
(1974) 11 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 14 of 1971

Dharamvir Puri	Vs	APPELLANT
The State of Himachal Pradesh etc.		RESPONDENT

Date of Decision : 08-11-1974

Acts Referred:

Constitution of India, 1950 — Article 226, 30(1), 309
Government of Union Territories Act, 1963 — Section 58, 58(2)
Himachal Pradesh Territorial Council Education Department Subordinate Service
(Recruitment, Promotion and Conditions of Service) Regulations, 1963 — Regulation 4, 4(1)
Integration of Territorial Council Employees Rules, 1963 — Rule 2(5), 3(1), 4(1), 5
State of Himachal Pradesh Act, 1970 — Section 30(3), 40, 41, 42
Territorial Councils Act, 1956 — Section 28, 28(1), 31, 32, 32(3)
Territorial Councils Rules, 1957 — Rule 1, 25, 45

Citation : (1976) 5 ILR HP 255

Hon'ble Judges : R.S. Pathak, C.J.; C.R. Thakur, J

Bench : Division Bench

Advocate : D.S. Nehra and P.N. Nag, for the Appellant; B. Sita Ram, General and S. Malhotra, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, C.J.—I am in agreement with my brother Thakur, J. that the petition has no force and should be dismissed.

2. I agree generally with the findings of my learned brother pertinent to the question concerning the status of the Respondents Nos. 3 to 31 but I should like to add few words. I am of opinion that the appointment of Respondents Nos. 4 to 31 cannot be traced to Section 28(1)(vi) of the Territorial Councils Act, 1956, which speaks of "the establishment, maintenance and management of primary and secondary schools...". That provision did not confer powers on the Territorial Council in the matter of appointing teachers to educational institutions. The contention on behalf of the Petitioner that the function of "management" includes the power to appoint teachers cannot be accepted because Section 32(4)

expressly makes provision for the appointment of staff necessary for the proper and efficient execution of the duties of the Territorial Council. The appointment of the teaching staff employed by the Territorial Council would fall under that provision. It is significant that Section 32(6) provides that the previous approval of the Central Government must be taken before the conditions of service applicable to a person appointed by the Territorial Council are varied to his disadvantage. In other words, in the matter of varying service conditions the control rests with the Central Government. No other provision in Section 32 contemplates any control by the Central Government in relation to the staff employed by the Territorial Council. If, as is contended for the Petitioner, the appointment of and other matters relating to, the teaching staff can be attributed to the powers vested by Section 28, then inasmuch as Section 28 itself provides for the exercise of those powers being subject to conditions imposed by the Central Government, there would have been no need for enacting Section 32(6). Accordingly, it must be taken that the order dated September 14, 1962, was not made u/s 28 of the Territorial Councils Act. I agree with my learned brother that for the other reasons mentioned by him also that order cannot be said to have statutory force. It would, therefore, appear that the original order appointing the said Respondents in an officiating capacity remained unaffected and there was no statutory power justifying the alteration of the officiating capacity, in which the said Respondents were initially appointed, to an ad hoc capacity.

3. That being so, I need not enter in to the question whether the Petitioner is entitled to have the judgment and order of Rangarajan, J. recalled.

4. As regards the seniority of the Petitioner in relation to the Respondents Nos. 3 to 31 I express no opinion because that is a matter which is presently pending with the Central Government and it will be for the Central Government to determine what should be the inter se seniority to be finally assigned to the parties.

5. The writ petition is dismissed but there is no order as to costs.

Chet Ram Thakur J.

1. The Petitioner was appointed to the Punjab Education Service (Class II) in the pay scale of Rs. 250-25-550/25-750 by the Governor of Punjab in consultation with the Public Service Commission on 31.5.1965 vide appointment letter, Annexure P.A. On 1-11-1966 on the reorganisation of the State of Punjab he was allocated to the Union territory of Himachal Pradesh. The Respondents 4 to 3 were appointed by the Territorial Council in July, 1963, in the pay scale of Rs. 250--750. After the reorganisation, in October, 1967, a joint seniority list, Annexure P.G., was prepared and the Respondents 4 to 31 were also included in that list but were placed below the Petitioner. Under Regulation P.D., issued by the Himachal Pradesh Territorial Council in exercise of its power u/s 32(4) of the Territorial Councils Act, 1956, the appointments could only be made by the Lt. Governor and not by the Territorial Council and that too in consultation with the

Union Public Service Commission. As the Respondents 4 to 31 were not regular appointees so the Himachal Pradesh Administration declared them as ad hoc appointees and these ad hoc appointments were extended from time to time till December, 1968 vide Annexures P.F. and P.J. Aggrieved by this decision of the Himachal Pradesh Administration, Sarvshri K.K. Vij and Rajinder Pal (Respondents 8 and 30 respectively in the present petition) filed a writ petition in 1969 in the Delhi High Court, Himachal Bench Simla, challenging the action of the Himachal Pradesh Administration, treating them as ad hoc appointees and there by assigning them a lower place in the integrated seniority list. The Petitioner was not joined as a party even though the relief sought was to have their status declared as officiating instead as ad hoc so that they could derive benefit of their ad hoc services from 1963 and claim seniority above the Petitioner. This writ petition was accepted on September 10, 1969, declaring their appointments not ad hoc but officiating.

2. Thereafter an integrated seniority list in accordance with the K.L.M. formula was prepared treating of Respondents 4 to 31 as regular, with the result that the Respondents were placed above the Petitioner in the seniority list. The Petitioner has, therefore, challenged this notification, Annexure P.C., dated 1-6-1970, where by the earlier notification No. T.O.-Edu.-46/63 (Estt. 1) dated 31-12-1968 (PJ) showing the Respondents as ad hoc was cancelled consequent to the decision of the Delhi High Court, Himachal Bench, Simla in C.W.P. No. 28/1969 filed by Sarvshri K.K. Vij and Rajinder Pal. The Petitioner has prayed that the judgment of the Delhi High Court, Himachal Bench, be recalled. He has contended that the action of Respondents 1 to 3 treating the Respondents, though illegally appointed by the Territorial Council and without consultation of Union Public Service Commission at par with the Petitioner as regular appointees to Class II service and also in making them eligible to be placed above the Petitioner, is illegal. According to him, he had made a representation also against the cancellation of the notification, dated 31-12-1968, and treating the Respondents on regular basis by notification, Annexure P.C., dated 1-6-1970. Although the Respondents 1 to 3 by an order, dated 1-6-1970, had treated the Respondents 4 to 31 as regular employees yet by an order, dated 17-9-1970, it informed the Petitioner that his representation was under consideration and decision will be communicated as and when taken. The Director of Education started action to fix pay of Class II officers on Punjab pattern and for releasing selection grade of Rs. 700--1100 to 15 per cent of the employees of this cadre on the basis of the provisional seniority list, dated 13-1-1970 (Annexure P.H.). Subsequently the Petitioner was informed that he would not be entitled to senior grade as his name has allegedly been placed below Respondents 4 to 31, and hence he contended that the seniority list was illegal and unconstitutional. The appointment letter of Respondents 4 to 31 is wholly unwarranted and without any basis. The Territorial Council was not competent to make appointments without consultation of Union Public Service Commission. The ad hoc appointments could not confer the status of regular employees on the

Respondents; simply because a person had been appointed in the pay scale of Rs. 250--750 will not confer the gazetted status on him unless it mentions that it is a gazetted post. According to the Himachal Pradesh Administration circular, dated 14-9-1962, promotions, direct recruitments by Territorial Council and Himachal Pradesh Administration were to be purely ad hoc and not to confer any claim on the incumbent for seniority and confirmation. This was based on the decision of the Government of India, Ministry of Home Affairs, dated 5-2-1962. Further, the appointments of Respondents in the pay scale of Rs. 250--750 as made under the regulation for promotion and recruitment never had the approval of the Central Government and the Lt. Governor, as required by the conditions of Departmental subordinate services under the Territorial Council (Annexure P.D.). Hence the promotions were void being made without any authority. The Selection Board for promotion of Respondent was not duly constituted, as required under Article 309 of the Constitution and as such the promotions were unconstitutional. The writ issued by Rangarajan, J. in favour of the Respondents 8 and 30 holding them officiating cannot be construed to make their appointment equivalent and gazetted with Petitioner. Since the Petitioner was not a party in the previous writ petition though he was directly affected by the inter se seniority, rights of persons are not to be affected adversely, unless impleaded as party or opportunity given to him of being heard. Hence the judgment of Rangarajan, J. cannot operate to the disadvantage of the Petitioner nor can the declaration given therein give any enforceable right to the Respondent. Hence the Petitioner was deprived of opportunity, therefore, he was entitled by this petition to recall the previous decision and review the same and to have the whole case decided after impleading the Petitioner as party to that writ. Therefore, in these circumstances he made a prayer for issue of a writ of mandamus to quash the list, dated 13-1-1970 (Annexure P.H.) in so far as it places the Respondents above the Petitioner, and notification, dated 1-6-1970 (Annexure P.C.) by which the Respondents were treated as regular employees in the pay scale of Rs. 250--750 (Class II Gazetted) with effect from the date of their gazetted appointment and further he prayed for recall of the decision in writ petition No. 28/1969 decided on 10-9-1969 with a direction to the Respondents 8 and 30, who were the Petitioners in the previous writ petition, to implead all the affected persons as Respondents in that writ petition for a decision of the Writ petition on merits thereafter.

3. The Respondents 1 to 3 in their return averred that appointment of Respondents 4 to 31 by the Territorial Council as Headmasters/Headmistress of Higher Secondary Schools in the pay scale of Rs. 250--750 u/s 32(4)(5) of the Territorial Councils Act, 1956 read with Rule 45 issued by the Central Govt. in 1957 was valid. It was only the appointment of Principal Officers which required approval of the Administrator u/s 32(3). The Territorial Council had made officiating appointments and there was nothing to show that the appointments/promotions were made as stop-gap arrangements on ad hoc basis. The Territorial Councils Act, 1956 was repealed by Section 58 of the Government of Union

Territories Act, 1963, and thereafter the Administrator of Himachal Pradesh in exercise of powers under Clause (a) of Sub-section (2) of Section 58 issued S.R.O. (HP)-8 (Annexure R.I.) giving the designation and integrated grade to the officers and employees under the Government of Himachal Pradesh. The Administrator vide notification, dated 23-7-1963 (Annexure R.2), issued in continuation of S.R.O. 8, appointed the Respondents 4 to 31 and other officers of the Territorial Council in the Administration of Himachal Pradesh on the posts and pay scales mentioned against each. The Government of Himachal Pradesh by a letter, dated 14-2-1968, made a reference to the Deputy Secretary, Union Public Service Commission for the approval of the Commission to the regularisation of promotions and direct recruitments of Respondents in Class II (Gazetted) (Annexure R.3). The Union Public Service Commission by a letter, dated 3-4-1968, (Annexure R.4) directed to continue them in their appointments upto the end of June, 1968, as on ad hoc arrangements. It was only on receipt of this letter that the appointments/promotions of Respondents 4 to 31 were treated on ad hoc basis, whereupon Sarvshri Vij and Pal felt aggrieved and filed C.W.P. 28/1969. After the integration, seniority list of Class II (Gaz.) Officers was circulated according to the KLM formula as per instructions of the Government of India. The Respondents 4 to 31 were treated as officiating according to the judgment and as such were given seniority in the pay scale of Rs. 250-750 from the date of their appointment in the scale. Their dates of appointments in the scale being earlier than the date of appointment of the Petitioner, the Petitioner had rightly been shown below the Respondents 4 to 31. These posts inherited from the Council were equated with the corresponding posts in existence in the Himachal Pradesh Administration and all posts in the pay scale of Rs. 250--750 from the Territorial Council, Education Department, were equated with the integrated grade under the Himachal Pradesh Administration, viz. 250--750, vide S.R.O. 8, dated 1-7-1963 (Annexure R.1) The scale of Rs. 250--750 in the Administration was Gazetted Class II, thus their services were integrated with the officers of Administration in the scale of Rs. 250--750 according to the provisions made in the Integration of Territorial Council Employees Rules, 1963 with effect from 1-7-1963 (Annexure R.5). No arbitrary or discriminatory action has been taken by the Respondents 1 to 3 in preparing the provisional integrated seniority list. It had been prepared keeping in view the decision as well as the instructions (Annexure P.E.). The integrated seniority list has not as yet been finalized and the representations including that of the Petitioner were under consideration. The grade of Rs. 700--1100 has been released in respect of senior officers who were eligible and some posts had been kept in reserve for the disputed cases. Lastly, it was pleaded that u/s 32 of the Territorial Councils Act, 1956, read with Section 54 of the said Act and under Rule 45 of the Territorial Councils Rules, 1957, the Respondents were competent to make appointments and the persons so appointed were not on ad hoc basis or as stop-gap, but on officiating basis. These posts were held as Class II Gazetted and salary slips are issued by the Accountant General.

4. The Respondents 4 to 31 also filed their separate return and raised two preliminary objections to the effect that the Court had no jurisdiction in view of the provision of Section 30(3) of the State of Himachal Pradesh Act, 1970, and that the review petition was time barred. On merits, it was pleaded that they were never appointed ad hoc. On 28.6.1963, the Chief Executive Officer of the Himachal Pradesh Territorial Council issued an order in pursuance of Rule 45 of the Territorial Councils Rules, 1957 ordering officiating appointments of Respondents 15 to 18, 20, 21, 24, 25 and 28 to 30. Similarly, on 23.7.1965 the Lt. Governor promoted other Respondents also on officiating basis (Annexure R.B. and R.C.). These persons were treated as officiating till the Himachal Pradesh Administration incorrectly issued a seniority list treating them as ad hoc appointees. Consequently, Respondents 8 and 30 filed writ petition for a declaration that they be treated as officiating and which writ was accepted. The Respondents were legally and validly appointed by the Territorial Council in pursuance of the rules and the Act. There was no need for consultation by the Union Public Service Commission as the grade to which they were appointed was Rs. 250--750. While the Respondents were working under the Territorial Council they could not be treated as Gazetted Government servants as they were not Government servants. The effect of taking over of the institution by the Himachal Pradesh Administration was not to wipe out the previous service rendered by the Respondents in the Territorial Council. They were rightly declared senior to the Petitioner, who joined service on 31.5.1965. The seniority list (Annexure P.H.) and the notification, dated 1.6.1970 (Annexure P.C.) are legal and valid. After the Himachal Pradesh Education Department took over the administration from the erstwhile Territorial Council of Himachal Pradesh they had to be shown as Gazetted and notification, dated 1.6.1970 was valid and legal. As soon as the services of these officers were transferred to the Himachal Pradesh Education Department they became Gazetted Government servants. The so-called policy decision has no evidentiary value or at any rate furnishes no cause of action to the Petitioner. The Selection Board was properly constituted and the Court cannot enter into the mental process of the Selection Board. The decision in C.W.P. 28/1969 binds the Government as also the Petitioner. The Petitioner knew the decision of the writ petition. Therefore, he cannot be permitted to challenge it after sixteen months. The allegation that he was deliberately not made a party in the previous writ petition was denied.

5. The Petitioner submitted his rejoinder to the written statement filed by Respondents 1 to 3 and reiterated the same facts alleging that the Territorial Council was not competent to appoint on regular basis in the pay scale of Rs. 250--750 nor were they ever appointed to Class II Gazetted service of Himachal Pradesh Education Department and their ad hoc appointments as stop-gap arrangement could not ripen into regular appointments by efflux of time and change in the political status of the Himachal Pradesh territory. The R. (S.R.O. 7) framed by the Lt. Governor under the Union Territories Act, 1963 clearly imposed a limitation that persons appointed before September 1962 shall continue to be

ad hoc and as such the Respondents continue to be ad hoc appointees in the pay scale of Rs. 250--750 or Rs. 400--800. Even the Union Public Service Commission advised in a letter, extending the Respondents' ad hoc status for one more year, which is said to have been set at naught by Rangarajan, J. and that the same has not been cited in toto in the Government reply. This letter R. 4 need be read with R. 3. The Respondents in C.W.P. 28/69 made gross misstatements leading to certain observations in the Judgment which are contrary to facts and even to Annexure E.G.--(i) Advertisement of Government for class II posts; (ii) Advertisement by the Government, i.e. between two wings T.C. and Administration was deliberately concealed and Government was silent, though it has confessed to this distinction; and (iii) slips by the Accountant General--some body has certainly erred in making Lt. Governor equation order for granting gazetted status, etc. In taking over the officers of the Territorial Council, the Lt. Governor could not bestow on the Respondents gazetted status. In the Administration a few persons out of the fixed percentage could be promoted by the Departmental Promotion Committee to Class II and their promotion got approved by the Union Public Service Commission and others selected direct through the agency of Union Public Service Commission.

6. A supplementary affidavit was filed by Respondents 4 to 31 and it was stated that the Respondents were appointed officiating prior to enforcement of Union Territories Act (Annexure R.B. and R.E.) The Petitioner in his petition had not made any allegation whereby it can be said to have rested his case on S.R.O. 7. During the course of arguments the learned Counsel for the Petitioner has made a reference to Sub-rule (5) to Rule 2 of the Integration of Territorial Council Employees' Rules, 1963. The Petitioner can not be permitted to refer to the aforesaid rule. If the Court holds that the Petitioner can rest his claim on the above referred rule then according to the above referred to Respondents, the rules detailed in Annexure R.5 are violative of the provisions of Section 59(2)(a) (i) of the Union Territories Act, 1963 in as much as no approval or sanction of the Central Government has been obtained by then-Government of Himachal Pradesh to change the status of Respondents from officiating basis to ad hoc basis.

7. Reply by the Petitioner to this supplementary affidavit is that the Respondents were appointed on officiating basis by mistake and in contravention of Government of India letter of September 14, 1962, (Annexure P.I.). In fact they were appointed on ad hoc basis. It had specifically been averred in the rejoinder, which is a part of the pleadings, that vide S.R.O. -7 the Respondents were not regularly appointed and they were recruited only on ad hoc basis. The Respondents had clear notice of this rejoinder and they filed the reply after lapse of long period of filing of the rejoinder by the Petitioner. They had ample opportunity to rebut the rejoinder; even otherwise they had every knowledge of S.R.O. 7, as they themselves had relied upon on the amendment, dated 12.7.1972, made by the Governor to S.R.O.-7 vide Annexure R.D. Previous sanction of the Central Government was not required for the rules contained in

S.R.O.-7, Even otherwise, if it is required that is deemed to have been given by the Central Government, vide Annexure P.I. The amendment to S.R.O. 7 vide Annexure R.D., dated 12.7.1972, during the pendency of the writ petition is void as it has taken away the vested right of the Petitioner of having seniority over Respondents, vide S.R.O. 7, as by this S.R.O. the Respondents will not be entitled to have seniority at all in the grade of Headmasters as they are not confirmed and they have been continuing on ad hoc basis. Further, the amendment is in violation of Section 42 of the State of Himachal Pradesh Act, 1970, as it has varied the terms and conditions of the Petitioner to his disadvantage without the prior permission of the Central Government. Such an amendment, therefore, should be considered as non-existent in the eye of law. The Petitioner has, therefore, made two prayers. The first is for quashing the seniority list, dated 13.1.1970 (Annexure P.H.) and the second is the letter dated 1.6.1970 (Annexure P.C.) whereby the Respondents were treated as regular employees in the pay scale of Rs. 250--750. And further to recall the decision made by Rangarajan, J. in writ petition No. 28/69 with a direction to the Respondents 8 and 30 to implead all the affected persons as Respondents in that petition to decide the writ petition on merits thereafter. The Petitioner, therefore, wants the state of affairs as it prevailed on 14th October, 1967, to be restored and thereafter to prepare the final integrated seniority list.

8. The first submission made by the Petitioner is that the Respondents 4 to 31 were ad hoc appointees. The State Government could not make appointments on regular basis in view of the ban imposed by Annexure. P.I., issued by the Central Government in the year 1962.

9. The order, Annexure P.I., dated 14.9.1962, purports, to have been issued by the Government of India to the Himachal Pradesh Administration and the Territorial Council not to confirm employees in the departments partly by the Territorial Council and partly by the Administration, such as Education, in view of the impending changes in the administrative set up of the Union territory of Himachal Pradesh. It had been mentioned therein that if it was absolutely necessary and if the confirmation had become ripe and fulfil all other criteria laid down for such confirmation the Territorial Council may confirm such officers in their respective departments. It had further been stated therein that promotions or direct recruitments to services and posts under the Territorial Council or the Administration should not be made unless such recruitment and promotion was necessary for technical and teaching posts required for plan scheme. Further, it had been emphasised that it should be clearly understood that those promotions and recruitments should be purely ad hoc and would give no claim to the incumbents for seniority or confirmation or for such other purposes. Therefore, on the basis of this letter, the learned Counsel for the Petitioner contends that it was a directive from the Central Government which had the over-all control and provided funds to the Territorial Council. The Territorial Council could not make any appointments after the issue of this directive contrary to it. If any appointments had been made they were all ad hoc, conferring no claim on the

incumbents for seniority or confirmation or for other purposes. The instructions were binding and were of a statutory character. If any appointments had been made on officiating basis on a mistaken view of the existence of the ban order then the Government was well within its right to rectify that mistake and support is sought to be derived from *Sunder Lal and Ors. v. The State of Punjab and Ors.* 1970 S.L.R. (Pb. & Hy.) 59 , and *The Secretary of State For India Vs. Faredoon Jijibhai Divecha*, In so far as the authorities are concerned it all depends upon the facts of each case whether the Government is entitled to correct a mistake. Therefore, there can be no dispute with the principle as enunciated in these authorities. The first question is as to what is the nature of this directive as contained in Annexure P.I. Learned Counsel for the Respondents contends that they are purely executive instructions which are not at all binding. Further, the appointments were made on officiating base and the Territorial Council was competent to make such appointments. The Government could not treat the Respondents as ad hoc. The Joint Secretary to the Government of Himachal Pradesh wrote a letter to the Union Public Service Commission (hereinafter shortly called the Commission) on 14.2.1968 in order to regularise the appointments, but, according to the learned Counsel for the Respondents, there was no need to refer the matter to the Commission because the appointments whether by promotion or by direct recruitment were all within the competence of the Territorial Council as these appointments carried the initial pay below three hundred rupees, in which case it was not incumbent upon the Territorial Council to have consulted or made appointments with the approval of the Commission.

10. In order to see as to what were the powers of the Territorial Council and whether any directive could be issued by the Central Government, if so, under what powers, we have been taken through various sections of the Territorial Councils Act, 1956 (shortly called the Act of 1956). The functions to be performed by the Territorial Council so established under the Act of 1956 are enumerated u/s 28 Chapter III. In fact certain departments were transferred from the Administration to the Territorial Council and education upto Matriculation standard was also transferred to the Territorial Council. One of the functions of the Territorial Council, as is indicated u/s 28(vi), was the establishment, maintenance and management of primary and secondary schools and the construction and repair of all buildings connected with these institutions, training of teachers and establishment of scholarships. u/s 32(4), it is stated that the Council shall, in addition, appoint such staff as may be necessary for the proper and efficient execution of its duties and make regulations for their conditions of service. u/s 32(5) the power of appointing officers and staff was to be exercised in accordance with the rules framed for the purpose, provided that no person shall be appointed to a post the minimum monthly salary (exclusive of allowances) for which is three hundred rupees per mensem or more except after consultation with the Commission. u/s 52 the control over the Territorial Council was to be exercised by the Administrator, who was authorised to give to the Territorial Council all such directions as he considered necessary in respect of the

subjects, curricula, text-books and standards of teaching in school. u/s 52(4) the Administrator was required to furnish a copy of any order or direction that he may have made under the aforesaid Act to the Central Government with a statement of the reasons for making it and forward in due course to that Government the explanation, if any, offered by the Council and that Government, may, thereupon confirm, modify or rescind the order of the Administrator. u/s 54 the Central Government is authorised to make rules for the purpose of carrying out the provisions of the Act.

11. After having perused these provisions, it would be clear that Section 28(vi) of the Act of 1956 to which the power to issue directive is traced by the learned Counsel for the Petitioner does not in fact empower the Central Government to issue any such directive with regard to the confirmation or appointment or with regard to other conditions of service. Clause (vi) of this Section 28 deals with the establishment, maintenance and management of primary and secondary schools and the construction and repair of all buildings connected with these institutions, training of teachers and establishment of scholarships. Learned Counsel for the Petitioner contends that these expressions "establishment", "maintenance" and "management" are quite comprehensive so as to embrace the appointment, promotion, confirmation, etc. of the teachers. But, I am afraid these expressions will not include appointment, promotion and confirmation etc. so as to empower the Central Government to issue _any directive imposing any such ban as referred to in Annexure P.I. The scope of the expression "establishment" fell to be considered in R.L. Sahni and Co. v. Union of India AIR 1966 Madras 416 and it was held therein that "establishment" is different from "employer" or "employee". Similarly the scope of the word "establishment" as mentioned under Article 30(1) of the Constitution fell for consideration in S. Azeez Basha and Another Vs. Union of India (UOI), and it was held that the word "establishment" means "to bring in to existence". Learned Counsel has also referred to the meaning as given to the words "establishment", "maintenance" and "management" in various dictionaries such as Butterworth Wharton, etc., and according to these definitions staff will not come within the expression "maintenance" and "management" nor within the word "establishment". Therefore, I am of the view that the employment of the teachers will not fall within the scope of Clause (vi) of Section 28 of the Act. So, it is wrong to say that these instructions, i.e. the ban order, have been issued in exercise of the powers u/s 28(vi) nor the Central Government was empowered to issue such instructions especially when a specific provision dealing with the powers of the Council in relation to such appointments has been made in Section 32. Further these powers of the Territorial Council, as contained in Section 32, are not subject to any exceptions and conditions that may be imposed by the Central Government. Therefore, this ban order on the recruitment and promotion cannot be said to derive its power from any statutory provision but it is a pure executive instruction given to the authorities by the Central Government. There is no doubt that the Central Government, as indicated in Section 52, has got an over-all

control over the Territorial Council which it exercises through the Administrator, but this section would show that such directions, if any, are to be issued only in respect of the subjects, curricula, text-books and standard of teaching in school. Section 54 authorised the Central Government to make rules for the purposes of carrying out the provisions of the Act, such as for regulating the employment, payment, suspension and removal of officers and servants of the Territorial Council and to protect terms and conditions of service of the Government servants transferred to the Territorial Council. Therefore, a perusal of the various provisions of the Act of 1956 would show that there is no such power given to the Central Government whereby it may impose such a ban on recruitment and promotion of the staff. The powers of appointment of the staff, as already stated are contained in Section 32 of the Act of 1956 and those powers are not subject to any exceptions or conditions as we find in Section 28. Those powers are to be exercised by the Territorial Council subject to the exceptions and conditions that may be made or imposed by the Central Government. Section 28, as already stated, does not provide for the appointment of the staff. Therefore, it is wrong to say that this letter, Annexure P.I., has got statutory power.

12. Learned Counsel for the Petitioner has invited our attention to *Beant Singh Bath Forest Range Officer v. The Union of India and Ors.* 1969 S.L.R. (Pb. & Hry.) 304 to emphasise that the guiding principles for giving a decision on any disputed matter must not necessarily be laid down in so many words in a statute, but may be gathered from the preamble and the scheme of the relevant Act, from other contemporaneous legislation, from the situation in which the law in question was enacted and from facts disclosed in the affidavits sworn in reply to the relevant writ petitions. But it may be stated that we have referred to all the relevant provisions in the Act. This ban, as it appears, had been imposed by the Central Government in view of the impending changes in the administrative set up of the Union territory of Himachal Pradesh. The Act of 1956 does not contain any such powers which may authorise the Central Government to give any such directions banning the recruitment and promotion of the teachers. Section 28 to which a pointed reference has been made gives general powers and the functions to be exercised or discharged by the Territorial Council subject to the conditions and exceptions made by the Central Government, and in this section the powers given are only with regard to the establishment, maintenance and management of primary/secondary schools. There is no power, as already stated, with regard to the appointment of the staff and that power is given u/s 32 which is not hedged by any such limitations. The submission of the learned Counsel for the Petitioner that both these sections must be read together is not tenable because these two sections are under two different chapters. Chapter III deals with the Territorial Council and Chapter IV under which Section 32 falls provides for the procedure and staff of the Territorial Council. Therefore, in the absence of any power to issue any such direction banning the recruitment and promotion of the teachers this order cannot be said to have any statutory force.

13. The authority *Sant Ram Sharma Vs. State of Rajasthan and Another*, also will

not assist the learned Counsel for the Petitioner because in the statute there is no gap or any lacuna to be filled up by administrative instructions so as to enable the Government to issue any such instructions in exercise of its executive functions. Similarly *B.N. Nagarajan and Others Vs. State of Mysore and Others*, is also not applicable to the facts of the present case. There can be no dispute that there is no bar for making any order by the State in exercise of its executive powers without framing of statutory rules. The rules which have been framed in exercise of the powers under sections 52 and 54 of the Act of 1956 do not talk of any ad hoc appointment at all and as such the instructions as contained in Annexure P.I. are merely of administrative character and if these are merely executive instructions then according to *G.J. Fernandez v. The State of Mysore and Ors.* A .I.R. 1967 S.C. 1753 no writ will lie for disobedience of the same. For invoking jurisdiction under Article 226, the Petitioner has to show that the concerned authority disregarded any mandatory provision of the law. The instructions, as contained in Annexure P.I., as already stated, are only executive instructions on which the Petitioner has based his case. But since they are only executive instructions which have no statutory force, the Petitioner has got no right to come on the basis of this letter, Annexure P.I., and I may refer to *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, in this behalf. It is also manifest from *I.N. Saksena Vs. State of Madhya Pradesh*, that memorandum issued by the Government amounts only to an executive instruction of the Government and not a rule within the meaning of Article 309. According to *Union of India v. K.P. Joseph and Ors.* 1973 (1) S.L.R. 910 the administrative instructions do not confer any right.

14. Further reliance is placed by the learned Counsel for the Petitioner on S.R.O. 7 (Annexure R. 5), which are the "Integration of Territorial Council Employees" Rules, 1963 framed by the Administrator in exercise of the powers conferred by the proviso to Article 309 of the Constitution read with notification of the Government of India in the Ministry of Home Affairs No. F. 27/ 59-HIM (1), dated 13th July, 1959, and Clause (a) of Sub-section (2) of Section 58 of the Government of Union Territories Act, 1963. Pointed reference has been made to Sub-rule (5) of Rule 2 of these rules whereby persons regularly appointed means a person appointed before the 6th September, 1962, to a post under the Government or the Territorial Council in accordance with the relevant rules of recruitment or if there were no such rules by due process of selection but does not include a person appointed as ad hoc. Further attention is invited to the proviso to Sub-rule (1) of Rule 4, which says that nothing in this rule shall be deemed to restrict the power of the appointing authority to terminate at any time an ad hoc appointment or appointment made on or after the 6th September, 1962. On the basis of the provisions of these rules the learned Counsel for the Petitioner contends that Respondents 4 to 31 who were appointed after the 6th September, 1962, shall be deemed to have been appointed on ad hoc basis and under Sub-rule (5) of Rule 2, such persons are not regularly appointed. Regularly appointed persons are those who are appointed either before the 6th September,

1962, or in accordance with the rules.

15. Learned Counsel for the Respondents contended that S.R.O. 7 is not valid. But the learned Counsel for the Petitioner contended that the Respondents cannot be permitted to take up this plea especially when they themselves rely on R.D. whereby this S.R.O., (Annexure R. 5) had been amended. R.D. is a notification, dated 12th July, 1972, issued by the Government of Himachal Pradesh in exercise of its power under proviso to Article 309 of the Constitution amending rules of 1963. Under this annexure R. 5 of the original Rules of 1963 has been substituted whereby it has been said that there shall be a joint seniority of persons regularly appointed according to the length of service in the integrated grade. The original rule states that there shall be a combined seniority list of all persons confirmed in the integrated grade, individuals being shown in seniority in the order of date from which they are confirmed. So the material change in the subsequent order is that condition of confirmation for purpose of seniority has been omitted. It has been submitted That a a combined seniority list of all persons regularly appointed according to the length of service shall be prepared which means that no regard shall be kept for confirmation, etc. Learned Counsel for the Petitioner further contends that the Respondents cannot take advantage of this amendment as the same was made after the attainment of Statehood by Himachal Pradesh and at a time when the writ petition was pending and that the Petitioner cannot be deprived of his vested right.

16. By the Rules of 1963 which were made vide S.R.O. 7, the services of the Territorial Council and the Administration were integrated and the posts of equal scale with the same nature of duties and responsibilities were to be equated with the posts of like nature in the Administration. It had been further provided that if the conditions of service of any officer or employee holding a post referred to in Sub-rule (1) of Rule 3 were altered to his disadvantage the previous sanction of the Central Government shall be obtained. In the instant case, Respondents 4 to 31 had been appointed in accordance with the rules and the regulations which were framed by the Himachal Pradesh Territorial Council in exercise of the powers u/s 32(4) of the Act of 1956. These regulations are known as the Himachal Pradesh Territorial Council Education Department Subordinate Service (Recruitment, Promotion and Conditions of Service) Regulations, 1963 (shortly called the Regulations of 1963). Regulation 4 of these Regulations provides for the authority empowered to make appointments. Sub-regulation (1) of Regulation 4 states that in case of a post carrying a minimum monthly salary (exclusive of allowances) or more than one hundred rupees the appointment shall be made by the Council or by a Committee of the Council appointed for the purpose of making appointments u/s 31 of the Act of 1956 read with Rule 25 of the Territorial Councils Rules, 1957. Here in the instant case the appointments were in the pay scale of Rs. 250--750. Therefore, it means that the appointments were within the exclusive competence of the Committee of the Territorial Council. According to the proviso to Sub-section (5) of Section 32 of the Act of 1956 no person shall be appointed to the post the minimum monthly salary (exclusive of

allowances) for which the scale of pay is three hundred rupees per mensem or more, except after consultation with the Commission in accordance with the rules. The scale of pay admissible to the Respondents who are both promotees as also direct recruits was Rs. 250--750 which means that the minimum was Rs. 250/- (exclusive of allowances) and, therefore, there was no need for consultation with the Commission. These regulations, as already stated, do not make provision for any ad hoc appointments. These regulations specifically deal with the service of Headmasters Headmistresses of High/Higher Secondary Schools in the grade of Rs. 250-25-550/25-750 and 250-10-350. The S.R.O. 7 was made subsequently under the Government of Union Territories Act, 1963 (shortly called the Act of 1963). Section 58 of the Act of 1963 repeals the Act of 1956. Sub-section (2)(a) of Section 58 guarantees the right of every officer and other employees of the Territorial Council of a Union territory before the repeal for being treated as an officer or an employee of the Government and to employ him in connection with the administration of the Union territory with such designation as the Administrator may determine and every officer shall hold office by the same tenure and at the same remuneration and on the same terms and conditions of service as he would have but for such repeal held the same and was to continue to do so unless and until such tenure, remuneration and terms and conditions are duly altered by the Administrator. But this power is again subject to the condition that the tenure remuneration and terms and conditions of service of any such officer or other employee shall not be altered to his disadvantage without the previous sanction of the Central Government. Thereafter the Administrator of Himachal Pradesh issued S.R.O. (H.P.) 8 in exercise of the powers conferred by Clause (a) of Sub-section (2) of Section 58 of the Act of 1963 and Sub-rule (1) of Rule 3 of the Rules of 1963 reads as under:

(a) as from the 1st July, 1963 every officer and other employees of the Territorial Council of Himachal Pradesh serving under the Council on the 30th June, 1963, in a post specified in col. 2 of the schedule to this order shall become an officer or other employee of Government and shall be employed in connection with the administration of H.P. with the designation specified in col. 3 of the Schedule to this order, and shall hold office by the same tenure and at the same remuneration and on the same terms and conditions of service as he would have but for the repeal of the Territorial Councils Act, 1956 (Act No. 103 of 1956) held the same and shall continue to do so unless and until such tenure, remuneration and terms and conditions are duly altered by the Administrator; and

(b) as from the 1st July, 1963, the posts both permanent and temporary under the Territorial Council specified in col. 12 of the Schedule to this order shall be included in and be integrated with the corresponding grade under Govt. of H.P. specified in col. 13 of the said Schedule as permanent and temporary posts as the case may be:

Provided that any officer or other employee of the Territorial Council whose post and designation are not specifically included in the schedule to this order shall

continue to have the same designation under the Govt. of H.P. as he had on 30th June, 1963 and shall be deemed to be integrated in a grade of the same designation under the Government of Himachal Pradesh.

From the Schedule attached to this S.R.O. it would appear that under the head "Education Department" under item 6 are shown the Headmasters in the Territorial Council in the scale of Rs. 250-25-550/25-750 and they have been integrated under the Government of Himachal Pradesh with the Headmasters in the equivalent scale. The Respondents had also been integrated in accordance with the provisions of Section 58 read with S.R.O. 8. According to Annexure R.5, i.e. S.R.O. (H.P.) 7, persons regularly appointed mean those persons who were appointed before the 6th September, 1962, to the posts under the Government or the Territorial Council in accordance with the relevant rules of recruitment, but do not include the persons appointed ad hoc. It is not disputed that Respondents 4 to 31 were appointed on officiating basis although they were appointed after 6th September, 1962. These rules, no doubt, were framed in exercise of the powers conferred by the proviso to Article 309 read with Clause (a) of Sub-section (2) of Section 58 of the Act of 1963, but it may be stated that their appointments which had been made on officiating basis under the rules and the regulations framed in exercise of the powers u/s 32(iv) of the Act of 1956 could not be changed to ad hoc unless the approval of the Central Government, as contemplated u/s 58(2)(a) proviso (v) was obtained. Similarly these rules state that the tenure, remuneration, and terms and conditions of any officer or employee holding a post referred to in Sub-rule (1) are altered to his disadvantage with the previous sanction of the Government. There is nothing on the record to show that the previous sanction of the Central Government was obtained so as to alter the conditions of service of the Respondents from officiating to ad hoc. It was only on a reply received from the Commission to the letter written by the Joint Secretary, Himachal Pradesh, that the Respondents were shown as ad hoc instead of officiating in the year 1969 from the back date although the Commission had nothing to do with the appointments of these persons whose minimum pay or salary was below three hundred rupees. So the mistake occurred when the Joint Secretary referred the matter to the Commission for regularisation of the Respondents and the Central Government was not approached before altering their conditions of service to their disadvantage. Therefore, this order is wrong because the rules or the regulations did not make any provision for ad hoc appointment. It was only intended by the instructions, as contained in Annexure P.I. that no regular appointments were to be made and if any appointments were necessary they were to be made on ad hoc basis in view of the impending changes in the administrative set up of Himachal Pradesh. But these instructions, as already stated, are not statutory.

17. Learned Counsel for the Petitioner submits that these directions, which, according to him, are statutory must be held to be the general instructions amounting to previous approval of the Central Government and he has placed reliance on N. Raghavendra Rao Vs. Deputy Commissioner, South Kanara,

Mangalore, But this authority does not apply to the facts of the present case. It was a case u/s 115(7) of the States Re-organisation Act, 1956, which empowered the Central Government to give directions. In the instant case the directions were issued as back as 6th September, 1962, but not under the Act of 1963, nor has such power been traced to any provision in the Act of 1956. Therefore, the contention that these instructions being general instructions amounted to previous approval of the Central Government is not tenable. Therefore, even if the S.R.O. 7 has been made in exercise of the powers conferred by proviso to Article 309 read with Sub-section (2) of Section 58 of the Act of 1963, yet the approval of the Central Government was necessary before altering the service conditions of the Respondents to their disadvantage. These instructions, which had been issued prior to the enforcement of the Act of 1963 had no legal or statutory force.

18. In these circumstances the contention that the Government was not debarred from correcting its mistake will not hold good. The Respondents had been appointed in accordance with the rules on a temporary officiating basis and there was no provision in the rules or the regulations for making such ad hoc appointments. The Respondents continued to work as officiating till 1968 when, according to the reply, Annexure R.4, to the letter, Annexure R. 3 written by Mr. Srivastava, Joint Secretary, Himachal Pradesh Government, they were considered as ad hoc after a period of full five years. The direct recruits If they had known that they were to be appointed ad hoc and that they had no security of service would not have applied at all. Therefore, in view of this the Government is estopped from treating them ad hoc when it had represented to the direct recruits that they would be appointed on a regular basis. In *Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another*, it has been observed by their Lordships that there is a clear distinction between a representation of an existing fact and a representation that something will be done in future. The former may, if it amounts to a representation as to some fact alleged at the time to be actually in existence, raise an estoppel, if another person alters his position relying upon that representation. Therefore, in these circumstances the Respondents are estopped.

19. The further submission of the learned Counsel for the Petitioner is that the Respondents were not appointed against Class II (Gazetted) posts. This argument of the learned Counsel should not detain us long because admittedly the service under the Territorial Council was not service under the Government. The Territorial Council was a local body and no appointments were published in the Official Gazette so as to give them gazetted status as is sought to be argued by the learned Counsel for the Petitioner who was appointed in the service of the Punjab Government in the Education Department and whose appointment had been notified in the Gazette. But it is quite apparent that the Respondents also had been discharging the same duties and responsibilities and were also drawing the same scale of pay as was admissible to the Petitioner in the erstwhile State of Punjab. Therefore, the fact that their appointments were not notified in the

Gazette will not mean that they did not enjoy equal status or they were not at par with the Petitioner. The Petitioner, it may be stated, is also not a confirmed hand. He is also working in a purely officiating capacity, which is not denied and so is the status of the Respondents 4 to 31. Therefore, the contention that they were not gazetted has got no force.

20. The further submission is that there were only six posts of Class II Officers in the State of Himachal Pradesh and, therefore, all these Respondents could not be absorbed in the gazetted posts on the abolition of the Territorial Council and on the enforcement of the Act of 1963. This is also not correct as the various annexures, as already indicated above, would show that on the enforcement of the Act of 1963 the Respondents had been taken in the Education Department of the Administration against equivalent posts of Headmasters/Headmistresses in the same scale of pay. Moreover, there is no such averment made by the Petitioner in the petition so as to permit him to raise this point at the stage of arguments.

21. R. 5 of S.R.O. 7 had been amended by the State vide Annexure R.D. dated 12th July and it states that there shall be combined seniority of all personnel confirmed in the integrated grade made in the order of the date from which they were confirmed. According to the amended rules the seniority was to be assigned to all personnel regularly appointed according to the length of service in an integrated grade. Further in the old rules, Annexure R.5 [S.R.O. (H.P.)-7] it was necessary to consult the Commission regarding the order of seniority to be assigned to any officer of the Territorial Council in a cadre to which recruitment was made, but in the amended rules the condition for consultation with the Commission had been dispensed with. Learned Counsel for the Petitioner contends that these rules could not be amended so as to take away the vested right of the Petitioner especially at a time when the petition was pending. But it may be stated that the rules have been framed under proviso to Article 309 of the Constitution and the State Government is competent to make the rules both retrospectively and prospectively, as is held in *B.S. Vadera and G.S. Chaggar v. Union of India and Ors.* 1969 S.L.R 6 Therefore, the State Government could frame these rules after the attainment of Statehood and there is no question of depriving the Petitioner of his vested right. Proviso to Section 42 of the State of Himachal Pradesh Act, 1970 only says that the conditions of service applicable immediately before the appointed day in the case of any person referred to in Section 40 or Section 41 shall not be varied to his disadvantage except with the previous approval of the Central Govt. In the instant case the conditions of service of the Petitioner have not been altered, rather the State has made rules concerning the service conditions of the employees of the erstwhile Territorial Council as also the employees of the Government of Union territory and it cannot be disputed that the State had the power to make such rules with retrospective effect. In these circumstances, I am of the view that the appointments were not enter were not ad hoc and the so-called ban order was merely an executive instruction not having the force of law. The Respondents 4 to 31 were appointed

on officiating basis and there was no question of converting their officiating status into ad hoc merely on the ground that there were executive instructions which were not issued either under the Act of 1956 or Act of 1963. The letter of the Commission by which it was advised that the Respondents should be allowed to continue on ad hoc basis was quite unwarranted. The Joint Secretary without looking to the provisions of the rules made a reference by mistake to the Commission and which mistake was again repeated by the Commission in making the State Administration to continue the Respondents on ad hoc basis instead of officiating basis. The Respondents were in service before the Petitioner had been employed by the erstwhile State of Punjab, both the Petitioner as also the Respondents 4 to 31 are officiating. R. 5 of S.R.O. 7 had been amended by the State which admittedly had the power and the same cannot be said to be invalid and no disadvantage by the amendment of this R. 5 of S.R.O. 7 has been caused to the Petitioner.

22. Second is the question whether the judgment of Rangarajan, J. should be recalled. The contention raised by the learned Counsel for the Petitioner is that the Petitioner was not impleaded as a party in that petition. It does not lay down the correct law in so far as the Petitioner is concerned. The Petitioner is not bound by that judgment. The same should be recalled and the Petitioner may be impleaded and reliance is placed on *Shivdeo Singh and Others Vs. State of Punjab and Others*, It says that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. In this case certain agricultural lands in a village in Gurdaspur district were allotted to a number of displaced persons including the Appellants in the year 1950 under the Administration of Evacuee Property Act, 1950. Subsequently the Director of Rehabilitation declared the village to be a "fauji" village and stated that the land therein will have to be re-allotted. The Appellants were "non-faujies". The "non-fauji" allottees had to move out. Therefore, the Director of Relief and Rehabilitation wrote to the Deputy Commissioner to fit them in some good second grade village. As soon as the order was made the "non-fauji" Appellants preferred a writ petition before the High Court for quashing the order. The Director of Relief and Rehabilitation alone was made a party thereto. The petition was allowed. Eventually the Respondents 3 to 14 who were members of "fauji" families in whose favour either the allotment had been made or was intended to be made preferred a petition before the High Court under Article 226 of the Constitution for impleading them as parties in the Appellants' petition and rehearing the whole matter. It was in view of these circumstances that their Lordships of the Supreme Court laid down the principle, stated above. But, in the instant case, Sarvshri Vij and Pal who filed the writ petition No. 28/69 did not challenge the status of the present Petitioner, rather they questioned the order whereby they had been declared ad hoc consequent to the advice rendered by the Commission. So, it was a writ petition about their status, which had been converted from officiating to ad hoc.

Moreover, it related to a period prior to 1-7-1963 when they were appointed as officiating. Therefore, there was no question of impleading the present Petitioner in that petition and this authority relied upon will not be helpful to the learned Counsel for the Petitioner.

23. In *Ramchandra Shankar Deodar and Ors. v. The State of Maharashtra and Ors.* 1974 (1) S.L.R. (S.C.) 470 in similar circumstances it was contended by the Respondents that though the Petitioners were not parties to the petition, in *Kapoor* as case, some of the Respondents in that petition were directly recruited Tehsildars like the Petitioners and the dispute of directly recruited Tehsildars as a class was agitated in that case and decided and consequently if the judgment of the Bombay High Court in regard to such dispute was incorrect, the Petitioners could always apply for a review of that judgment, as did the parties in *Shivdeo Singh v. State of Punjab*, Repelling this contention it was held that this contention was without any force, firstly, it was difficult to see how the Petitioners could have applied for review of the judgment of the Bombay High Court in *Kapoor's* case. The Petitioners were not persons directly and immediately affected by the judgment and it could not be said that they were necessary parties to the petition who should have been heard before the judgment was given, as was the case in *Shivdeo Singh v. State of Punjab*, The Petitioners had, therefore, no locus standi to apply for review of that judgment Secondly the subject-matter of the petition, was barring only one question which is common, namely, the question as to the validity of the second proviso to Rule 1 of the Rules of 30th July, 1959, wholly different from that of the petition in *Kapoor's* case, and asking for review of the judgment of *Kapoor's* case would be no remedy at all so far as the reliefs claimed in the present petition were concerned. Similarly, in writ petition No. 28/69, *Sarvshri Vij and Pal* made a grievance that their status from that of officiating was changed to that of ad hoc. In that case they did not seek any relief either against the allocates or about seniority which was assigned either to the two Petitioners in that petition or to *Shri V.P. Puri*, the present Petitioner. Therefore, there was no question of impleading *Shri Puri* as a party in that case. In so far as the case of *Shivdeo Singh* (supra) is concerned the same is distinguishable because of the different facts. In these circumstances the judgment of *Rangarajan, J.* cannot be recalled at the instance of the present Petitioner. The law declared in that judgment is binding on the Respondent-State and its officers and they are bound to follow it whether the Petitioner was a party or not to the previous petition. See *Makhan Lal Waza v. State of Jammu and Kashmir* 1971 S.C. 92 1971(2) S.L.R. 294.

24. In the light of the above findings, I am of the opinion that the Petitioner has no locus standi to question status of the Respondents 4 to 31 and there is no need to re call the judgment delivered by *Rangarajan, J.* in C.W.P. No. 28 of 1969. The Petitioner was not a necessary party in that writ petition. The Respondents 4 to 31, were officiating and the order, dated 6th September, 1962, has no statutory sanction. Consequently, the petition fails and is hereby dismissed with no order as to costs.