

(2011) 01 DEL CK 0098

In the Delhi High Court

Case No : Writ Petition (C) No. 2001 of 2010

Dr. Mohammad Rizwanul Haque

APPELLANT

Vs

Central Wakf Council and Others

RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Citation : (2011) 176 DLT 753 : (2011) 121 DRJ 710 : (2011) 3 ILR Delhi 1

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Sandeep Sethi and Mohd. Irshad Hanif, for the Appellant; A.S. Chandhiok, ASG and A.K. Bhardwaj, M.P. Singh for UOI and S. Wasim A. Qadri, for Respondent No 1 and Syed Shahid Hussain Rizvi, A.K. Pradhan and Hamid Ashraf for Respondent No 2, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Singh, J.—This order shall dispose of the petition filed by the Petitioner under Article 226 of Constitution of India challenging the order passed by the Respondent No. 3 on 10.3.2010 whereby the Respondent No. 1 through its chairman is directed to retire the Petitioner from the post of the secretary to the Central Wakf Council (hereinafter referred to as Council) on 31.3.2010. The Petitioner has challenged the said order by way of this petition on several counts. The brief factual matrix of the matter leading to filing of this petition are enunciated as under :

(a) The Petitioner is stated to be working as a Secretary to the Central Wakf Council after meeting the due qualification. The Respondent No. 1 Central Wakf Council (for short CWC) is a statutory body constituted by Government of India u/s 9(1) of the Wakf Act, 1995 for the various purposes and matters concerning the working of the boards and due administration of Wakfs. The Respondent No. 1 Council comprises of several members inter alia, Union Minister Incharge of Wakf is the ex- officio Chairperson, other members include nominated members of Government of India, representatives of Muslim Organization, persons of

national eminence, Judges of Supreme Court or High Court, Advocate of national eminence etc.

(b) The Petitioner has stated that in the year 1997, the advertisement for the post of Secretary appeared in the Employment News and pursuant to the same, Petitioner applied for the said post and was appointed as Secretary to the Respondent No. 1 by way of the appointment letter dated 03.07.1997.

(c) The Petitioner was initially appointed for the period of 1 year from the date of the appointment letter and subsequently on 22.8.2000 the Ministry moved the proposal to absorb the Petitioner permanently which was ratified by the Respondent Council in its 43rd meeting held on 29.08.2000 which provided that the Petitioner shall be absorbed permanently.

(d) The Petitioner has averred in the petition that in the year 2008, the Petitioner was served with a charge sheet relating to some departmental inquiry alleging that the Petitioner during his tenure in 2001- 2002 had made some appointments acting as administrator of Punjab Wakf Board in contravention to Rule 3 (i) and (iii) of CCS (conduct) Rules 1964. The Petitioner has filed the detailed reply denying such charges.

(e) On 01.09.2009, the Planning and Advisory Committee of the Council has made following resolution :

Recruitment rules for the post of secretary, Central Wakf Council approved in the 27th Meeting of the council held on 10th July 1988 simply says that the applicant for the post should be " not below 45 years and not exceeding 60 years on the date of application relaxable on the discretion of chairperson in case of otherwise exceptionally qualified candidate.

This indicates that the council wanted the secretary to continue in the service of the council beyond 60 years. The Rule 7 (1) of Central Wakf Rules, 1998 (corresponding to Rule 5 of the Central Wakf Council Rules, 1965) states

there shall be a secretary to the council, who shall be Muslim appointed by the chairperson on such terms and conditions as may fixed by the council

Therefore, it is the prerogative of the council to decide the age of retirement of its secretary. In case of the present secretary, Dr. M.R. Haque , the retirement age has not yet been decided, therefore, the committee in view of Rule 7 (1) of the Central Wakf Council Rules 1998 recommended that his retirement age may be fixed at 62 years. It can be further extended on the discretion of the council"

(f) The said resolution dated 01.09.2009 was placed and approved by the Council in its 55th meeting held on 05.10.2009. The minutes of meeting was duly approved by the Chairman and was circulated on 7.10.2009.

(g) Pursuant to the said meeting, the office order dated 7.10.2009 No. 12 (1)/97- CWC was issued which provided that the age of retirement of the present Petitioner has been extended to 62 years. The Petitioner submitted that the

minutes of the said meeting was also sent to joint secretary, Ministry of Minority affairs, Respondent No. 3. There was no objection received from the government at the time when the decision was taken by the Council to extend the retirement age of the Petitioner.

(h) The Petitioner submitted that he wrote to the enquiry officer in the disciplinary enquiry demanding the documents which were not supplied to him in support of the charges leveled against him. The said letter was written by the Petitioner on 12.01.2010. Thereafter on 20.01.2010, the Chief Vigilance Officer of the Ministry of Minority Affairs wrote to the enquiry officers and to other officers of the Ministry to ensure that the Petitioner is not posted on sensitive post on the ground that the Petitioner was issued a major charge sheet. The said letter recommended necessary action and status report by 27.01.2010.

(i) The Petitioner also filed a representation to the Chairman on February 19, 2010 explaining the legal position regarding distinction of the appointment of Secretary as against the other staff. The said letter also referred to the resolution and decision taken by the Respondent No. 1 in 55th meeting in the year 2009.

(j) That Respondent No. 3 vide letter dated 10.3.2010 explained the regarding the Central Vigilance Commission's direction regarding the disciplinary case against the petition wherein the letter dated 20.01.2010 was also enclosed. It was also mentioned that the Petitioner who will be 60 years of age by March 2010 should be allowed to retire on 31.3.2010 as per the government rules in absence of duly approved rules of CWC. The said letter also called upon the Respondent No. 1 to reconsider the decision regarding the extension of tenure of the Petitioner.

(k) The Respondent No. 2 wrote the letter on behalf of the Respondent No. 1 on 16.3.2010 informing the orders passed by the Respondent No. 3 by enclosing the copy of the letter dated 10.3.2010 received from ministry addressed to Chairman.

2. The Petitioner filed the present writ petition seeking to quash the orders passed by the Respondent No. 3 on 10.3.2010 on various grounds. The petition was listed before this Court on 23.3.2010 when this Court while issuing notice stayed the operation of the impugned order. The Petitioner has urged several grounds in the petition which can be stated as under :

a) Firstly, the Petitioner contends that the impugned order is bad in as much as the terms and conditions of the service of the Petitioner shall be determined by the Council and not by the Central Government or the Ministry and the same is the mandate of Section 9 of the Wakf Act and Rule 7 of the Central Wakf Council Rules 1998. Thus, the appointing authority and the authority to determine the terms and conditions of the service and for that matter the retirement age is the council and not the government which makes the impugned order bad at the inception.

b) Secondly the Petitioner submitted that the Rule 7 of the Wakf Rules, 1998

clearly empowers the Council to fix the terms and conditions of the appointment. In terms of Rule 7, the Council vide its 55th meeting dated 05.10.2009 has already approved and implemented the suggestion of the Planning and Advisory Committee and thereby caused to extend the age of retirement of the Petitioner to 62 in contradistinction to 60 years which is mentioned in the order dated 10.3.2010. Thus, the said impugned order being contradictory to the age fixed by the Council is bad and liable to be quashed and the terms of the appointment fixed by the Council shall prevail.

c) The reasons mentioned in the impugned order are incorrect which is that in the absence of the recruitment rules duly approved, the rules relating to ordinary Government employee shall apply. The said reasoning is erroneous according to the Petitioner in as much as the Rule 7 itself empowers the Council to determine the terms and conditions of the appointment of the Secretary. Once, the said power is given to the Council, the Central Government Rules cannot be pressed into service.

d) The Respondent No. 1 and 3 have deliberately misinterpreted the provisions of Rule 7 and Rule 13 which are applicable in different fields. Rule 7, as per the Petitioner is meant for the post of Secretary which is reserved for a member of a particular religion in the present case a Muslim and Rule 13 will be applicable to other posts of the staff of the Council which are non reserved category.

e) The impugned order suffers from malice as the Respondent No. 1 and Respondent No. 3 acted in malice as no objection to the Council's decision dated 05.10.2009 was raised by the Government for more than 5 months of the communication. Secondly, the intimation to review the decision regarding the retirement age of the Petitioner was referred to Council only on 16.3.2010 with council given no time to act knowing well that the Council is going to complete its term on 17.03.2010.

f) The passing of the impugned order is arbitrary and without due authority of law and also against the principles of natural justice.

3. The Respondent No. 2 Mr. Ghazi Ul Islam has filed his counter affidavit stating as under :

a) That the Respondent No. 2 is the development officer of the Respondent No. 1. The Respondent No. 2 acknowledges that resolution dated 1.9.2009 was placed and approved by the Council and it was resolved that the retirement age of the present Secretary may be fixed at 62 years.

b) The Respondent No. 2 also stated that in the 55th Meeting held by the Council on 05.10.2009 presided by the Chairman, the minutes of the Planning and Advisory Committee meeting were approved and confirmed. The office order dated 7.10.2009 was also issued pursuant thereto.

c) The Respondent No. 2 stated that on 17.3.2010, he received a call from the office of the Ministry of Minority affairs to come at the premises to sign some

letters. The Respondent No. 2 stated that he was asked to sign the letter dated 16.3.2010 already typed on the letter head of the Council addressed to all members of the Central Wakf Council forwarding the letter dated 10.3.2010 of Ministry of Minority affairs addressed to Chairman which was regarding the retirement of the Petitioner.

d) It is also stated by the Respondent No. 2 that similarly on 23.3.2010 he was called by the ministry to sign order office memorandum on 23.3.2010 again typed on the letter head of the council stating that the Petitioner will be retiring on 31.3.2010 and so would be handing over the charge to Shri Mohammad Afzal, Deputy Secretary Ministry of Minority Affairs.

e) The Respondent No. 2 has stated that he has acted under the direction of the senior officers of the Ministry of Minority affairs and none of the above decision was made by him independently.

Further, the Respondent No. 3 has filed the detailed counter affidavit wherein the Respondent has sought to justify the impugned order by bringing into light the following facts :

a) The Respondent No. 3 submitted that the Ministry and Government has its role in appointment and setting out terms and conditions of the appointment of the Petitioner. The Respondent No. 3 corroborates the said facts by highlighting the following :

- * The panel of selection committee recommended the name of the Petitioner.

- * Vide order w.e.f. 14.07.1997, the Government of India, Ministry of Welfare offered the appointment to the Petitioner for the post of secretary, CWC.

- * The Petitioner sent a communication dated 7.7.1997 to Joint Secretary to Government of India, Ministry of Welfare accepting offer of appointment as per the terms and conditions mentioned in the letter of Deputy Secretary, Government of India.

- * The Petitioner made a representation dated 6.2.1998 to the Secretary to Government of India, Ministry of Welfare expressing his willingness to continue as Secretary to CWC wherein he had sought for continuation.

- * On 2.6.1998, the Petitioner herein had again made the representation for fixation of his pay to the Government/ Respondent No. 3.

- * On 24.6.1998, the Petitioner was given his letter of appointment detailing and fixing his pay scale.

The Respondent No. 3 by narrating the abovesaid events has argued that it is actually the Respondent No. 3 which is the competent authority to decide the terms and conditions of the service of the Petitioner and when the Respondent No. 3 has directed the Respondent Nos. 1 and 2 to ask the Petitioner to retire by 31.3.2010, the said decision was done by the competent authority and no

interference is called for by this Court as there is no fault in the decision making.

b) The Respondent No. 3 has stated in the counter affidavit that the appointment of the Petitioner shall be regulated by the Respondent No. 3 only and to substantiate the argument, the Respondent No. 3 relied upon Rule 13 (3) Central Wakf Council Rules, 1998 which reads as under :

Rule 13 (3) Except as otherwise provided by the Council, with the prior concurrence of the Central Government, the scale of pay, leave, conduct rules and other terms and conditions of the service for the various categories of posts shall be the same as may for the time being in force be applicable to the officers and servants, holding posts of corresponding scale of pay under the Central Government.

The Respondent No. 3 thus stated that it is central Government which can regulate the terms of service of the Petitioner and the Petitioner is trying to take contrary stand after being duly appointed on the terms fixed by the Respondent No. 3. The said Rule 13 (3) as per the Respondent No. 3 operates and empowers the Central Government to take such decision and thereby the impugned order is in consonance with the Rule 13.

c) The Respondent No. 3 also negated the applicability of Rule 7 on the ground that it was all the time Central Government which played the active role in the appointment of the Petitioner and fixation of pay and other terms of the Petitioner, nowhere in the appointment letter of the Petitioner, it is stated that the Petitioner is appointed in exercise of the powers under Rule 7 of the CWC Rules.

Further Respondent No. 3 argued that Rule 13 provides specifically about the pay scales and other terms of service and also provides for terms and conditions for various categories of posts which mean that the same shall have an overriding effect over and above Rule 7 whereby the Central Government will have the powers to regulate the terms of conditions of service as mentioned in Rule 13 and not the Council and thus Rule 7 has no applicability in the present case.

4. Mr. Sandeep Sethi, learned senior counsel appearing on behalf of the Petitioner has made submissions to support his case which can be summarized in the following manner :

a) Mr. Sethi has argued that the Petitioner's appointment has been made as per Rule 7 of CWC Rules 1998. Learned Counsel for the Petitioner has read the contents of the appointment letter to draw the support to his argument that it is the Chairman/ Chairperson which is the appointing authority on the terms and conditions fixed by the Council which is wording of the Rule 7. The appointment letter when read in consonance with Rule 7 and other rules will leave no room for any ambiguity so far as appointing authority is concerned.

b) Mr. Sethi, learned Senior counsel for the Petitioner contended that Rule 13 has no applicability when it comes to regulating the terms and conditions of the

Secretary which is sole prerogative of the Council as per Rule 7. Learned Counsel for the Petitioner has argued that there is a fine distinction between the Rule 7 and Rule 13 of the CWC Rules 1998 and both operate in a different fields. Learned Counsel for the Petitioner has supported his argument by relying upon judgment passed by Hon'ble Apex Court in The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others, wherein the Apex Court observed that within the same statute itself, there may be provisions which may operate generally and specifically. The special/specific provision enacted for specific purpose will override the general provision to the extent to serve the purpose for which it is enacted.

Applying the said principle, the learned Counsel submitted that the provision relating to the Secretary (including appointment etc) is Rule 7 as against Rule 13 which relates to staff of the Council. Thus, both the provisions operate in a separate fields and thus Rule 13 cannot be pressed in to service when it comes to regulating the terms and condition of service of Secretary of the Council.

c) Learned Senior counsel for the Petitioner has argued that the Council from time to time has fixed the age limit of Secretaries who have worked for the Council for the past. Earlier there was a 27th Council meeting held on 10.07.1988 which resolved the age limit of the secretary would be 60 years. However, in 55th meeting, the said age was extended to 62 years and it was resolved and decided that the Petitioner's retirement age is fixed at 62 years. Learned Counsel for the Petitioner thus argued that the Respondent No. 3 direction cannot be in conflict with the council decision to fix the age of the Petitioner and the same is thus ultra vires the Rules of the Council.

d) Learned Senior counsel further submitted that there are several other Secretaries in the past who have retired after the age limit and at the discretion of the Council which further makes it clear that it is the Council which has the role to play in fixing the terms and conditions of the Secretary and not the Government. The Petitioner has given instances in the petition along with the names of the earlier Secretaries.

e) Lastly, Mr. Sethi learned Senior counsel for the Petitioner has argued that the order of the Respondent No. 3 besides being ultra vires also suffers from malice as the said decision was made in haste and with the knowledge that the Council is going to dissolve on 17.03.2010 and cannot have its say thereafter. Accordingly, the Respondent No. 3 order through Respondent No. 2 without proper approval of Chairman as well as on the last day of the Council when the council in exercise of powers under Rule 7 has already fixed the age of the Petitioner suffers from malice, arbitrariness.

5. Learned Counsel for the Petitioner summed up his arguments by stating the present case is a fit case for this Court to interfere as the Respondent No. 3 has acted contrary to Rule 7 and attempted to override the decision making of the Council. Further, the Respondent No. 3 acted in malice and therefore the order

passed by the Respondent No. 3 is liable to quashed.

6. Per Contra, learned ASG Mr. Chandhiok appearing on behalf of the Respondent No. 3 has made his submissions which can be enumerated as under :

a) Mr. Chandhiok, learned ASG firstly argued that the Petitioner has not properly disclosed the complete facts before this Court as the Respondent No. 3 has written on 10.3.2010 to the council stating that the matter was put up before the competent authority in the Ministry and it has been decided that Dr. Haque, who will attain the age of 60 years should be allowed to retire on 31.03.2010. Thus, there is no malice or malafide on the part of the Respondent No. 3 and rather the said decision has been made by the competent authority as per the Rules.

b) Learned ASG strenuously argued that it is the Respondent No. 3 which is the competent authority and not the CWC. Learned ASG relied upon Rule 7 and Rule 13 which reads as under :

Relying upon both the rules, learned ASG has sought to make a distinction between the language of Rule 7 and Rule 13 wherein the words Chairperson and Chairman are used. He submitted that the Chairperson is only acting as an appointing authority and it is actually the Central Government which makes the actual appointment of the Secretary. Learned ASG submitted that Rule 13 will be applicable to regulate the terms and conditions of service of the Petitioner.

c) Learned ASG further submitted in practical sense also, it is the Respondent No. 3 which has made the appointment of the Petitioner. Learned ASG relied upon several instances pleaded in the reply/counter affidavit to urge that the Ministry has its role in appointment of the Petitioner which are again reproduced hereinafter;

d) Learned ASG replying to the argument of the Petitioner submitted that once Rule 7 is read along with Rule 13, the same makes it clear that Rule 13 will govern each and every post in the Council wherein the Central Government and Rules applicable to Central Government employees shall operate. Learned ASG has sought to amplify his argument by referring to Rule 13 (3) which talks about various categories of the posts.

7. Learned ASG submitted that once the said Rules talk about various categories of posts and not to the staff, the operation of the said Rule 13(3) cannot be circumscribed to staff only and must be given its fullest effect by interpreting in widest amplitude.

8. Learned Counsel further argued that heading of Rule 13 which talks about staff of the Council cannot take away the plain words mentioned under Rule 13 (3) and thus this Court should not merely be convinced by the headings or marginal note of the provision.

9. Learned ASG has relied upon the judgment passed by Supreme Court of India in *Frick India Ltd. Vs. Union of India (UOI) and Others*, the excerpts of the

judgment are reproduced herein after :

8. It is well settled that the headings prefixed to sections or entire cannot control the plain words of the provision; they cannot also be referred for the purpose of construing the provision when the words of the provision are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision. Only, in the case of ambiguity or doubt, the heading or subheading may be referred to as an aid in construing the provision but even in such a case, it could not be used for cutting down the wide application of clear words used in the provision.

10. Relying upon the aforementioned paragraph of the judgment, learned ASG submitted that clear applicability of Rule 13(3) will resolve the issue which can be answered straightway in following manner :

a) Central Government/Respondent No. 3 is the actual appointing authority which in practice too has an active role in appointing the Petitioner.

b) By applicability of Rule 13(3) no prior concurrence has been taken by the Council even if the council has provided otherwise in case of the Petitioner.

c) There is no discretion left with the council without the prior concurrence of the Central Government to extend the age of the Petitioner.

d) The later part of Rule 13 (3) will take care of the applicability of Central Government employees Rules in case of Secretary.

Thus, as per the learned ASG, no ambiguity remains when Rule 13 is applied in decision making process and the impugned order is passed within the framework of Rule 13.

e) Learned ASG lastly argued that even assuming for the sake of argument Rule 7 is applicable, even then the said Rule talks about that terms and conditions as may be fixed by the Council which as per ASG means the terms already fixed and the subsequent resolution passed in 55th meeting cannot be given the retrospective effect and thus even then the said Rule 7 even if applicable does not improve the case of the Petitioner and the writ petition is liable to be dismissed.

11. I have gone through the submissions made by the learned Counsel for the parties and also perused through the petition and the counter affidavits filed by the Respondents. I shall now proceed to deal with the contention of the parties point wise.

12. First and foremost is the discussion which relates to the applicability of Rule 7 or Rule 13 of the Central Wakf Council Rules 1998 so far it relates to the appointment of secretary/Petitioner and its terms and conditions of the service. The same can be done by looking into the framework and scheme of The Wakf Act, 1995 and its corresponding Rules meticulously. The relevant Sections and Rules are reproduced hereinafter.

13. Section 3 in the definition clause defines Council u/s 3(e) which provides that Council means the Central Wakf Council established u/s 9. Section 9 of the Act provides for the establishment and constitution of Central Wakf Council which reads as under :

9. Establishment and constitution of Central Wakf Council.- (1) For the purpose of advising it, on matters concerning the working of Boards and the due administration of wakfs, the Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Wakf Council.

(2) The Council shall consist of -

(a) the Union Minister in charge of wakfs-ex officio Chairperson;

(b) the following members to be appointed by the Central Government from amongst Muslims, namely:

(i) three persons to represent Muslim organisations having all India character and national importance;

(ii) four persons of national eminence of whom two shall be from amongst persons having administrative and financial expertise;

(iii) three Members of Parliament of whom two shall be from the House of the People and one from the Council of States;

(iv) Chairperson of three Boards by rotation;

(v) two persons who have been Judges of the Supreme Court or a High Court;

(vi) one advocate of national eminence;

(vii) one person to represent the mutawallis of the wakf having a gross annual income of rupees five lakhs and above;

(viii) three persons who are eminent scholars in Muslim Law.

(3) The term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, members of the Council shall be such as may be prescribed by rules made by the Central Government.

14. Section 12 empowers the Central Government to make Rules which reads that the Central Government may, by the notification in the official gazette make rules to carry out the purposes of this chapter. Relevant Sub-Section 2 of Section 12 reads as under :

(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) the term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, the members of

the Council;

(b) control over and application of the Central Wakf Fund;

(c) the form and manner in which accounts of the Council may be maintained.

15. In exercise of the Rule making power as envisaged u/s 12, the Central Government has made The Central Wakf Council Rules, 1998. The definition clause provides for the definition of Chairperson, Council, Secretary and Member which reads as under :

2. Definitions.-In these rules, unless the context otherwise requires -

a) ...

b) "Chairperson" means the Chairperson of the Council;

(c) "Council" means the Central Wakf Council established u/s 9 of the Act;

(d) ...

(e) "Member" means a member of the Council;

(f) "Secretary" means the Secretary of the Council.

16. Rule 3 and 4 provides for the Register of Members, term of office, resignation and removal of members which are mostly done by the Central Government as mentioned in the Rules.

17. Rule 5 deals with the filling of casual vacancies. Rule 6 provides for the committees of the Council. The Rule 7 which is relevant for the purposes of the present proceedings provides the provisions relating to Secretary to the Council. For the sake of convenience, the said Rule 7 is reproduced hereunder :

7. Secretary to the Council.-

(1) There shall be a Secretary to the Council, who shall be a Muslim, appointed by the Chairperson on such terms and conditions as may be fixed by the Council.

(2) The Secretary shall be the Chief Executive Officer of the Council and shall exercise powers of control, supervision and management over the office and staff of the Council.

(3) The Secretary shall give effect to the decisions of, and carry out the instructions that may, from time to time, be given by the Council or the Chairperson :

Provided that when Council is in the process of reconstitution or unable to meet for reasons beyond its control, the Secretary may seek the orders or approval of the Chairperson on an urgent matter:

Provided further that all such orders or approval of the Chairperson shall be placed before the Council for its decision, as soon as the Council meets.

(4) The Secretary shall ensure that all the records of the Council are properly maintained and kept in safe custody.

(5) The Secretary shall be responsible for the presentation of the annual statement of accounts of the Council duly authenticated in the proper form to the auditor appointed by the Central Government for this purpose.

18. Rule 13 is the Rule which provides for the staff of the Council which reads as under :

13. Staff of the Council.-(1) The Council shall, from time to time, and on the recommendation of the Secretary, create such posts as are necessary for the efficient performance of the functions of the Council.

(2) (i) The Chairperson shall make appointments to the posts in the category of Upper Division Clerk or its equivalent and above.

(ii) The Secretary shall make appointments to the posts in the category of Lower Division Clerk or its equivalent and below.

(iii) The appointing authority of the employees of the Council shall be the disciplinary authority and shall be competent to impose all kinds of punishments including dismissal as per the Central Civil Services (Classification, Control and Appeal) Rules, 1965, as amended from time to time.

(iv) In case of disciplinary proceedings against the employees of the Council, where the disciplinary authority is the Chairperson, the Council shall be the appellate authority and where the disciplinary authority is the Secretary, the Chairperson shall be the appellate authority.

(3) Except as otherwise provided by the Council, with the prior concurrence of the Central Government, the scale of pay, leave, conduct rules, and other terms and conditions of service for the various categories of posts shall be the same as may for the time being in force be applicable to the officers and servants, holding posts of corresponding scale of pay under the Central Government.

19. Rule 15 provides for the power to sanction expenditure by Chairperson and Secretary. Rule 17 provides for the powers of Secretary in respect of staff and contingent expenditure.

20. A careful analysis of the Act and the rules from the aforesaid provisions makes it clear that the council under the act has been constituted u/s 9 of the Act. The Central Government has been empowered to make rules to carry out the purposes of the Act u/s 12 of the Act.

21. Further the rules have been enacted by the Central Government which defines Chairperson, Council Member and Secretary. The definition clause itself makes it clear that rules are defining and recognizing the posts under it separately. Pursuant thereto the entire scheme of the rules deals with the aforementioned posts separately, this can be seen by reading Rule 3 and 4 deals

with members of the Council, Rule 6 provides for the appointment of committees within the Council, Rule 7 deals with the secretary to the Council, Rule 13 provides for the staff of the Council etc.

22. The said scheme of the rules makes it abundantly clear that each rule is intending to define and make distinction of the various posts recognized under the rules. The said rules provide for the appointments, term of offices, the removal and other terms separately in their respective rules. It can be said that the said rules are self contained codes for the respective recognized posts under the Act.

23. For Instance, the Council may appoint amongst the members the committees under the rules. The terms of the office of the Committees shall be as specified by the Council. As against the same, the Secretary shall be appointed by the Chairperson on such terms and conditions as may be fixed by the Council. These are the distinctions which are apparent after reading of Rule 6 and 7 of the Rules. Thus, the said rules laid down the appointing authority and provides for the other terms to be regulated by the respective authority as mentioned in the rule.

24. It is also not necessary that it is only the appointing authority which shall be decisive of the terms and conditions of the employment. For instance, Rule 6 gives appointing power as well as the term of the office of members of Committee to the Council as against the Rule 7 where the Appointing Authority is chair person but the terms and conditions of the appointment shall be fixed by the Council. Likewise under Rule 13 staff of various categories is appointed by Chairperson or by the Secretary depending upon the cadre. However, the terms of the office shall be regulated by the Central Government under the Rule 13 (3) except where the Council has otherwise provided with the prior concurrence of the Central Government. Thus, the said rules provide and prescribe for separate appointments with different modes and their terms of offices etc are also regulated separately as per the rules.

25. It is well settled principle of law that the rules made under the Act operate with the same force as that of the Act and are to be adhered to with the same spirit as that of the Act unless the said rules are in conflict with any provisions of the Act wherein the court can declare any rule to be ultra vires the Act. (Kindly see Chief Forest Conservator (Wild Life) and Others Vs. Nisar Khan, wherein Apex Court held that it is well settled that when rules are validly framed, they should be treated as a part of the Act.)

26. It is also the cardinal principle of administrative law that the things which are to be performed in the manner prescribed under the delegated legislation has to be performed in the manner prescribed to the exclusion of other. (The said Rule laid down in Taylor v. Taylor 1876 (1) Ch.D. 426 that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden.)

27. It is the normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. This principle has been reiterated in Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, ; Captain Sube Singh and Others Vs. Lt. Governor of Delhi and Others, and State of Uttar Pradesh Vs. Singhara Singh and Others, .

28. The Rules in Central Wakf Rules, 1998 thus provides for distinct posts which can be categorized under the rules. The said posts including that of the members, Secretary and Chairperson are recognized posts as against the post which have been created from time to time which is mandated under Rule 13 (1). Thus, the Rules relating to the staff of the Council which is created post from time to time cannot be pressed into service so far it relates to recognized post of Secretary (who has separate allocated powers within rules also) which is governed by Rule 7 of Rules.

29. I find merit in the submission of Mr. Sandeep Sethi, learned Senior counsel for the Petitioner that when there is specific provision enacted under the rules for carrying out specific purpose, the said provision must be given its effect against the provision which can only be used by way of interpretative tools to render the specific provision ineffective. Applying this rule of construction that in cases of conflict between a specific provision and a general provision the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision, I must hold that appointment of the Secretary and its terms and conditions of the employment shall be governed by Rule 7 which means the same which has been fixed by the Council as against the Rule 13 which deals with creating posts.

30. The submissions of the learned ASG on this aspect has been dealt with as under :

1) Firstly the learned ASG argued that the combined reading of Rule 7 and Rule 13 will make it clear that the Rule 13 deals with various categories of the post and the same will be applicable for regulating the post of Secretary also. I find that the combined reading of both the rules suggest that both operate in different fields and the same cannot be said to be in conflict with each other. There is a complete legislative harmony rather than disharmony when it comes to operation of the said rules. The same cannot be used interchangeably under any circumstances.

2) Secondly learned ASG has contended that the Rule 13 (3) is framed in such a language which has to be given the interpretation of widest amplitude. This is more so due to the wordings of the said rule which encompasses several categories of the posts and also talks about the scale of pay, conduct Rules and other terms of the conditions. Learned ASG also stressed that as the Rules begins with the wordings except as otherwise provided by the Council with the prior concurrence of the Central Government, the powers are vested with the

Central Government save as otherwise provided by the Council to govern each and every post and the same may be given overriding effect.

31. To further substantiate this argument, learned ASG also relied upon dicta of Frick India Ltd (supra) which states that the marginal note of the provision cannot curtail the plain language of the section or the provision. Thus, the said Rule 13 (3) as per learned ASG must not be given restrictive interpretation merely because of the marginal note of the Rule 13 provides for the staff of the Council.

32. I have carefully examined the submissions made by ASG and I am in disagreement with the submission made by ASG due to following reasons :

a) Firstly it is not only due to the marginal note of Rule 13, it is concluded that the terms and conditions of the appointment of Secretary shall be governed by Rule 7 not by Rule 13. But after a careful examination of scheme of rules, definitions of various posts and reading of rules which prescribe separate modes of appointment for several posts along with the respective authorities which shall determine the terms and conditions of the service of the posts under the Act, I have come to the conclusion that it is not Rule 13 which shall govern the terms and conditions of the service of the Petitioner but Rule 7.

b) Secondly, there is no res integra to the proposition that the marginal note of the provision cannot be taken recourse into for curtailing the plain language of the main provision and the said proposition stands a good law as held by the Apex Court in Frick India Ltd (supra). But I am doubtful as to how this would aid the case of the Respondent as not merely the marginal note is speaking the intent of the provision but the plain language of the Rule itself makes it clear that the same will be applicable to the created posts and not to the other posts. The same can be explained as under :

Rule 13 (1) provides for that the council shall from time to time and on the recommendation of secretary create such posts as are necessary for efficient performance of the functions of the council.

Rule 13(2) explains the appointments to the posts shall be made by chairperson or by secretary depending upon the category.

Rule 13(3) provides that "Rule 13(3) Except as otherwise provided by the Council, with the prior concurrence of the Central Government, the scale of pay, leave, conduct rules, and other terms and conditions of service for the various categories of posts shall be the same as may for the time being in force be applicable to the officers and servants, holding posts of corresponding scale of pay under the Central Government.

33. Thus the meaningful and pragmatic reading and plain wording of Rules/ sub Rules under Rule 13 makes it clear that when sub Rule 3 talks about posts, then same has to be a post which has been created under this rule from time to time by the Council. Also when sub Rule 3 provides for various categories of the posts,

the same gets immediately connected with the previous sub Rule 2 where the appointments to the post were either made by the Chairperson or by Secretary depending upon the category of the posts. Thus the various categories of the posts are same posts which have been created under Rule 13 and cannot relate to the statutory recognized posts when the other Rules provides for different modes of appointment and different terms of office.

34. All these factors are clear indicators that the Sub-rule 3 has its operation solely for the purposes of the posts which has been created under the said Rule and not in the manner as sought to be interpreted by the learned ASG.

36. Thirdly, the interpretation sought to be given by the learned ASG to Rule 13 (3) to its wide amplitude leads to absurdity or inconvenience and renders the Rule 7 ineffective.

36. It is trite that the construction which leads to harmony between the provisions should be upheld and the interpretation which renders the operation of the provision otiose must be eschewed. This has consistently been the view of the courts as the presumption always goes in favour that the rules have been framed by the rule makers purposefully and each and every clause has its meaning to it.

37. In High Court of Gujarat and Another Vs. Gujarat Kishan Mazdoor Panchayat and Others, , the Supreme Court held as under :

35. The Court while interpreting the provision of a statute, although, is not entitled to rewrite the statute itself, is not debarred from "ironing out the creases". The court should always make an attempt to uphold the rules and interpret the same in such a manner which would make it workable.

36. It is also a well-settled principle of law that an attempt should be made to give effect to each and every word employed in a statute and such interpretation which would render a particular provision redundant or otiose should be avoided

38. In Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, , the Supreme Court said :

Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context, its scheme, the sections clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and

designed to any as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation, Statutes have to be construed so that every word has a place and everything is in its place....

39. Thus, by using the interpretative tools and giving the interpretation to Rule 13(3) as giving over riding effect will render the Rule 7 which is a specific Rule meant for Secretary otiose which cannot be done. Thus, this is the only harmonious interpretation possible under the existing rules.

40. Fourthly, It has also to be seen that where the rule makers intended to provide the terms and conditions of the service to be in parity with that of the Central Government employees, the rule makers have consciously provided so in the form of Rule 13(3). However, if the interpretation accorded by the learned ASG is accepted, then even the members of the council and committee members within the council whose terms and conditions of service are governed by Rules 3, 4 and 6 will also be governed by the pay scale and other terms and conditions of Central Government employees as the same is also one of the categories of posts in the Council. This will render the purpose of the Rule making and providing the different posts, their appointment procedure and terms of the office nugatory. Thus, the said interpretation again leads to inconvenience and renders several rules inoperative.

41. Fifthly, The appointment letter dated 05.08.1997 itself stated that the Chairperson of Central Wakf Council is appointing the Petitioner on the terms and conditions mentioned in appointment offer dated 3.7.1997. The said appointment offer dated 3.7.1997 provides for different terms and condition and wherever it is necessary, the appointment terms dated 3.7.1997 provides that the terms are same as that of the Central Government employees. In relation to pay and allowance, accommodation etc, the Central Government scale and rates are respectively applicable. However, in relation to the tenure of appointment, it specifically provides that the appointment of the Petitioner shall be for the period of one year to be extended at the discretion of the Chairperson, Central Wakf Council and does not provide for the role of the Central Government. This again shows that the tenure of appointment is intended to be treated differently as against the ordinary post of the staff stated in the Rule 13.

42. Further it is again noteworthy to state that while absorbing the Petitioner permanently, the letter dated 22.08.2000 issued by the Respondent No. 3 again refers to Rule 7 of CWC Rules, 1998 and confirms the Petitioner employment permanently in exercising the powers as a Chairperson. The contents of the said letters are reproduced hereinafter :

As per Section 7 (1) of Central Wakf Rules, 1998 Secretary of the Central Wakf Council is to be appointed by the Chairperson, on such terms and conditions, as may be fixed by the Council. It appears that the Central Wakf Council had approved the recruitment rules for the post of Secretary in its 27th meeting held on 17.7.1988. Clause 3(3) of the said Rules provides that the mode of

recruitment shall be by open public advertisement. Dr. Haque was appointed as Secretary, CWC, against the advertisement issued by this Ministry on 19th December, 1996. Clause (8) of the said advertisement indicates that the tenure of appointment shall be initially for a period of one year to be extended for further period at the discretion of Chairperson. Keeping in view the facts that the recruitment rules as well as the advertisement are silent about the maximum period of appointment rules as well as the advertisement are silent about the maximum period of appointment, Dr. Haque has requisite qualifications, experience and has rendered excellent service, the Minister of State for Social Justice and Empowerment in her capacity as Chairperson of the Council, has considered and approved the appointment of Dr. Haque to the post of Secretary, CWC, on permanent basis.

43. From the content of the said letter it is evident that even the Respondent No. 3 is aware of the fact that the appointment for the post of the Secretary is governed by Rule 7 of the Rules and Chairperson in exercise of the powers under Rule 7 can exercise his powers by extending the tenure of the Petitioner on terms and conditions fixed by the Council. It also becomes further clear after reading the later part of the letter dated 22.08.2000 which reads as under :

These have been decided by the MOS and Chairperson, subject to the ratification by the Central Wakf Council. Accordingly, the above may be placed before the council in its next meeting and the decision of the Council may be intimated to this Ministry....

44. The said wordings emanating from the Respondent No. 3 are clarificatory in nature and rather put an end to the conflict as the Respondent No. 3 is aware that its decision as otherwise or Minister's decision as chair person is subject to the ratification by the Council. It is the Council which has its final say in fixing terms and conditions of the service of the Secretary. This is also the mandate of Rule 7 and thus to be followed in its letter and spirit as followed by the Respondent No. 3 from time to time.

45. It is thus too late for Respondent No. 3 to argue that the Petitioner's terms of service is governed by Rule 13 and not under Rule 7.

46. The submission of learned ASG also stands answered so far as it relates to prior concurrence of the Central Government, the contents of the letter dated 22.08.2000 itself answer the said submission. It is the Council which has its final say as against the Central Government/Ministry and the Respondent No. 3 has itself written letter to the Council for its final ratification. Thus, the said submission is rejected being devoid of any merit.

47. The submission of the learned ASG that the terms and conditions fixed by the Council cannot be given retrospective operation assuming the Rule 7 is applicable is also rejected as meritless. This is so as the appointment letter itself appoints the Petitioner for one year which shall be further extended by Chairperson of Central Wakf Council. It is thus all the more incumbent upon the Council and

Chairperson to fix the terms and conditions of the employment of Secretary in accordance with the Rules for proper administration of the Council and its working. The said terms if remain static, the fixation of terms and conditions by the Council cannot be put into operation. Thus, the said argument is without any substance.

48. For all above reasons, it can be safely be said that the terms of the appointment of the Petitioner are governed by Rule 7 and not by Rule 13 of Central Wakf Council Rules, 1998.

49. After the aforementioned discussion, it can be concluded that the terms of the service of the Petitioner is governed by Rule 7 of Central Wakf Council Rules, 1998 and the Council has its final say in the matter rather than the Respondent No. 3, it can be also be said without hesitation that the term of retirement of the Petitioner fixed by the Council in exercise of its power under Rule 7 cannot be rendered inoperative due to the impugned order passed by Respondent No. 3.

50. The Central Wakf Council in its 55th Meeting held on 05.10.2009 had fixed the retirement age of the Petitioner in exercise of the powers under Rule 7 of the Central Wakf Council Rules. The copy of the said decision was also conveyed to the Respondent No. 3. The contents of the said office order are reproduced hereinafter :

I am directed to convey the decision of the Central Wakf Council taken in its 55th meeting held on October 5, 2009 (Monday), fixing the retirement age of the present Secretary, CWC, Dr. M.R. Haque at 62 years, which can be further extended on the discretion of the Council.

The above decision was taken by the Council, under the Rule 7(1) of the Central Wakf Council Rules, 1998 (corresponding to Rule 5(1) of the Central Wakf Council Rules, 1965), on the recommendation of the Planning and Advisory Committee made in its meeting held on September 1, 2009.

The above decision of the Council may be noted for record and necessary action.

51. Once the Council has fixed the terms of the retirement of the present Petitioner on October 7, 2009 and the same was communicated to Chairperson, Central Wakf Council as well as to Respondent No. 3. The compliance of Rule 7 was done fully by the Council, the Chairperson is left with no option but to act upon the decision of the Council which is as per the Rule 7 of the Central Wakf Council Rules, 1998. It is not open to the Ministry/Respondent No. 3 to pass a separate decision by writing letters to Chairperson on 10.03.2010 by superimposing its decision on Chairperson as well as upon the Council. The Chairperson in such a situation has to abide by the decision of the Council and not be influenced by the decision of the Respondent No. 3 as per Rule 7 of the Central Wakf Council Rules 1998. In the present case, the Chairperson has remained silent and Ministry/Respondent No. 3 has acted in contravention of Rules by passing the said order dated 10.03.2010. Thus, the impugned order

dated 10.03.2010 passed by the Respondent No. 3 is ultra vires the Rule 7 and ought to be quashed warranting interference by this Court.

52. It is a well settled law that whenever any administrative order or quasi judicial order is passed in violation of the main act and the rules, the same is termed as ultra vires and ought to be corrected by this Court in exercise of the powers of the writ. The often quoted excerpt from the judgment of Lord Atkin L. J. in R. v. Electricity Commissioners [1924] 1 K.B. 171 is reproduced here :

Whenever any body of persons having legal authority to determine questions affecting rights of subjects, and having the duty to act judicially act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.

53. Thus I find that the Respondent No. 3 has acted beyond the legal bounds as envisaged under the Wakf Act and Rules made there under. The Respondent Nos. 1 and 2 have wrongly acted upon the same and therefore the case is made out warranting interference by this Court. The impugned order dated 10.03.2010 is, therefore, quashed being in violation of Rule 7 of the Central Wakf Council Rules. The decision of the council taken on 05.10.2009 is upheld.

54. As regards the office memorandum issued by the Respondents on 22.03.2010 are concerned, it has been clarified in the counter affidavit filed by the Respondent No. 2 that the said office memorandum has been passed by the Respondents without the knowledge of the stay orders passed by this Court on 23.03.2010. By this office memorandum it was observed that the Petitioner would hand over the charges on 31.3.2010. Without going into any controversy raised by the parties as to whether official memorandum was issued by the Respondents before or after passing the interim order passed by the Court on 23.03.2010 since the main order dated 10.3.2010 is quashed, the order dated 22/23.03.2010 also become infructuous.

55. The Respondents are directed to allow the Petitioner to resume office with effect from 15.01.2011. It is directed that the said decision passed by the Council shall be implemented and Respondent No. 3 is also directed to pass all its orders strictly within the rules. The writ petition is thus allowed.

56. CM No. 4020/2010, CM No. 9657/2010 and CM No. 10070/2010 are also disposed of accordingly. No costs.