisions of Sections 304 to 306 and of any rules u/s 297 or any other provision of this Act

(2) (a) An assessor shall be appointed by a council or a board with the sanction of the State Government, and

(b) A sanitary inspector or other inspector or subordinate officer or account-ant or a member of the ministerial establishment shall be appointed by a council or a board.

(2) Subject to any rules u/s 297 or any other provision of this Act appointments to other posts, whether permanent or temporary shall be made by the Commissioner in the case of a city and the Chairman of the board in any other case.

(3) All persons appointed under Sub-section (1) or Sub-section (2) shall be under the control and supervision of the President or the Chairman as the case may be.

(4) Without prejudice to such control and supervision, the persons to appointed shall be directly subject to the orders of the Commissioner or the executive officer and shall perform such functions, exercise such powers and discharge such duties as are laid down in rules or as may be required of them by the Commissioner or the executive officer.

(5) A person appointed under Sub-section (1) or subSection (2) may be dismissed, removed or otherwise punished in accordance with rules then obtaining by the appointing authority, subject to a right of appeal from such dismissal, removal or punishment within the prescribed time limit.

(i) To the State Government if the order appealed from it passed by a council or board, and

(ii) To the council or board, if such order is passed by the Commissioner or Chairman.

From the scheme of the Act of 1959, it appears that the staff of the municipal board consists of the officers appointed by the State Government and subordinate, ministerial and Class IV staff appointed by the municipal boards. The Government appoints certain categories of officers in the municipalities for which rules have been framed for the recruitment in the municipal service and it is known as the Rajasthan Municipal Service Rules, 1963. These rules have been framed by the State Government in the purported exercise of its powers u/s 297 (2)(f) read with Section 299,302,304,305,306(2),307 and 308 of the Act of 1959. Thus, it appears that there are three kinds of service under the Act of 1959, namely,(1) Rajasthan Municipal Service, (ii) Rajasthan Municipal Subordinate & Ministerial Service and (iii) Rajasthan Municipalities Class IV service. So far as the State service is concerned; it is governed by the Rajasthan Municipal Service Rules, 1963 as aforesaid. Likewise the service conditions of subordinate and ministerial staff is governed by the Rajasthan Municipal Subordinate & Ministerial Service Rules, 1963 and the service conditions of Class IV staff is concerned by the Rajasthan Municipalities (Class IV) Service Rules, 1964. The appointing authority for the State service is the Government and the appointing authority in the case of subordinate, ministerial and class IV services is the municipal boards/councils as the case may be. From this scheme of the Act and the Rules it appears that recruitment to the State service is made by the State Government and for subordinate, ministerial and class IV services, the recruitment is made by the municipal boards. The appointing authority in the case of State service shall be the State Government and the appointing authority in the case of class III and class IV is the municipal board or the council concerned.

11. In this back ground of the provisions of the Act and the Rules, we have to examine the arguments of the learned Counsel for adjudging the validity of Rules 38 of the Rules of 1963 and Rule 20 of the Rules of 1964. All the learned Counsel submitted that although both the Rules i.e. Rules of 1963 as well as the Rules of 1964 have been framed by the State Government under delegated authority under the Act by virtue of Section 297 read in the Section 88 of the Act of 1959. The relevant Sections have already been reproduced above. It is contended that under both these Sections quoted above, the State Government have been given the power to make the rules for recruitment, promotion, punishment, leaves and Fixation etc. But there is a very significant omission that u/s 88 clauses (b) to (h) it has not been mentioned that the Government has a power to from the rules for transfer also. The word "transfer" is significantly missing from all these clauses. Therefore, learned Counsel submitted that the Government has exceeded its power in framing rule 38 of the Rules of 1963 which provides for transfer of an incumbent from one municipality to another and likewise Rule 20 of the Rules of 1964. In this connection, learned Counsels have invited our attention to General Officer, Commanding-in-Chief's case (supra).

12. As against this learned Counsel for the respondents submitted that under Rule 297 a general power has been given to the Government to frame the rules

in order to effect the provisions of the Act of 1959 and Sub-section (3) of Section 304 confers a power on the State Government to effect transfer. Therefore, Rule 38 of the Rules of 1963 and Rule 20 of the Rules of 1964 are not beyond the scope of the Act.

13. We have given our anxious consideration to the rival contentions raised by the learned Counsel for the parties.

14. From a perusal of Section 297 read with Section 88, it appears that there is no specific mention as to whether the Government has been conferred with the power to frame the rules for affecting the transfer of the employees from one municipal board to another municipal board. It is also true that the subordinate, ministerial and class IV employees under the various service rules framed by the State Government as aforesaid are recruited and appointed by the municipal boards. It is each municipal board or council, as the case may be which is the appointing authority for ministerial, subordinate and class IV staff. Therefore, an employee be a member of the subordinate or ministerial or class IV cannot be transferred from one municipal board to another municipal board as each municipal board is the appointing authority and when the incumbent is transferred from one municipal board to another municipal board that will amount to change of master without the consent of the employee. Incidentally it will also amount to termination of his services from one municipal board and appointment in another municipal board. This is not contemplated in any of the service rules. Similar situation arose before their Lordships of the Supreme Court in *General Officer, Commanding-in-Chief* case (supra) and in that case their Lordships of the Supreme Court held that such transfer cannot be effected. The analogy of that case squarely fits in the present cases and all the arguments have been raised on the basis of the judgment delivered in *General Officer, Commanding-in-Chief* case (supra). Therefore, this judgment needs to be discussed in detail.

15. In *General Officer, Commanding-in-Chief* case (supra) certain rules were framed u/s 280 of the Cantonments Act, 1924. The rules are known as Cantonment Funds Servants Rules, 1937. Rule 5-C of these rules provides for transfer of the employees of the Cantonment Boards from one Cantonment Board to another. The validity of this Rule was challenged. The petitioner succeeded before the High Court of Allahabad and Rule 5-C was struck down. Thereafter, a special leave petition was preferred and it came to be disposed of by Hon'ble Supreme Court and it was held that Rule 5-C is ultra vires of the Act. Section 280 of the Cantonments Act, 1924 reads as under:

280. Power to make rules:-The Central Government may after previous publication, make rules to carry out the purposes and objects of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) To (b)....

(c) The tenure of office, salaries and allowances, provident funds, pensions, gratuities, leave of absence and other conditions of service of servants of Boards.

16. Clause 2(c) of Section 280 was amended in the year 1983. Before such amendment clause (c) Of Section 280(2) reads as under:

(c) The appointment, control, supervision, suspension, removal, dismissal and punishment of servants of Boards.

17. Though this clause was substituted later on but prior to that the aforesaid rules were issued and Rule 5-C read as under:

Rule 5-C. (1) The service of a servant shall be transferable from one post in one Board to another post in another Board:

(a) The transferor and transferee Boards are situated within the same State: and

(b) The posts in both the Boards are similar and carry the same scales of pay.

(2) Subject to such general directions as the Central Government may issue from time to time, the Officer commanding-in-Chief, the Central Command, or such other authority as may be authorized by the Central Government in. this behalf, shall be the competent authority to trans for a servant under this rule.

(3) A servant on transfer under Sub-rule (1) from one Board to another may, for the purposes of determination of seniority and eligibility for promotion opt:

(i) To be governed by the conditions applicable in this behalf to the servants of the Board from which he has been transferred (hereinafter referred to as the transferor Board); or

(ii) To be governed by the conditions applicable in this behalf to the servants of the Board to which he has been transferred (hereinafter referred to as the transfor on Board):

Provided that where a servant does not opt under this rule within thirty days from the date of assumption of charge in the transferee Board, he shall, for purposes of promotion and seniority, be governed by the conditions applicable in this behalf to the servants of the trans for or Board.

(4) suve as provided in Sub-rule (3), the terms and conditions of service of" a servant transferred under this rule shall be deemed to be those applicable to the servants of the transferee Board.

(5) Where the servant opts under clause (ii) of Sub-rule (3), the service put in by him under the transferor Board before his transfer shall be deemed to be service under the transferee Board.

18. In exercise of this power Dr. Subhash Chandra Yadav was appointed as a Sub-Charge, Cantonment General Hospital, Luck now. He was confirmed on that post. The conditions of service of the employees of the Cantonment Board, which is a

statutory body, were governed by the provisions of the Rules. At the time of the appointment of Dr. Subhash Chandra, his services were not transferable as per the provisions of the Rules then prevailing. He was transferred by GOC-in-Chief, Central Command by his order dated 27-10-1986 from the Cantonment General Hospital, Lucknow to the Cantonment General Hospital, Varansasi. It is this order, which was challenged by Dr. Subhash Chandra before the Allahabad High Court and he challenged the validity of Rule 5-C. The petitioner succeeded before the Allahabad High Court and the Allahabad High Court struck down Rule 5-C of the Rules. Thereafter a SLP was preferred and in that petition the Hon"ble Supreme Court upheld the judgment of the Allahabad High Court and it was observed as under:

The question, however, is whether the Central Government is entitled to frame rules for transfer of the employees of the Cantonment Boards under the substituted clause (C) of Sub-section (2) of Section 280 of the Cantonments Act. It is true that under clause (c), as it now stands, the Central Government can frame rules pertaining to conditions of service of the Cantonment Board employees. But, in our opinion, even in spite of substituted clause (c), the Central Government, will not be entitled to frame rules for transfer of an employee from one Cantonment board to another "within the State for the reasons stated already, namely, (1.) the Cantonment boards are autonomous bodies: (2) the service under the Cantonment Board is neither a centralized service nor is it a service at the State level: and (3) any such transfer of an employee will mean termination of service of the employee in the Cantonment Board from where he is transferred and fresh appointment by the Cantonment Board which he joins on such transfer.

19. Thus, it was made clear by their Lordships of the Supreme Court that the transfer of employees from one Cantonment Board to another violates the autonomy of the autonomous bodies. It was also observed that it was neither a centralised service nor was it a service at the State-level and it was lastly pointed out that any such transfer would mean termination of the services of the employee from the Cantonment Board from where he was transferred and a fresh appointment to the Cantonment Board where he joins on his transfer. In this connection their lordships of the Supreme Court relied to its earlier decision in Om Prakash Rana Vs. Swarup Singh Tomar and Others,

20. Now advertent back to the facts of the present cases, there is no two opinion that all the Municipal Boards are autonomous bodies. It is true that u/s 297 read with Section 88 of the Act of 1959 the State Government has a power to frame the rules for the servants of various municipalities in Rajasthan. But nonetheless that appointing authority for subordinate, ministerial and class IV employees is the concerned municipal board or council as the case may be. In case an incumbent is transferred be that a ministerial, subordinate or class IV employee to another municipal board or council then it will amount to violating the autonomy of the board or council, as the case may be and it also amounts to

termination of the services from one municipal board or council and appointment in another board or council. This found to be up to the vires of the Act by their Lordships of the Supreme Court in *GCC-in-Chief's case* (supra). Thus, the analogy of the aforesaid case squarely fits in the present cases and on the parity of reasoning Rule 38 of the Rules of 1963 and Rule 20 of the Rules of 1964 cannot survive.

21. In this connection, learned Counsel has invited our attention to yet another decision of their Lordships of the Supreme Court in *Jawahar Lal Nehru University's case* (supra). In this case, the transfer of the incumbent as Assistant Professor to the Manipur University against his wishes was challenged. The Jawahar Lal Nehru University u/s 5(2) of the Jawahar Lal Nehru University Act, 1966 established a Centre of Post-graduate studies at Imphal and appointed the respondent as Assistant Professor on a regular basis and also confirmed him w.e.f. 29.8.1979. In 1981, the Jawahar Lal Nehru University decided to transfer the Centre to the Manipuri University. The Governor of Manipur made an order dated 31.3.1981 which provided for transfer of the members of the locution of the Centre to the Manipur University. A question was, therefore, raised that transfer of the Centre would result in transfer of the respondent's services to the Manipur University. This question was answered in the negative by their Lordships of the Supreme Court. It was held as under:

The respondent continues to be an employee of the appellant University. The contract of service entered into by the respondent was a contract with the appellant University and no law can convert that contract into a contract between the respondent and the Manipur University without simultaneously making it either expressly or by necessary implication, subject to the respondent's consent. The provision in Manipur University Act for the transfer of the services of the staff working at the said Centre must be construed as enabling such transfer with the consent of the employee concerned. Since the transfer of the Centre could not result in, automatic transfer of the respondent's service, he continues in the employment of the appellant University.

22. Thus, it was clearly laid down that the transfer of an employee of an autonomous body cannot be effected to another autonomous body without the consent of that incumbent.

23. Mr. N.P. Gupta, Yashwant Mchta, N.M. Lodha, B.L. Purohit, Mr. M.R. Singhvi, L.R. Choudhary, Bhim Faj Arora, J.M. Bhandari, D.D. Joshi and L.R. Joshi, learned Counsel appearing for the respondents have invited our attention to various notifications issued by the Local Self Government Department to show that in case an employee is transferred from one autonomous body to another autonomous body then still his seniority and promotion shall be continued to be governed in their parent body. Learned Counsel placed reliance on the notification dated 2.1.1981 which reads as under:

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24. Notwithstanding this notification, the basic question still remains is whether such transfer is permissible or not. Such permission also existed in the case of GCC-in-Chief's case (supra). There also, under Rule 5-C there was an option to the transferred employee that he can opt to be governed by the conditions applicable in this behalf to the servants of the transferor or transferee Board. But notwithstanding that their Loro ships of the Supreme Court did not find it convenient to hold the validity of Rule 5-C. Therefore, this notification will also not help the respondents in order to maintain the validity of Rule 38 of the Rules

of 1983 and Rule 20 of the Rules of 1964.

25. Learned Counsel for the respondents also invite our attention to a decision of this Court in Mohan Lal Jain v. State of Rajasthan RLW 1979 441. In this case also the validity of Rule 38 came up for consideration and it was upheld. This judgment was further followed by one of us in Ram Pratap v. State of Rajasthan (1987) WLN 569 and Ram Kishore v. State 1985 RLR 748. Thereafter, an appeal was also preferred before the Division Bench of this Court and the Division Bench upheld the judgment in State of Rajasthan v. Ram Pratap & 29 others 1988 (2) RLR 14.

26. But in view of the decision of their Lordships of the Supreme Court in GCC-in-Chief (supra) all earlier judgment of this court cannot hold good any more.

27. It was also contended by the respondent State that under Sub-section (3) of Section 304, the Government has power to effect the transfer, notwithstanding Rule 38 of the Rules of 1963 and Rule 20 of the Rules of 1964, a great stress was laid on Sub-section (3) of Section 304 of the Act of 1959.

28. We have bestowed our consideration to this argument also. But a bare perusal of Sub-section (3) of Section 304 of the Act of 1959, it clearly transpires that this Sub-section will not govern the conditions of subordinate, ministerial and class IV Staff of the municipalities. It is true that this Section occurs in Chapter XIII under the heading Staff of Boards. Section 302 deals with the creation of Municipal service, which is a State service and thereafter Section 303 deals with classification of municipalities and Section 304 deals with recruitment posts in the service. But a bare reading, of Sections 302, 303 and 304, 305, 307 and 308 would reveal that all these Sections deal with the State Service. Section 309 deals with the determination of the strength of the staff. Section 310 onwards deal with the subordinate officers, ministerial staff and other services of the municipalities in Rajasthan. A close reading of Sections 302, 303, 304, 305, 307 and 308 would show that all these provisions deal with the State service. Section 310 deals with subordinate service. These Sections form a Code in itself for the State Service as against the subordinate and ministerial and class IV service u/s 310. Therefore, the expression "service" occurring in Sub-section (3) would mean a State service and the State service does not include the subordinate, ministerial and class IV service which is essentially recruited by the various municipalities. Sub-section (3) of Section 304 confers the power on the State government to effect the transfer of the members of the Rajasthan Municipal Service from one place to another. Thus, the contention of the respondents that the Government has an independent power under Sub-section (3) of Section 304 irrespective of the Rules of 1963 and Rules of 1964 is not correct. Sub-section (3) of Section 304 only relates to the members of State Service i.e. members of the Rajasthan Municipal Service and not to subordinate, ministerial and class IV services.

29. In the result, we held that Rule 38 of the Rajasthan Municipal (Subordinate

and Ministerial Service) Rules, 1963 and Rule 20 of the Rajasthan Municipalities (Class IV Service) Rules, 1964 are ultra vires of the Rajasthan Municipalities Act, 1959 and they are hereby struck down. Consequently, all the writ petitions are allowed and the transfer orders issued in the purported exercise of Rule 38 of the Rules of 1963 and Rule 20 of the Rules of 1963 are quashed.

30. The parties are left to bear their own costs.